

## Market Review for the Postal Sector: Parcel Post Markets

*Analysis of Markets, Determination of Market Power and Setting of Remedies*

Consultation Document

MCA/C/13-1743

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## EXECUTIVE SUMMARY

The Malta Communications Authority (MCA) is hereby presenting, for national consultation, its proposed conclusions of the market review of the parcel post markets.

The consultation period shall run from the 5th November 2013 to the 16th December 2013.

## SUMMARY OF CONCLUSIONS

The MCA decided to carry out two separate reviews, one for letter mail markets and another for parcel post markets.

On the 9th of July 2013, the MCA presented for national consultation, its proposed decision on the market definition of the postal sector in Malta and the consequent proposed conclusions of the market review of the letter mail markets. The decision was subsequently published by the MCA on the 30th October 2013.

The MCA will in this review carry out an analysis to assess the level of competition of parcel post services markets in Malta.

Having already identified, in the market review of the letter mail markets, the individual markets that comprise the postal sector in Malta (including the parcel post markets), the MCA will not repeat the market definition procedure and will proceed immediately to carrying out the market analysis procedure of the parcel post markets. This said, the MCA will, for ease of reference, summarise the conclusions on the definition of the postal services markets in Section 2.1 below.

### Assessment of Market Power

In determining whether a postal operator has the ability to exercise SMP in a parcel post market, the MCA will carry out a forward-looking market analysis based on existing market conditions and evidence.

The MCA shall establish the presence of a dominant position in parcel post markets by reference to the following criteria:

- Market Share
- Barriers to entry
  - Vertical and horizontal integration
  - Economies of scale and scope
  - A highly developed collection and distribution network
- Potential Competition

- Countervailing buyer power

The findings that emerge from this analysis suggest that MaltaPost enjoys SMP in all the parcel post markets identified. This evidence is supported by the fact that MaltaPost has high market shares in all the standard parcel post markets defined. Moreover, the MCA does not expect that within the timeframe of this review conditions in the parcel post markets will change in a manner that effective competition is guaranteed in the absence of regulation.

In view of all this, the MCA therefore concludes that MaltaPost has significant market power in all the standard parcel post markets.

Full details of the MCA's decision and reasoning are contained in Chapter 3 of this document.

### Regulatory Obligations

Given the position of dominance held by MaltaPost in all of the parcel post markets identified the MCA is imposing the following remedies:

- Obligation to provide services at cost-oriented prices
- Obligation of non-discrimination
- Obligation of provision of services on an unbundled basis
- Approval and publication of tariffs
- Accounting separation

Full details of these remedies are contained in Chapter 4 of this document.

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## 1. INTRODUCTION

The Malta Communications Authority (MCA) may at any time as it may deem necessary, after having defined a postal services market in accordance with Regulation 64A of the Postal Services Regulations [SL254.01 of the Laws of Malta], carry out an analysis of such market taking into account any guidelines howsoever described by the Authority.<sup>1</sup>

### 1.1 PURPOSE OF THIS REVIEW

The MCA will in this review carry out an analysis to assess the level of competition of parcel post services markets in Malta.

Where the review determines that a parcel post service market is not effectively competitive, the MCA shall designate postal operators as having significant market power (SMP) and it shall impose on such postal operators appropriate regulatory obligations, or maintain and amend such obligations where they already exist. On the other hand, where the review determines that a parcel post service market is effectively competitive it shall remove a designation of SMP and withdraw the related regulatory obligations.

In order to carry out this analysis the MCA will follow the market review procedure outlined in the ex-ante regulatory framework.<sup>2</sup>

### 1.2 MARKET REVIEW PROCEDURE

The adoption of a market review procedure for the postal sector enables the MCA to define the different postal service markets within the universal service area, comprising also the parcel post services, and assess competition within these markets. The market review procedure is regulated by the Postal Services (General) Regulations [SL254.01 of the Laws of Malta].

As required by Regulation 64A (1) of the Postal Services (General) Regulations, *"the authority shall define the relevant postal services markets within the scope of the universal service appropriate to national circumstances"*. Furthermore, *"the Authority may at any time as it may deem necessary, after having defined a postal services market in accordance with regulation 64A, carry out an analysis of such market"*.

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<sup>1</sup> Regulation 64C (1) of the Postal Services (General) Regulations

<sup>2</sup> Refer to Response to Consultation and Next Steps (MCA/O/12-1397):

<http://www.mca.org.mt/service-providers/decisions/regulating-postal-sector-fully-liberalised-market-response-consultation>

Regulation 64 of the Postal Services Regulation goes on to say that in absence of effective competition, the MCA shall classify one or more licensed operators as having SMP. *"A postal operator shall be deemed to have SMP if either individually or jointly with others, it enjoys a position equivalent to dominance, that is to say a position of economic strength affording it the power to behave to an appreciable extent independently of competitors, customers and ultimately users"*.

Postal operators classified as having SMP, in one or more postal markets will be required to comply with specific ex-ante regulatory obligations identified in regulations 64E to 64I of the Postal Services Regulations to prevent anti-competitive practices and to safeguard the interests of consumers. Ex-ante regulatory intervention will ensure that postal operators having significant market power provide postal services on terms and conditions, and at cost-oriented tariffs that are non-discriminatory and transparent. Where the MCA concludes that a market is effectively competitive, the MCA will not impose any of the specific regulatory obligations applicable to a postal operator having SMP, or remove previously imposed obligations.

In summary, the market review procedure follows three distinct stages:

- Market Definition procedure – definition of the relevant market or markets
- Market Analysis procedure – assessment of competition in each market, in particular whether any postal operators have SMP in a given market
- Application of regulatory obligations / remedies – assessment of the appropriate regulatory obligations that should be imposed given the findings of SMP

In order to carry out the market review procedure described above, based on established economic and legal principles, the MCA will use market data collected from a variety of internal and external sources, including postal operators. The MCA shall also take utmost account of the market review procedure outlined in the postal regulatory framework.

### 1.3 STRUCTURE OF THE DOCUMENT

The rest of the document is structured as follows:

**Chapter 2** outlines all the measures taken by the MCA in line with the postal liberalisation in Malta and provides a brief description of the postal services markets defined and the market review of the letter mail markets;

**Chapter 3** outlines the MCA's market analysis of the parcel post markets identified and determines whether these markets are effectively competitive or not;

**Chapter 4** sets the general principles associated with the imposition of remedies; and

**Chapter 5** highlights the consultation questions.

## 2. BACKGROUND

Full market opening of the postal sector in Malta took place on the 1st of January 2013. To this effect, the area reserved for MaltaPost, as the incumbent designated universal service provider (USP) has been completely abolished and new entrants are thus allowed to start offering end-to-end services for all postal services.

In order to develop and maintain fair and effective competition in the postal sector within the context of full market opening the MCA published an ex-ante postal regulatory framework.<sup>3</sup> Such a framework set forth the rules to facilitate entry of new postal operators and to prevent abuse by postal operators not yet subject to constraints posed by competitive market forces.

Moreover, in order to effectively regulate the postal sector within the context of full liberalisation the MCA proposed a number of amendments to the Postal Services (General) Regulations [SL254.01 of the Laws of Malta].<sup>4</sup> These proposals were duly taken on board by the Government and the relevant regulations were brought into force on the 26th November 2012.<sup>5</sup>

MaltaPost, having been the incumbent designated USP for many years, enjoys a long standing position as the main operator providing postal services in Malta. In order to ensure a smooth transition to a fully liberalised and competitive market environment, on the 26th December 2012 the MCA designated MaltaPost as having 'a priori' SMP<sup>6</sup> in the following postal services markets falling within the scope of the universal service in Malta:

- Letter-post services market
- Bulk letter-post services market
- Registered letter-post services market
- Parcel-post services market

An SMP designation is not however permanent and would be removed if the MCA determines that MaltaPost no longer possesses SMP in one or more postal services markets following a market review procedure. To this effect, the MCA decided to carry out two separate reviews, one for **letter mail markets** and another for **parcel post markets**.

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<sup>3</sup> Refer to Response to Consultation and Next Steps (MCA/O/12-1397):

<http://www.mca.org.mt/service-providers/decisions/regulating-postal-sector-fully-liberalised-market-response-consultation>

<sup>4</sup> Refer to amendments to the Postal Services (General) Regulations - Legal Notice 408 of 2012:

<http://justiceservices.gov.mt/DownloadDocument.aspx?app=lp&itemid=24140&l=1>

<sup>5</sup> Refer to Postal Services (General) Regulations [SL254.01 of the Laws of Malta]:

<http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=9662&l=1>

<sup>6</sup> Refer to MCA Decision Notice on designation of MaltaPost as having SMP:

<http://www.mca.org.mt/decisions/designation-maltapost-having-significant-market-power>

On the 9th of July 2013, the MCA presented for national consultation, its proposed decision on the market definition of the postal sector in Malta and the consequent proposed conclusions of the market review of the letter mail markets.<sup>7</sup> The decision was subsequently published by the MCA on the 30th October 2013.<sup>8</sup>

The MCA will now carry out its next review to assess the level of competition of parcel post service markets in Malta. Having already identified, in the market review of the letter mail markets, the individual markets that comprise the postal sector in Malta (including the parcel post markets), the MCA will not repeat the market definition procedure and will proceed immediately to carrying out the market analysis procedure of the parcel post markets. This said, the MCA will, for ease of reference, summarise the conclusions on the definition of the postal services markets in Section 2.1 below. The MCA will also summarise the conclusions of the market analysis of the letter mail markets in Section 2.2.

## 2.1 OUTLINE TO THE POSTAL SERVICES MARKETS DEFINED

The Postal Regulatory Framework and the Postal Services (General) Regulations require the MCA to define relevant postal services markets appropriate to national circumstances. The purpose of the market definition procedure is to identify, in a methodical way, the competitive constraints faced by undertakings, thereby also facilitating the subsequent market analysis procedure.

Central to the market definition procedure are the demand-side and supply-side substitutability analysis. Demand-side substitutability is used to measure the extent to which consumers are prepared to substitute other services or products for the service or product under investigation. Supply-side substitutability, on the other hand, indicates whether suppliers other than those offering the product or service in question would switch in the immediate to short term their line of production to offer the relevant products or services without incurring considerable additional costs.

The existence of any demand and supply side substitution is determined through the hypothetical monopolist test. The test, used in competition analysis, seeks to define a market by establishing the closest substitute to the product being considered. The hypothetical monopolist test identifies products as being substitutes by evaluating what will happen if there was a small but significant, lasting increase in the price of a given product, assuming that the prices of all other products remain constant.

On these lines, the relevant product market comprises all those products and services that are substitutable, not only in terms of the price and the intended use of the product under investigation, but also in terms of the overall conditions of supply and demand.

In defining the boundaries of the relevant markets for the postal sector in Malta the MCA had to answer the following relevant questions:

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<sup>7</sup> Refer to Consultation Document - Market Review of the Letter Mail Markets (MCA/C/13-1624):  
<http://www.mca.org.mt/consultations/market-review-postal-sector-letter-mail-markets>

<sup>8</sup> Link to the MCA Decision on Market Review of the Letter Mail Markets (MCA/D/13-1738):  
<http://www.mca.org.mt/decisions/market-review-postal-sector-letter-mail-markets-decision>

- What constitutes a postal service?
- Are standard mail services and express mail services part of the same postal services market?
- Are letter-post services and parcel-post services part of the same postal services market?
- Are domestic (inland) and cross border (inbound / outbound) mail part of the same postal services market?
- On the domestic front should the MCA define a postal services market that is national geographic in scope?
- On the international front should the MCA define a separate inbound cross-border and outbound cross-border mail market?

### 2.1.1 POSTAL SERVICES MARKETS

According to the Postal Services Act, Chapter 254 of the Laws of Malta<sup>9</sup>, a postal service constitutes the service involving the clearance, sorting, transport and distribution of postal articles. Postal services include the transmission of postal articles of both domestic (inland) and cross border mail (incoming and outgoing mail).

A postal article refers to an article addressed in the final form in which it is to be carried by the postal operator. In addition to items of correspondence, such articles also include books, catalogues, newspapers, periodicals and postal parcels, however so described, including packages containing merchandise with or without commercial value.

Unaddressed mail services, on the other hand, lack certain constituent features by which to be deemed 'postal services' and therefore fall outside the scope of the postal market review procedure.

### 2.1.2 STANDARD MAIL SERVICES AND EXPRESS MAIL SERVICES

Express mail services are operationally distinct from standard mail services. The provision of express services is based on a niche geared on the urgent exchange of physical communications making additional speed one of the defining characteristics of such services.

In general, express mail services are also characterised by a high degree of reliability in terms of guaranteed delivery. In contrast standard postal services are subject to delivery targets that do not

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<sup>9</sup> Link to Postal Services Act:  
<http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=8748&l=1>

provide for certainty and guarantees as to the exact day or time of delivery. The MCA thus concludes that customers opting for express services do so, on the basis of these requirements and are in principle prepared to pay a higher price for these services.

In this regard, the MCA notes that there also exist price differentials between standard postal services and express services. Suppose someone in Malta wanted to send a parcel weighing 1 kilogram to an address in the United Kingdom. The sender can do so either by using the standard parcel service offered by MaltaPost or an express parcel service offered by one of the many express / courier providers operating from Malta.

If the sender opts to send his/her parcel using MaltaPost's standard parcel service the tariff rate charged for the service will be €23.04. If on the other hand, the sender requires a faster delivery service and opts to use the express parcel service, then the tariff rate for that service ranges between €30 and €40. This analysis holds true for other mail services involving different destinations, weight and girth specifications.

In view of this evidence, the MCA therefore concludes that in the event of a small but significant non-transitory increase in the price (SSNIP)<sup>10</sup> of standard mail services by a hypothetical monopolist it would be unlikely for people to switch to express mail services. This is because the price of express mail services would still be higher than that charged by the standard mail service.

The MCA notes that it would also be very unlikely for customers using the express mail services to switch to the standard mail services following a 5 to 10 percent increase in the postal rates of express services. Customers using the express mail service do so on the basis of the value added qualities these services offer, such as speed and guaranteed time delivery. To this end customers are prepared to pay a higher price for these services. Consequently, an increase in the price of express mail services is not expected to deter customers from continuing to use such services, provided that the value added features are satisfied.

On the basis of the above assessment the MCA therefore concluded that standard postal services and express services are not substitutable from a demand perspective. Standard postal services and express mail services thus belong to separate postal markets.

At the same time, the MCA however notes that express mail services have been operating in a liberalised and competitive environment for a good number of years, so much so that several mail operators are registered in this area.<sup>11</sup> In view of this, the MCA deems that it is not necessary to analyse the express mail market for effective competition, and likewise, no ex-ante regulatory obligations shall apply to this market.

Conclusively, the market review procedure shall only be carried out to assess the state of competition in postal markets providing standard mail services. Having said this, the MCA shall

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<sup>10</sup> This SSNIP test is assessed against a 5 to 10 percent variation in the price of a given product or service.

<sup>11</sup> Link to Register of Authorised Undertakings published in accordance with Regulations 45, 46 and 47 of the Postal Services (General) Regulations:

<http://www.mca.org.mt/sites/default/files/pageattachments/2013-05-09-register-postal.pdf>

nonetheless take utmost account in the market analysis procedure of any indirect constraints imposed by express services on the standard mail service markets.

### 2.1.3 LETTER POST AND PARCEL POST

Letter post services refer to the transmission by post of letter post items weighing up to 2 kilograms per item and adhering to certain restrictions with regard to size. The letter post service may convey letter post items tendered singly or in large quantities. A letter post service may also include the registration of letter post items.

Parcel post services, on the other hand, refer to the transmission by post of packages, tendered over the counter either singly or in large quantities. Parcels are distinct from letter post items and transportation freight respectively in consideration to weight and size limits. The maximum weight per package for this service is 20 kilograms.

From a demand perspective the MCA believes that letter post services and parcel post services are not substitutable with each other. At the outset, the MCA notes that the functional attributes between the two services is inherently different. On the one hand, letter post services refer to a written communication that is individualised for the addressee, such as an invoice, statement of account, postcards or personal greetings. In addition, the letter post service conveys other addressed letter post items including books, newspapers, periodicals, magazines, catalogues, and small packets.

Parcel post services, on the other hand, are designed to provide for transmission by post of larger and heavier shipments whose size and weight exceed the established limitations for letter post items.

In this regard, the MCA also notes that there are distinct service specifications between letter post services and parcel post services. Parcels are distinct from letter post items in consideration to weight and size limits.

In addition, it can also be concluded that the transmission of services for letter post items and parcels is somewhat different. Letter post items are generally posted and delivered through the letter box. Parcels, on the other hand, are tendered by the sender over the counter and delivered to the addressee by dedicated transport. If the household delivery is not successful the parcel is then retrieved over the counter.

Finally the MCA also notes that there is a difference between letter post and parcel post services on the basis of price. For example the domestic rate charged by MaltaPost for a single 50 gram letter is €0.26. MaltaPost's domestic rate for a 50 gram parcel exceeding the size limit of a letter post item is €1.16. Consequently, customers using letter posts services would unlikely switch to parcel post services following a 5 to 10 percent increase in the rates of letter post items, given that parcel services would continue to be higher in price.

Conversely, if the tariff rate for parcel services were to increase by 5 to 10 percent, people would be unable to switch to letter post services, given that the two postal services have distinct service specifications with regards to weight and size.

In view of this, the MCA therefore concluded that letter post services and parcel post services are not substitutes from a demand side perspective, and as a result belong to separate postal markets.

From a supply viewpoint the MCA argued that there is the potential for one-way supply substitution between letter post services and parcel post services. On one hand, no significant additional investment would be required if it is deemed profitable by postal providers of letter post services to start offering parcel services. A nationwide infrastructure for collection, sorting and delivery would already be in place for postal providers of letter post services, which could then be extended to the provision of parcel services.

On the other hand, it is unlikely for a parcel provider to start offering letter post services following a small but significant increase in the price of letter post. The provision of certain letter post services involves a process of collection, sorting and delivery which is far more complex than that entailed in the offerings of parcel post services. Consequently, parcel service operators would have to invest in a nationwide infrastructure for the provision of letter post services which will be costly to set-up.

All in all the MCA found no justifiable grounds on which to define a single market for letter post services and parcel post services. Letter post and parcel post therefore pertain to separate markets.

Additional to this conclusion, the letter mail market was further segmented into three separate markets: the single piece letter mail market, the bulk letter mail market and the registered letter mail market. In defining the boundaries of these letter mail markets the MCA applied the above mentioned demand and supply substitutability procedure.

#### 2.1.4 DOMESTIC AND CROSS-BORDER MAIL

Domestic mail services refer to the transmission by post of postal articles posted in Malta and addressed for delivery to any place in Malta. Cross-border mail services, on the other hand, refer to the transmission by post of postal articles to or from another country.

In view of this, the MCA concludes that the demand and supply conditions for domestic mail services and cross-border mail services are inherently different as they address distinct consumer requirements. At the functional level, people will therefore demand one postal service and not the other on the basis of these requirements. In terms of postal tariff rates, domestic mail services and cross-border mail services are also different.

With these functional and pricing differences the MCA thus concluded that there exists no possible demand substitution between domestic mail services and cross-border mail services. Conclusively, the MCA believes that domestic mail services and cross-border mail services are not substitutable and the two services belong to separate markets. To this effect, a separate domestic and cross-border market has been defined for the parcel post market, the single piece letter mail market, the registered letter mail market and the bulk letter mail market.

### 2.1.5 GEOGRAPHIC MARKET

The MCA defines a relevant geographic market as one which comprises an area in which the postal operators concerned are involved in the supply and demand of the relevant postal services in which area the conditions of competition are similar and which can be distinguished from neighbouring areas in which the prevailing conditions of competition are appreciably different. In determining the geographical scope of a relevant market two criteria are generally used; namely the area covered by the postal network, and the existence of legal and other regulatory instruments.

On the basis of the above-mentioned criteria, the MCA maintains that the relevant geographic market for the provision of postal services on the domestic front is national in scope. This view is supported by the fact that all authorised or licensed postal operators providing one or more postal services in the identified markets above are operating under sufficiently similar conditions of competition, subject to common constraints in terms of pricing and marketing arrangements, and common conditions of supply across the national territory.

To this effect, the MCA defined a national geographic market for each of the four domestic postal markets identified; that is the domestic single piece letter mail, domestic registered letter mail, domestic bulk letter mail and domestic parcel post.

### 2.1.6 CROSS-BORDER MAIL – INBOUND MAIL VERSUS OUTBOUND MAIL

Cross-border mail services are categorised into two distinct markets: the inbound cross-border mail market and the outbound cross-border mail market. Inbound cross-border mail services refer to postal articles received through the post from a place outside Malta for delivery to any place in Malta. Outbound cross-border mail services, on the other hand, refer to postal articles posted in Malta for onward transmission through the post to a place outside Malta.

The MCA believes that the demand and supply conditions for inbound cross-border mail and outbound cross-border mail are inherently different. Consequently the MCA defined a separate inbound cross-border market and an outbound cross-border market for each of the four postal markets identified above.

With reference to the inbound market the MCA notes that the remuneration for the distribution of inbound cross-border mail is subject to international agreements (in the case of a Universal Postal Union [UPU] designated operator) or bilateral/multilateral agreements. Consequently, the prices, terms and conditions for the delivery of inbound cross-border mail services are not established by the local postal operator but dictated by international negotiations.

The MCA argues that while the receiving end of the inbound mail service lies in Malta the sender of the postal article is located abroad and it is therefore the latter who requests the end-to-end services of a postal operator. Naturally, the sender will request the end-to-end service of a postal operator which also operates in the country of origin. In this case, the local postal operator will only act as an intermediary to complete the final leg in the delivery portion of the end-to-end postal service into Malta. Thereby, the local postal operator will have limited influence over the price,

terms and conditions offered by the foreign postal operator. Likewise, the local postal operator would not be able to leverage its market power over the foreign sender.

Moreover, the agreements for cross-border mail delivery reached between foreign and local postal operators are on a voluntarily basis. This means that foreign postal operators can choose to conclude cross-border agreements with any local postal operator(s) for the delivery of inbound cross-border mail. Although MaltaPost is the UPU designated operator, the MCA notes that other postal operators have concluded specific agreements with foreign postal operators and are currently offering the inbound cross-border mail service. DHL Malta currently offers inbound cross-border mail services from certain countries, mainly Germany.

In view of the above, the MCA deems that regulatory intervention is not required for the inbound cross-border mail markets since MaltaPost is not able to leverage any market power with international providers. This is because if MaltaPost had to leverage any market power over international providers the latter would move on to renegotiate cross-border mail agreements with other local postal operators.

Subsequently, the MCA does not at this stage intend to define a market for inbound cross-border markets which will be susceptible for ex ante regulation.

Having said this, the MCA still reserves the right to carry out any analysis if it has reason to believe that competition issues may arise in the distribution of inbound cross-border mail. This conclusion is also without prejudice to Article 22 of the Postal Services Act.

Outbound cross-border mail services are also subject to international agreements or bilateral/multilateral agreements. Outbound cross-border mail services, like inbound cross-border mail services, can only be offered provided that the local postal operator has negotiated agreements with foreign postal operators to deliver postal articles beyond Malta.

However the MCA notes that, contrary to the inbound cross-border mail service, the outbound postal service originates from a sender in Malta, thus the price, terms and conditions are established by the postal operator in Malta. In this case, the state of play for the local postal operator is different as it can leverage its market position over the local user of the postal outbound service. Likewise the local postal operator can negotiate favourable terms with international postal operators to further cream the market.

In view of this assessment, the outbound market will therefore be analysed to determine whether a postal operator in Malta has SMP in one of the four outbound cross-border markets; that is the outbound single piece letter mail market, outbound registered letter mail market, outbound bulk letter mail market and outbound parcel post market.

Following the examination and discussion highlighted above the MCA proposed for SMP analysis the following postal service markets:

Market 1: Domestic Single Piece Letter Mail Market

Market 2: Outbound Single Piece Letter Mail Market

Market 3: Domestic Registered Letter Mail Market

Market 4: Outbound Registered Letter Mail Market

Market 5: Domestic Bulk Letter Mail Market

Market 6: Outbound Bulk Letter Mail Market

Market 7: Domestic Parcel Post Market

Market 8: Outbound Parcel Post Market

## 2.2 SUMMARY OF CONCLUSIONS: ANALYSIS OF LETTER MAIL MARKETS

The MCA has decided to split the analysis of these eight markets in two main clusters, namely the letter mail markets (Markets 1 – 6) and the parcel post markets (Markets 7 and 8).

The findings that emerged from the analysis of markets 1 - 6 suggest that MaltaPost enjoys SMP in all the letter mail markets identified. This evidence has been supported by the fact that MaltaPost has high market shares in all the letter mail markets defined and that no alternative operator seems to be in a position to erode this market power within the timeframe of the review. Moreover, with the presence of barriers to market entry the MCA does not expect that within the timeframe of the review conditions in the letter mail markets will change in a manner that effective competition is guaranteed in the absence of regulation. Absence of potential competition also excludes countervailing buyer power which in turn reinforces the incumbent's market position.

In view of all this, the MCA therefore concluded that MaltaPost has significant market power in all the letter mail markets identified.

Given the position of dominance held by MaltaPost in all the letter mail markets identified the MCA thus imposed the following remedies:

- Obligation to provide services at cost-oriented prices
- Obligation of non-discrimination
- Obligation of provision of services on an unbundled basis
- Approval and publication of tariffs
- Accounting separation

### 3. MARKET ANALYSIS OF THE PARCEL POST MARKETS

Having already identified the individual markets that comprise the postal sector in Malta, and having also already analysed the letter mail markets in the first review, the MCA will now move to analyse the parcel post markets to assess whether any operator has significant market power as defined in and required by Regulation 64 of the Postal Services Regulations.

#### 3.1 BACKGROUND TO MARKET ANALYSIS

According to Regulation 64 of the Postal Services Regulations [SL254.01 of the Laws of Malta] *“the authority may at any time as it may deem necessary, after having defined a postal services market in accordance with regulation 64A, carry out an analysis of such market taking into account any guidelines howsoever described by the Authority”*.<sup>12</sup>

It follows that in the absence of effective competition, the MCA shall classify one or more licensed operators as having SMP. *“A postal operator shall be deemed to have SMP if either individually or jointly with others, it enjoys a position equivalent to dominance, that is to say a position of economic strength affording it the power to behave to an appreciable extent independently of competitors, customers and ultimately users”*.

Regulation 64B (4) of the Postal Services Regulations additionally states that *“where a postal operator has significant market power on a specific relevant postal services market, it may also be designated as have significant market power on a closely related postal services market, where the links between the two markets are such as to allow the market power held in one market to be leveraged into the other market, thereby strengthening the market power of the postal operator”*.

Therefore, in view of the above, one or more postal operators in the postal markets may be designated as having SMP where that operator(s), enjoys a position of dominance. Similarly, a postal operator may be designated as having SMP where it is in a position to leverage market power across closely related markets.

As has been explained in Chapter 2 above, the MCA already classified MaltaPost as having a priori SMP in the parcel post markets identified. To this effect, MaltaPost is currently subject to specific regulatory obligations applicable to postal operators having SMP.

This SMP designation is not permanent and will be removed if the MCA determines through this market analysis that MaltaPost no longer possesses SMP in one or more parcel post markets. At the same time, the MCA may classify any other postal operator as having SMP in any of the two parcel post markets identified, if it determines that the postal operator has SMP.

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<sup>12</sup> Regulation 64C (1) of the Postal Services (General) Regulations

In carrying out its market analysis, based on established economic and legal principles, the MCA will use market data collected from a variety of internal and external sources, including postal operators. The MCA shall also take utmost account of the market review procedure outlined in the postal regulatory framework.

### 3.2 ASSESSMENT OF SIGNIFICANT MARKET POWER

In determining whether a postal operator has the ability to exercise SMP in a parcel post market, the MCA will carry out a forward-looking market analysis based on existing market conditions and evidence.

The MCA shall establish the presence of a dominant position in parcel post markets by reference to the following criteria:

- Market Share
- Barriers to entry
  - Vertical and horizontal integration
  - Economies of scale and scope
  - A highly developed collection and distribution network
- Potential Competition
- Countervailing buyer power

In carrying out this analysis the MCA will also take into account the dynamic aspects of the postal sector. The MCA will investigate a number of structural and behavioural aspects of the parcel post markets and consider evidence of actual market performance to assess whether or not, over the time period considered, these markets have characteristics which may be such as to justify the imposition of regulatory obligations. In doing so, the MCA will look at market factors, such as price movements, trends in parcel volumes, and external-indirect constraints.

#### Market Shares

In competition law assessment, market shares are commonly used as a proxy for market power. Since there is a positive association between market share and market power, a first step in the analysis of market power of a firm is by measuring its market share.

Although high market shares are not in themselves sufficient to conclude whether a postal operator enjoys SMP in a market, market shares exceeding a certain threshold may give rise to the presumption that the firm has market dominance. This notion stems from established European case-law underlying that market shares in excess of 50 percent are in themselves, save in exceptional circumstances, evidence of the existence of a dominant position. The market share analysis, based on available statistical evidence and trends over the 2009 – 2012 period, shall

establish whether any operator providing services in one of the parcel post markets identified for Malta is in a position to exert market power.

### Barriers to entry

Barriers to entry typically serve as obstacles for potential operators to enter the market and compete with the incumbent. This document will, therefore, investigate whether the identified parcel post markets are characterised by such barriers to entry. In so doing, the MCA remarks that barriers to entry can be of various types, however, vertical and horizontal integration, economies of scale and scope, and a highly developed collection and distribution network will be the major elements that are addressed in this assessment.

### Vertical and Horizontal Integration

Vertical integration, essentially involves an undertaking operating in a given market, while also being operative in a market that is at a higher or lower level in the chain of provision. Put it differently, an operator may decide to enter a market by investing in both upstream access to infrastructure markets and downstream service provision markets, as this may give the operator a competitive edge over existent and potential competitors by way of market power leverage from upstream to downstream markets. To this effect, vertical integration may deter potential entry in such markets.

Horizontal integration, on the other hand, refers to an undertaking operating in a given market while also being operative in other business activities that are at the same level of the value chain in similar or different sectors of the economy. In essence, horizontal integration offers several advantages to the integrated operator, including favourable economies of scale, economies of scope and increased market power. In the same way horizontal integration may act as a barrier to entry for potential operators and preclude effective competition in such markets.

### Economies of Scale and Scope

Economies of scale refer to the cost reductions that a business may enjoy as it expands its production and penetrates the market in which it operates. Economies of scale are generally achieved because as production increases, the cost of producing each additional unit falls, provided that fixed costs, among other elements, are shared over an increased number of units. On the same lines, the additional costs incurred by a postal operator will fall with greater parcel volumes.

Economies of scope, on the other hand, refer to the unit cost reduction of a particular service as it results from being produced jointly with another service by the same operator. In this regard, costs may be saved where common processes or technological infrastructures are used in the provision of a group of services. Likewise, when an operator is present in a large number of markets it can share common cost over a greater range of services.

### A highly developed postal network

A well developed postal network is important for the efficient collection and delivery of postal services. Well developed postal distribution systems may however prove to be somewhat costly to replicate and maintain. This is because the collection, sorting, transport and delivery of postal

articles may exhibit economies of scale. For this reason, well developed postal networks are likely to be controlled by the incumbent operator.

The incumbent operator, having been in the postal sector for a number of years, would have established itself among postal service users, as the leading nationwide service provider. Likewise the incumbent operator would have, over time, acquired the necessary knowledge and expertise to improve on existing processes and develop a network that would be difficult to replicate in the short to medium term. At the same time, a potential market entrant may find it hard to incur an investment that would then require high economies of scale for returns to justify the initial investment costs.

In view of all this, the incumbent's control over a highly developed postal network may thus represent a significant barrier to entry for potential competitors as well as an advantage over existing competitors.

### Potential Competition

Potential competition refers to the prospect of new operators joining the market within a short period of time or existing operators capable of competing with the incumbent operator. In essence, the sheer threat of competition may prevent the incumbent operator from raising prices above competitive levels, leading thereby to a situation in which no market power is exercised.

Naturally, where barriers to entry are strong, the threat of potential competition is likely to be weak or absent. This is because barriers to entry serve as obstacles to new competition, thus affording the incumbent operators the power to behave to an appreciable extent independently of competitors and customers.

Market maturity, particularly evidence of stagnant or moderate demand-side growth, is also an important aspect in the assessment of potential competition. This is because in a mature market, there may be less of an incentive to compete aggressively and attract new customers. Similarly there would be less scope for successful market entry as a new operator would find it difficult to acquire market share where growth in demand is low.

### Countervailing Buyer Power

Customers with a strong negotiating position may significantly shape the level of competition in a market as this will tend to restrict the operator's ability to exercise market power and at independently of their customers. In effect, when customers can exert significant pressure on a supplier of a good or service, they can effectively stop an attempt to increase prices by service providers. The extent of countervailing buyer power will however depend on whether customers could, at the outset, choose to discontinue the service being provided by a particular operator and switch to alternative providers, within a short period of time.

With reference to the above-mentioned criteria the following two sections will now analyse each of the previously defined parcel post markets to assess whether any postal operators are in a position to exercise SMP in these markets.

### 3.3 ANALYSIS OF DOMESTIC PARCEL POST MARKET

The MCA will start its analysis by looking at **Market 7** of the postal sector comprising the domestic parcel post market.

#### 3.3.1 MARKET SHARE

Unlike letter mail markets which were fully liberalised on the 1st of January 2013, parcel post markets in Malta have been open to competition for quite some time. In this regard, new postal operators have had the opportunity, over the past years, to enter one or more of the standard parcel post markets and compete directly with the incumbent MaltaPost by offering an equivalent parcel post service.

Having said this, the MCA explains that MaltaPost is currently the sole postal operator in Malta offering domestic standard parcel post services. It thus follows that MaltaPost enjoys 100 percent market share in the domestic parcel post market.

#### 3.3.2 BARRIERS TO ENTRY

In this part of the analysis the MCA will establish whether the domestic parcel post market is characterised by barriers to entry, and if so to what extent are these preventing new entry from happening. Barriers to entry typically serve as obstacles for potential operators to enter a market and compete with the incumbent. Subsequently, where barriers to entry are high competition is unlikely to emerge with the result that the incumbent operator continues to enjoy SMP in such markets.

In terms of new entrants setting up their own postal network to start offering domestic parcel post services the MCA suggests that, unlike some letter mail services, the provision of parcel post services involves a process of collection, sorting and delivery which is less complex to organise and set up. In essence, the costs involved remain largely fixed in nature but are then again significantly lower compared to the provision of, say, domestic single piece letter mail services.

For instance, postal operators wanting to start offering domestic parcel post services do not need to have a nationwide infrastructure of post boxes for the collection of parcels. Parcels are tendered over the counter and therefore new postal operators would only need to have a central post office and/or a number of sub-post agents to collect such postal items. The central post office may likewise be used as a sorting hub.

Parcels are delivered to the addressee by dedicated transport, which is relatively straightforward to organise given Malta's geographic scope. Moreover, if the household delivery is not successful the parcel is then retrieved over the counter. To this effect, the workforce complement required to deliver domestic parcels is also significantly lower than the number of employees involved in the delivery of letter mail services.

In view of this assessment, the MCA therefore suggests that it is possible for a new entrant to develop its own postal network and compete directly with MaltaPost in the provision of domestic parcel post services as setup costs are not prohibitive.

At the same time, however, the MCA believes that new entrants would only be able to successfully compete with the incumbent operator MaltaPost if they manage to achieve scale in the number of domestic parcel post volumes.

With reference to the local context, the MCA suggests that given the small size of the domestic parcel post market it is very unlikely for the incumbent operator MaltaPost or for any new operator to benefit from significant economies of scale in this market. To this effect, new operators in particular, would find it hard to incur an investment where the returns from the market would not justify the initial investment. As a result this will deter new entry and reduce any potential impact on the incumbent's market presence.

While no operator is likely to enjoy economies of scale, MaltaPost's presence in other postal service markets may however enable it to benefit from economies of scope. As explained in the market definition procedure, the transmission of letter mail services and parcel post services is somewhat different and thus certain operational costs are directly linked to specific postal services. Thus in this regard, there are no cost savings from offering a range of postal services.

On the other hand, however, certain processes and cost centres are common to the provision of any postal service. For instance, MaltaPost's strong nationwide presence in the letter mail markets by way of post offices in a number of locations around Malta also contributes towards the collection phase of domestic parcel post items. Consequently, the average costs of providing the domestic parcel post service are lower given that these are shared over a greater range of postal services. Similarly, the costs related to the delivery of domestic parcels are also lower for MaltaPost. This is because the incumbent also offers inbound parcel post services which are delivered using the same dedicated transport and thus the cost of delivery is shared between the two parcel services.

In essence, this ability of MaltaPost to benefit from economies of scope can act as a barrier to entry for new competitors. New entrants can achieve such economies of scope only if they enter a large number of markets and with sufficient scale. In reality, this may however prove to be difficult given it requires time and investment to develop a fully fledged postal network in order to have the same capacity, as MaltaPost, to cater for a whole range of postal services. Needless to say, it would also require scale to justify such an investment.

In conclusion, the MCA believes that while it is possible for new operators to enter the domestic parcel post market by setting up their own postal network, the small size of such market is not very attractive for new entry. Moreover the MCA also believes that MaltaPost's strong market presence across the whole range of postal services continues to underline its market dominance in the domestic parcel post market, in relation to any other provider. With this outlook the MCA thus concludes that conditions in the domestic parcel post market will continue to confer competitive advantages in favour of the incumbent in a way it supports the SMP position it holds in relation to potential new entrants.

### 3.3.3 COUNTERVAILING BUYER POWER

In view of the fact that MaltaPost is the sole postal operator offering nationwide domestic standard parcel post services, users of these postal services cannot exert countervailing buyer power to sufficiently constrain any market power enjoyed by the incumbent operator. This is because users of such services only have MaltaPost to choose from and cannot therefore switch to alternative postal operators for the domestic standard parcel post services.

This said, the MCA, however believes that countervailing buyer power must also be assessed within the broader picture of the availability of express parcel post services. In this context the MCA deems that if someone in Malta wanted to send a parcel to another address in Malta the sender can do so either by using the standard parcel service offered by MaltaPost or an express parcel service offered by one of the express / courier providers operating in Malta.

As highlighted in the market definition procedure, express mail services are however operationally distinct from standard mail services. Express mail or courier services are accelerated postal services (i.e. the expedited collection, transport and delivery of postal articles) characterised throughout the supply of the service by a degree of speed, tracking and managerial control that exceed that applied to the fastest category<sup>13</sup> of the basic letter post and parcel service.<sup>14</sup>

The MCA thus concluded that those opting to use the express services do so, on the basis of the value added qualities these services offer. To this end customers also pay a higher price for these services.

In summary the MCA therefore concludes that standard postal services and express services are not substitutable from a demand perspective. This is because the two services are functionally different from each other to the extent that a higher price is paid for such additional value added services. To this effect, the MCA argues that there is no immediate substitute or alternative to the domestic standard parcel service offered by MaltaPost. Consequently, the MCA therefore believes that users of standard parcel post services are unlikely to exert countervailing buyer power on MaltaPost by switching to express postal alternatives.

All in all the MCA thus deems that MaltaPost is still in a position, in the domestic parcel post market, to behave to an appreciable extent independently of service users.

### 3.3.4 ABSENCE OF POTENTIAL COMPETITION

Competition is largely dependent on the ability of new operators to enter the market and for existing operators to expand or increase their business capacities. Essentially, there may be more active competition where there are low barriers to market growth and expansion.

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<sup>13</sup> The fastest standard category of basic letter post and parcel service relates to the USP's services subject to a next day delivery target (D+1).

<sup>14</sup> These standard mail services are subject to delivery targets but do not provide for certainty and guarantee as to the exact day or time.

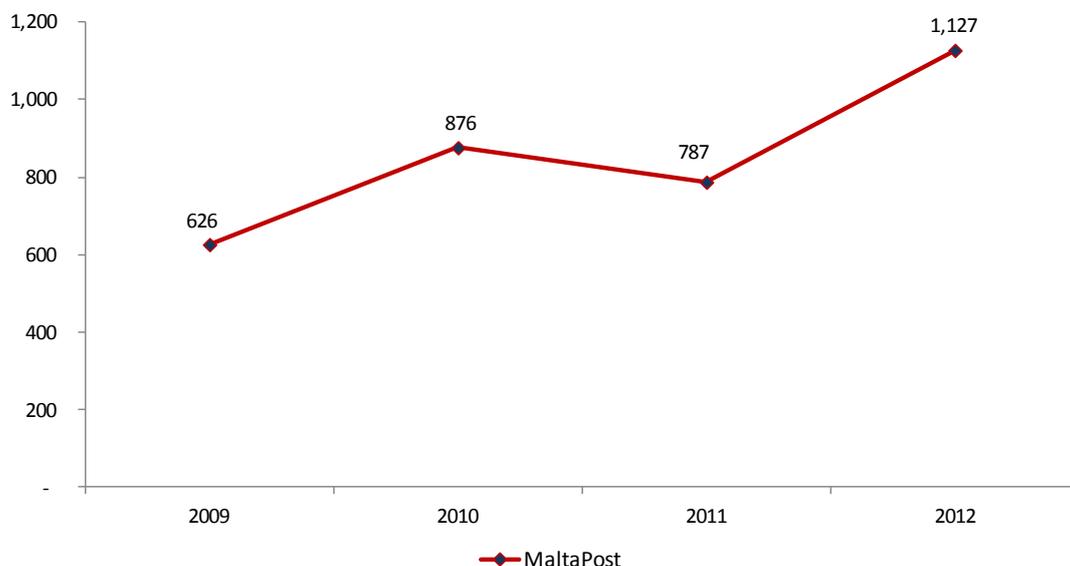
The MCA has already suggested that it is quite possible for a new entrant to develop its own postal network and compete directly with MaltaPost in the provision of domestic parcel post services. At the same time, the MCA also explained that new entrants would only be able to successfully compete with the incumbent operator MaltaPost if they manage to achieve scale in the number of domestic parcel post volumes.

In this context, the MCA does not envisage the competitive situation to improve by way of new market entry in the domestic parcel post market. This is because the MCA does not believe that the domestic parcel post market will, during the timeframe of this review, experience any significant growth in terms of volumes. Statistical evidence depicted in chart 1 below suggests that MaltaPost's presence in the domestic parcel post market has been slowly growing over the past four years. Despite this fact, demand for the domestic parcel post service remains low, with current volumes deemed insufficient to attract new operators to this market.

In the MCA's view this situation is likely to prevail under current trends and market realities. At the outset, the MCA argues that Malta's geographic scope inherently limits growth in the domestic parcel post market. In fact, given Malta's small geographic size some people may very well deliver the domestic parcels themselves rather than use the delivery service provided by the postal operator. Further to this, the MCA suggests that the size of the domestic parcel post market also relates to the size of the domestic eCommerce market.

In essence, Malta's domestic eCommerce market is relatively small when compared to the domestic eCommerce market of other European countries. As a result the domestic parcel post market in Malta is substantially smaller than the majority of domestic parcel post markets across Europe. The MCA explains that this results from the fact that very few retail outlets in Malta are engaged in domestic eCommerce. It therefore follows that very few retail outlets demand domestic parcel post services in order to deliver to their customers the products they have bought locally by way of eCommerce. The MCA also notes that where the local retail outlets offer domestic eCommerce services then they are also likely to organise their own in-house delivery systems.

**CHART 1 – DOMESTIC PARCEL POST VOLUMES**



In view of the above assessment, the MCA therefore concludes that it will be difficult for potential competition to emerge in this market. This is because where demand is low and volumes are insufficient, there is less of an incentive to compete and attract new customers. Likewise there is less scope for successful market entry as a new operator would find it difficult to acquire market share and benefit from economies of scale where demand is low.

A potential market entrant would therefore find it hard to undertake an investment where the returns from the market would not justify the initial investment costs. As a result this will deter effective competition and reduce any potential impact on the incumbent's market presence.

### 3.3.5 CONCLUSION ON THE DOMESTIC PARCEL POST MARKET

In view of the above assessment the MCA does not expect that within the timeframe of this review conditions in Market 7 will change in a manner that effective competition is guaranteed in the absence of regulation. As a result, the MCA believes that MaltaPost will continue to hold SMP in the domestic parcel post market.

## 3.4 ANALYSIS OF OUTBOUND PARCEL POST MARKET

Following the analysis of the domestic parcel post market, the MCA will now analyse the outbound parcel post market; that is **Market 8** of the postal sector.

### 3.4.1 MARKET SHARE

As has already been explained in the market share analysis of Market 7 above, parcel post markets in Malta have been open to competition for quite some time. In this regard, new postal operators have had the opportunity, over the past years, to enter one or more of the standard parcel post markets and compete directly with the incumbent MaltaPost by offering an equivalent parcel post service.

Having said this, the MCA notes that MaltaPost, as is also the case with domestic parcel post services, is currently the sole postal operator in Malta offering outbound standard parcel post services.<sup>15</sup> It thus follows that MaltaPost also enjoys 100 percent market share in the outbound parcel post market.

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<sup>15</sup> On the 15th December 2011, the MCA, after having considered the various submissions made by all concerned parties in a complaint lodged by MaltaPost against Global Parcel Limited (GPL), required GPL to apply for an individual licence for the provision of postal services that fall within the scope of the universal service [MCA Decision following a complaint by MaltaPost PLC against Global Parcels Limited, General Logistics Services and Airsped Express Limited', 15th December 2011, MCA-LEG/mb/11-0678]. In the mean time, the MCA has been notified with an appeal made on behalf of GPL contesting the Decision. On the 29th March 2012 the Appeal's Board also directed the MCA to suspend the Decision against GPL until all evidence is heard and a final decision is taken by the Appeal's Board /Tribunal. To this effect the MCA will have to wait for the Appeal's Tribunal decision on the matter. Therefore to date MaltaPost is the only licensed postal operator offering outbound standard parcel post services.

### 3.4.2 BARRIERS TO ENTRY

In this part of the analysis the MCA will establish whether the outbound parcel post market is characterised by barriers to entry, and if so to what extent are these preventing new entry from happening.

In terms of new entrants setting up their own postal network to start offering outbound standard parcel post services the MCA does not deem this to be a costly and impractical venture. The MCA has already suggested that, unlike some letter mail services, the provision of parcel post services involves a process of collection, sorting and delivery which is less complex to organise and set up. In essence, the costs involved to provide such a service remain to be largely fixed in nature but are then again significantly lower compared to the provision of certain letter mail services.

For instance, postal operators wanting to start offering outbound parcel post services do not need to have a nationwide infrastructure of post boxes for the collection of parcels. Outbound parcels are tendered over the counter and therefore new postal operators would only need to have a central post office and/or a number of sub-post agents on a commission paid basis to collect such postal items. The central post office may likewise be used as a sorting hub to organise the parcels by destination. In this regard, the workforce complement required for collection and sorting is minimal.

Moreover, the delivery phase in the provision of outbound parcel post services totally depends on the foreign postal operator with which the local postal operator reaches an agreement to deliver postal articles beyond Malta. To this effect, the local postal operator does not need to have in place a local delivery system, thus avoiding local transport costs and delivery related wages.

In view of this assessment, the MCA therefore suggests that it is not prohibitive for a new entrant to develop its own local postal network for the collection and sorting of outbound parcel post items.

At the same time, however, local postal operators wanting to offer outbound parcel post services must negotiate agreements with foreign postal operators to deliver postal items beyond Malta. Without such agreements new entrants will be unable to launch their outbound standard parcel service and compete with the incumbent.

The MCA notes that these agreements, between foreign and local postal operators, are reached on a commercial basis, thus implying that postal operators can choose to conclude cross-border agreements with any postal operator(s) for the delivery of outbound cross-border parcel items. In this regard, the MCA also explains that there are a number of foreign postal providers operating across Europe in the provision of standard parcel services. With this backdrop, the MCA thus argues that it is possible for new local operators to reach cross-border agreements with any one of these foreign postal operators for the delivery of standard parcel items beyond Malta.

In view of this, the MCA therefore concludes that new entrants are not precluded from developing their own postal network, locally and abroad, and compete with the incumbent MaltaPost in the provision of outbound standard parcel post services.

Having said this, the MCA also explains that new entrants would only be able to successfully compete with MaltaPost if they manage to achieve scale in the number of outbound parcel post volumes.

With reference to the local context, the MCA believes that a new entrant will find it difficult to erode MaltaPost's market share since the incumbent has been the sole provider of outbound standard parcel services for a number of years and has likewise established itself among postal service users, as the main provider of these services. Given this market presence, the MCA therefore suggests that MaltaPost is likely to benefit from economies of scale and would thus be in a position to react quickly and to effectively constrain new entrants.

MaltaPost's presence in other postal service markets also enables it to benefit from economies of scope, where the average costs of providing the outbound parcel post services are lower given that these are shared over a greater range of services. This ability of MaltaPost to benefit from economies of scope can also act as a barrier to entry for new competitors.

In essence, new entrants can achieve such economies of scope only if they enter a large number of markets and with sufficient scale. In reality, this may however prove to be difficult given it requires time and investment to develop a fully fledged postal network in order to have the same capacity, as MaltaPost, to cater for a whole range of postal services. Needless to say, it would also require scale to justify such an investment.

All in all, the MCA therefore concludes that while new operators are not precluded, during the timeframe of this review, from setting up their own postal network for the provision of outbound parcel post services the emergence of effective competition in this market is not necessary consequential. At the outset, a new entrant would only be able to sufficiently compete with the more established incumbent MaltaPost if it captures a significant share of market volumes. Indeed failure to generate such volumes will make it difficult for new entrants to acquire scale and to justify market entry. Moreover the MCA also believes that MaltaPost's strong market presence across the whole range of postal services continues to underline its market dominance in the outbound parcel post market, in relation to any other provider.

With this outlook the MCA thus concludes that while it is possible for new operators to enter the outbound parcel post market, conditions in the market still appear to pose a challenge for new entrants to launch their own outbound standard parcel service and compete with MaltaPost.

### 3.4.3 COUNTERVAILING BUYER POWER

As has already been described above, MaltaPost is currently the sole postal operator offering outbound standard parcel post services.<sup>16</sup> To this effect, users of this postal service cannot exert

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<sup>16</sup> The MCA has already mentioned that, after having considered the various submissions made by all concerned parties in a complaint lodged by MaltaPost against Global Parcel Limited (GPL), it required GPL to apply for an individual licence for the provision of postal services that fall within the scope of the universal service. This Decision was however appealed by GPL and the MCA will have to wait for the Appeal's Tribunal decision on the matter. Therefore to date MaltaPost is the only licensed postal operator offering outbound standard parcel post services.

countervailing buyer power to sufficiently constrain any market power enjoyed by the incumbent operator. This is because users of such services only have MaltaPost to choose from and cannot therefore switch to alternative postal operators for the outbound standard parcel post services.<sup>17</sup>

This said, the MCA, however also notes that if someone in Malta wanted to send a parcel to an address outside Malta the sender may decide to do so via one of the many express postal service providers available.<sup>18</sup> Consequently, countervailing buyer power must also be assessed within this context.

The MCA has already highlighted in the market definition procedure that express mail services are operationally distinct from standard mail services. Express mail services are accelerated postal services characterised throughout the supply of the service by a degree of speed, tracking and managerial control that exceed that applied to the fastest category<sup>19</sup> of the basic letter post and parcel service.<sup>20</sup> The MCA thus concludes that those opting to use the express services do so, on the basis of the value added qualities these services offer. To this end it has also been explained that customers pay a higher price for these services.

A survey conducted by the MCA among households<sup>21</sup> and micro enterprises<sup>22</sup> in November 2011 indicate that only 3 percent of households used alternative operators besides MaltaPost to send postal articles. Given the fact that MaltaPost is the sole postal operator providing standard letter mail and standard parcel post services, those using the alternative providers are taken to be referring to express service providers. In comparison, micro businesses use alternative operators (i.e. express services providers) more, with 15 percent claiming to have used other providers besides MaltaPost to send their postal articles.

While it is apparent from the survey results that express mail providers pose no competitive threat towards MaltaPost among households, the results for micro businesses may, at the outset, suggest a somewhat different state of play. However, the MCA explains that the survey results also show that 54 percent of micro enterprises which used alternative postal operators claim to have done so because they provide a faster service. Similarly, 23 percent claim to have opted for express services because they provide for a high degree of reliability in terms of guaranteed day/time delivery. It can thus be concluded from these results that those which have opted to use alternative providers have exclusively done so on the basis of the value added qualities these services offer.

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<sup>17</sup> The MCA argues that even if GPL were to be considered in the market analysis of outbound parcel post services it would not expect it to impose a significant competitive constraint on the incumbent by way of countervailing buyer power. This is because MaltaPost, having been the de facto monopoly in the postal sector for a long time, is the postal operator most known by users for providing postal services (including outbound parcel services), and such goodwill would be difficult to erode during the timeframe of this review.

<sup>18</sup> Link to Register of Authorised Undertakings published in accordance with Regulations 45, 46 and 47 of the Postal Services (General) Regulations:

<http://www.mca.org.mt/sites/default/files/pageattachments/2013-05-09-register-postal.pdf>

<sup>19</sup> The fastest standard category of basic letter post and parcel service relates to the USP's services subject to a next day delivery target (D+1).

<sup>20</sup> These standard mail services are subject to delivery targets but do not provide for certainty and guarantee as to the exact day or time.

<sup>21</sup> Household Survey Results:

<https://www.mca.org.mt/consumer/surveys/consumer-perception-survey-households-postal-services>

<sup>22</sup> Small Businesses Survey Results:

<https://www.mca.org.mt/consumer/surveys/micro-businesses-perception-survey-postal-services>

In conclusion, the MCA therefore explains that standard postal services and express services are not substitutable from a demand perspective. This is because the two services are functionally different from each other to the extent that a higher price is paid for such additional value added services. To this effect, the MCA argues that there is no immediate substitute or alternative to the outbound standard parcel service offered by MaltaPost. Consequently, the MCA believes that users of standard parcel post services are unlikely to exert countervailing buyer power on MaltaPost by switching to express postal alternatives. To this effect, the MCA also deems that MaltaPost is still in a position, in the outbound parcel post market, to behave to an appreciable extent independently of service users.

#### 3.4.4 ABSENCE OF POTENTIAL COMPETITION

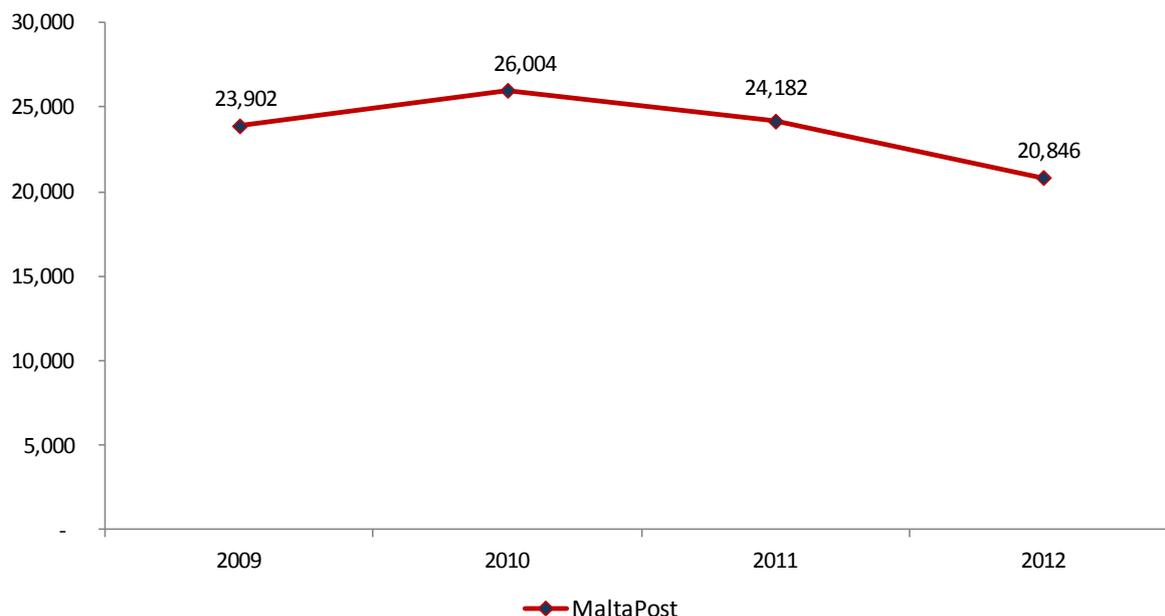
The lack of countervailing buyer power in the outbound standard parcel post market is mainly the result of the fact that MaltaPost is the sole operator providing such postal services.

However, the MCA has already suggested above that it is quite possible for a new entrant to develop its own postal network and compete directly with MaltaPost in the provision of outbound standard parcel post services. This said, the MCA also explained that new entrants would only be able to successfully compete with MaltaPost if they manage to achieve scale in the number of outbound parcel post volumes.

In essence, where demand is low and volumes are insufficient, there is less of an incentive to compete and attract new customers. Likewise there would be less scope for successful market entry as a new operator would find it difficult to acquire market share and enjoy from economies of scale where demand is low.

With reference to the local scenario the MCA reports that during 2012 MaltaPost delivered around 21,000 outbound standard parcels. To this effect, the MCA argues that the outbound standard parcel post services form an integral part of the local parcel market. Consequently, the MCA deems that this provides the conditions for new operators to enter the outbound parcel post market.

**CHART 2 – OUTBOUND PARCEL POST VOLUMES**



Furthermore, the MCA notes that the revenue generated from the outbound standard parcel service increased by 27 percent over the period 2009 to 2012. The MCA believes that this too may serve as an incentive for new operators to enter the outbound standard parcel post market.

Notwithstanding this evidence, the MCA argues that no alternative operators have so far expressed any interest with the MCA to start offering outbound standard parcel post services, and this despite the fact that parcel post markets in Malta have been open to competition for quite some time.

In this regard, the MCA therefore concludes that while it is possible for new operators to enter the outbound parcel post market, no competition has emerged so far. Furthermore, the MCA points out that even if new entry were to happen during the timeframe of this review, this alone is not sufficient to conclude that the market is effectively competitive.

### 3.4.5 CONCLUSION ON THE OUTBOUND PARCEL POST MARKET

In view of the above analysis, the MCA thus concludes that MaltaPost will continue to hold onto its market power in the outbound parcel post market.<sup>23</sup>

The MCA deems it is important to continue regulating the outbound parcel post market during the timeframe of this review. At the same time, the MCA will continue to monitor closely developments in this market and where appropriate shall carry out a new analysis in advance, if and when, conditions of competition change significantly.

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<sup>23</sup> The MCA is of the opinion that even if the Decision taken by the MCA on the 15th December 2011, whereby it required GPL to apply for an individual licence for the provision of postal services that fall within the scope of the universal service, were to be upheld by the Appeal's Tribunal this will not in any way change the finding of MaltaPost having SMP in the outbound parcel post market within the timeframe of this review. To begin with, GPL's market share would amount to a mere 5 to 7 percent. Moreover MaltaPost, having been the de facto monopoly in the postal sector for a long time, is the postal operator most known by users for providing postal services (including outbound parcel services), and such goodwill would be difficult to erode during the timeframe of this review.

## 4. REGULATORY OBLIGATIONS

### 4.1 BACKGROUND TO REGULATION

In accordance with Regulation 64C of the Postal Services Regulations [SL254.01 of the Laws of Malta], *“where the Authority determines that a postal services market is not effectively competitive, it shall designate postal operators as having significant market power in accordance with regulation 64B, and it shall impose on such postal operators appropriate regulatory obligations, or maintain and amend such obligations where they already exist”*.<sup>24</sup>

On the other hand, *“where the Authority determines that a postal services market is effectively competitive, it shall not impose or maintain any of the specific regulatory obligations applicable to a postal operator with significant market power, provided that in cases where a postal operator had previously been designated as having significant market power and such obligations already exist, the Authority shall, after giving reasonable notice to any parties which the Authority considers to be affected by such withdrawal, withdraw such obligations onerous on the postal operator concerned”*.<sup>25</sup>

### 4.2 EXISTING OBLIGATIONS

In order to ensure a smooth transition to a fully liberalised and competitive market environment, on the 26th December 2012 the MCA designated MaltaPost as having 'a priori' SMP in all the postal markets that have been identified, including the parcel post service markets.<sup>26</sup> Given the position of SMP held by MaltaPost in the parcel post services markets, MaltaPost is required to abide by the following regulatory obligations.

#### 4.2.1 OBLIGATION TO PROVIDE SERVICES AT COST-ORIENTED PRICES

Cost-oriented rates ensure that a postal operator does not charge excessive prices to customers, nor does it attempt to restrict market entry by charging unreasonably low prices or unfairly squeezing the margins of competitors or potential competitors to the detriment of competition.

In accordance with regulation 64E of the Postal Services Regulations, MaltaPost is required to provide postal services in the above mentioned parcel markets to customers at cost-oriented prices, that is to say, that prices shall take account of, and reflect the costs of, providing the postal service or part of the postal service in that market.

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<sup>24</sup> Regulation 64C (4) of the Postal Services (General) Regulations

<sup>25</sup> Regulation 64C (3) of the Postal Services (General) Regulations

<sup>26</sup> Refer to MCA Decision Notice on designation of MaltaPost as having SMP:  
<http://www.mca.org.mt/decisions/designation-maltapost-having-significant-market-power>

#### 4.2.2 OBLIGATION OF NON-DISCRIMINATION

In accordance with regulation 64F of the Postal Services Regulations, MaltaPost is required to provide postal services in the above parcel markets to customers at prices, terms and conditions that are non-discriminatory. MaltaPost must not discriminate in favour of itself, or of its subsidiaries or partners, in the provision of such services.

The obligation to provide such postal services on a non-discriminatory basis requires that differences in the prices, terms and conditions for comparable postal services have to be based on objective differences, such as, but not limited to, variations in the cost of the service provided, variations in the quantity or quality of the service provided, or variations in the duration of the service agreement period.

The provision of services at prices, terms and conditions which are non-discriminatory would ensure that a postal operator does not discriminate in favour of particular customers in such manner as to have a detrimental effect on competition.

#### 4.2.3 OBLIGATION OF PROVISION OF SERVICES ON AN UNBUNDLED BASIS

Though bundling is intended to provide customers with better products or offerings in more cost effective ways, an undertaking with SMP in one product market (or more) of a bundle, can potentially harm consumers by foreclosing the market for the other products that are part of the bundle. To mitigate the effects of unreasonable bundling, a postal operator found to enjoy SMP in a relevant postal services market is required to provide such services in that market also on a standalone basis.

In accordance with regulation 64G of the Postal Services Regulations, MaltaPost is required to provide postal services in the above parcel markets on an unbundled basis.

This means that MaltaPost must not require that, as a condition for purchasing a particular parcel post service, a customer must also purchase any other postal service or non-postal service. However, MaltaPost may offer customers the option of purchasing a package that contains multiple postal services and non-postal services or products.

#### 4.2.4 APPROVAL AND PUBLICATION OF TARIFFS

In accordance with regulation 64H of the Postal Services Regulations, and in accordance with any decision issued by the MCA, MaltaPost is required to submit a tariff for the written approval of the MCA prior to offering or modifying the terms and conditions on which it offers any postal service that it provides in the above parcel markets. In addition, MaltaPost is required to obtain the written approval of the MCA prior to the withdrawal of a postal service that it provides in the above parcel markets.

MaltaPost is required to disclose, by publishing on its website, the effective tariff not later than the date on which it begins to provide the postal service described in the tariff approved by the MCA.

Where MaltaPost has obtained the MCA's approval to modify the tariff for an existing postal service, it must make the required publication no later than the date on which the modification becomes effective. The information must, as a minimum, include a service description, prices, service quality and availability, and eligibility requirements.<sup>27</sup> The information must be published in a manner that is readily available, current and easy-to-understand.

The MCA may review these tariffs at any time to determine whether the prices, terms and conditions are cost-oriented and non-discriminatory.

#### 4.2.5 ACCOUNTING SEPARATION

In accordance with regulation 64I of the Postal Services Regulations and without prejudice to article 23 of the Postal Services Act,<sup>28</sup> a postal operator designated as having SMP in a postal services market is required to keep separate accounts within its accounting system in line with any directives that the MCA may issue.

In accordance with article 23 of the Postal Services Act, MaltaPost, as the designated USP, is required to keep separate accounts within its accounting system for each of the postal services which are part of the universal services on the one hand and those which are not on the other. MaltaPost is required to continue to maintain the level of accounting separation as identified under the MCA's decision on Accounting Separation<sup>29</sup> until such time as any adjustments are required.

#### 4.3 PROPOSED DECISION ON REGULATORY INTERVENTION

With reference to the evidence presented above the MCA concludes that MaltaPost continues to retain its SMP position in both the domestic parcel post market and the outbound parcel post market identified above.

As a result the MCA believes that if unregulated, MaltaPost has the power to constrain potential competition from emerging in the standard parcel post markets, and consequently behave to an appreciable extent independently of users and potential competitors.

To this effect, the MCA therefore deems it is very important to continue regulating the standard parcel post markets during the timeframe of this review. Consequently, the MCA shall continue to impose on MaltaPost all the above mentioned regulatory obligations in Section 4.2, to ensure that MaltaPost does not:

- charge excessive prices;

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<sup>27</sup> In accordance with regulation 64H(2) of the Regulations, the MCA may issue directives in respect of the manner in which approved tariffs, terms and conditions (including quality of service) are published.

<sup>28</sup> Article 23 of the Act refers to the accounting procedures required by a designated USP, such as, MaltaPost.

<sup>29</sup> Refer to the MCA's Decision on the Accounting Separation and Publication of Financial Information by MaltaPost Plc published in January 2005:

<http://www.mca.org.mt/article/accounting-separation-and-publication-financial-information-maltapost-plc>

- inhibit market entry or restrict competition by setting predatory prices;
- show undue preference to specific end-users; or
- unreasonably bundle services.

#### 4.4 STATUTORY POWER NOT AFFECTED

Nothing in this document shall limit the MCA in the exercise and performance of its statutory functions, powers and duties under legislation (in force prior to or after the effective date of this document becoming a Decision) from time to time as the occasion may require. The above mentioned regulatory obligations are without prejudice to the power of the MCA to issue any directives to MaltaPost as it may be authorised to issue at law, including but not limited to any such directives issued in respect of article 76A of the Postal Services Act, Chapter 254.<sup>30</sup>

Any decisions issued by the MCA prior to the effective date of this consultation document becoming a decision shall continue to be in force until revoked or amended by the MCA.

#### 4.5 MONITORING DEVELOPMENTS

The MCA considers that it is very important to keep a close watch on all the parcel post markets identified for any signs of progress and developments.

To this end, the MCA intends to monitor market trends and developments on an ongoing basis, and remains committed to carry out new analysis on any one of the parcel post markets identified and at any point in time in response to any significant development in that market.

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<sup>30</sup> Link to Postal Services Act: <http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=8748&l=1>

## 5. CONSULTATION QUESTIONS

The MCA would like to ask the following consultation questions with respect to the market review carried above:

- Do you agree with the above proposed conclusions regarding the analysis of the domestic parcel post market?
- Do you agree with the above proposed conclusions regarding the analysis of the outbound parcel post market?
- Do you agree with the above conclusions regarding the regulatory obligations for the parcel post markets?

## 6. SUBMISSION OF RESPONSES

In accordance with its obligations under Article 4A of the Malta Communications Authority Act [Cap. 418 of the Laws of Malta], the Authority welcomes written comments and representations from interested parties and stakeholders during the national consultation period which shall run from the **5th November 2013** to the **16th December 2013**.

The Authority appreciates that respondents may provide confidential information in their feedback to this consultation document. This information is to be included in a separate annex and should be clearly marked as confidential. Respondents are also requested to state the reasons why the information should be treated as confidential.

For the sake of openness and transparency, the MCA will publish a list of all respondents to this consultation on its website, up to three days following the deadline for responses. The Authority will take the necessary steps to protect the confidentiality of all such material as soon as it is received at the MCA offices in accordance with the MCA's confidentiality guidelines and procedures<sup>31</sup>. Respondents are however encouraged to avoid confidential markings wherever possible.

All responses should be submitted to the Authority, in writing by no later than 5:00PM CET on the 16th December 2013 and addressed to:

Mr. Patrick Vella  
Chief, Policy and Planning  
Malta Communications Authority  
Valletta Waterfront, Pinto Wharf,  
Floriana, FRN1913  
Malta.  
Tel: +356 21 336 840 Fax: +356 21 336 846  
Email: [patrick.b.vella@mca.org.mt](mailto:patrick.b.vella@mca.org.mt)

Extensions to the consultation deadline will only be permitted in exceptional circumstances and where the Authority deems fit. The MCA reserves the right to grant or refuse any such request at its discretion. Requests for extensions are to be made in writing within the first ten (10) working days of the consultation period.

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<sup>31</sup> [http://www.mca.org.mt/sites/default/files/articles/confidentialityguidelinesFINAL\\_0.pdf](http://www.mca.org.mt/sites/default/files/articles/confidentialityguidelinesFINAL_0.pdf)