

May 2003

**Consultation on the introduction of a new regulatory
regime for the postal sector**

1. Introduction

The Malta Communications Authority will be responsible for regulating the Postal Sector when the Amended Post Office Act (CAP 254) comes into force in June 2003.

An unofficial copy of the amalgamated version of the Act may be consulted on the MCA website on www.mca.org.mt. The EU directives relating to postal services are also available from the postal services section of the MCA website.

The purpose of this document is to outline the initial work programme that is being envisaged by the MCA with regard to the setting up of the regulatory framework for the postal services sector and to invite input from interested parties. The MCA intends to follow the consultative process that has been adopted in telecommunications, that is, to take into account the views of interested parties such as postal services providers, users and consumers in the course of developing the regulatory framework.

The new Maltese legislation starts to gradually open the market for postal services. The reserved area is 350 grammes and five times the price for inland public tariff of an article of correspondence in the first weight step of the fastest standard category.

Since the postal services market is not fully liberalised, regulation is required to achieve improvements in quality of service and to ensure the application of cost effective tariff structures. The nature of the regulation is therefore set to change when the opening of the postal sector to full competition is gradually realised over a span of years.

While the cornerstone of postal sector policy in the long-term is that of achieving competition, the shorter term emphasis will be on universal services and quality of service.

This consultation paper aims to gather initial feedback from interested parties prior to the gradual introduction of the new regime.

2. Background

2.1 MCA Strategic Plan

The MCA mission as defined in the Strategic Plan is: “to regulate the sectors of telecommunications, e-commerce and posts with a view to achieving sustainable competition, enabling customer choice and value for money, coincident with contributing to the development of an environment that is conducive to investment, and continued social and economic growth.”

The MCA Strategic Plan 2002-2005 highlights two main objectives with regards to the Postal Services sector:

P1

Attaining the target, within established timeframes, of a liberalised postal services environment that is capable of sustaining competition among the respective players, while allowing new entrants to do so with relative ease.

P2

Ensuring that residential and business consumers of postal services get the best value for money from Maltese postal services providers, and that any social inclusion aspects as may be identified are addressed.

The Strategic Plan notes that the MCA needs to build the necessary regulatory capacity and processes in order to be able to cater for postal services regulation when these fall within its remit. The MCA will do this within the context of the current EU direction on postal regulation, which is for users of the service “to enjoy the right of a universal service involving the permanent provision of a postal service of specified quality at all points in their territory at affordable prices for all users.”

The Strategic Plan had envisaged that the preparation of a sector policy would include:

- Establishing a Licensing Regime which will embrace
 - Individual licences;
 - General authorisation
- Establishing Accounting Separation
- Designation of a Universal Service Provider
- Reviewing extent or otherwise of USP support
- Reviewing the extent of reserved services and their future
- Establishment of a tariff regime
- Establishment of Quality Service Targets

Since the publication of the Strategic Plan, the MCA has undertaken an initial requirements analysis on postal services regulation, which included an envisaged timeframe for the development of a sector policy. This proposed timeframe is included further on in this document with a view to gathering feedback from interested parties.

The strategic thrusts as identified in the Strategic Plan are also enshrined in the legislation that will enter into force in June.

The MCA Strategic Plan may be accessed on the MCA website at:

<http://www.mca.org.mt/images/library/Outline%20MCA%20Strategic%20Action%20Plan%20for%202002.pdf>

2.2 The EU approach to postal regulation

The Act to amend the Post Office Act follows the spirit of the EU Directives on postal services, namely Directive 97/67/EC of the European Parliament and of the Council of 15 December 1997 on common rules for the development of the Internal Market of Community Postal Services and the improvement of quality of service and Directive 2002/39/EC of the European Parliament and of the Council of 10 June 2002

amending Directive 97/67/EC with regard to the further opening to competition of Community postal services.

Although EU legislation on postal services is rather recent, the Community discussed the setting up of a single market for postal services in 1992. A year later, a Communication on the guidelines for the development of Community postal services was published.

The EU regards the establishment of the internal market in the postal sector as one of proven importance for economic and social cohesion of the Community and as an essential instrument for communication and trade.

Among the issues that had to be addressed was the extent of the universal service and the differences that existed between one Member State and another. One of the main concerns was that quality of service was very unequal among Member States.

The EU also had to take measures to ensure gradual and controlled liberalization of the market subject to the obligations and rights of the universal service providers.

The EU wants to ensure that a universal postal service, encompassing a minimum range of services of specified quality would be guaranteed at Community level in all Member States in the long term. The services had to be at an affordable price and for the benefits of all users, irrespective of their geographical location.

The resultant EU regulatory framework that has been put in place has been designed to ensure that the service becomes more efficient by the setting up of tariff principles and quality standards for cross-border services.

The European Commission has also proposed an indicative timetable for the gradual and controlled opening of the letters market to competition which allows all universal service providers sufficient time to put in place any further measures of modernisation and restructuring required to ensure their long-term viability under the new market conditions.

To date, the European Commission has stated that it envisages 2009 to be the date for the full accomplishment of the internal market for postal services. Nevertheless, this is subject to a review being carried out.

2.3 The Maltese legislation

The Post Office Act (1975) has been updated to reflect the new regulatory environment. This updating is reflected in the Act to Amend the Post Office Act Cap 254 (2002). The amending Act, which is not yet in force, will form an integral part of the Main Act, which has been renamed as the Postal Services Act. For the purposes of this document, any subsequent reference to Maltese legislation will be to the Postal Services Act.

Subsidiary legislation will be subsequently introduced in the course of setting up of the regulatory framework.

3 The main elements of the Regulatory Framework

The regulatory framework for Postal Services has a number of main elements and related tasks. These can be summarised as follows:

- Identifying those services that qualify as postal services and therefore subject to regulation.
- Defining the Universal Service
- Determining the reserved area and the principles governing the provision of non-reserved services.
- Ensuring quality in the provision of postal services.
- Establishing principles governing transparency of accounts, to ensure transparency and non-discrimination in tariffs.

What follows is a highlight of the relative regulatory building blocks as well as an indication of how the MCA intends to go about establishing these.

3.1 Licensing

Maltese legislation specifies that no person (the term person is taken to include a legal person, that is, a company) shall provide postal services in Malta unless he is an authorised provider. The licensing regime established in the Postal Services Act contains options for general authorisations or individual licences to be issued in respect of services which will be regulated.

A licensing regime which could plausibly be proposed by the MCA is that of having the Universal Service Provider covered by an individual licence as specified in the Postal Services Act and the other postal services operators requiring a general authorisation to be able to operate in the non-reserved area.

This effectively means that existing businesses that offer certain services may require a licence or authorisation from the MCA to be able to operate their services when the new legislation is brought into force. Barring any exemptions of particular services, the following list of services aims to potentially indicate who will require a licence under the Postal Services Act:

- Services granted to the USP
- Services within the reserved area
- Letters conveyed on a commercial basis above 350 grammes
- Courier, express and other special services of higher quality than what is required in the universal service
- Distribution of books, catalogues, newspapers and periodicals addressed in the final form in which they are to be carried by a postal operator
- Document exchange (Messenger services offered commercially)
- Conveying of letters on a commercial basis on the sender's behalf from the sender and taken to access points (letter boxes or premises of the postal operator)
- Conveying of letters on a commercial basis of letters collected on the addressee's behalf from PO boxes and delivered to the addressee
- Distribution of postal articles (addressed) for others by way of trade

(Postal Articles are defined in the Postal Services Act as an article addressed in the final form in which it is to be carried by a postal operator. In addition to articles of

correspondence, such articles also include books, catalogues, newspapers, periodicals and postal packages containing merchandise with or without commercial value)

From the above one can also attempt to list what services will not require a licence:

- Businesses who distribute their own goods
- Distributors of unaddressed mail
- Businesses/organisations who employ messengers
- Network of volunteers who distribute ad hoc items

At this stage, the MCA is proposing that the distribution of postal articles as defined above on a commercial basis will require a licence or authorisation from the MCA. It is evident that there are existing companies and organisations that were previously not considered as postal operators and who would now fall under the new licensing regime. These may include companies offering courier services and also messenger services.

One area in which the MCA is not envisaging the necessity of a licence is the distribution of non-addressed mail or distribution of material on a non-profit basis.

The MCA welcomes initial comments with regards to who should be licenced or not. A review of the licensing regime is also likely to look into what the likely licence fees will be.

3.2 Universal Service Obligations

The new Maltese legislation defines the type of postal service that everyone has a right to receive.

These include:

- Clearance, sorting, transport and distribution of postal articles up to two kilogrammes;
- Clearance, sorting, transport and distribution of postal packages up to ten kilogrammes;
- Services for registered articles;
- Services for insured articles within Malta and to and from all countries which, as signatories to the Convention of the Universal Postal Union, declare their willingness to admit such articles whether reciprocally or in one direction only; and
- A basic counter service throughout Malta

To date, Maltese legislation does not cater for the establishment of a compensation fund for Universal Service Provision, and the necessity is not one that is likely to come up in the foreseeable future. Nonetheless the situation will be assessed by the MCA from time to time depending on the level of competition reached within the sector, and advice to the Government on the matter would be given accordingly.

3.3 Reserved Services

An important element in the new legislation is the definition for reserved services which gives an indication of the services which are being reserved for the Universal Service Provider.

The Postal Services Act states that the reserved services are:

The clearance, sorting, transport and delivery of articles of inland correspondence, cross-border and direct mail, whether by accelerated delivery or not, the price of which is less than five times the inland public tariff for an article of correspondence in the first weight step of the fastest standard category, provided that they weight less than 350 grammes.

Document exchange is not reserved. Document exchange may be considered as “commercial messenger services”.

The Act defines the term direct mail and this service forms part of the universal service.

It is worth noting that the parameters of the reserved services will need to be changed with a view to achieving alignment with the Amended Directive on the further opening to competition of Community postal services. The probable timeframe for the first change, that is the decrease in weight from 350 grammes to 100 grammes will be during the second quarter of 2004.

The MCA will also have to build the mechanisms to be able to monitor the market and determine whether any postal operators could be in breach of their licence if they offer a service that is reserved for the universal service provider.

3.4 Quality of service

In view of the lack of competition in the sector and the gradual opening of the market, quality of service is deemed to be very important to ensure the proper functioning of the sector. The Postal Services Act grants the power to the Authority to prescribe quality standards for inland mail.

Particular attention will be given to routing times and on the regularity and reliability of the services. The quality of standards will have to be compatible with those laid down for intra-Community cross-border services. The Directive’s target in this regard is for cross- border quality of 85 per cent of mail being delivered within three days.

The Authority will monitor the performance by the Universal Service Provider of the universal service at least once a year in accordance with the quality standards for inland mail.

3.5 Tariff principles

The legislation envisages that the Universal Service Provider has to ensure that prices are geared to costs, transparent and non-discriminatory among others. According to the Third Schedule of the Act, the Universal Service Provider must also keep separate accounts within its accounting system, for each of the services within the reserved sector on the one hand and the non-reserved sector on the other.

This means that the Universal Service Provider will be required to develop a cost accounting system which features the separation of accounts. This is done in order to ensure that prices are geared to costs, are transparent and non-discriminatory.

One of the challenges that will be faced by the MCA and the Universal Service Provider is the determination of the term 'services' and how it will be interpreted. There are various classifications that could be feasibly adopted.

1. Detailed interpretation of term service

This would include classifying different services even within the same category. For example, one would require detailed costs on the distribution of a standard letter up to 20g, a standard letter between 20g and 50g, a standard letter between 50-100g etc.

2. Groupings of single services

Another way of determining services would be grouping of single services to mean business letters, private letters etc.

3. Postal services

A third way of categorising services is to further simplify the definition and this would include for example identifying the costs of providing letter services, parcel services, direct mail and newspapers

Most countries have gone for the most detailed interpretation of the term service. The approach that will be taken will have a significant impact on the level of detailed accounting that is required from the Universal Service Provider. In this regard, the Third Schedule in the Act notes:

Subject to article 23 of this Act, and in accordance with directives laid down by the Authority, the universal service provider shall keep separate accounts within its accounting system, for each of the services within the reserved sector on the one hand and the non-reserved sector on the other. The accounts for the non-reserved sector shall distinguish between services which are part of the universal services and services which are not. Such internal accounting systems shall operate on the basis of consistently applied and objectively justifiable cost accounting principles.

Apart from the above, a tariff regime will also have to be adopted. The principles of this policy will be:

- Tariffs will be affordable such that all users have access to such services as are provided by the Universal Service Provider;
- Tariffs will be cost-oriented
- Tariffs will be transparent and non-discriminatory

The tariff control policy should be linked to inflation and to pricing indicators and may be covered by an RPI – x formula which is a “basket of services” approach, or by control of prices of individual services, a system which is similar to the approach being taken for telecommunications.

Future developments

The reserved weight limit will be changed to 100 grammes in the second quarter of 2004 and such a weight limit will not apply if the price is equal to, or more than, three times the public tariff for an item of correspondence in the first weight step of the fastest category. The EU also envisages a further opening of the market in 2006 with the reserved area weight limit decreasing to 50 grammes and such weight limit will not apply if the price is equal to, or more than two and a half times the normal tariff.

4. Consultation procedure

The Postal Services Act (Art 28) places an obligation on the Authority to take into account the views of interested parties as it may consider appropriate in relation to functions in this Act or any regulations made thereunder and these procedures should be published.

There are various ways in which a consultation process may take place and the MCA will select the most appropriate one according to the specific circumstances.

To date, the MCA has engaged in public consultation in relation to the telecommunications sector and is proposing to follow similar procedures with regards to postal services. Where the MCA engages in such a public consultation process it will follow these procedures. The consultation papers will be made available on the MCA website and in hard copy format from the MCA offices. Notice of publication of a consultation paper will be placed in the media and this will include the closing date for submissions and the contact person within the MCA.

The time allowed for interested parties to respond varies according to the topic in question, the complexity of the issues addressed, the stakeholders that are likely to respond to the consultation paper and where the timeframe is specified in the legislation.

Responses to consultation papers will not be treated as confidential unless they are marked as confidential because, for example, they include commercially confidential information.

The MCA will respond to feedback given in a consultation either through a general review of the submissions received, or where appropriate through a Decision Notice which will be issued, highlighting the decisions taken following the consultation together with a review of the submissions received.

5. Schedule for consultation

The following is a proposed schedule of the envisaged consultation that the MCA intends to follow to meet the new responsibilities in the postal sector. The indicative dates are in relation to the finalisation of the consultation process and the issue of relative decisions on the topic in question.

Consultation	Proposed timeline
Licensing Regime	August 2003
Quality of Service Standards	December 2003
Universal Services	December 2003
Cost Accounting Methodology	March 2004
Tariff Regime	April 2004

The MCA may also issue other consultation documents as the need may arise.

6. This document

The MCA would like to gather feedback from the sector on the items discussed above. While this initial document has been that of giving guidance on the work plan

of the MCA with regards to this sector, the MCA also wants to determine a priori, any possible concerns or opinions which existing operators, potential new operators and users might have.

The MCA invites comments from interested parties in relation to any of the issues raised in this consultation document. The consultation period will run until 12.00pm on 13 June 2003. Comments should be sent to:

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Written comments will be made public unless marked as confidential. Respondents are therefore asked to mark any confidential information, explaining why they want such information to be kept confidential and separate it from the rest of the document. The MCA will consider the comments received in response to this communication.