

**A POSTAL AUTHORISATION FEE STRUCTUE
FOR A FULLY LIBERALISED
MARKET ENVIRONMENT**

Response to Consultation

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EXECUTIVE SUMMARY

The postal services sector in Malta was fully liberalised on the 1st of January of this year, in line with the mandate set by the third EU Postal Directive. Prior to full market opening of the postal services market, a number of initiatives leading to an effective regulatory approach suitable to a fully liberalised market environment, were proposed by the Malta Communications Authority (MCA), followed by the adoption of these proposals by Government.

An authorisation framework, as well as a set of administrative charging principles reflective of a fully liberalised postal services market, has been put in place. This framework needs to be complemented by an adequate authorisation fee structure, conforming to the administrative charging principles.

The rationale underpinning the review of the existing postal authorisation fee structure is that it currently differentiates between the incumbent designated universal service provider, MaltaPost Plc, and other postal operators providing services within the scope of the universal service. Furthermore, the postal authorisation fees presently collected from postal operators do not cover the expenses incurred by the MCA in the discharge of its functions relating to the regulation of postal services.

On the 16th September 2013, the MCA published a consultation paper titled *A Postal Authorisation Fee Structure for a Fully Liberalised Market Environment*. The Consultation, which ran through to the 21st October 2013, sought views from the industry and members of the public on the proposed authorisation fee structure.

The Consultation proposed to revise the postal authorisation fee structure as follows:

Provision of Postal Services	Fees payable to the MCA on an annual basis
Postal operators licensed to provide postal services within the scope of the universal service are required to pay on an annual basis:	1.5% of the total gross revenue from postal services within the scope of the universal service, or €5,000, whichever amount is the higher.
Postal operators authorised by way of a general authorisation to provide only postal services which are outside the scope of the universal service are required to continue to pay on an annual basis:	€150, provided that an operator whose annual gross revenue does not exceed €24,300 would be exempt from the payment of such a fee. <i>(Note: No change was proposed to this administrative fee)</i>

MaltaPost Plc ('MaltaPost') and DHL International Ltd ('DHL') submitted their views to the Consultation.

MaltaPost expressed disappointment on the overall increase in the proposed licence costs and proposed an alternative algorithm. DHL proposed different percentage fees for MaltaPost (as the Universal Service Provider) on the one hand and the remaining operators, on the other. Both responses presented no new perspective or proposal. They essentially advocate the 'status quo' on a number of issues, albeit from different directions.

This document provides the salient points of the feedback provided by the respondents to the issues and proposals raised in the Consultation and the MCA's reflections on the feedback provided.

TABLE OF CONTENTS

1.	INTRODUCTION.....	1
2.	LEGAL BASIS	3
3.	CONSULTATION ISSUES	5
3.1	FEES PROPORTIONATE TO THE LEVEL OF REGULATORY ACTIVITY.....	5
3.2	FEES SUFFICIENT TO MEET THE MCA’S EXPENDITURE.....	6
3.3	PROPOSED AUTHORISATION FEE STRUCTURE	7
4.	RESPONSES RECEIVED TO THE CONSULTATION	8
4.1	RESPONDENTS' VIEWS	8
4.2	COMMENTS BY THE MCA.....	8

1. INTRODUCTION

The MCA's primary objective with regard to the regulation of the postal sector is to safeguard the provision of an efficient, affordable and high quality universal postal service, together with the promotion of fair market conditions, conducive to effective competition between postal operators.

In line with the third EU Postal Directive,¹ full market opening of the postal services market in Malta took place on the 1st of January of this year, when the area reserved to MaltaPost Plc (hereinafter referred to as MaltaPost), as the incumbent designated universal service provider ('USP'), was completely abolished. Prior to full market opening of the postal services market, the MCA carried out a number of initiatives that eventually led to Government adopting a regulatory approach suitable to a fully liberalised market environment.

A regulatory framework that strikes a balance between ensuring fair and effective competition, on the one hand, and safeguarding the provision of the universal service on the other, is now in place. In line with this approach, a postal authorisation framework as well as a set of administrative charging principles reflective of a fully liberalised postal services market, have also been put in place.

These principles require that the authorisation fees payable by postal operators be:

- objectively justifiable;
- transparent;
- proportionate to the level of regulatory activity; and
- as far as practicable, sufficient to meet the Authority's expenditure in carrying out its functions relating to postal services.

At the time, the MCA noted that in 2013 it would be proposing to Government a revised authorisation fee structure based on these charging principles.² The rationale underpinning the review of the postal authorisation fee structure is that it presently differentiates between the incumbent designated USP, MaltaPost, and other postal operators providing services within the

¹ Refer to the EU Postal Directive 2008/6/EC of 20th February 2008 with regard to the full accomplishment of the internal market of Community postal services:

http://ec.europa.eu/internal_market/post/doc/legislation/2008-06_en.pdf

² Refer to decision document *Regulating the Postal Sector in a fully Liberalised Market - An Authorisation Regime for a Fully Liberalised Postal Market*:

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

scope of the universal service. Moreover, authorisation fees collected from postal operators do not cover the expenses incurred by the MCA in regulating postal services.

On the 16th September 2013 the MCA published a consultation paper titled *A Postal Authorisation Fee Structure for a Fully Liberalised Market Environment*.³ The consultation, which ran through to the 21st October 2013, sought views from the industry and members of the public on the proposed authorisation fee structure.

³ Refer to consultation document A Postal Authorisation Fee Structure for a Fully Liberalised Market Environment:
<http://www.mca.org.mt/service-providers/consultations/postal-authorisation-fee-structure-fully-liberalised-market>

2. LEGAL BASIS

Arising from the Postal Services Act (Cap 254),⁴ the MCA's functions in relation to the regulation of postal services are to:

- ensure the provision of a universal service that meets the reasonable needs of postal service users; and to
- monitor and ensure compliance by postal operators with the obligations imposed on them by or under the Postal Services Act.

The statutory provisions relating to the administrative fees required to cover the costs of the MCA, incurred in the performance of its functions relating to the regulation of postal services, are found in the following Acts:

- Article 14 of the Malta Communications Authority Act (Cap 418)⁵ requires the MCA to levy all administrative fees, rates and other payments prescribed under any law that the MCA enforces in order to, as far as practicable, meet its expenditure out of its revenue.
- Article 8 (2) (b) (iii) of the Postal Services Act establishes that, inter alia, the granting of authorisations may, in all cases including of universal service providers, where appropriate, be subject to an obligation to make a financial contribution to the Authority's operational costs.
- Article 8 (3) of the Postal Services Act establishes that, inter alia, an individual licence may include conditions requiring the payment to the Authority of a fee on the grant of the individual licence or of payments during the currency of the individual licence or both. Fees or payments shall be of such amounts (which may also be determined by reference to the licensee's income, sale or turnover) as may be determined in the individual licence.
- Article 81 (2) of the Postal Services Act allows the Minister, after consultation with the Authority, to make regulations, inter alia, for any matters in respect of authorisations under this Act, including the establishment of fees.

⁴ Refer to the Postal Services Act (Cap 254):

<http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=8748&l=1>
<http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=8748&l=1>

⁵ Refer to the Malta Communications Authority Act (Cap 418):

<http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=8884&l=1>

- The First Schedule of the Postal Services (General) Regulations (254.01) refers to the fees to be payable on an annual basis by postal operators licensed to provide services within the scope of the universal service in line with regulations 45 and 46, and operators authorised to provide services outside the scope of the universal service in line with regulation 47.⁶

In addition, the third EU Postal Directive 2008/6/7 (Recital 47) notes that the relevant national regulatory authorities (NRAs) should be provided with all necessary resources, in terms of staffing, expertise, and financial means, for the performance of their tasks.

⁶ Refer to Postal Services (General) Regulations (Cap 254.01):
<http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=9662&l=1>

3. CONSULTATION ISSUES

This section outlines the rationale that underpins the revision of the existing postal authorisation fee structure and discusses the MCA's proposals put forward in the Consultation.

3.1 FEES PROPORTIONATE TO THE LEVEL OF REGULATORY ACTIVITY

The MCA proposed to retain the current authorisation fee structure for postal operators authorised, by way of a general authorisation, to provide only postal services which fall outside the scope of the universal service. Postal operators providing only services outside the scope of the universal service are required to notify the MCA of their intention to start offering commercial services. Such postal operators are, in the main, only required to provide assurance as to their adherence to the essential requirements,⁷ complaint handling, and the submission of required statistical data. The resultant regulatory burden on the MCA is not significant and the fee structure reflects this state of affairs.

The MCA noted that the regulatory functions in respect of postal services that fall within the scope of the universal service⁸ require significantly more resources than the more limited functions relating to those services that fall outside the scope of the universal service. This sizeable increment in regulatory activity stems from the Postal Services Act, which places additional obligations on postal operators providing services that are within the scope of the universal service. The proposed authorisation fee structure should therefore continue to reflect the significantly higher costs of regulating postal services that fall within the scope of the universal service and be consistent across all such postal operators.

The MCA proposed that the authorisation fee structure should continue to be based on a percentage of applicable turnover subject to a minimum charge. The current two different algorithms should however be collapsed into one, and applicable to all postal operators licensed to provide services that fall within the scope of the universal service, including a designated USP. A turnover-based approach is in keeping with the provisions of the Postal Services Act, namely Article 8(3), which states that an individual licence may include conditions requiring the payment to the MCA of a fee, which fee shall be of such amounts which may also be determined by reference to the licensee's income, sales or turnover.

⁷ Refers to the non-economic reasons which the MCA can impose on the supply of postal services. These reasons, amongst others, include the confidentiality of correspondence and the security of network a regards transport of dangerous goods.

⁸ Services within the scope of the universal service refer to those postal services whose provision is ensured by the Postal Services Act and other postal services which could reasonably be said to be inter-changeable from a user's perspective. Refer to MCA Decision Notice on the Regulatory Direction of Specific Aspects of the Universal Service (25th March 2011) and the EU Postal Directive 2008/6/EC, Recital 17.

It is recognised that with a uniform turnover based authorisation fee structure, as competition emerges, any possible volume transfers from the incumbent designated USP to other postal operators would result in the latter paying more authorisation fees as their relevant turnover increases. Meanwhile, the opposite would apply for the incumbent should turnovers drop. Therefore, all licensed postal operators, would contribute an authorisation fee at a proportionate rate, which represents the level of regulation in each case.

An element of fixed cost in managing licensed operators will nevertheless subsist, irrespective of turnover. The MCA therefore proposed a minimum charge in the form of a fixed fee. This fixed fee will reflect the element of administration on the part of the NRA that is necessary in exercising its regulatory function with respect to all individual operators irrespective of their size. The fixed fee to be levied will, however, be dimensioned in such manner as not to constitute a barrier to entry. At the same time it will ensure that there is an element of cost recovery for regulating postal services from all postal operators providing services within the scope of the universal service.

3.2 FEES SUFFICIENT TO MEET THE MCA'S EXPENDITURE

The Malta Communications Authority Act states that the expenditure required for the proper performance of the MCA's functions shall, as far as practicable, be met out of its revenues. This objective is achieved through an arrangement of administrative charges levied on players operating within the respective communications sectors falling under the MCA's regulatory jurisdiction. In addition, the Postal Services Act requires that postal operators may, where appropriate, be subject to an obligation to make a financial contribution to the MCA's operational costs.⁹

Regardless of Malta's size and population, the MCA still has to carry out the same regulatory functions as other NRAs in larger EU Member States. There are a number of activities, in relation to oversight of the sector, in particular in monitoring the competitive situation and in ensuring adherence to universal service obligation requirements, that are equally time consuming as those undertaken by NRAs in larger jurisdictions. The MCA therefore requires appropriate staffing and expertise to carry out its postal regulatory functions.

The MCA's postal regulation workload, which averages three to four persons - full time equivalent - working on postal regulation, is still considered low relative to other NRAs, despite the inherent diseconomies. According to WIK-Consult¹⁰, for all except the six largest national postal markets, the minimum annual budget needed for postal regulation was estimated to be, on average, about €1.2 million for a staff of about nine to ten persons. The MCA is of the opinion that, with due credit given

⁹ This reflects Article 9 of the EU Postal Directive. Article 9 states that the granting of an authorisation may, where appropriate are made subject to an obligation to make a financial contribution to the NRA's operational costs. The Directive notes that the NRA's shall have as a particular task ensuring compliance with the obligations arising from the Directive, in particular by establishing monitoring and regulatory procedures to ensure the provision of the universal service. They may also be charged with ensuring compliance with competition rules in the postal sector.

¹⁰ WIK-Consult (2009). The Role of Regulators in a More Competitive Postal Market Study for the European Commission, Directorate General for Internal Market and Services, p272:
http://ec.europa.eu/internal_market/post/doc/studies/2009-wik_regulators.pdf

to the WIK-Consult report, it is still possible to synergize the disciplines used in electronic communications and postal regulation in such manner as to be able to straddle across sectors with the same experts. Thus, while the MCA's equivalent number of full time persons devolved to the postal sector averages between three and four, the actual number of professional staff involved is significantly higher, and more or less equivalent to the nine to ten persons mentioned in the WIK-Consult report. The MCA therefore manages to counter diseconomies of scale by achieving economies of scope across the sectors regulated.

Figures for the past three years indicate that the MCA's annual expenditure on postal sector regulation averages €250,000. The MCA proposed an authorisation fee algorithm calibrated around the collection of this amount on an annual basis. The end result would be in conformity with the provisions of Article 14 of Malta Communications Authority Act.

3.3 PROPOSED AUTHORISATION FEE STRUCTURE

In view of the above considerations, taking into account the likely cost of postal regulation, which will continue to be incurred by the MCA, and the estimated applicable turnover from postal operators within the scope of universal service, the MCA proposed an authorisation fee structure as follows:

TABLE 1: PROPOSED AUTHORISATION FEE STRUCTURE

Provision of Postal Services	Fees payable to the MCA on an annual basis
Postal operators licensed to provide postal services within the scope of the universal service are required to pay on an annual basis:	1.5% of the total gross revenue from postal services within the scope of the universal service, or €5,000, whichever amount is the higher.
Postal operators authorised by way of a general authorisation to provide only postal services which are outside the scope of the universal service are required to continue to pay on an annual basis:	€150, provided that an operator whose annual gross revenue does not exceed €24,300 would be exempt from the payment of such a fee.

The authorisation fees levied on postal operators will be used for the purpose of meeting the expenses incurred by the MCA in carrying out its tasks in respect of the regulation of postal services.

The MCA noted that it will, in the absence of adequate or tangible turnover figures, turn to an alternative parameter so as to assess the amount of fees to be paid by the operator in question. Any such alternative measure will be applied in line with principles of proportionality and reasonableness.

The MCA proposed that the new authorisation fee structure should come into effect on the 1st of January 2014.

4. RESPONSES RECEIVED TO THE CONSULTATION

This section outlines the respondents' views on the Consultation and the comments made by the MCA.

4.1 RESPONDENTS' VIEWS

MaltaPost welcomed a license fee structure intended to be consistent across all postal operators providing services within the scope of the universal service and which seeks to ensure a level playing field by safeguarding transparency and proportionality. It agreed that the existing authorisation fee structure is not consistent across all operators licensed to provide postal services within the scope of the universal service and emphasized that licence fees should apply equally to operators and based on the same criteria.

MaltaPost however asserted that the proposed fee structure will be even more onerous than that prior to liberalisation. MaltaPost proposed a scaled mechanism with decreasing percentages applicable on total gross revenue from postal services within the scope of the universal service - similar to that applicable to the provision of electronic communications services and, or networks.

MaltaPost also expressed disappointment that the general authorisation fee applicable to postal operators providing only services that fall outside the scope of the universal service did not increase beyond what is levied at the moment.

DHL challenged what they claim to be a revenue-based fee on services outside the scope of the universal service, claiming that it is counter to the third EU Postal Directive. It further argued that the principle of proportionality would be better satisfied if the designated universal service provider(s) were to pay a higher percentage of their revenues than other operators because of the specific regulatory activities related to universal services.

4.2 COMMENTS BY THE MCA

As mentioned in the Consultation, a uniform percentage on turnover will ensure equitable application of authorisation fees across all postal operators providing services within the scope of the universal service, whilst also ensuring that operators with higher turnovers pay more towards the cost of regulation.

The MCA acknowledges that other charging models conforming to the established administrative charging principles exist. The MCA however notes that its principal aim is to eliminate distortion in the market by, inter alia, streamlining the fee structure for licensed postal operators. Regardless of the model chosen, the amount of fees collected needs to be distributed in a consistent and proportionate manner across all licensed postal operators. In line with this aim, the MCA proposed

a uniform turnover based model authorisation fee structure as this maintains consistency in the regulation of postal services within the scope of the universal service, including services provided by a designated USP.

The MCA is conscious that the revised authorisation fee structure would raise the fees of all licensed postal operators. The MCA however notes that it keeps its costs incurred in regulating the postal sector to a minimum in order for the sector not to be unduly burdened with excessive or unnecessary costs. The MCA further notes that it exercised prudence when calculating the estimated annual costs of €250,000. It further notes that this estimate is well within the costs borne by a regulator supervising a small postal market.

The MCA notes that the application of a regressive fee structure, as applied to the electronic communications sector, proposed by MaltaPost (who have not, however, specified the detail) would not make any difference to the outcome, which is that of collecting the necessary amounts to cover regulation.

With regard to the general authorisation fee for services falling outside of the scope of the universal service, it is to be noted that the DHL contention, to the effect that this fee is turnover based, is wrong, although there is a threshold below which the fee is waived. Whilst DHL is advocating the removal of the fee, MaltaPost, on the other hand, is requesting that it be increased.

The current administrative fee of €150 for postal operators authorised, by way of a general authorisation, to provide only postal services which fall outside the scope of the universal service reflects the relatively slight burden that these operators create for the MCA. As noted in the Consultation this administrative fee covers the administrative costs related to the assurance that such postal operators are required to provide in relation to adherence to the essential requirements, complaint handling, and the submission of required statistical data.

On the basis of the consultation and the related responses received, the MCA will propose to the Minister responsible for postal matters, changes to the postal authorisation fee structure specified in the Postal Services (General) Regulations.

The MCA intends to review the postal authorisation fee structure every three years subject to there being no significant changes to operator turnovers or in the MCA's costs incurred to effectively regulate the provision of postal services. Based on this review the MCA will assess whether there is the need to make recommendations to Government on any adjustments required to the postal authorisation fees.