



Regulating the Postal Sector in a fully Liberalised Market

An Authorisation Regime for a Fully Liberalised Market

Consultation Document

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Executive Summary

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

The European Postal Directive as amended by Directive 2008/06/EC, adopted on the 20th of February 2008, identified the end of 2012 as the final step in the gradual opening of Malta's postal markets to competition - referred to as full market opening of the postal sector.

In July 2010, the Postal Services Act (Cap. 254) (hereafter 'the Act') and the Postal Services (General) Regulations (SL 254.01) (hereafter 'the Regulations') were amended to reflect the European Postal Directive as amended in 2008. In line with the Second Schedule of the Act, full market opening of the postal sector in Malta will take place on the 1st of January 2013, when the area reserved to MaltaPost Plc ('MaltaPost'), as the incumbent designated universal service provider ('designated USP'), will be completely abolished.

In a fully liberalised market environment, new or existing postal operators may choose to offer new postal services within the scope of the universal services (also referred to as "the universal service area"), or diversify their postal activities. An appropriate authorisation regime is therefore necessary to ensure a level playing field by lowering barriers to entry, leading to further innovation, investment, and competition.

The existing authorisation regime safeguards the provision of the universal service whilst at the same time allowing for minimal supervision in the provision of postal services without hindering competition. The MCA is therefore proposing to maintain the existing authorisation regime whereby an individual licence is required to provide postal services within the universal service area and a general authorisation is required to provide postal services which fall outside the scope of the universal service.

The existing licensing structure distinguishes between postal operators providing services within the scope of the universal services and a designated USP. Licensed postal operators, other than the incumbent designated USP, MaltaPost, require a *'Licence to provide non-reserved postal services within the scope of the universal services'*¹ granted by the MCA. On the other hand, MaltaPost's licence for the provision of all services within the scope of the universal services was issued by Government in the form

¹ A specimen licence for the provision of postal services within the scope of the universal services may be found on the MCA's web site:

http://www.mca.org.mt/sites/default/files/pageattachments/Specimen_Licence_-_Postal_Non-Res_US_0.pdf

of a legal notice, and includes additional specific provisions and obligations pertaining to its capacity as the incumbent designated USP.²

The MCA is proposing that, following full market opening of the postal sector, all postal operators providing services within the scope of the universal services, including a designated USP, will be issued with an identical individual licence. The legal instrument designating a postal operator as a USP to provide all or part of the universal service will remain in the form of a legal notice in line with the Act.

An effective authorisation regime needs to be complemented by an equitable administrative fee regime conforming to the MCA's charging principles. This is required in order for the MCA to be in a position to effectively carry out its functions in relation to postal services and to ensure that the principle of equitability is preserved in a fully liberalised market environment. The MCA plans to review the administrative charge-out algorithm determining the annual fees payable by postal operators, in line with the charging principles, towards the end of 2012.

The MCA is seeking views from the industry and members of the public on the proposed changes to the licensing structure, together with the related administrative charging principles. The MCA is also seeking views on the proposed legal amendments putting into effect the revised licensing structure.

The MCA will, taking into consideration the responses received to this consultation, submit the proposed changes to legislation to the Minister responsible for postal matters.

Following the adoption of the proposed changes to legislation by the Minister, the MCA will publish a new '*Specimen Licence to provide postal services within the scope of the universal services*', and subsequently amend existing individual licences to all licensed postal operators so as to put into effect the proposed amendments.

The consultation period will run from the **10th August 2012** until the **24th September 2012**.

² Refer to MaltaPost's licence for the provision of all postal services within the scope of the universal services: <http://www.mjha.gov.mt/DownloadDocument.aspx?app=lom&itemid=9667&l=1>

Key Definitions

<i>Act</i>	Postal Services Act (Cap 254).
<i>Regulations</i>	Postal Services (General) Regulations (SL 254.01).
<i>Licensed postal operator</i>	A postal operator authorised to provide postal services within the scope of the universal service as defined in the Act.
<i>Designated universal service provider</i>	A postal operator designated by the Minister to provide the universal service or parts thereof within Malta.
<i>Essential requirements</i>	General non-economic reasons which can induce the Authority to impose conditions on the supply of postal services. These reasons are the confidentiality of correspondence, security of the network as regards the transport of dangerous goods, respect for the terms and conditions of employment, social security schemes laid down by law or administrative provision and, or by collective agreement between national social partners, in accordance with Community and national law, and where justified, data protection, environmental protection and regional planning.
<i>General Authorisation</i>	Means an authorisation regardless of whether it is regulated by a 'class licence' and regardless of whether such regulation requires registration or declaration procedures, which does not require the postal operator concerned to obtain an explicit decision by the Authority before exercising the rights stemming from the authorisation.
<i>Individual licence</i>	Means an authorisation which is granted by the MCA and which gives a postal operator specific rights, or which subjects the operations of that operator to specific obligations supplementing the general authorisation where applicable, where the postal operator is not entitled to exercise the rights until it has received the decision by the MCA further to the operator's application for such authorisation.

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None of the material in this document should be taken to reflect the views of the Ministry for Infrastructure, Transport and Communications (MITC) or to represent official Government policy, unless it is explicitly stated otherwise. This document is without prejudice to the legal position or rights and duties of the MCA to regulate the market generally.

1 Introduction

The European Postal Directive as amended by Directive 2008/06/EC, adopted on the 20th of February 2008 (hereinafter referred to as 'the Directive'), identified 2010, and for some Member States the end of 2012, as the final step in the gradual opening of the postal markets to competition. Malta was among the eleven Member States which were granted consent to continue to reserve postal services (i.e. items of correspondence weighing less than fifty grams and costing less than two-and-a-half times the basic postal tariff) to the incumbent designated USP, until not later than the end of 2012.

The Act and the Regulations were accordingly amended in July 2010 to reflect the Directive. In line with the Second Schedule of the Act, full market opening of the postal sector in Malta will take place on the 1st of January 2013 when the area reserved to MaltaPost Plc ('MaltaPost') will be completely abolished.³

The MCA is presently carrying out final preparations to be in a position to regulate the postal sector effectively⁴ when full liberalisation of the postal sector takes place on the 1st of January 2013⁵ – in line with the mandate set by the Directive. These preparations include, amongst other things, a review of the postal authorisation regime, which includes a re-assessment of:

- the licensing structure leading to a streamlined individual licence granted to all postal operators providing services within the scope of the universal services, including those postal operators designated as a USP; and
- the principles underlying authorisation fee charges.

The current licensing structure places MaltaPost as the incumbent designated universal service provider ('designated USP'), and other licensed postal operators on a different footing, both as regards rights and obligations, as well as with respect to the administrative fee algorithm. The main reason for this state of affairs is primarily legacy, where MaltaPost was always considered as the only postal operator with the necessary capacity to provide elements of the universal service. This assumption may no longer necessarily hold true in a fully liberalised market environment.

Presently, licences granted to postal operators providing services within the scope of the universal services vary, both in content and structure, from that issued to MaltaPost as the incumbent designated USP. In order to maintain a level playing field, when the

³ The complete removal of the 'reserved area' for MaltaPost will allow new entrants as well as existing market players to offer end-to-end services for all postal services, including letter mail, bulk mail, direct mail, newspapers, periodicals and other mail items forming part of the universal services.

⁴ On the 1st of August 2012 the MCA published its consultation document on the proposed framework for the regulation of the postal sector in a fully liberalised market - <http://www.mca.org.mt/consultation/regulating-postal-sector-fully-liberalised-market-consultation-mcac114312>

⁵ In line with the Second Schedule of the Act, full market opening of the postal sector in Malta will take place on the 1 January 2013, when the area reserved to MaltaPost will be completely abolished.

postal market is fully liberalised, equivalent licence terms and conditions should be applicable to all licensed postal operators that provide services within the scope of the universal services, including a designated USP. Additional specific rights and obligations would apply to a licensed postal operator in its capacity as a designated USP as set out in the Act.

A rationalisation exercise aimed at streamlining the structure of existing postal licences into one single licence, containing all pertinent terms and conditions applicable to all postal operators providing services within the scope of the universal services, is therefore necessary. In this manner, rights and obligations applicable to a postal operator providing services within the scope of the universal services in its capacity as a designated USP will be clearly distinguishable from the symmetrical obligations⁶ incumbent on it as a provider of postal services within the scope of the universal services.

This exercise is complemented by a review of the administrative charging principles for the postal sector. The charging principles aim to ensure that the MCA continues to carry out its regulatory functions effectively in relation to postal services and to ensure a level playing field by safeguarding the principles of proportionality and equitability in the financing of such regulation.

1.1 Legal Basis

The following provisions constitute the legal basis for this review:

- Article 8(1) of the Act establishes that an authorisation to operate or provide postal services which are *within* the scope of the universal services may be granted by **individual licence** issued by the MCA to the extent necessary in order to:
 - guarantee compliance with essential requirements; and to
 - safeguard the universal services.

An authorisation to operate or provide postal services which are *outside* the scope of the universal services may be granted in accordance with a **general authorisation** in order to guarantee compliance with essential requirements.

- Article 8(2) and article 8(3) of the Act establish the terms and conditions that may be imposed on operators authorised to provide postal services.
- Article 8(4) of the Act requires the MCA to ensure that procedures stipulated in articles 8(1), 8(2) and 8(3) are, amongst others, transparent, non-discriminatory, proportionate and made public in advance.

⁶ Symmetrical obligations, in the context of this consultation, are obligations which apply to all postal operators providing postal services within the scope of the universal services; asymmetrical obligations are specific obligations incumbent on a designated USP(s) and which do not apply to other postal operators.

- Clause 6.4 of existing licences for the provision of non-reserved postal services within the scope of the universal services⁷ states that, *inter alia*, nothing in the licence shall be construed as limiting the power of the Authority to amend the licence or to impose further conditions on the licensed postal operator.
- Article 14 of the Malta Communications Authority Act (Cap 418) 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.

1.2 Document Structure

The remainder of this consultation document comprises of the following five sections:

- **Section 2** discusses the authorisation regime laid down in the Act, and puts forward proposals on how the MCA intends to apply the regime in a fully liberalised market. This section also serves to provide the backdrop to the review of the licensing structure.
- **Section 3** outlines the existing licensing structure and puts forward proposals for the rationalisation of existing licences into one single licence for the provision of postal services within the scope of the universal services – containing all relevant terms and conditions applicable to all licensed postal operators.
- **Section 4** proposes the authorisation charging principles to preserve equitability and to ensure effective regulation of the postal sector in a fully liberalised environment.
- **Section 5** outlines the key work-streams and implementation timelines for the review of the licensing structure and charging principles.
- **Section 6** outlines the process for the submission of comments.

The consultation document also includes the following three appendices:

- **Appendix A** exhibits the proposed specimen licence to provide postal services within the scope of the universal services.
- **Appendix B** puts forward proposals to the Regulations, bringing into effect the proposals put forward in the consultation.
- **Appendix C** includes the proposed amendments to MaltaPost's designation as the postal operator responsible for providing all elements of the universal service.

⁷ The specimen licence is available on the MCA's web site here:
[http://www.mca.org.mt/sites/default/files/pageattachments/Specimen_Licence - Postal Non-Res US 0.pdf](http://www.mca.org.mt/sites/default/files/pageattachments/Specimen_Licence_-_Postal_Non-Res_US_0.pdf)

2 The Postal Authorisation Regime

In line with the Act, a postal operator providing, or intending to provide, postal services:

- **within the scope of the universal services** is required to seek an individual licence from the MCA,⁸ prior to providing such services, in order to safeguard the universal service and at the same time guarantee compliance with the essential requirements;
- **outside the scope of the universal services** requires a general authorisation in order to guarantee compliance with the essential requirements.⁹

Figure 1 below illustrates the existing authorisation regime:

Provision of Services Within the Scope of the Universal Services		Provision of Services Outside the Scope of the Universal Services
<p>MaltaPost Plc Licence (designated USP)</p> <p>Terms and Conditions</p> <ul style="list-style-type: none"> • Set of universal services • Standards of service • Service provision and complaint handling / compensation • Mail integrity • Provision of information • Accounting separation (Universal Service Obligation) • Access points • Directives or decisions of the MCA • Obligations and requirements emanating from the Postal Services Act 	<p>Individual Licence (other postal operators)</p> <p>Terms and Conditions</p> <ul style="list-style-type: none"> • Service provision and complaint handling • Mail integrity • Provision of information • Accounting separation – revenues from services with the scope of the universal service • Directives or decisions of the MCA • Obligations and requirements emanating from the Postal Services Act 	<p>General Authorisation</p> <p>Terms and Conditions</p> <ul style="list-style-type: none"> • Service provision and complaint handling • Mail integrity • Provision of information • Directives or decisions of the MCA • Obligations and requirements emanating from the Postal Services Act

Figure 1: Existing authorisation regime

⁸ Refer to MCA’s website on the Application for a Licence and General Authorisation to provide postal services (both within and outside the scope of the universal service).

⁹ Refer to article 8 of the Act - Individual licences and general authorisations. The essential difference between an individual licence and a general authorization is that an individual licence requires the operator to obtain specific approval from the MCA before starting operations whereas a general authorisation does not.

Postal operators providing services within the scope of the universal services have more obligations than those providing services outside this scope, as set out in the Act. The obligations, amongst other things, aim to maintain public confidence in the reliability and availability of the postal service in Malta. Moreover, the Act also specifies the specific additional rights and obligations applicable to a postal operator designated as a USP. These include the postal services to be provided as part of its universal service obligation, together with the quality standards at which these services are to be offered.

The existing postal authorisation regime was developed for a partially liberalised postal sector. Two key concepts underpinned its development:

- The concept of an authorisation regime whereby postal operators providing services within the scope of the universal services require an individual licence, whereas those providing postal services outside this scope require a general authorisation. This distinction is required to safeguard the provision of the universal service whilst at the same time allowing for minimal supervision in the provision of postal services that are not within the scope of the universal service. The MCA believes that such a distinction should continue to subsist in a fully liberalised market environment.
- The concept of a 'reserved area', whereby certain postal services are reserved for the exclusive use of MaltaPost, as the incumbent designated USP.¹⁰ This privilege will be abolished as from 1st January 2013 when the postal market will be completely liberalised. This means that MaltaPost will no longer retain exclusivity in the provision of such postal services and that new or existing postal operators may choose to offer any of these postal services.

The MCA is therefore proposing to maintain the existing authorisation regime whereby postal operators providing postal services within the scope of the universal services, including a designated USP, require a licence whereas postal operators providing postal services outside scope require a general authorisation.

¹⁰ The services presently reserved for MaltaPost are described in the Second Schedule of the Act, and include the clearance, sorting, transport and delivery of items of inland correspondence, cross-border and direct mail up to 50 grams.

Figure 2 below illustrates the authorisation regime with the proposed amendments to the licensing structure:

Provision of Services Within the Scope of the Universal Services	Provision of Services Outside the Scope of the Universal Services
<p style="text-align: center;">Individual Licence</p> <p style="text-align: center;">Terms and Conditions</p> <ul style="list-style-type: none"> • Service provision and complaint handling • Mail integrity • Provision of information • Directives or decisions of the MCA • Accounting separation to establish revenues from services within the scope of the universal services • Obligations and requirements emerging from Postal Services Act • Additional obligations and requirements emerging from the Postal Services Act and applicable to a postal operator designated as USP 	<p style="text-align: center;">General Authorisation</p> <p style="text-align: center;">Terms and Conditions</p> <ul style="list-style-type: none"> • Service provision and complaint handling • Mail integrity • Provision of information • Directives and decisions of the MCA • Obligations and requirements emerging from the Postal Services Act

Figure 2: Authorisation regime indicating amendments to the licensing structure

The proposed licensing structure necessitates amendments to the licences issued to all currently licensed postal operators, including MaltaPost.¹¹ The proposed amendments to the licence for the provision of services within the scope of the universal services are presented and discussed in detail in **Section 3** below.

¹¹ Refer to current licences issued to postal operators - MaltaPost Plc, DHL International Limited and Premier Post Limited – <http://www.mca.org.mt/authorisations-licensing/postal-authorisation-and-licensing>.

3 Licence for Services within the Scope of the Universal Services

The current licensing structure places MaltaPost, as the incumbent designated USP, and other licensed postal operators on different playing fields, both as regards rights as well as obligations. Whilst the existing licensing structure has served its purpose well in a partially liberalised environment, the MCA believes that this structure will no longer remain feasible and relevant in a fully liberalised market environment.

The MCA is proposing that all licensed postal operators, including a designated USP, will be granted an individual licence with identical terms and conditions. Additional rights and obligations would apply to a postal operator in its capacity as a designated USP as set out in the Act.¹² The latter rights and obligations would therefore arise from the USP designation process which is clearly distinct from the postal licence.

This distinction is of particular importance in the context of the current MaltaPost licence, which contains provisions relative to both symmetrical obligations applicable to postal operators providing postal services within the scope of the universal services as well as those pertaining to its USP status. These two elements need to come apart.

This section puts forward the MCA's proposed amendments to the current specimen licence to provide (*non-reserved*) postal services within the scope of the universal services, which specimen forms the basis of licences to be issued to all postal operators providing postal services within the scope of the universal services.

3.1 Existing Licensing Structure

As already mentioned above, the present licensing structure distinguishes between postal operators providing postal services within the scope of the universal services, and the incumbent designated USP.

Presently, licensed postal operators, other than MaltaPost, require a '*Licence to provide non-reserved postal services within the scope of the universal services*'. MaltaPost, on the other hand, is granted a tailor-made licence for the provision of all postal services within the scope of the universal services, by virtue of its long-standing role as the incumbent designated USP.

This licence was issued to MaltaPost by Government in 1998. It was subsequently amended to comply with European Union law and published in the form of a legal notice (MaltaPost Plc Licence (Modification) Regulations as per LN500/2004¹³). MaltaPost's licence runs for a term of 15 years, with expiry at the end of April 2013.

¹² These rights and obligations on a designated USP only apply in respect of the services it is obliged to provide as the designated universal service provider. Currently, MaltaPost is the only designated USP in Malta.

¹³ <http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=9667&l=1>

MaltaPost's licence includes provisions related to both its capacity as an operator providing postal services within the scope of the universal services, as well as additional provisions and obligations specifically applicable to its capacity as the designated USP. The underlying assumption was that MaltaPost is inherently the only postal operator that can provide elements of the universal service. This assumption may no longer necessarily hold true in a fully liberalised market environment.

Two main issues stem from the existing postal licensing structure:

- The first is that it distinguishes between a licensed postal operator designated as a USP and one that is not a designated USP. As indicated above, the designated USP operates under two capacities with corresponding implications:
 - (i) as one of a number of licensed postal operators, it should be subject to the same standard terms and conditions applicable to other such postal operators; and
 - (ii) as a designated USP, it is subject to additional rights and obligations pertaining to its designation.

In a fully liberalised market environment there should be no distinction between the standard terms and conditions applicable to licensed postal operators providing services within the scope of the universal services. Terms and conditions applicable to a postal operator, as part of its designation as a USP, are distinct and separate from those covered by its individual licence, and should therefore be treated as such. A revised postal licence with identical terms and conditions applicable to all postal operators licensed to provide postal services within the scope of the universal services is therefore necessary.

- The second issue concerns the reference to the reserved area in existing licences. As the reserved area will be completely abolished when the market will be fully liberalised, any reference to the reserved area in individual licences needs to be removed.

In view of this, and in light of the amendments to the Act carried out in July 2010,¹⁴ which place the responsibility for licence issuance on the MCA, a revision of the existing licensing structure as well as the individual licence itself is required.

3.2 Proposed Licensing Structure

In order to create a level playing field, the MCA is proposing that all licensed postal operators, including a designated USP, will be granted an individual licence to provide

The licence issuance function has since devolved to the MCA. In line with Article 80 of the Postal Services Act any individual licence granted after 1 January 2010 shall be made in accordance with the provisions of articles 8 and 9.

¹⁴ As per Act XII of 2010.

postal services within the scope of the universal services with identical terms and conditions.

The legal instrument designating a postal operator as a USP will remain in the form of a legal notice. The MCA is however proposing that the legal notice designating a USP will be amended to specify the universal service or universal services a designated USP is required to provide¹⁵ (refer to **Appendix C**).

Figure 3 below illustrates this concept:

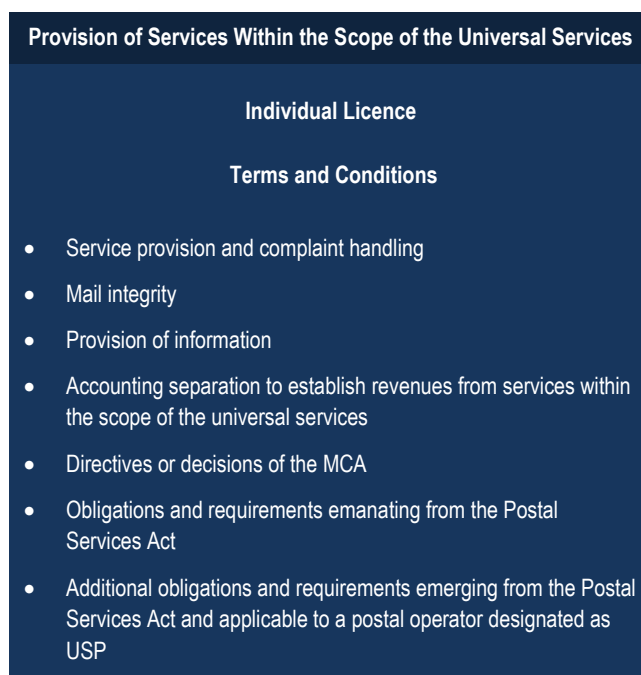


Figure 3: Proposed licensing structure

For the proposed licensing structure to have effect, amendments to regulations 45 and 46 of the Regulations are required. The amendments remove references to the reserved area and harmonise the licensing of operators providing postal services within the scope of the universal services (including a postal operator designated as a USP).

The proposed amendments to the Regulations may be found in **Appendix B**.

¹⁵ The specific range of universal services that MaltaPost is required to provide as part of its universal service obligation currently forms part of its licence to provide all services within the scope of the universal services.

3.3 Proposed Amendments to the Specimen Licence

The MCA is proposing a series of amendments to the current postal licence structure. Such amendments to the licence structure will be reflected accordingly in the content of individual licences granted to postal operators authorised to provide postal services within the scope of the universal services.

The proposed changes fall into three main categories:

- new clauses to be included in the licence;
- amendments having a material effect on existing clauses; and
- amendments having no material effect on existing clauses.

The MCA is proposing to extend the term of the licence from the existing ten-year period (currently fifteen years in the case of MaltaPost) to an indefinite term. The MCA notes that the need to have a definite licence term for the provision of postal services is not required. The MCA cannot restrict the number of licences issued for the provision of services within the scope of the universal services. Furthermore, the provision of postal services, unlike for example the rights of use of radio spectrum, does not require the grant of any exclusive use of scarce resources. Therefore, there is no need for a licence granted to a postal operator licensed to provide services within the scope of the universal service to be subject to renewal. On the other hand, the MCA is proposing that a licence may be suspended or withdrawn by the MCA, or handed back by the licensed postal operator, under certain conditions. Furthermore, a postal operator licensed to provide postal services within the scope of the universal services may be designated as a USP in line with the Act.¹⁶ A designated USP will be subject to additional specific rights and obligations emerging from the Act.

A consolidated version of the proposed licence for the provision of postal services within the scope of the universal services may be found in **Appendix A**.

3.3.1 Title

As the reserved area will be completely abolished come 1st of January 2013, the scope of the individual licence needs to shift from a '*Licence to provide non-reserved postal services within the scope of the universal services*' to a '*Licence to provide postal services within the scope of the universal services*'.

¹⁶ The Minister may, after consultation with the MCA, determine the different USPs designated in line with Article 17 of the Act, to provide different parts of the universal service and, or cover different parts of the national territory. In line with Article 17 of the Act, the Minister may, after consultation with the MCA, amend or suspend any designation of a USP, and, where applicable and after consultation with the MCA, designate another postal operator in respect of the service affected by any such withdrawal, amendment or suspension.

This shift effectively removes the distinction in the current licensing structure, between licensed postal operators designated as USPs and those which are not.

Amendment 1: Licence Title

The title of the Specimen Licence shall read as follows:

LICENCE TO {*name of licensee*} FOR THE PROVISION OF POSTAL SERVICES
WITHIN THE SCOPE OF THE UNIVERSAL SERVICES

3.3.2 Grant and Reserved Area

The salient changes to this section of the current licence are as follows:

- Clause 2.2 and references to the reserved area shall be removed.
- Clause 2.1 shall include the term of the licence, which is proposed to be indefinite.

Amendment 2: Proposed amendments to the clause 'Grant and Reserved Area'

The title of the clause shall be renamed **Grant**, with clause 2.1 substituted with the following text:

- 2.1 By virtue of this Licence, the Licensee is hereby authorised to provide postal services within the scope of the universal services as specified in the Act, for an indefinite term and subject to the terms and conditions stated in this Licence.

3.3.3 Licence Term

This clause will be deleted. The Licence is granted for an indefinite term as specified in the proposed amendments to clause 2 (refer to Amendment 2).

Amendment 3: Licence Term

Deleted.

3.3.4 Suspension and Termination

The licence may be suspended or withdrawn by the MCA, or handed back by the licensed postal operator.

The licence shall be considered as terminated when the MCA withdraws the licence or the licensed postal operator hands it back to the MCA, and shall cease to have effect when it

is either suspended or terminated by the MCA. Once the licence ceases to have effect, the licensed postal operator is required to cease from providing postal services within the scope of the universal services. The licensed postal operator is nevertheless permitted to provide postal services that are outside the scope of the universal services, subject to a general authorisation. Where the licence has been suspended, it will recommence to have effect once again when the MCA revokes the suspension.

Should the MCA arrive at a decision to suspend or withdraw the licence, it must do so on justified grounds related to serious and repeated breaches of any laws, and/or decisions. Similarly, the licensed postal operator would need to give its reasons for handing back its licence, which could include commercial reasons such as insolvency and liquidation.

The licensed postal operator shall give the MCA advance notice of six months (twelve months in the case of a licensed postal operator designated as a USP) that it intends to hand back its licence. This will give the MCA sufficient time to ensure that all obligations incumbent on the postal operator by virtue of its licence are respected.

Amendment 4: Proposed amendments to the clause 'Termination'

The title of the clause shall be renamed **Suspension and Termination** and renumbered **Clause 3**, and shall be substituted with the following text:

3.1 The Authority may suspend or withdraw this Licence at any time for serious and repeated breaches of any laws, and, or decisions.

3.2 The Licensee may hand back this Licence at any time by communicating its intention to do so in writing to the Authority giving the reasons for handing back the Licence:

(a) where the Licensee is not designated as a universal service provider, at least six (6) months prior to the date when the Licensee intends to hand this Licence back to the Authority;

(b) where the Licensee is designated as a universal service provider, at least twelve (12) months prior to the date when the Licensee intends to hand this Licence back to the Authority:

Provided that the Licensee may not hand back this License within eighteen (18) months from the date of grant of this Licence.

3.3 The termination of this Licence shall occur upon the earlier of:

(a) a decision of the Authority to withdraw the Licence in accordance with the applicable legislation or with this Licence; or

(b) the handing back of the Licence by the Licensee to the Authority provided the Authority in writing agrees to such handing back; or

(c) the insolvency, liquidation or bankruptcy of the Licensee; or

(d) the winding up or dissolution of the Licensee.

3.4 This Licence shall cease to have effect upon suspension or termination:

Provided that where the Licensee wishes to provide, or continue to provide, postal services which are outside the scope of the universal services, the Licensee shall notify its intention to the Authority to provide such services in accordance with the Act:

Provided further that where the Licence has been suspended by the Authority, the Licence shall recommence to have effect from the date when the Authority revokes the suspension.

3.5 The suspension or termination of this Licence shall be without prejudice to the obligation of the Licensee to effect any payments due to the Authority or to comply with any obligations under the Act.

3.6 Where the Licence is being terminated by the Licensee, the Authority reserves the right not to withdraw the Licence until any payments due to the Authority are effected, or in cases where there is the need to comply with any obligations under the Act until such obligations are complied with.

3.7 Upon the suspension or termination of this Licence, the Licensee shall cease to provide postal services.

3.8 The suspension or termination of this Licence shall not operate as a waiver or release of any obligation of the Licensee, as applicable, arising prior to such termination or suspension.

3.3.5 Rights of the Authority

Clause 6.4 of the existing Licence reserves the right for the MCA to amend an existing licence and impose further conditions on the licensee, in line with Act, where these are deemed necessary. Amendments to licences are typically required to comply with legislation, which may be amended by Government from time to time, and with international obligations, and shall be carried out following a period of consultation.

A new clause is therefore being proposed to clarify the circumstances when a licence may be amended, as well as the rights of the Authority when effecting any amendments in these circumstances.

Amendment 5: Proposed new clause: 'Rights of the Authority'

A new clause **Rights of the Authority** will be inserted in the licence as **Clause 4**.

4.1 The Authority may add to, or amend any of the terms and conditions of this Licence when such additions or amendments are necessary as a result of any international obligations entered into by the Authority or by the Government of Malta, or by the need to ensure compliance with the Act:

Provided that the Authority shall not be held responsible in any manner whatsoever for any damages suffered or expenses incurred by the Licensee as a result of any amendment of the terms or conditions of this Licence:

Provided further that the Authority shall inform the Licensee in advance and take into account the Licensee's views if relevant impact is foreseeable on the Licensee's circumstances, granting a reasonable timeframe for the implementation of the relevant additions and, or amendments to the terms or conditions.

3.3.6 Cessation of Business as a Postal Operator

The obligation for a licensee to ensure that all postal articles in its care are duly delivered to the respective addressees in the event that it ceases to carry out business as a postal operator shall remain.

In its existing licence, MaltaPost is also required to notify the MCA when any event leading to cessation as a postal operator is taking place. The MCA notes that this requirement is incumbent on MaltaPost in its capacity as one of a number of postal operators providing postal services that fall within the scope of the universal services.

The MCA deems that such a requirement should be placed on all such operators providing services within the scope of the universal services given that such a measure ensures that the MCA is provided with information necessary in its mission to safeguard the provision of the universal services.

Amendment 6: Proposed amendments to the clause 'Cessation of Business as a Postal Operator'

- 5.1 The Licensee shall establish, and at all times during the term of this Licence maintain all necessary arrangements ensuring that if it ceases to carry on business as a postal operator, postal articles in its care at the time of such cessation shall be delivered to the addressees.
- 5.2 The Licensee shall notify the Authority in writing for whatever cause it ceases to provide postal services, including without prejudice to the generality of the foregoing:
 - (a) prior to the filing of an answer admitting the allegations of a demand by any creditor for declaration of bankruptcy;
 - (b) prior to the institution of dissolution or liquidation proceedings with respect to its business;
 - (c) prior to the approval of a demand for the dissolution or the liquidation of the Licensee or effecting a plan or other arrangement with the creditors of the Licensee which may affect the operation of postal services under this Licence;

- (d) on being subject to an executive warrant of seizure or garnishee order or other similar process that may materially affect the provision of postal services; or
- (e) upon the occurrence of any event which is reasonably likely to lead to foreclosure or to the judicial sale of a substantial part of the assets of the Licensee.

3.3.7 Applicability of laws, decisions of the Authority, etc

No revisions having a material effect on the terms and conditions of the licence are being proposed. The main amendments pertain to clauses 6.2 and 6.3 merged into a single clause.

Amendment 7: Proposed amendment to the clause 'Applicability of Laws, Decisions of the Authority, etc'

- 6.1 The Act, all national laws, all decisions of the Authority, and applicable European Union Law, shall apply to the Licensee for all purposes and shall form an integral part of this Licence except in those cases where the Licensee is specifically exempted by the Authority.¹⁷
- 6.2 The Licensee shall comply with the terms and conditions of this Licence, as well as any applicable obligations or requirements, however described, emanating from the laws and decisions mentioned in 6.1 above:

Provided that nothing in this Licence shall exempt the Licensee from the obligation to diligently obtain at its own expense any permit, licence or other approval or authorisation, however so described, that may be necessary to construct, operate and maintain the postal services or any part thereof, or from the obligation of complying with any condition of any such permit, licence or other approval or authorisation however so described:

Provided further that the Licensee shall be solely responsible for all expenses and other commitments, however so described, whether financial or otherwise, in respect of the Licence and the implementation thereof, and the Authority shall not be responsible for any such expenses or commitments whatever they may be.
- 6.3 Nothing in this Licence shall be construed as absolving or releasing the Licensee from any obligations, or limiting the power of the Authority to amend this Licence or to impose further conditions on the Licensee.

¹⁷ Refer to Article 76A with regard to the right of the Authority to issue directives to any postal operator as it may consider necessary for the purposes of and in accordance with the provisions of this Act.

3.3.8 Severability

This is a new clause which clarifies that although the provisions of the licence are to be considered as a whole, should parts of the contract be held illegal or otherwise unenforceable, the remainder of the licence should continue to apply.

Revision 4: Proposed new clause: 'Severability'

A new clause **Severability** will be inserted in the licence as **Clause 7**.

- 7.1 If any term or condition of this Licence is determined to be illegal or invalid by any court or tribunal, however so described, such determination shall have no effect on the validity of any other parts of this Licence, which parts shall remain in full force and effect for the term of the Licence or any amendment thereof.

3.3.9 Dispute Resolution

Dispute resolution is a necessary measure to safeguard the provision of universal services. Licensed postal operators will therefore be required to appropriately resolve disputes in a fair manner.

Amendment 8: Proposed new clause: 'Dispute Resolution'

A new clause **Dispute Resolution** will be inserted in the licence as **Clause 8**.

- 8.1 The Licensee shall resolve disputes in a fair, transparent and timely manner and, without prejudice to the right to appeal under any law, shall comply with all requirements or decisions of the Authority in relation to disputes.

3.3.10 Transfer of Licence

A minor amendment is being proposed, requiring the consent granted by the MCA when the licence is transferred as a result of change in management control to be in writing.¹⁸

Revision 6: Proposed amendment to the clause 'Transfer of Licence'

The clause **Transfer of Licence** shall be renumbered **Clause 9**.

- 9.1 This Licence may not be transferred or assigned by the Licensee to another person without the prior consent in writing of the Authority and in

¹⁸ Refer to Article 13 of Act with respect to Transferability of authorisation.

accordance with the provisions of the Act. The decision of the Authority in this regard shall be communicated in writing and the Authority shall give reasons for its decision.

- 9.2 A change in the control of the ownership or management of the Licensee shall be equivalent to the transfer of the Licence, and shall be subject to the prior consent in writing of the Authority as aforesaid.

3.3.11 Licence Fees

Any references to any amount of licence fees payable to the MCA are to be removed from the licence as such amounts are specified in the Regulations.

Amendment 9: Proposed amendment to the clause 'Licence Fees'

The clause **Licence Fees** shall be renumbered **Clause 10**.

- 10.1 The Licensee shall pay any licence fees however so described in accordance with the provisions of the Act.

3.3.12 Non-Compliance

Minor amendment: the phrase "as authorised by law" to be substituted with "as authorised at law".

Amendment 10: Proposed amendment to the clause 'Non-Compliance'

The clause **Non-Compliance** shall be renumbered **Clause 11**.

- 11.1 If the Authority has reason to believe that the Licensee is not complying with the terms or conditions of this Licence, the Authority may take any required action as authorised at law.

3.3.13 Service Provision and Complaint Handling

The effect of these provisions is to ensure that a licensed postal operator complies with its service level standards with regard to the postal services it provides and to ensure that an effective complaint handling mechanism is in place.¹⁹ The MCA is proposing to

¹⁹ Refer to Regulation 7H of the Regulations. Postal operators not subject to a universal service obligation (i.e. not designated as a USP) will, as a general rule, not be subject to any minimum quality of service standards. However all postal operators are required to inform their users in advance of the prices, terms and conditions of their postal services, including quality of service standards adopted for each service, so that the user can make an informed choice. It is noted that because service standards are contained in contracts between customers and the postal operators, they are enforceable at law.

strengthen the provisions by requiring the operator to submit its procedures for handling complaints on the grant of the licence.

Users dissatisfied with the way the operator handled complaints are to be informed that they may refer their complaint to the Authority for investigation. The MCA may require the operator to amend its procedures where the number or nature of complaints referred to the MCA indicate that the procedures are inadequate.

Amendment 11: Proposed amendments to the clause 'Service Provision and Complaint Handling'

The clause **Service Provision and Complaint Handling** shall be renumbered **Clause 12**.

- 12.1 The Licensee shall collect, convey, and deliver postal articles according to the prices and terms and conditions, including quality of service standards, as defined by the Licensee or as agreed upon with individual customers.
- 12.2 Within two (2) months of the grant of this Licence, the Licensee shall establish and operate adequate systems for:
- (a) measuring and recording its performance in achieving the quality of service standards as defined by the Licensee or as agreed upon with its individual customers, and
 - (b) recording, analysing and responding to complaints in respect of the postal services provided by the Licensee generally.
- 12.3 On the grant of this Licence, the Licensee shall submit to the Authority its procedures for handling complaints about all postal services it provides. The Authority shall verify that the procedures reflect and conform to all legal requirements as provided for in the laws and decisions it enforces. The procedures shall:
- (a) be transparent, simple, inexpensive and prompt;
 - (b) cover in particular complaints involving loss, theft, damage or non-compliance with quality of service standards;
 - (c) identify where responsibility lies if more than one postal operator is involved;
 - (d) include appropriate reimbursement and compensation systems; and
 - (e) publicise updated information on complaint handling procedures and the contact details for lodging complaints with the Licensee in a manner as may be determined by the Authority.
- 12.4 The Authority may require the Licensee to amend its procedures to ensure that the conditions mentioned in paragraph 12.2 and 12.3 are satisfied.

- 12.5 Where a user is not satisfied with the way the Licensee has handled his/her complaint, the Licensee shall ensure that the user is informed that s/he may refer the complaint to the Authority for investigation.
- 12.6 If in the opinion of the Authority, the number or nature of complaints referred to the Authority indicate, or if the Authority otherwise becomes aware, that the complaint handling procedures of the Licensee are not adequate, the Authority may require the procedures to be reviewed and improved.
- 12.7 The Licensee shall publish its complaints and redress contact details in a manner as may be determined by the Authority.

3.3.14 Provision of Information

No material amends. The clause is however revised for the purposes of clarity.

Amendment 12: Proposed amendment to the clause 'Provision of Information'

The clause **Provision of Information** shall be renumbered **Clause 13**.

- 13.1 The Licensee shall in a timely manner provide any information as the Authority may require in the exercise of its functions:

Provided that the Authority may also specify the form in which it requires such information.²⁰

3.3.15 Protection of Integrity of Mail

No material amends to this clause. The clause with regard to the protection of the integrity of mail²¹ is however revised for the purposes of clarity.

Amendment 13: Proposed amendments to the clause 'Protection of Integrity of Mail'

The clause **Protection of Integrity of Mail** shall be renumbered **Clause 14**.

- 14.1 The Licensee shall establish and apply adequate mail integrity procedures:

²⁰ A licensed postal operator is required to provide the MCA with such information as may be required by the MCA.

²¹ Refer to Regulation 66 of the Regulations with regard to the requirement for all postal operators to ensure the integrity of mail.

Provided that within two (2) months of the grant of this licence the Licensee shall submit to the Authority the proposed mail integrity procedures, which procedures are to be drawn up in accordance with any directives issued by the Authority:

Provided further that the Authority shall verify that the procedures reflect and conform with all requirements as provided for in the laws and decisions it enforces.

- 14.2 The Licensee shall establish and apply adequate mail integrity procedures for the purpose of:
- (a) minimising the exposure of postal articles conveyed by the Licensee to the risk of loss, theft, damage or interference;
 - (b) minimising the risk of non-compliance with the Act and, or any decisions in relation to postal articles conveyed by the Licensee; and
 - (c) improving the performance of the Licensee in relation to the matters referred to in paragraphs (a) and (b).
- 14.3 The mail integrity procedures of the Licensee shall include the following:
- (a) the selection, vetting, training, provision of incentives to and disciplining of its staff, agents, sub-contractors, directors and officials however so described;
 - (b) the security of its buildings and vehicles;
 - (c) the avoiding, identifying and taking action in respect of offences under the Act in relation to postal articles conveyed by the Licensee;
 - (d) the collection and analysis of statistics on the achievement of the purposes set out in paragraph 14.2; and
 - (e) any other measures that the Authority may deem necessary.
- 14.4 The Authority may require the Licensee to amend its procedures to ensure that the matters mentioned in paragraph 14.3 are provided for.
- 14.5 The Licensee shall use all reasonable endeavours at all times to apply its mail integrity protection procedures.
- 14.6 The Licensee shall allow the Authority to inspect all matters relating to the procedures established under paragraphs 14.2 and 14.3 and any related physical facilities.
- 14.7 The mail integrity procedures of the Licensee may be reviewed by the Authority. The Licensee shall cooperate in the conduct of any review.

3.3.16 Accounting Separation

Reference to the reserved area shall be removed.

Amendment 14: Proposed amendment to the clause 'Accounting Separation'

The clause **Accounting Separation** shall be renumbered **Clause 15**.

- 15.1 The Licensee shall keep annually independently audited accounting and financial records for each of service groups specified in paragraph 15.2.
- 15.2 The Licensee shall keep separate accounts for each of the following service groups:
- (a) postal services which are within the scope of the universal services, pursuant to this Licence;
 - (b) any other postal service comprising the conveyance of postal articles including all postal services which are outside the scope of the universal services; and
 - (c) any service or activity not comprising the conveyance of postal articles.
- 15.3 The accounting systems must be sufficient so as to enable the Authority to determine turnover in relation to postal services that are within the scope of the universal services and any postal services outside this scope.

3.3.17 Provision of Universal Services

A postal operator designated as a USP in line with the Act is required to provide those universal services as identified in its designation as well as those that may be decided by the MCA from time to time, in terms with Regulation 23 of the Regulations.²²

A designated USP is required to comply with the Act, all other national laws, decisions of the Authority, and applicable European Union Law (refer to **Section 3.3.7** above), applicable to a designated USP.²³

Amendment 15: Proposed new clause: 'Provision of Universal Services'

A new clause **Provision of Universal Services** will be inserted in the licence as **Clause 16**.

²² Refer to **Appendix C: Proposed Designation of Universal Service Provider**.

²³ Refer to Article 76B of the Act with regard to the right of the Authority to issue directives to any postal operator as it may consider necessary for the purposes of and in accordance with the provisions of this Act. In particular the Authority may issue directives to a designated USP with regard to, amongst others, the quality of postal services to be provided, the density of access points, compliance with the universal service pricing principles in article 21 and article 22 of the Act, and the manner and time in which postal articles may be posted and delivered, including the core hours during which post offices are to be open to the public. Subject to article 23 of this Act and in accordance with any directives as the Authority may issue, a designated USP is required to keep separate accounts within its accounting system.

16.1 The Licensee may be designated as a universal service provider with an obligation to provide the universal service or parts thereof, as determined in its designation as a universal service provider and as may be decided by the Authority from time to time in accordance with the Act.

3.4 Amendment of current Postal Licences

Following this consultation process, the MCA will amend the current specimen postal licence for the provision of services within the scope of the universal services taking into account the feedback received. In addition, the new specimen postal licence will be published on the MCA's website and will replace the current published specimen postal licence.

The MCA will subsequently amend existing postal licences currently granted to the postal operators not designated as a USP, to reflect the updated specimen licence. The MCA will also provide licensed postal operators with a consolidated version of the licence for ease of reference.

3.5 Grant of new Licence to MaltaPost

MaltaPost's current licence is due to expire on the 1st of May 2013.²⁴ The MCA will grant MaltaPost a new individual licence upon expiry of its current licence in line with the Act. The new licence will be based on the proposed licensing structure and will authorise MaltaPost to provide postal services within the scope of the universal services. MaltaPost will continue to be required to provide the universal services specified in the Regulation relating to its designation as a USP (refer to **Appendix C**).

3.6 Ensuring Continuity in the Provision of the Universal Service

Article 17 of the Act maintains that users at all points in Malta shall enjoy the right to a universal service involving the permanent provision of a range of universal services at an affordable price.

Clause 8 of MaltaPost's current licence grants Government powers to ensure continuity of the universal services in a situation where MaltaPost, as the incumbent designated USP, ceases to provide a universal service for any reason other than, industrial action or other force majeure, or if the universal service provider goes into liquidation or is declared bankrupt.

The MCA believes that such continuity is necessary for users to enjoy an uninterrupted universal service, and observes that such a requirement should be incumbent on any

²⁴ Clause 3 of MaltaPost's licence states that the licence shall be valid for a term of fifteen years from the 1st of May, 1998, unless otherwise lawfully terminated in accordance with the Act or the provisions of this licence.

designated USP. This will allow the continuity of the universal service until a designation, as necessary, of another USP or USPs is carried out in line with the Act.

The MCA is therefore proposing that in line with the separation of universal service obligation related conditions from other symmetrical obligations, this existing clause is migrated to legislation, albeit with the appropriate amendments that effectively set stricter boundaries to this measure. As such, it is being proposed that similar powers are retained in the Regulations. The relative regulation would grant Government the necessary powers to ensure an uninterrupted universal service in the eventuality of a situation mentioned above.

Given that there exists the possibility that another operator, apart from MaltaPost, may eventually be designated as a USP, this measure cannot be applicable exclusively on a particular operator (as is currently the case). The proposed legal provision is therefore 'operator-neutral' in that it applies to a designated USP and not to any particular operator.

This regulation will apply only to a designated USP with regard to the provision of universal services, and only for a limited period of time, until an alternative postal operator is designated to provide the universal service in line with the Act.

The proposed draft regulation is presented in **Appendix B**.

4 Administrative Charging Principles

The Malta Communications Authority Act (Cap. 418) provides that the MCA “*shall so conduct its affairs that the expenditure required for the proper performance of its functions shall, as far as practicable, be met out of its revenue.*” This objective is achieved through an arrangement of administrative charges and/or fees levied on players operating within the respective communications sectors falling under the MCA’s jurisdiction.

Whilst Government part-financing of the regulatory regime is not discounted, it needs to be justified on grounds of practicability. Such grounds could be raised in relation to issues such as small sector size, which may render it impracticable for the postal sector to fund the MCA’s regulatory activity in its entirety.

Beyond looking into the extent of financing of the regulatory regime on the part of the sector it is also necessary to ensure that individual sector players contribute proportionately according to the burden brought to bear on the regulatory function. A consistent turnover related algorithm is arguably the best applicable measure.

The current fee algorithm, which is not consistent across operators in the universal service area, is based in part on legacy, and can at present be justified on the grounds that the market is not yet fully competitive. It would not, however, fully live up to the proportionality principle in a fully competitive market.

An appropriate authorisation fee regime conforming to the MCA’s administrative charging principles is therefore advocated. Such administrative charging principles require that the fees payable by all postal operators are:

- objectively justifiable;
- transparent;
- proportionate to the level of regulatory activity; and
- as far as practicable, sufficient to meet the MCA’s expenditure in carrying out its functions related to the postal sector.

An equitable authorisation fee regime for the postal sector would need to factor in the above-mentioned charging principles. In addition, when developing a suitable authorisation charge-out algorithm, two key elements need to be taken into account:

- sustainability of an effective regulatory function; and
- proportionality in application across all licensed postal operators.

The MCA intends to review the current authorisation fee regime later on this year. The MCA intends to propose an authorisation fee that will be uniformly applicable to all postal operators providing services within the scope of the universal services, including

designated USPs. The principal aim of this review is to ensure a level playing field in a completely liberalised environment.

5 Implementation Plan and Timelines

The table below depicts the envisaged timetable for consultations, proposed legislative amendments and amendments to individual licences.

Summary of Key Activities and Timelines	Planned
Consultation Document	
Publication of Consultation Document on the proposed revised licensing structure and authorisation charging principles	10th August 2012
Legal amendments	
Recommendations to the Minister responsible for postal matters on the proposed amendments to the Regulations	Sep 2012
Licensing Structure and Authorisation Charging Principles	
Publication of the explanatory memorandum on the licensing structure and authorisation charging principles	Oct 2012
Consultation Document	
Publication of Consultation Document on the proposed authorisation fee charge-out algorithm	Nov 2012
Amendments to current licences	
Amendments to the current licences for the provision of postal services within the scope of the universal services	Jan 2012
Renewal of MaltaPost Licence	
Renewal of MaltaPost Licence for the provision of postal services within the scope of the universal services	End March 2012

Note:

The above-mentioned timelines may be influenced by dependencies which are not within the MCA's control. Nonetheless, the MCA will do its utmost to follow the assignment to conclusion within the envisaged timelines.

6 Requests for Comments

The MCA would like to seek the views and comments from the industry, members of the public and other interested stakeholders on the proposals put forward in this consultation document.

Respondents should clearly link each view or comment to the relevant section. Any proposed amendments or revisions should be clearly explained and supported by respondents. Supporting material may be placed in an annex.

All views and comments should be submitted in writing in soft copies (such as Microsoft Word or PDF Format), and should reach the MCA by the **24th September 2012**. Respondents are required to include their personal or company particulars, correspondence address, contact number and email address in their submissions.

The MCA will make public all or parts of any submissions made in response to this consultation and disclose the identity of the source. Respondents are required to clearly mark any part of the submission that is considered commercially sensitive and place the information separately as an annex to the submission.²⁵ The MCA will not disclose information identified as commercially sensitive or confidential but will take them into consideration in its review.

All comments should be addressed to:

**Chief, Policy and Planning
Malta Communications Authority
Valletta Waterfront
Floriana FRN1913, Malta**

Tel: +356 21 336840

Fax: +356 21 336846

Soft copies should be made via email to info@mca.org.mt with the subject '**Response to consultation on an authorisation regime for a fully liberalised postal market**'.

Respondents may also submit a hardcopy via fax number: (+356) 21 336846.

²⁵ In accordance with the MCA's confidentiality guidelines and procedures published on the MCA's website.

Appendix A: Proposed Specimen Postal Services Licence

LICENCE TO *{name of licensee}* FOR THE PROVISION OF POSTAL SERVICES WITHIN THE SCOPE OF THE UNIVERSAL SERVICES

This Licence is being granted by the Malta Communications Authority in exercise of the powers conferred on it by the Postal Services Act (Cap 254 of the Laws of Malta).

Date of Issue:	
Name of Licensee:	
Registered Address:	
Company Registration Number:	

SECTION A: DEFINED TERMS

1. Defined Terms

- 1.1 Any reference to the "Act" in this Licence is a reference to the Postal Services Act (Cap. 254 of the Laws of Malta) and to any regulations made thereunder.
- 1.2 The provisions of article 2 of the Act shall apply to this Licence.
- 1.3 In this Licence, unless the context otherwise requires:
"the Authority" means the Malta Communications Authority established under the Malta Communications Authority Act (Cap. 418 of the Laws of Malta); and
"the Licensee" means (*Name of Licensee*) (company registration number).
- 1.4 In this Licence the word "decision" shall have the meaning that is has under article 2 of the Malta Communications Authority Act (Cap. 418 of the Laws of Malta).

SECTION B: GRANT AND GENERAL CONDITIONS OF LICENCE

2. Grant

- 2.1 By virtue of this Licence, the Licensee is hereby authorised to provide postal services within the scope of the universal services as specified in the Act, for an indefinite term and subject to the terms and conditions stated in this Licence.

3. Suspension and Termination

- 3.1 The Authority may suspend or withdraw this Licence at any time for serious and repeated breaches of any laws, and, or decisions.
- 3.2 The Licensee may hand back this Licence at any time by communicating its intention to do so in writing to the Authority giving the reasons for handing back the Licence:
 - (a) where the Licensee is not designated as a universal service provider, at least six (6) months prior to the date when the Licensee intends to hand this Licence back to the Authority;
 - (b) where the Licensee is designated as a universal service provider, at least twelve (12) months prior to the date when the Licensee intends to hand this Licence back to the Authority;

Provided that the Licensee may not hand back this License within eighteen (18) months from the date of grant of this Licence.

- 3.3 The termination of this Licence shall occur upon the earlier of:

- (a) a decision of the Authority to withdraw the Licence in accordance with the applicable legislation or with this Licence; or
- (b) the handing back of the Licence by the Licensee to the Authority provided the Authority in writing agrees to such handing back; or
- (c) the insolvency, liquidation or bankruptcy of the Licensee; or
- (d) the winding up or dissolution of the Licensee.

3.4 This Licence shall cease to have effect upon suspension or termination:

Provided that where the Licensee wishes to provide, or continue to provide, postal services which are outside the scope of the universal services, the Licensee shall notify its intention to the Authority to provide such services in accordance with the Act:

Provided further that where the Licence has been suspended by the Authority, the Licence shall recommence to have effect from the date when the Authority revokes the suspension.

- 3.5 The suspension or termination of this Licence shall be without prejudice to the obligation of the Licensee to effect any payments due to the Authority or to comply with any obligations under the Act.
- 3.6 Where the Licence is being terminated by the Licensee, the Authority reserves the right not to withdraw the Licence until any payments due to the Authority are effected, or in cases where there is the need to comply with any obligations under the Act until such obligations are complied with.
- 3.7 Upon the suspension or termination of this Licence, the Licensee shall cease to provide postal services.
- 3.8 The suspension or termination of this Licence shall not operate as a waiver or release of any obligation of the Licensee, as applicable, arising prior to such termination or suspension.

4. Rights of the Authority

- 4.1 The Authority may add to, or amend any of the terms and conditions of this Licence when such additions or amendments are necessary as a result of any international obligations entered into by the Authority or by the Government of Malta, or by the need to ensure compliance with the Act:

Provided that the Authority shall not be held responsible in any manner whatsoever for any damages suffered or expenses incurred by the Licensee as a result of any amendment of the terms or conditions of this Licence:

Provided further that the Authority shall inform the Licensee in advance and take into account the Licensee's views if relevant impact is foreseeable on the

Licensee's circumstances, granting a reasonable timeframe for the implementation of the relevant additions and, or amendments to the terms or conditions.

5. Cessation of Business as a Postal Operator

- 5.1 The Licensee shall establish, and at all times during the term of this Licence maintain all necessary arrangements ensuring that if it ceases to carry on business as a postal operator, postal articles in its care at the time of such cessation shall be delivered to the addressees.
- 5.2 The Licensee shall notify the Authority in writing for whatever cause it ceases to provide postal services, including without prejudice to the generality of the foregoing:
- (a) prior to the filing of an answer admitting the allegations of a demand by any creditor for declaration of bankruptcy;
 - (b) prior to the institution of dissolution or liquidation proceedings with respect to its business;
 - (c) prior to the approval of a demand for the dissolution or the liquidation of the Licensee or effecting a plan or other arrangement with the creditors of the Licensee which may affect the operation of postal services under this Licence;
 - (d) on being subject to an executive warrant of seizure or garnishee order or other similar process that may materially affect the provision of postal services; or
 - (e) upon the occurrence of any event which is reasonably likely to lead to foreclosure or to the judicial sale of a substantial part of the assets of the Licensee.

6. Applicability of Laws, Decisions of the Authority, etc

- 6.1 The Act, all national laws, all decisions of the Authority, and applicable European Union Law, shall apply to the Licensee for all purposes and shall form an integral part of this Licence except in those cases where the Licensee is specifically exempted by the Authority.
- 6.2 The Licensee shall comply with the terms and conditions of this Licence, as well as any applicable obligations or requirements, however described, emanating from the laws and decisions mentioned in 6.1 above:

Provided that nothing in this Licence shall exempt the Licensee from the obligation to diligently obtain at its own expense any permit, licence or other approval or authorisation, however so described, that may be necessary to construct, operate and maintain the postal services or any part thereof, or from the

obligation of complying with any condition of any such permit, licence or other approval or authorisation however so described:

Provided further that the Licensee shall be solely responsible for all expenses and other commitments, however so described, whether financial or otherwise, in respect of the Licence and the implementation thereof, and the Authority shall not be responsible for any such expenses or commitments whatever they may be.

- 6.3 Nothing in this Licence shall be construed as absolving or releasing the Licensee from any obligations, or limiting the power of the Authority to amend this Licence or to impose further conditions on the Licensee.

7. Severability

- 7.1 If any term or condition of this Licence is determined to be illegal or invalid by any court or tribunal, however so described, such determination shall have no effect on the validity of any other parts of this Licence, which parts shall remain in full force and effect for the term of the Licence or any amendment thereof.

8. Dispute Resolution

- 8.1 The Licensee shall resolve disputes in a fair, transparent and timely manner and, without prejudice to the right to appeal under any law, shall comply with all requirements or decisions of the Authority in relation to disputes.

9. Transfer of Licence

- 9.1 This Licence may not be transferred or assigned by the Licensee to another person without the prior consent in writing of the Authority and in accordance with the provisions of the Act. The decision of the Authority in this regard shall be communicated in writing and the Authority shall give reasons for its decision.
- 9.2 A change in the control of the ownership or management of the Licensee shall be equivalent to the transfer of the Licence, and shall be subject to the prior consent in writing of the Authority as aforesaid.

10. Licence Fees

- 10.1 The Licensee shall pay any licence fees however so described in accordance with the provisions of the Act.

11. Non-Compliance

- 11.1 If the Authority has reason to believe that the Licensee is not complying with the terms or conditions of this Licence, the Authority may take any required action as authorised at law.

SECTION C: SERVICES PROVIDED AND RELATED CONDITIONS

12. Service Provision and Complaint Handling

- 12.1 The Licensee shall collect, convey, and deliver postal articles according to the prices and terms and conditions, including quality of service standards, as defined by the Licensee or as agreed upon with individual customers.
- 12.2 Within two (2) months of the grant of this Licence, the Licensee shall establish and operate adequate systems for:
- (a) measuring and recording its performance in achieving the quality of service standards as defined by the Licensee or as agreed upon with its individual customers; and
 - (b) recording, analysing and responding to complaints in respect of the postal services provided by the Licensee generally.
- 12.3 On the grant of this Licence, the Licensee shall submit to the Authority its procedures for handling complaints about all postal services it provides. The Authority shall verify that the procedures reflect and conform to all legal requirements as provided for in the laws and decisions it enforces. The procedures shall:
- (a) be transparent, simple, inexpensive and prompt;
 - (b) cover in particular complaints involving loss, theft, damage or non-compliance with quality of service standards;
 - (c) identify where responsibility lies if more than one postal operator is involved;
 - (d) include appropriate reimbursement and compensation systems; and
 - (e) publicise updated information on complaint handling procedures and contact details for lodging complaints with the Licensee in a manner as may be determined by the Authority.
- 12.4 The Authority may require the Licensee to amend its procedures to ensure that the conditions mentioned in paragraph 12.2 and 12.3 are satisfied.
- 12.5 Where a user is not satisfied with the way the Licensee has handled his/her complaint, the Licensee shall ensure that the user is informed that s/he may refer the complaint to the Authority for investigation.
- 12.6 If in the opinion of the Authority, the number or nature of complaints referred to the Authority indicate, or if the Authority otherwise becomes aware, that the complaint handling procedures of the Licensee are not adequate, the Authority may require the procedures to be reviewed and improved.

12.7 The Licensee shall publish its complaints and redress contact details in a manner as may be determined by the Authority.

13. Provision of Information

13.1 The Licensee shall in a timely manner provide any information as the Authority may require in the exercise of its functions:

Provided that the Authority may also specify the form in which it requires such information.

14. Protection of Integrity of Mail

14.1 The Licensee shall establish and apply adequate mail integrity procedures:

Provided that within two (2) months of the grant of this licence the Licensee shall submit to the Authority the proposed mail integrity procedures, which procedures are to be drawn up in accordance with any directives issued by the Authority:

Provided further that the Authority shall verify that the procedures reflect and conform with all requirements as provided for in the laws and decisions it enforces.

14.2 The Licensee shall establish and apply adequate mail integrity procedures for the purpose of:

- (a) minimising the exposure of postal articles conveyed by the Licensee to the risk of loss, theft, damage or interference;
- (b) minimising the risk of non-compliance with the Act and, or any decisions in relation to postal articles conveyed by the Licensee; and
- (c) improving the performance of the Licensee in relation to the matters referred to in paragraphs (a) and (b).

14.3 The mail integrity procedures of the Licensee shall include the following:

- (a) the selection, vetting, training, provision of incentives to and disciplining of its staff, agents, sub-contractors, directors and officials however so described;
- (b) the security of its buildings and vehicles;
- (c) the avoiding, identifying and taking action in respect of offences under the Act in relation to postal articles conveyed by the Licensee;
- (d) the collection and analysis of statistics on the achievement of the purposes set out in paragraph 14.2; and
- (e) any other measures that the Authority may deem necessary.

14.4 The Authority may require the Licensee to amend its procedures to ensure that the matters mentioned in paragraph 14.3 are provided for.

14.5 The Licensee shall use all reasonable endeavours at all times to apply its mail integrity protection procedures.

14.6 The Licensee shall allow the Authority to inspect all matters relating to the procedures established under paragraphs 14.2 and 14.3 and any related physical facilities.

14.7 The mail integrity procedures of the Licensee may be reviewed by the Authority. The Licensee shall cooperate in the conduct of any review.

15. Accounting Separation

15.1 The Licensee shall keep annually independently audited accounting and financial records for each of service groups specified in paragraph 15.2.

15.2 The Licensee shall keep separate accounts for each of the following service groups:

- (a) postal services which are within the scope of the universal services, pursuant to this Licence;
- (b) any other postal service comprising the conveyance of postal articles including all postal services which are outside the scope of the universal services; and
- (c) any service or activity not comprising the conveyance of postal articles.

15.3 The accounting systems must be sufficient so as to enable the Authority to determine turnover in relation to postal services that are within the scope of the universal services and any postal services outside this scope.

16. Provision of Universal Services

16.1 The Licensee may be designated as a universal service provider with an obligation to provide the universal service or parts thereof, as determined in its designation as a universal service provider and as may be decided by the Authority from time to time in accordance with the Act.

Appendix B: Proposed Amendments to the Postal Regulations

L.N. . . . of 2012

POSTAL SERVICES ACT

(CAP. 254)

Postal Services (General) (Amendment) Regulations, 2012

IN EXERCISE of the powers conferred by article 81 of the Postal Services Act, the Minister for the Infrastructure, Transport and Communications, after consultation with the Malta Communications Authority, has made the following regulations:

Title.

1. The title of these regulations is the Postal Services (General) (Amendment) Regulations, 2012 and they shall be read and construed as one with the Postal Services (General) Regulation, 2005 which regulations hereinafter shall be referred to as the "principal regulations".

Adds new regulation 43B to the principal regulations

2. Immediately after regulation 43A of the principal regulations there shall be added the following new regulation:

"43B (1) If a universal service provider designated in accordance with the Act at any time ceases, for a continuous period of one week, to provide a universal service the provision of which it has been designated to provide, for any reason other than:

- (a) industrial action or other force majeure; or
- (b) if the universal service provider goes into liquidation or is declared bankrupt,

then Government may consider the universal service provider as effectively being unable to abide with the said universal service obligation onerous on it.

(2) Where a universal service provider ceases to provide a universal service in the circumstances referred to in subregulation (1), Government may, in order to ensure the continuity of that service, take over that part of the operation of the postal services relating to the provision of the universal service obligation

which the universal service provider has ceased to provide, without any obligation to pay compensation to the universal service provider:

Provided that in doing so Government, where necessary, shall without any undue delay endeavour to find an alternative operator to provide the said universal service in line with the Act:

Provided further that Government or any person authorised by Government for the purpose, shall be empowered to use the assets of the universal service provider subject to the payment of such compensation for the said use as may be agreed between the parties, or in default of agreement, determined by arbitration according to Maltese Law, and to recoup any reasonable costs incurred in providing the said universal service from the defaulting universal service provider.”.

Amendment of regulation 45 of the principal regulations

3 Subregulation (1) of Regulation 45 of the principal regulations shall be substituted with the following:

“ (1) The authorisation by virtue of which a universal service provider may provide services within the scope of the universal services in accordance with the Act, shall be granted by individual licence”.

Amendment of regulation 46 of the principal regulations

4. Regulation 46 of the principal regulations shall be amended as follows:

(a) The explanatory note to regulation 46 shall be substituted with the following:
“Licensing of services within the scope of universal services”.

(b) Subregulation (1) thereof shall be substituted with the following:

“(1) The authorisation by virtue of which a postal operator provides postal services falling within the scope of the universal services, but who is not a universal service provider, shall be granted by individual licence.”.

(c) Subregulation (2) thereof shall be substituted with the following:

“(2) The grant of a licence under subregulation (1) shall be deemed to authorise the licensee to provide also postal services outside the scope of the universal services:

Provided that the licensee shall also comply with the conditions attached to the general authorisation.”.

Amendment of regulation 47 of the principal regulations

5. Regulation 47 of the principal regulations shall be amended as follows:

(a) Subregulation (1) thereof shall be substituted with the following:

“(1) The authorisation to provide postal services that are outside the scope of the universal services, shall be granted in accordance with a general authorisation.”.

Amendment of regulation 48 of the principal regulations

6. Regulation 48 of the principal regulations shall be amended as follows:

(a) Subregulation (1) thereof shall be substituted with the following:

“(1) Any person who intends to provide postal services outside the scope of the universal services shall, before doing so, notify the Authority of his intention to provide such services.”.

Amendment to the First Schedule

7. Paragraph (b) of the First Schedule of the principal regulations shall be substituted with the following:

“(b) Fees to be paid by operators who are not designated universal service providers, licensed in terms of regulation 46 in respect of services which are both within and outside the scope of the universal services

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together with one percent of the total gross revenue from postal services within the scope of the universal services;”

Appendix C: Proposed Designation of Universal Service Provider

L.N. . . . XX of 2012

POSTAL SERVICES ACT

(CAP. 254)

Postal Services (Designation of Universal Service Provider) (Amendment) Order, 2012

IN EXERCISE of the powers conferred by article 81 of the Postal Services Act, the Minister for the Infrastructure, Transport and Communications, after consultation with the Malta Communications Authority, has made the following regulations:

Title

LN 296 of 2004.

1. The title of these regulations is the Postal Services (Designation of Universal Service Provider) (Amendment) Order, 2012 and shall be read and construed as one with the Postal Services (Designation of Universal Service Provider) Order, 2004, which Order shall be referred to as the "principal Order".

Amendment of regulation 2 of the principal Order

2. Regulation 2 thereof shall be substituted with the following:

"Cap. 254

2. (1) Unless the context otherwise requires the provisions of article 2 of the Postal Services Act shall apply to this Order.

(2) MaltaPost Plc is hereby designated as the universal service provider with an obligation to provide, as a minimum, the following universal services:

(a) every working day at least one delivery to each postal address or other delivery point and at least one collection from each current access point or as may be agreed to with the Authority from time to time:

Provided that the delivery and collection shall apply to all postal articles which weigh up to 20 kilograms;

- (b) services for registered postal articles;
- (c) services for insured postal 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;
- (d) the collection and onward transmission of postal articles for destinations outside of Malta and the receipt and delivery of postal articles originating outside of Malta for addresses within Malta;
- (e) services for the blind or partially sighted persons as shall be agreed from time to time with the Authority;
- (f) a basic counter service throughout Malta; and

LN 328 of 2005

- (g) the postal services indicated in regulation 23 of the Postal Services (General) Regulations:

Provided that MaltaPost Plc in providing these universal services shall act in accordance with the obligations imposed on it by or under the Act and any decision or any authorisation issued by the Authority.”.