

Universal Service Obligations in Malta

1 Introduction

Malta obtained independence from Britain in 1964, and became a parliamentary Republic in 1974. In 1975, the Telemalta Corporation was set up under the Telemalta Corporation Act as a business organisation wholly owned by the Government to provide telecommunications. Under the former regime, Cable and Wireless Ltd., Rediffusion Ltd., and the Posts and Telephones Department provided telecommunications and broadcasting services.

In 1997, with the enactment of the Telecommunications (Regulation) Act (Cap. 399), Telemalta Corporation was succeeded by Maltacom, a public liability company. The company negotiated in 1998 a 25-year telecommunications operating licence with exclusive rights to provide fixed telecommunications services until 2010.

The Telecommunications (Regulation) Act as enacted in 1997 also provided for the separation of regulatory functions from the operation of telecommunications networks and services with the establishment of the Office of the Telecommunications Regulator. In a further step, responsibilities for ownership and for regulation of Maltacom were allocated to separate Ministries in 1998 (Ministry for Economic Services and Ministry of Transport and Communications respectively).

Following a tender in 1988, Racal-Telecom of UK was awarded a 20-year exclusive licence on August 11, 1989 for the provision of mobile cellular telephony in Malta. The local company, called Telecell had two shareholders: Vodafone Europe Holdings B.V. with 80% of the shares and Telemalta with 20%. Telecell operated an ETACS analogue cellular system until 1997. A Licence Agreement with Telemalta of November 5, 1997 allowed Telecell (now Vodafone Malta Ltd) to operate a GSM network.

On July 16, 1990, the Government of Malta applied to join the European Communities. The European Commission delivered its opinion on Malta's application on June 30, 1993, confirming that Malta was eligible for membership. As part of its accession preparations, a National Programme for the Adoption of the Acquis (NPAA) was published on September 1, 2000. This outlines the time frame and actions necessary for the adoption and implementation of the *acquis communautaire* in Malta. The NPAA refers to the Malta Communications Authority Act approved by Parliament in July 2000. This Act also amended the Telecommunications (Regulation) Act of 1997, established a single authority responsible for regulation of the communications sector and aimed at bringing the Telecommunications (Regulation) Act of 1997 in line with the *acquis communautaire*.

As part of the Malta Communications Authority Act, the "National Plan for the Reform of the Telecommunications Sector" set out the telecommunications liberalisation package.

2 Market Structure

The regulatory framework and the status of the telecommunications market has recently undergone considerable changes. Maltacom p.l.c.'s monopoly for the provision of fixed line telecommunications services and the international gateway, which, according to its licence of 10th August 1998, would have run until 2010, was substantially modified following the enactment of the Malta Communications Authority Act in 2000 and the amendments to Telecommunications (Regulation) Act. In this context the Telecommunications (Regulation) Act as amended in 2000 provides for:

- the liberalisation of all telecommunications services, other than fixed telephony, mobile telephony, international gateway and cable television during the year 2000;
- the limitation of Maltacom's exclusive privilege for fixed telephony until December 31, 2002;
- the liberalisation of international gateway services, including those for data services, from January 1, 2003;
- an end to the monopoly in mobile telephony with the licensing of Mobisle Communications, a subsidiary of Maltacom, as the second operator and this with effect from December 1, 2000, with the possibility of considering the licensing of a third operator in 2003 with a third licensee not to be expected before January 1, 2005;
- the requirement that Maltacom disposes of its shares in Vodafone Malta Limited within six months from the date when its subsidiary first provides mobile telephony services.

3 Legislative Background to USO

3.1 Telecommunications (Regulation) Act

Section 4(1) of the Telecommunications (Regulation) Act provides that it shall be the duty of the MCA to exercise the functions assigned to it under the same Act in a manner which it considers to be conducive to:

- a. the regulation of the telecommunications sector on the basis of the fundamental principles of the Act including the separation of regulatory and operational functions, fair competition, transparency, non-discrimination, open networks, consumer protection, universal service, public service values and respect for fundamental human rights;
- b. secure that there are provided in Malta, save in so far as the provision thereof is impracticable, such telecommunications services as satisfy all reasonable demands for them including in particular emergency services, public call services, directory information services, and maritime services; and

The Minister acting under the powers conferred to him by Section 38(1) of the Telecommunications (Regulation) Act, made provisions regarding Universal Service Obligations in the Telecommunications Services (General) Regulations.

These Regulations authorise the Malta Communications Authority to designate the services, which are to be provided as universal service obligations, and to require any one or more authorised providers to provide such services.

The Authority has the power to issue directives designating the universal service obligations and requiring any one or more authorised providers to provide such services and to make provisions for a funding mechanism if this is deemed necessary and appropriate.

3.2 Telecommunications Services (General) Regulations – Legal Notice 151 of 2000

Regulation 38(1) of the Telecommunications Services (General) Regulations provides that the MCA may designate an operator with a dominant market position to be the provider of universal services as defined by the MCA.

The Regulations oblige operators designated as universal service providers to supply the basic services described below to any person including users in high cost areas or vulnerable groups such as the elderly, the disabled or people with special social needs. This is to be provided on the usual terms and conditions, within a reasonable period of time and at an affordable charge (if any) as authorised by the MCA.

3.2.1 Services Supported

The Telecommunications Services (General) Regulations define the basic set of services that a designated fixed network operator is obliged to provide to include as a minimum the provision of:

- voice telephony via a fixed connection which will also allow fax and a modem to operate;
- operator assistance;
- emergency services;
- directory enquiry services (including subscriber directories); and
- public payphones.

On the other hand, a mobile operator designated with a universal service obligation, shall provide handsets that can be used by people with hearing difficulties.

In addition, the Legal Notice sets out special services that has to be provided under a universal service obligation as:

- i.* services for people with visual impairment; and
- ii.* services for people who are deaf or hard of hearing;

The Regulations also authorise the MCA to define other universal services, as it deems appropriate.

3.2.2 Tariff control

Telephone services by a dominant operator (who will also be the universal service provider) is subject to price control by the MCA, who may choose also to introduce a price cap. The Regulations give further guidance to the MCA on the necessary considerations to be given when deciding on service tariffs:

Regulation 40(5)

In authorising charges for services provided under a universal service obligation, the Regulator shall balance the principle of affordability with the cost-orientation requirement and the need to re-balance tariffs for a competitive market environment.

3.2.3 Universal Service Contribution Mechanism

The MCA may establish a universal service contribution mechanism, which shall be calculated by the MCA, taking into account the costs, net of attributable revenues, of serving customers with a basic service who otherwise would not be served. Other benefits received by the operator from the provision of the service such as brand recognition and market position shall also be accounted for.

The MCA shall determine operators' contributions towards universal services with regard to factors such as:

- the relative size of the operator's business;
- the relative capacity of the operator to comply with universal service conditions;
- financial stability; and
- the likely net cost of the operator of complying with any or all conditions of universal service obligation.

The Telecommunications Services (General) Regulations provides that if required, universal service obligation contributions will be collected either through a fund established for the purpose, a supplementary charge added to charges for call terminations, or through a supplement charge to customers based on their number of main telephone lines.