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## **Proposed Modifications to the Terms and Conditions of Subscriber Contracts**

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Consultation on Decision

### **Malta Communications Authority**

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## 1. Background

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In November 2008, the Malta Communications Authority, (hereinafter the "Authority"), published a Decision on **Proposed Modifications to the Terms and Conditions of Subscriber Contracts** (hereinafter the "Decision"). The proposals were aimed at addressing the interpretation of article 22 of the Electronic Communications (Regulation) Act (Cap.399) (ECRA) which relates to the manner in which any changes to the terms and conditions of subscriber contracts are to be effected by operators and the legal rights of subscribers throughout such a process. The Decision clarifies the manner in which service providers must implement the legal provision which requires that any termination or proposed modification to subscriber contracts shall:

1. be notified in writing to the subscriber at least 30 days prior to the implementation of the proposed modification; and
2. provide the possibility to the subscriber to withdraw from such contract without incurring any penalty should the subscriber not agree to the proposed modification.

The Decision states that the notification regarding proposed modifications to the contract of service shall be sent in writing to subscribers via ordinary mail, or email if the subscriber has given his/her consent prior to any verbal notification of the proposed amendment. In the case of subscribers of a pre-paid mobile telephony service, notifications of proposed modifications to such services may be sent via SMS.

In this regard, the MCA has identified one area where it considers that the notification to subscribers regarding proposed modifications to their contracts is in some cases, unsatisfactory. This relates to instances whereby notifications to subscribers on proposed modifications to their contracts, include additional material which does not necessarily concern the proposed change and which therefore does not permit the subscriber to adequately assess the impact of such proposed changes. The Authority is therefore proposing to amend the Decision to address this concern.

Further to the above, the MCA considers that the provision which grants the right to subscribers to terminate their contract without incurring any penalty is designed to ensure that subscribers can withdraw from their contract in such instances where a service provider alters the terms and conditions to the detriment of subscribers.

In such circumstances, a subscriber may be left with a service which differs greatly from the one for which he/she originally contracted. The Authority however, appreciates that certain modifications to terms and conditions of subscriber contracts may have a positive impact on the concerned subscribers. The Authority is of the opinion that such instances should be treated differently.

The Authority would also like to address the issue related to the termination of a service and/or services. The proposed changes to the Decision seek to clarify that in such instances undertakings are expected to take all the necessary steps to ensure that all of the provisions addressed by the Decision are implemented.

The Authority is therefore proposing to amend the current Decision on **Proposed Modifications to the Terms and Conditions of Subscriber Contracts** to address these issues.

## **2. Areas of concern and proposed changes to the Decision**

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### ***2.1 Notifications to subscribers regarding proposed modifications to the terms and conditions of subscriber contracts***

The Authority is responsible to ensure that any notifications by undertakings regarding proposed modifications to subscriber contracts provide clear and transparent information.

The Authority regrettably notes that the content of such notifications, include in most instances, additional information which does not specifically relate to the proposed modification/s. As a result, such notifications do not allow subscribers to make a proper assessment of:

- the suggested change;
- the impact on their requirements and expectations from the given service and, consequently;
- whether they would like to terminate their subscription to such service.

In order to counter such practices, the Authority is proposing that such notifications are limited to include only the following information:

- The proposed modifications to the conditions of the service/s currently being offered, including, the exact provisions of the revised contract;
- The subscribers' right to terminate the service/s within 30 days from notification, without incurring any penalties, if he/she does not agree with the proposed change/s; and
- The manner in which any deposit or advance payment made by the subscriber for the original service (if any) will be refunded if the subscriber chooses to unsubscribe to the service/s or switch to a new service/s.

### **Proposed Decision 1**

Any communication intended to notify subscribers of proposed modifications to the Terms and Conditions of subscriber contracts shall be limited to contain only the following information:

1. The proposed modifications to the conditions of the service/s currently being offered, including, the exact provisions of the revised contract;
2. The subscribers' right to terminate the service/s within 30 days from notification, without incurring any penalties, if he/she does not agree with the proposed change/s; and
3. The manner in which any deposit or advance payment made by the subscriber for the original service (if any) will be refunded if the subscriber chooses to unsubscribe to the service/s or switch to a new service.

For the avoidance of any doubt, the Authority would like to clarify that although the aforementioned notification regarding proposed modifications to the Terms and Conditions of subscriber contracts may be delivered to subscribers concurrently with other communications, the notification must be a separate and distinct document.

### ***2.2 Modifications to the terms and conditions of subscriber contracts which positively impact subscribers***

The Decision on **Proposed Modifications to the Terms and Conditions of Subscriber Contracts** clearly specifies that subscribers have a right to terminate their contract without incurring any penalty if the subscriber does not accept a proposed modification by the undertaking. This provision in the Decision is clearly intended to protect subscribers' interests.

In light of the above, the Authority considers that it is appropriate to waive the obligation to provide subscribers with the possibility to terminate their contract without incurring any penalties in cases where the Authority determines that the proposed modification is clearly positively impacting subscribers.

The Authority, is hereby proposing that in instances where an undertaking considers that the proposed change/s are positively affecting impacted subscribers, an undertaking may seek MCA's authorisation to proceed with notifying subscribers about the proposed changes in line with MCA's current decision, without the requirement to provide the option to subscribers to terminate their contract without incurring any penalty fees. In doing so, the Authority is proposing that the suggested modifications to the subscribers' contract are communicated to the Authority at least five (5) working days before the proposed modifications are communicated to the subscribers. The Authority will communicate its decision to the undertaking by not later than the aforesaid five (5) working days.

When submitting such requests, undertakings are to provide the Authority with all relevant documentation, including but not limited to:

- The full description of the service/s impacted;
- A brief statement providing considerations on how the undertakings believes that the proposed change/s will positively affect impacted subscribers;
- The related Terms and Conditions of the service/s impacted;
- The copy of the notification letter to be sent to the subscribers; and
- Any other relevant information which may be necessary for MCA's ruling.

Such advanced notification together with the provision of the above mentioned documentation, will allow the Authority to determine whether or not, the proposed modifications will positively impact the concerned subscribers, and therefore decide if the requirement to provide subscribers with the option to terminate the contract without incurring any penalty still rests on the undertaking in question or not.

## **Proposed Decision 2**

When an undertaking considers that the proposed change/s are positively affecting impacted subscribers, that undertaking may notify the MCA regarding proposed modifications to terms and conditions of subscriber contracts and seek MCA's decision as to whether the obligation to provide subscribers with the option to terminate the contract without penalty may be waived, provided that undertakings:

1. notify the Authority about the proposed modifications to the terms and conditions at least five (5) working days before the proposed modifications are to be communicated to subscribers; and
2. supply the Authority with the relevant documentation, including but not limited to :
  - The related Service descriptions of the service/s impacted;
  - A brief statement providing considerations on how the undertakings believes that the proposed change/s will positively affect impacted subscribers;
  - The related Terms and Conditions of the service/s impacted;
  - A copy of the notification letter to be sent to subscribers; and
  - Any other relevant information which may be necessary for MCA's ruling.

MCA will communicate its decision to the concerned undertaking by not later than five (5) working days from receipt of the all of the above requested information. Failure to provide all of the required information may delay the issuance of the Authority's ruling.



### ***2.3 Modifications to the terms and conditions of subscriber contracts which do not necessarily positively impact subscribers***

In the event that, the Authority decides that the proposed modifications will not necessarily positively impact some or all of the concerned subscribers; the requirement at law that the undertaking must offer its subscribers the possibility of terminating the contract without incurring any penalty will apply. In such cases, undertakings would be required to make any proposed changes in line with MCA's decision.

In such instances, as described above, the obligation that requires undertakings to notify the Authority about any proposed modifications to the contract of service/s at least one (1) working day prior to the notification to the relevant subscribers, would be automatically waived if the notification provided previously to the Authority is not altered.

In the event that the undertaking considers that the proposed modification to the subscribers contract is not positively affecting impacted subscribers; and/or if for any other reason the undertaking decides not to seek the Authority's ruling on whether the obligation to provide subscribers with the possibility to terminate the contract without incurring any penalties should be waived, undertakings would be required to make any proposed changes in line with MCA's decision.

### **Proposed Decision 3**

When the Authority decides that that the proposed modifications will not necessarily positively impact some or all of the concerned subscribers; the requirement at law that the undertaking must offer its subscribers the possibility of terminating the contract without incurring any penalty will apply. In such cases, undertakings would be required to make any proposed changes in line with MCA's decision.

In such instances, as described above, the obligation that requires undertakings to notify the Authority about any proposed modifications to the contract of service/s at least one (1) working day prior to the notification to the relevant subscribers would be automatically waived if the notification provided previously to the Authority is not altered.

In the event that the undertaking considers that the proposed modification to the subscribers contract is not positively affecting impacted subscribers; and/or if for any other reason the undertaking decides not to seek the Authority's ruling on whether the obligation to provide subscribers with the possibility to terminate the contract without incurring any penalties should be waived, undertakings would be required to make any proposed changes in line with MCA's decision.

## **2.4 Termination of a service/s**

The Authority is concerned that in instances where an undertaking terminates a service/s, and in particular in instances where undertakings cease operations, undertakings are not fully complying with MCA's decision. The Authority believes that in such circumstances, undertakings are responsible to take all the necessary precautions to ensure that:

- subscribers are informed in writing of the termination of the service/s at least 30 days prior to the implementation of the proposed modification;
- the notification of termination of the service/s provides information that enable the impacted subscribers to migrate services to alternative

providers where necessary and make available, technical support services to assist subscribers so as to minimise any disruptions.

- the notification of termination of the service/s provides information about the manner in which any deposit or advance payment however so described (if any), made by the subscriber for the original service will be refunded;
- any notification about the termination of the service/s and related communications are notified to the Authority by the relevant undertaking at least three (3) working days prior to notification to the relevant subscribers.

Undertakings are to take all the necessary measures, particularly when making agreements with third parties in relation to the electronic communications services that they provide, in order to ensure that such agreements do not act as an obstacle when implementing the above mentioned provisions addressed in MCA's decision.

#### **Proposed Decision 4**

Undertakings shall inform their subscribers about the termination of a service/s at least 30 days prior to the termination of the service/s.

The notification of termination shall:

- provide information that effectively enables its subscribers to migrate services to alternative providers;
- provide information about the manner in which any deposit or advance payment however so described (if any), made by the subscriber for the original service will be refunded;
- be notified to the Authority accompanied by any relevant communications by the relevant undertaking at least three (3) working days prior to notification to the relevant subscribers.

Undertakings shall take all the necessary measures, particularly when making agreements with third parties in relation to the electronic communications services that they provide, in order to ensure that such agreements do not act as an obstacle when implementing the above mentioned provisions addressed in MCA's decision.

### **3. Request for Input**

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The Authority, in accordance with its obligations under article 4A of the Malta Communications Authority Act [Cap. 418] is seeking the views of all interested parties and stakeholders who have an interest in the subject being dealt with before issuing the proposed decision referred to above.

Any person who wishes to make submissions relevant to the consultation must ensure that submissions are received by the Authority by not later than **Friday, 18<sup>th</sup> March 2011.**

Any such submissions are to be addressed to:

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All submissions shall be made publicly available by the Authority on its website unless the person making any such submission gives valid reasons acceptable to the Authority as to why such submissions should not be made public.