



Decision on Proposed Modifications to the Terms and Conditions of Subscriber Contracts

Report on Consultation and Decision

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1. Introduction

In August 2008, the Malta Communications Authority (MCA) published a Consultation Document on modifications to the terms and conditions of subscriber contracts. The objective that document was to seek the views of operators and interested parties on the proposals developed by the MCA in relation to the procedures adopted by service providers when modifying the terms and conditions of subscriber contracts.

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 Consultative Document focussed on three areas of concern where it considered implementation of contract modifications, on the part of undertakings, to be, at times, unsatisfactory.

This Report on Consultation and Decision summarises the responses to the consultation; presents the revisions to the Proposed Decision of August 2008 and the final text that the MCA is adopting.

2. Responses to the Consultation

The Consultation period for the Proposed Decision entitled “Proposed Modifications to the Terms and Conditions of Subscriber Contracts” ran from 28th August 2008 to 12th September 2008.

Responses to this Proposed Decision were received from Melita Cable p.l.c. Queries requiring further clarifications were received from ECC European Consumer Centre.

MCA wishes to thank these parties for their interest and response.

3. The Legal Basis

Article 22 of the ECRA states that undertakings providing any electronic communications service¹, that wish to modify any related contractual terms must notify every subscriber to that service. The notification should include the proposed modification to the conditions of the contract and inform subscribers of their right to withdraw without penalty from such contract if they do not accept the proposed modification. Such notification must be given at least thirty days prior to the coming into effect of any proposed modification.

Despite this obligation, the MCA has established, following its own investigation as well as reports received, that some contracts for service specify a pre-notification period that is unlawful, being less than the thirty days specified by law. The MCA has taken steps with the undertakings concerned to ensure that these clauses are rectified. However, it has also become apparent that further elucidation of the rule contained in Article 22 is required in order to avoid any impingement on consumer's rights.

Given the MCA's interest and the obligation it has under Article 4(3) (r) of the Malta Communications Authority Act (Cap 418) to promote the interests of consumers, the MCA has issued the following Decision on Proposed Modifications to the Terms and Conditions of Subscriber Contracts to address issues relating to the correct application of Article 22 that are currently being experienced.

¹ Generally this refers to telephony service (both mobile and fixed line), internet access service, and broadcast transmission service.

4. Decision

4.1 Insufficiently informative terms and conditions regarding amendments to contracts

In its consultation paper, the MCA noted that some contracts of service adopted by providers of electronic communications services include an 'Amendment Clause' which runs contrary to both Article 22 of the ECRA and Regulation 40(e) of the Electronic Communications Networks and Services (General) Regulations (S.L.399.28) as it does not clearly state that:

1. The undertaking will notify its subscribers of any proposed modifications to the terms and conditions of an existing contract at least thirty days in advance of the changes taking place; and
2. The subscriber has the right to withdraw from the contract without penalty during the said period should he/she not accept the proposed modifications.²

Regulation 40(e) of the Electronic Communications Networks and Services (General) Regulations (S.L.399.28) states that subscribers of telephony services and subscribers which enter into a written contract for service should be provided with a contract specifying the conditions for termination of services and of the contract.

Since the 'Amendment clauses' in the contracts for service directly impact the termination of such contracts, the above-mentioned information as specified in Article 22 of the ECRA should be clearly outlined in the terms and conditions, irrespective of the duration of the contract of service.

No feedback to the proposed Decision was received so that it remains unchanged as follows:

Decision 1:

Subscriber contracts must include a clause that relates to the possible future modification or termination of such contracts which shall clearly and unambiguously state that:

1. Any proposed modification will be notified in writing to the subscriber at least 30 days prior to the implementation of the proposed modification; and
2. Should the subscriber not agree to this modification, he/she has the right to withdraw from such contract without penalty.

² Further to a clarification sought, the MCA wishes to point out that this right subsists even if the consumer subscribes to a contract that binds him to acquire such service for a minimum period and the operator chooses to amend the terms and conditions of such service prior to the expiration of the minimum period. In such a case, the consumer must be allowed to terminate the contract within the stipulated 30 day period without forfeiting any of his/her rights.

4.2 Manner of notification of changes to contract

Another matter of concern to the Authority is that while a notification, as required by Article 22(4) of the ECRA, may be given within the minimum legal time-frame, the manner in which such notification is given as well as the content of such notification may not always allow subscribers a proper assessment of:

1. The suggested change;
2. The impact on their individual requirements and expectations of the given service and, consequently,
3. Whether or not they would like to terminate their subscription to such service.

Therefore, the Authority proposed that sufficiently detailed notifications be sent to all potentially affected subscribers via ordinary mail, or email if the subscriber has given his/her consent, prior to any verbal communication in this regard.

In instances where the suggested change in the terms and conditions of service relates to pre-paid mobile telephony, the Authority considers notification via SMS to be sufficient notification. In the event that sufficient information cannot be provided entirely by SMS, the undertaking must make available a freephone service for subscribers wishing to obtain full information on the proposed modification.

In all other cases, notification via SMS shall be considered supplementary and additional to notification by ordinary mail.

As a minimum, the notification must always contain the following details:

1. The proposed modifications to the conditions of the service currently being offered, that is, the exact provisions of the revised contract; and
2. The manner in which any deposit or advance payment made by the subscriber for the original service will be refunded if the subscriber chooses to unsubscribe to the service or switch to a new service.

In the event of termination of service, the Authority strongly recommends that the undertaking provides its subscribers with written information on the possible service options available and all related terms and conditions; in particular all costs that subscribers would incur, should they decide to take up any proposed service option. The Authority considers that in the case of subscribers to internet access services, a referral in the notice to a web-page where such information is available would be sufficient.

In all cases the subscriber should be provided with a telephone number (preferably toll-free) and physical address to be contacted in order to seek further clarifications on the proposed changes should these be required.

No feedback to the proposed Decisions was received so that they remain unchanged as follows:

Decision 2:

Any notifications 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 service may be sent via SMS.

Decision 3:

All notifications regarding proposed modifications to the contract of service shall always contain the following information as a minimum requirement:

1. The proposed modifications to the conditions of the service currently being offered, that is, the exact provisions of the revised contract; and
2. The manner in which any deposit or advance payment made by the subscriber for the original service will be refunded if the subscriber chooses to unsubscribe to the service, or switch to a new service.

In all cases, subscribers must also be given the opportunity to seek further information and clarifications on the proposed modifications from the undertaking in a simple manner and at minimal cost.

4.3 Provision of advance information to the Authority

The Authority, in line with its powers under Article 4(10) of the Malta Communications Authority Act (Cap. 418) (hereby referred to as 'MCA Act') to request information from any person in order to ensure compliance with the provisions of, or decisions and directives made in accordance with, the MCA Act or any other law which the Authority is entitled to enforce, proposed that any modifications to the terms and conditions proposed by an undertaking and the related communication to subscribers be notified to the Authority prior to notification to the relevant subscribers.

The Authority proposed that such advance notification be sent to the Authority at least three (3) working days before notification to subscribers was planned.

Feedback on this proposed decision was received by the Authority which suggested that the Authority be informed of any proposed change concurrently with the operator's customers. Having evaluated the implications of this suggestion, the Authority considers that concurrent notification would not allow the Authority enough time to take full cognisance of the implications of the changes prior to answering any queries received from consumers by the Authority.

However, the Authority also appreciates that there may be practical difficulties that may be faced by operators in giving the Authority 3 days notice. As a consequence, the Authority has amended the suggested timeframe in the proposed decision so that notice of one working day will be considered sufficient. Such advance notification will allow the Authority to be better placed to fulfil its obligations towards subscribers under Article 4 of the ECRA.

The decision has therefore been amended as follows:

Proposed Decision 4:

Any proposed modifications to the contract of service and related communications must be notified to the Authority by the relevant undertaking at least one (1) working day prior to notification to the relevant subscribers.

26th November 2008



Philip Micallef
Chairman