

Please quote our ref. LEG 243

15<sup>th</sup> October 2010

Mr. David Kay  
Chief Executive Officer  
GO Plc  
Spencer Hill  
Marsa MRS 1950

Dear Mr. Kay,

**Re: Decision further to letter of warning dated 24<sup>th</sup> June 2010 about GO's failure to furnish requested information on fixed telephony, internet and data services, pay TV and leased lines for Quarters 1 to 4 of 2009.**

Reference is made to the Malta Communications Authority's (the "Authority") letter of warning dated 24<sup>th</sup> June 2010 addressed to GO Plc ("GO") and to the various related communications including GO's letter dated 24<sup>th</sup> July 2010.

The Authority after having considered GO's submissions as per GO's letter of the 24<sup>th</sup> July 2010 is issuing this decision.

**Background**

The Authority had requested GO and Mobisle Communications Limited ("GO Mobile") to provide all pending information on fixed telephony, mobile telephony, internet and data services, Pay TV and leased lines covering Quarters 1 to 4 of the 2009 or parts thereof for 2009. A subsequent reminder was sent on the 22<sup>nd</sup> March 2010 detailing the outstanding information that GO/GO Mobile had to provide.

The said information **then outstanding (namely when the letter of warning of the 24<sup>th</sup> June 2010 was sent)** was as follows:

*[ X detail omitted from non-confidential version ]*

A final warning dated 24<sup>th</sup> June 2010 was issued to GO informing GO that a daily administrative fine of thirty Euros (€30) may be imposed if GO fail to furnish the requested information. GO was informed that such a fine may be backdated to the 31<sup>st</sup> December 2009 being the date when the said information had to be provided to the Authority, and would continue until when GO furnishes the required information to the Authority.

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GO in its response dated 24<sup>th</sup> July 2010 remarked that there were various communications to show that it endeavoured to communicate and co-operate with the Authority.<sup>1</sup> GO contend that the quantity of data requests appears to be increasing on a yearly basis.

GO further noted that the Authority is required by law to provide justification for its requests for information from operators and to ensure that all its actions are reasonable, justified and proportionate, expressing its doubts as to whether the data requests were in accordance with the "spirit and letter of the law". GO with regard to the specific categories whereby the Authority is requesting data information also made submissions dealing with each of the said categories.

On the 23<sup>rd</sup> July 2010 GO provided the outstanding information relating to Mobile telephony as listed above.

### **Decision**

In general terms GO argues that the Authority's requests for information are increasing each year and that the Authority is at law required to justify its requests for information and to ensure that these requests are reasonable, justified and proportionate.

The Law – specifically article 4(10) of the Malta Communications Authority Act (Cap. 418) – does not restrict the Authority as to amount of information that it may request from operators. Whilst one appreciates that the gathering and submission of such information may entail some effort by the operators in complying with such information requests, on the other hand one must appreciate that if the Authority is to be effective in the performance of its regulatory functions then the Authority must be furnished with such information as it considers to be necessary in fulfilment of its statutory functions.

GO in its submissions attempts to convey the impression that the information required by the Authority may not always be necessary for the performance of the Authority's functions and that such requests are not proportionate to the performance of such functions. GO argues that such information data requests do not follow "the spirit and letter of the law" since the Authority is required to ensure that all its actions are reasonable, justified and proportionate.

The Authority notes that in the context of information requirements under article 4(10) the Authority is required to ensure that any such information requests are "proportionate to the performance of its functions and obligations" under Cap. 418.

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<sup>1</sup> GO referred specifically to the Authority's communication of the 12<sup>th</sup> February 2010 and GO's feedback dated 26<sup>th</sup> February 2010 – see GO's submissions to the Authority of the 24<sup>th</sup> July 2010 at page 1 thereof.

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In doing so the Authority is required to state why the information is needed. The Authority considers that the information requested from GO was proportionate to the performance of the Authority's functions at law and that the timely provision of such information is necessary in order to enable the Authority to effectively perform its functions at law. The Authority further notes that in asking for such information it is, in most instances, self evident why the information is required.<sup>2</sup> Moreover if an operator at any stage queries as to why the information is required the Authority provides an explanation. One should appreciate that the Authority will not request data from operators simply to ask for such information but that such requests are made with a clear purpose related to the performance of the Authority's functions at law.

It is also relevant at this point to note that the Authority had even published in March 2010 a document entitled *Guidelines on Quarterly Statistical Data Collection* wherein it had referred to the importance of the data collected, the negative repercussions that incomplete/incorrect data generates, and that the Authority would take the necessary regulatory measures to address non-compliance.

GO with regard to the specific category requests attempts to justify its stance primarily by arguing that the Authority either does not need all information required or that the Authority is creating an excessive burden on GO.

[ ✕ detail omitted from non-confidential version ]

Finally reference is made to article 4(10) of the Malta Communications Authority Act (Cap. 418 of the Laws of Malta) whereby the Authority is empowered to "require any person to provide it with any information, including financial information, that the Authority considers necessary for the purpose of ensuring compliance with the provisions of, or decisions or directives made in accordance with this Act or any other law which the Authority is entitled to enforce."<sup>3</sup>

Article 4(11) of Cap.418 further provides that "Any information required by the Authority under sub article (10) shall be proportionate to the performance of its functions and obligations under this Act and in requiring any information as aforesaid, the Authority shall state why it requires the information requested.", whereas article 4(12) states that a person notified with a requirement to provide information under article 4(10) must "comply promptly with the requirement within the timescales and according to any level of detail as may be required by the Authority:....". The Law then establishes the maximum administrative fines applicable if there is non-compliance with such information requirements.<sup>4</sup>

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<sup>2</sup> See for example our e-mail communication dated 7<sup>th</sup> October 2009 addressed to GO.

<sup>3</sup> The reference to "this Act" is to Cap.418 of the Laws of Malta.

<sup>4</sup> Article 4(13) of Cap.418 provides for a maximum one off administrative fine of €11,645 and/or a daily fine of up to €230 for each day of non-compliance until such non-compliance persists.

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The Authority considers that article 4(10) *et seq* cited above gives it a clear mandate to require the aforesaid information from GO and that GO repeatedly failed to provide the information required in a timely and comprehensive manner.

The Authority considers that it has given adequate opportunity to GO to provide the required information. In the circumstances the Authority **determines that a daily fine of thirty Euros shall be imposed commencing as from the date of this Decision if within thirty days from the said date GO does not provide all the outstanding information as detailed in this decision.** The Authority reserves the faculty to revise the quantum of the fines imposed if GO persists in being non-compliant.

Yours,

[Signed]

Paul Edgar Micallef  
Chief Legal Adviser

Cc:

- (1) *Mr. Stefan Briffa – Senior Manager Regulatory Affairs – GO plc*
- (2) *Mr. Ian Agius – Chief of Operations – MCA*
- (3) *Ms. Ritianne Cassar – Manager Finance - MCA*

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