

Tariff Approval Procedures

Administrative Guidelines

October 2003

Malta Communications Authority

"Il-Piazzetta" Suite 43/44, Tower Road, Sliema SLM 16, MALTA

Telephone: +356 21 336 840 Fax: +356 21 336 846

Web: <http://www.mca.org.mt>

Table of Contents

Executive Summary	1
1 Introduction	2
1.1 Background	2
2 Legislative background	3
3 Proposed Administrative Procedures	4
3.1 Preliminary	4
3.2 Scope	4
3.3 Application Contents	6
3.4 Timeframes	7
3.5 Special Offers	7
3.6 Confidentiality	9
3.7 Publication	10
3.8 Method of Application	11

Executive Summary

These guidelines follow the decision on *Price Control Review* published by the MCA in January 2003. In that decision the MCA had established that it would initiate a separate consultation regarding the administrative procedures to be followed when introducing new or proposing changes in tariffs for telecommunications services.

This document captures the MCA's final position on the subject following the consultation and offers guidance to operators on administrative issues, such as, the contents to be included in tariff applications, the timeframes for submitting tariffs applications, and the procedure to be followed when introducing special offers.

1 Introduction

1.1 Background

The Malta Communications Authority (MCA) is responsible for the regulation of the Maltese telecommunications sector in accordance with the powers and duties conferred on it by the Telecommunications (Regulation) Act and subsidiary legislation enacted under this Act.

The Act provides that until such time as telecommunications markets become subject to effective competition, tariffs for telecommunications services shall be regulated by the MCA. The purpose is to ensure that tariffs are just, reasonable and promote the interests of consumers and other users of telecommunications services in Malta.

In the document *Report on Consultation and Decision - Price Control Review* published in January 2003, the MCA established that it would in the future consult on two related topics namely:

- the administrative procedures to be followed when introducing new, or proposing changes in tariffs for telecommunications services, and;
- the determination of a suitable price control mechanism for fixed telecommunications services provided by the dominant operator based on an RPI-X price control regime.

Following this decision, in February 2003 the MCA published the document *Draft Guidelines on Tariff Approval Procedures* which addressed the administrative procedures to be followed when introducing new, or proposing changes in, tariffs for telecommunications services.

Four submissions were made as follows:

- Maltacom plc,
- Melita Cable plc,
- Mobisle Communications Limited (Go Mobile), and
- Vodafone Malta Limited.

This document summarises the responses received from the operators and updates the guidelines on the basis of the feedback received by the MCA.

This document is without prejudice to the legal position or the rights and duties of the MCA to regulate the market generally. This is not a legal document; the MCA is not bound by this document and may amend it from time to time.

2 Legislative background

The legislative provisions governing price control were set out in some detail in previous communications on this subject, including the Decision Notice published by the MCA in January 2003 (“the decision notice”).

This document does not reiterate these points and interested parties are invited to access the above-mentioned documents on the MCA s website.

3 Proposed Administrative Procedures

3.1 Preliminary

These guidelines do not replace, detract or supplement in any manner the provisions of any legislation. In case of doubt on the application or interpretation of these guidelines, the relevant legislation shall prevail.

3.2 Scope

Summary of Consultation Responses

One operator submitted that tariff controls should be imposed only where effective competition does not exist, and only after an empirical examination has been conducted. The same operator urges the MCA to support an amendment to LN151/2000 repealing the 6-week timeframe allowed to the MCA to examine tariffs. One operator commented that tariff controls should be imposed solely on DMP operators. Another operator expressed concern on the provision in LN151/2000 allowing the MCA to demand a fixed telephony operator to submit tariffs 15-weeks prior the intended effective date.

The MCA's position is that these guidelines are intended only to address the administrative procedures related to tariff approval. The policy for price regulation has been set out in the Decision on Price Control Review published in January 2003. The MCA considers that it should maintain the two issues separate, and that this document should address only the administrative processes relating to the price controls regime currently in force, without entering into the respective policy issues.

One operator suggested a clarification whether the procedures will apply in respect of tariff-rebalancing. This request was made in view of the fact that in May 2003 the MCA had initiated a Consultation on the introduction of an RPI-X price cap mechanism.

The MCA considers this proposal favourably and is amenable to keep the tariff rebalancing process separate from these administrative procedures.

One operator suggested that the guidelines should also include the MCA's position regarding hand-set subsidies and sponsorships offered by operators.

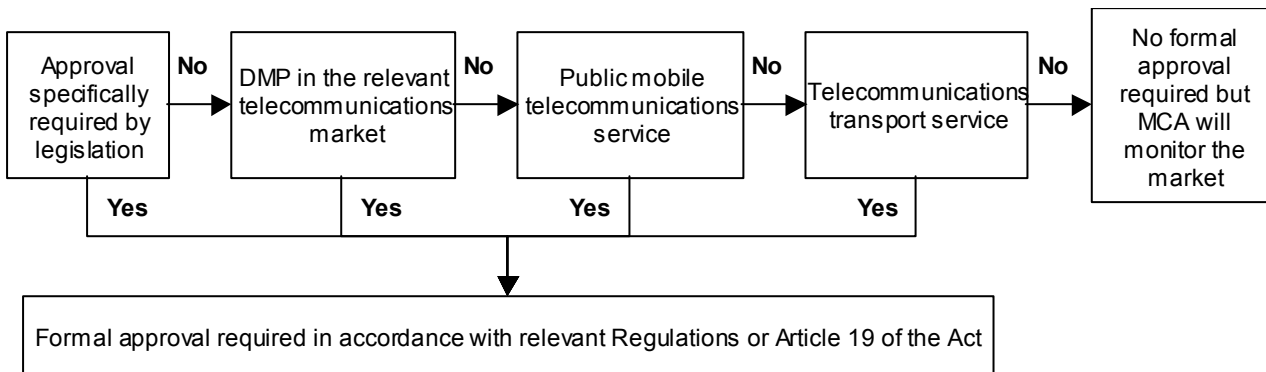
The MCA is of the view that the scope of these guidelines should not be extended with the inclusion of ex-ante regulation over such matters.

The Telecommunications (Regulation) Act establishes that where the MCA considers that a market lacks effective competition, tariffs shall be subject to proportionate controls and regulations, which may also grant the MCA powers to

issue proportionate and non-discriminatory directives, as it may deem appropriate. Where no regulations have been issued, tariffs are regulated in accordance with Subarticles (2) to (7) of Article 19 of the Act.

In accordance with the current legislation, formal approval from the MCA should be sought by the following providers of telecommunications services¹:

- Operators having a DMP, for all those services provided in the relevant market in which they have a DMP, in accordance with the relevant legislation;
- Operators of public mobile telecommunications systems and services, in accordance with the relevant legislation;
- Telecommunications Transport Providers, for those services provided in respect of telecommunications transport, in accordance with the relevant legislation.



The MCA is of the view that, in accordance with relevant legislation, regulatory controls over tariffs for public mobile telecommunications services and telecommunications transport provision services are still required until competition provides for an effective regulation.

Such controls are not being applied to other authorised providers (such as ISPs) operating in market segments where the MCA believes there is sufficient competition or very low barriers to entry. However, the MCA reserves the right to initiate investigations and direct any authorised provider to provide it with information as required by the pertinent legislation. In particular the MCA may intervene in order to ensure that no illegal cross-subsidisation is taking place.

¹ The same obligations also apply to a subsidiary or associated company of such providers, where the subsidiary or associated company provides such services by virtue of a licence granted to the holding company.

The above services shall be subject to review depending on the results of the study on effective competition in telecommunications, which is due to be undertaken in 2003, in accordance with the published Decision on Price Control Review.

In accordance with the Decision on Price Control Review, the process of tariff rebalancing relating to services provided by the fixed telephony DMP operator will be subject to alternative forms of control.

Furthermore, where specific control over tariffs for any of the above services already exists in terms of Regulations currently in force, tariffs shall be regulated accordingly.

3.3 Application Contents

Summary of Consultation Responses

One operator commented that clarification should be made on what the terms and conditions of service attached to the tariff application should include. Another operator commented that such terms and conditions of service should be re-registered only when these are changed

The MCA agrees with both proposals and the guidelines have been amended accordingly

The legislation requires operators of telecommunications services to register terms and conditions of service, including approved tariffs, with the MCA.

All submissions for new tariff approvals should include the proposed tariffs as well as the complete set of proposed terms and conditions of service (including description of service, peak/off-peak differentiation, discounts, minimum contractual period, and complete charges as applicable). Failure to include the proposed tariffs as well as the terms and conditions of service may result in the MCA not accepting the application.

When submitting applications for changes to existing tariffs or terms and conditions of service, an operator should indicate clearly the changes for which it is seeking approval. Apart from indicating the changes, the operator should also re-register the amended tariff plan as well as the terms and conditions of service where any changes are made thereto.

The legislation mandates that in a number of instances tariffs should be cost-oriented. Where tariffs are required to be cost-oriented the applications should be accompanied by detailed cost submissions.

3.4 Timeframes

Summary of Consultation Responses

Two operators submitted that the legislation allows the MCA excessive timeframes to evaluate tariff applications. One operator proposed that the timeframes should be significantly reduced to a maximum of 10 days.

As stated earlier in this document, these guidelines are intended to address only the administrative procedures for tariff approvals under existing legislation.

Furthermore, operators will have the faculty to introduce tariffs rapidly under the “Special Offer” accelerated procedure, described in the next section of this document. Operators can at the same time apply for the full approval during the “Special Offer” period, without being forced to delay the launch of the new tariffs.

The legislation establishes a number of different timeframes for the submission, publication and approval of tariffs.

The MCA is fully cognisant of the competitive pressures and market dynamics impinging on the operators, which often result in the submission of applications for urgent approval. For this reason the MCA always attempts to give its decision on proposed tariffs sooner than the timeframes allowed by law. At the same time the MCA needs adequate time to analyse rigorously the applications it receives from the operators. It is the responsibility of every operator to make sure that applications are submitted in good time (at least 15 working days, without prejudice to the timeframes established by law) before the intended launch of the new tariffs.

3.5 Special Offers

Summary of Consultation Responses

All respondents commented that the maximum period allowed for a special offer should be longer.

One operator submitted that special offers should not be time bound except for offers which have a tariff above 0 cents. Another operator commented that special offers should be allowed for up to 6 months in the case of new services. Another operator submitted that the time allowed was excessively restrictive. The fourth operator proposed that the maximum duration for special offers should be extended to 60/180 days.

The MCA is favourably disposed to extend the maximum duration allowed for special offers. Accordingly, the guidelines have been revised to allow special offers for up to 90 days (instead of 45 days).

One operator commented that special offers should be notified to the MCA 15 working days prior to launch, instead of the proposed 10 working days, in order to allow sufficient time for marketing campaigns and publicity to be organised by the operator.

The MCA acknowledges that there may be a number of reasons why operators would need certain lead-times prior to launching a special offer. Accordingly the MCA will accept notifications for special offers even before the required minimum of 10-days notice.

One operator commented that special offers for 0-tariff services should be subject only to a simple notification. Two operators submitted that the MCA's explicit or implicit consent should be reckoned within 5 working days of the notification to the MCA. Another operator proposed that that requests for further information by the MCA should be made within 3 working days from notification otherwise the request would be approved within 5 working days.

The MCA is revising the guidelines so that a “no objection” note would be sent within 5 working days from acknowledgment of the special offer by the MCA, unless either the notification is refused or further information is requested within that same timeframe. If further information is requested the MCA's final approval or disapproval will follow within 3 working days of receiving the information.

One operator submitted that the MCA should remove the principle that special offers must not be anti-competitive or predatory, since by their very nature special offers will almost invariably result in a reduction in the applicable charges.

The MCA concurs that special offers will be expected to provide additional benefits or cost savings to customers. However the MCA does not agree that such offers inevitably need to be anti-competitive for them to be effective. The MCA is of the view that some reserve power should be retained to investigate anti-competitive behaviour.

On a number of occasions operators apply to the MCA for the approval of temporary special offers relating to tariffs and/or tariff plans, including, amongst others:

- Waiving or reduction of installation or connection fees;
- Reduction of periodic or usage charges;
- Free service/product for an introductory or limited period of time.

In order to simplify the administrative process and increase flexibility for operators in responding to the market needs, the MCA is proposing that special offers be regulated as follows:

- a) A “special offer” shall mean a temporary promotion being made available to an operator’s customers for no longer than one continuous period of 90 calendar days. The MCA reserves the right to request an operator to submit a full tariff application should the operator propose to extend further a special offer,
- b) An operator is to notify the MCA of any special offer 10 working days or more prior to the intended launch date. The MCA will acknowledge receipt of all notifications. Unless a request for information, or rejection, is served by the MCA within five working days from acknowledgment, the MCA will send a “no objection” note to the operator. If additional information is demanded, the MCA will approve or otherwise the request within three working days from the date when the required information is received;
- c) Such “no objection” communication will not prejudice the MCA from carrying out investigations or requiring further information with respect to such special offers;
- d) A special offer must not include terms and conditions which are anti-competitive, discriminatory, predatory or which may have a negative impact on competition in the market;
- e) Promotions which do not qualify as a special offer (as defined above) require the MCA’s prior approval.

3.6 Confidentiality

Summary of Consultation Responses

Operators agreed that submissions relating to tariffs should be treated as confidential.

The MCA has taken cognisance of the operators’ submissions. The guidelines now include that submissions related to tariffs are to be treated confidential as far as possible within the parameters established by the law.

The law allows (and in some cases requires) the MCA to offer the opportunity for comment upon proposed tariffs by other operators and by customers.

The MCA will normally treat requests for the approval of new service offerings, special offers, marketing ideas, and tariffs as confidential unless the MCA is required by law to consult publicly on any such service offerings etc.

Where the MCA is required to consult publicly, it would normally endeavour to reduce any detailed accounting information in support of the applicant’s request

to the extent that this does not prevent other stakeholders from making an informed judgement as to the validity of the request.

3.7 Publication

Summary of Consultation Responses

One operator did not agree that special offers should not be marketed before the relevant procedures have been complied with.

The MCA is of the view that the revised guidelines reduce timeframes significantly and do not introduce significant delays to marketing plans. Furthermore it is in the operators' interests that marketing efforts are commenced only after the due process has been followed.

Operators should ensure that new or revised tariff plans are not marketed or offered to subscribers before formal approval is granted by the MCA (or in the case of special offers before the relevant procedures have been fully complied with).

In publishing tariffs and terms and conditions of service relating to telecommunications services, operators should ensure that:

- Any new or revised tariffs or special offers must not be communicated in a discriminatory fashion to customers or other operators;
- The full terms and conditions, including tariffs, approved by the MCA must be made available to all new clients upon provisioning of the service;
- The full terms and conditions, including tariffs, approved by the MCA should be made publicly available.

Preferably authorised providers are to keep an updated Internet tariff page, and new tariffs and/or changes to existing tariffs should be publicised on local media by the operator.

3.8 Method of Application

All applications should be submitted (preferably in electronic format) to:

Joseph Cuschieri
Chief of Operations
Malta Communications Authority
'Il-Piazzetta' Suite 43/44
Tower Road
Sliema SLM 16
MALTA

Tel: +356 21 336 840
Fax: +356 21 336 846
e-mail: operations@mca.org.mt

Receipt of applications and special offer notifications will be acknowledged by the MCA.

All applications should indicate clearly the name of the company submitting the application and the contact details including the name of the person in charge of tariff applications, postal address, phone and fax numbers and e-mail addresses.