

## **Subscriber contracts for electronic communications services**

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### **Guidelines**

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## 1. Introduction

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The Malta Communications Authority (MCA) is the statutory body responsible for the regulation of the electronic communications sector in Malta as stipulated in the Malta Communications Authority Act (Cap. 418)(hereinafter "MCA Act") and the Electronic Communications (Regulation) Act (Cap.399) (hereinafter "ECRA").

As part of its role in ensuring that end-users of electronic communications services are protected, the MCA seeks to guarantee that such end-users have the necessary information to make informed decisions with regards to the subscription of electronic communications services (that is, fixed telephony, mobile telephony, internet and TV distribution services), taking into account their individual needs. The ongoing increase in the number of undertakings providing such services, together with the additional complexities in the nature of services provided, necessitates more detailed information to be made available to end-users.

The main protection afforded to end-users in this regard, is the contract which includes the terms and conditions for the use of the service. The ECRA requires providers of electronic communications services to provide a written contract to end-users including a specific set of information requirements.

This provision has been significantly strengthened in the revised EU Electronic Communications Framework (as published in the Official Journal of the European Union) which entered into force as of 19<sup>th</sup> December 2009. It is expected that the legislation implementing this and other EU Directives under Maltese law will be enacted in the near future.

Investigations by the MCA have identified a number of lacunae in terms of information provided in contracts. The MCA is also concerned about certain practices, such as the provision of a summary of the terms and conditions in hardcopy format and the unwillingness of a number of undertakings to provide end-users with the applicable full terms and conditions prior to subscription. The MCA considers such practices not to be consumer friendly.

In order to counter such practices, the MCA is adopting guidelines for service providers to address the following:

- provisions that are legally required to be included in contracts related to electronic communications;
- the form of such contracts;

- the means by which the contracts should be made available to consumers; and
- any necessary additional transparency rules related to contracts and terms and conditions, for example their availability on web-sites, from outlets etc.

It is intended that these Guidelines will be amended as necessary following the transposition of the new EU framework, referred to above, into Maltese Law.

These guidelines do not exempt providers of electronic communications services from complying with any other obligations in accordance with other legal provisions and decisions published by the MCA.

## 2. Background

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Article 22 of the ECRA states that undertakings must provide subscribers of telephony services with a written contract which includes the information set out below.

Article 22 of the same act further states that, where a written contract is agreed between an end-user and an undertaking providing any other electronic communications services, such contract must also include the following information:

- a) the identity and address of the supplier;
- b) the services provided, the service quality levels offered, as well as the time for the initial connection;
- c) the types of maintenance service offered;
- d) the particulars of prices and tariffs and the means by which up-to-date information on all applicable tariffs and maintenance charges may be obtained;
- e) the duration of the contract, the conditions for its renewal and termination of services and of the contract;
- f) any compensation and the refund arrangements which apply if contracted service quality levels are not met; and
- g) the method of initiating procedures for settlement of disputes in accordance with the said law.

The MCA notes that the manner in which these legal requirements are being implemented by service providers does not always provide clear contract terms that allow subscribers to enforce their contractual rights.

The MCA is therefore issuing the following guidelines to assist the industry in complying with its obligations at law.

### **3. Provision of Contract**

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#### **3.1 *What is a contract?***

A 'contract' means an agreement or an accord between a subscriber and a service provider by which obligations and rights are created and regulated for the provision and use of any electronic communications service. The Authority considers that, a 'written contract' is one that is in tangible form, where the acceptance of the end-user is denoted, normally by a signature.

In this regard, in all cases where a subscriber is being bound by a definite contract, the Authority considers that a written contract which is signed by the subscriber is necessary for the purposes of this article.

The MCA is aware, however, that in the electronic communications sector, it is common practice that subscribers enter into indefinite contracts for pre-paid services without actually signing a written contract. A classical example of this is the subscription to indefinite pre-paid mobile telephony services. The MCA does not interpret this as a breach of Article 22 of ECRA as long as the subscribers' consent is manifested, and as long as the contract does not bind the subscriber to a definite period.

In relation to the above example, the MCA considers that the subscription and subsequent use of the service, is sufficient proof of a subscribers' intention to enter into, and accept the contract terms.

#### **3.2 *Who has to provide a contract?***

As indicated above, Article 22 (1) of the ECRA states that a service provider shall provide a person subscribing to services providing connection and, or access to the public telephone network, with a written contract.

Therefore the obligation to provide a 'written contract' rests on telephony service providers.

### **3.3 When is the contract to be provided?**

End-users need to be able to compare contract terms and conditions, in addition to applicable tariffs and other relevant conditions, prior to deciding to subscribe to a specific service.

While the MCA is aware that this information is generally available on service providers' web-sites - although not always easy to locate - it is also aware that service providers do not always make available hard copies of their contracts to interested end-users.

Contract terms should be published in a manner which is sufficiently transparent and easily accessible to end-users, and a copy should be provided to any end-user who requests it, for example, either in hard copy from retail outlets or in soft copy following an electronic request by a prospective end-user.

This will help end-users who wish to avail themselves of a service, to understand the service provider's contract terms, and to make an informed choice in deciding whether to subscribe or not to the service offered.

#### **Guideline 1**

Subscriber contracts should be made available:

- at all of the undertakings' official outlets; and
- on the undertakings' website and linked to the respective offers and/or service descriptions.

Undertakings providing electronic communications services should, upon request by any prospective subscriber, provide free of charge, a copy of the standard contract pertaining to the service. Contracts should be provided in hard copy or soft copy as requested by the prospective subscriber.

## 4. Information to be included in subscriber contracts

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The Guidelines listed below are aimed at assisting undertakings in meeting their obligations under Regulation 40 of the Electronic Communications Networks and Services Regulations (ECNSR).

In accordance with article 22(3) of the ECRA, these obligations **apply to all service providers of electronic communication services** that conclude contracts with end-users.

### 4.1 *Description of services provided*

The MCA considers that service providers generally effectively comply with this obligation by providing a broad description of the service and a list of ancillary services. In the telephony sector for example, the primary service would be the ability to receive and make telephone calls while ancillary services, amongst others, could include roaming services.

One area however, where the description of the service, in the view of the Authority, is generally insufficient, relates to the television sector.

In this sector, when subscribing to a service, the service providers provide a channel programme line-up to which the end-user is subscribing. It is however possible that the service provider's rights to transmit one or more of the channels would expire during the term of a contract entered into by the subscriber.

The lack of provision of such important information to the subscriber at the time of subscription may result in serious detriment to the end-user. This because a subscriber may enter into a contract for a service, which as a result of matters known to the service provider at the time when the subscriber entered into the contract, changes materially during the term of the contract.

The MCA considers that service providers have the following options at law, with regard to this issue:

- i. either include any material information, for example the known expiry dates for content rights in the contract, so that the consumer may make an informed decision; or
- ii. include any material information, for example the known expiry dates for content rights in a separate document. In such instances, subscriber



contracts should include a reference to the existence of such document and provide clear information where the document containing this information can be found. The provision of subscriber contracts should in every instance be accompanied with a copy of the document containing this information. Such documents should be available on the undertaking's website and linked to the respective offers and/or service descriptions.

- iii. in default of either of the above, provide the end-user with a thirty (30) day notice, should there be material changes to the channel line up during the term of a contract, thereby enabling the subscriber to opt-out of the contract.

#### **4.2 Service quality levels offered**

The Authority interprets this clause as requiring the service provider to include, as a minimum, basic information on the quality of service offered in the standard contract terms, such as:

- i. the minimum service availability or up-time, excepting in cases of force majeure;
- ii. in case of internet service, the minimum access speeds provided, ensuring that these do not differ significantly from the marketed upper levels; and
- iii. any important limitations or conditions impacting on the quality of the service as perceived by the subscriber, e.g. in the case of mobile or terrestrially transmitted services, any service limitations related to network coverage, both in terms of any significant geographical areas where the service provider does not have coverage; and any coverage limitations due to, for example, indoor penetration.

With respect to the subparagraph 4.2 (iii) above, the MCA understands that it may not be practical to include all pertinent information in the contract. In such cases, the contract should clearly indicate the sources where such information should be available, including as a minimum all retail outlets and the undertaking's website.

The Authority highlights that Article 8 of the ECRA establishes that service providers must provide services efficiently complying with the standards for quality, generally accepted in the industry or as may from time to time be specified by the Authority. Any limitations set out in the contract terms are without prejudice to the overriding nature of this obligation.

## **Guideline 2**

The standard contract terms shall comprehensively define the services to be provided as part of the contract.

The service quality levels for the use of the service shall be clearly defined in the standard contract terms. These should include:

1. the minimum service availability;
2. the minimum access speeds in case of Internet service, ensuring that these do not differ significantly from the marketed upper levels; and
3. any important limitations or conditions impacting on the quality of the service being provided.

### **4.3 Initial time for connection**

This section of the contract shall specify the maximum time-frame for initial connection. Should this time-frame be exceeded and the service not installed, the Authority considers that the subscriber should have a right to exit from the related contract without penalty.

## **Guideline 3**

Standard contract terms of electronic communications services shall set out the maximum installation time required to activate the service.

Should the time-frame agreed to in the subscriber contract be exceeded and the service not installed, the subscriber would have a right to exit from the related contract without penalty. The contract should also specify the manner in which any deposit or advance payment made by the subscriber for the original service, will be refunded if the subscriber chooses not to subscribe to the service after that the maximum installation time to activate the service expires.

#### **4.4 Types of maintenance services offered**

This section of the contract shall specify the types of maintenance services offered and the related timeframes. These would include in particular the maximum time-frames for the restoration of the service should a fault occur in the service, or should the service be interrupted for the repair, maintenance, improvement of the network or for other operational reasons.

In establishing such timeframes undertakings must take into account their obligation to establish an efficient mechanism for receiving complaints and repairing failures under Article 8 of ECRA.

##### **Guideline 4**

Standard contract terms of electronic communications services must set out:

- The maintenance services offered in the event that the service is interrupted; and
- The maximum time-frames for the restoration of the service should a fault occur in the service, or should the service be interrupted for the repair, maintenance, improvement of the network or for other operational reasons.

#### **4.5 Particulars of Tariffs, Prices and Charges**

Subscriber contract terms shall include the following information together with any other information related to the applicable tariffs, prices and charges for the use of service/s:

1. the types of tariffs, prices and charges, applying to the supply of the designated service/s;
2. the cost of installation, connection, reconnection and disconnection of the designated service/s, if any;
3. any charges due on termination of the contract;

4. whether the subscriber is eligible for a discount, credit or rebate, and, if so, the amount of the discount, credit or rebate; and how it is worked out;
5. peak and off-peak usage times (where applicable) and the amounts thereof;
6. any access charges;
7. the charge for terminating the contract before the end of its term and its computation; and
8. any penalties for unreturned terminal equipment supplied.

### **Guideline 5**

The information outlined in 4.5(1) to 4.5(8) above, shall be:

- Included in subscribers' contracts; and / or
- Included in a separate document. Subscriber contracts shall include a reference to the existence of such document and provide clear information where the document containing this information can be found. The provision of subscriber contracts shall in every instance be accompanied with a copy of the document containing this information. Such documents shall be available on the undertaking's website and linked to the respective offers and/or service descriptions.
- The charge for terminating the contract before the end of its term should be reasonable and proportionate and shall always be included in the standard contract. In order to ensure that subscribers are aware of the applicable penalty fees in case of early termination, such clause should be written in **bold** and in a font size which is at least **20% larger** than the other clauses in the contract.

#### **4.6 Duration of Contracts**

Contracts of service may include a specific term for the supply of the designated services.

The clause on the duration of the contract is one of the most important clauses in the contract and should be separate from any other clause in the contract and prominently displayed:

In particular this clause shall specify:

1. the duration of the contract;
2. the minimum period of notice to be given by either party to terminate the contract; and
3. the events that would give either party a right to suspend and/or terminate the contract.

#### **Guideline 6**

The information outlined in points 4.6(1) to 4.6(3) above, shall be included in all contracts of service.

In order to ensure that subscribers are aware of the minimum term of the contract, such clause should be written in **bold** and in a font size which is at least **20% larger** than the other clauses in the contract of service.

#### **4.7 Initiating procedures for settlement of disputes**

Under Article 8 of ECRA undertakings are required to establish efficient mechanisms for receiving complaints. The provision of such a service, enables service providers to enhance customer satisfaction by providing an efficient, fair and accessible mechanism for handling complaints. In order for subscribers to use this service, they require information on the complaint handling processes adopted by the undertaking concerned.

The Authority considers that in relation to the complaints handling process the following information should be specified in subscriber contracts, taking into account the obligations onerous on service providers under Article 8 of ECRA:

1. available channels for submitting claims;
2. any reasonable time limit for submitting claims;
3. maximum time limit for undertakings to acknowledge receipt of claims;
4. maximum time limit for responding to claims;
5. claims resolution procedure;
6. information about the subscriber's right to lodge a complaint with the MCA if not satisfied with the response and/or remedy offered by the service provider; and
7. MCA's contact details.

### **Guideline 7**

The information outlined in points 4.7(1) to 4.7(7) above, shall be included in all contracts of service.

The information on the claims resolution procedure may be included in a separate document. Subscriber contracts shall include a reference to the existence of such document and provide clear information where the document containing this information can be found. The provision of subscriber contracts shall in every instance be accompanied with a copy of the document containing this information. Such documents shall be available on the undertaking's website and linked to the respective offers and/or service descriptions.

## 5. Request for Input

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The Authority, welcomes the comments / submissions of all interested parties and stakeholders who have an interest in the subject matter being dealt with and intends to review and update these guidelines on a regular basis to ensure that they continue to address the requirements of the sector.

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.