



Decision on Wholesale Access to Data for the Provision of Publicly Available Directory Information Services

Consultation on Proposed Revision

Consultation document

MCA/C/15-2436

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DISTRIBUTION

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16 November 2015	1.0	Public Consultation

EXECUTIVE SUMMARY

The purpose of this consultation process is to propose linguistic clarifications to the Decision on Wholesale Access to Data for the Provision of Publicly Available Directory Information Services ('the Decision'), dated 20 April 2015, with the aim of providing clarifications which will assist all operators in their implementation of the Decision. However, should the suggestions as put forward in this consultation be rejected, the text as originally drafted in the Decision shall apply.

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1. INTRODUCTION

Following the publication of the Decision, it was brought to the Authority's attention that the first sentence of Decision 3 may benefit from minor textual clarifications in the case of subscribers to pre-paid mobile telephony services.

As a result, it was felt that Decision 4 of the Decision could also benefit from the same textual clarification.

The purpose of this consultation process is therefore limited to suggesting clarifications to the text in these two specific decisions in order to provide more clarity.

These suggestions are either to be accepted or, if objected to, the original text of the Decision will apply.

Due to the fact that this consultation process will straddle the implementation date of the Decision, the implementation of the Decision, whether revised or unchanged following this consultation process, shall be postponed to one month following the publication of the report on this consultation process.

2. LEGAL BASIS

Given that the aim of this consultation document is to improve on a decision which has already been published and the legal basis of which has not, *per se*, been challenged, the same substantive legal basis as the original Decision shall apply to this consultation process too.

The consultation process is taking place in line with the relevant provisions on consultations of the Malta Communications Authority Act (Cap. 418 of the Laws of Malta), specifically Article 4A of this Act.

3. ISSUES FOR CONSULTATION

As already indicated in the introduction, this consultation document shall only address two issues, namely the wording of Decisions 3 and 4 of the Decision.

3.1 CLARIFICATION OF DECISION 3:

Currently, the first sentence of Decision 3 reads as follows:

Consent clauses should be presented by PATS providers to new customers at the same time as they are provided with their contract of service or, in the case of pre-paid subscribers of mobile telephony services who wish to register their personal details, at the time of purchase.

The text which requires further scrutiny has been underlined in order to highlight the aspect where textual improvements are being suggested, with the text in bold being that text which could be replaced.

The changes would be as per the text which is in bold as follows:

*Consent clauses should be presented by PATS providers to new customers at the same time as they are provided with their contract of service or, in the case of pre-paid subscribers of mobile telephony services, **whenever they express their wish to register their personal details.***

The argument in favour of this proposed change is that, in the case of pre-paid telephony, a customer is not obliged to register his or her personal details with the PATS provider of choice in order to avail him/herself of the service being provided. Thus, registration need not necessarily take place at the time of purchase, if at all, as the current wording of Decision 3 may imply. What the suggested wording does is to state that, should the customer wish to register his details at any point in time – and therefore not necessarily at the time of purchase of the SIM card – then the PATS provider will be obliged to ask whether such subscriber would also like to register for Directory Information Services.

Should the suggested changes not be objected to, Decision 3 in the Decision would be amended to read as follows:

Decision 3

Consent clauses should be presented by PATS providers to new customers at the same time as they are provided with their contract of service or, in the case of pre-paid

subscribers of mobile telephony services, whenever they express their wish to register their personal details. The consent clauses should be presented in all such cases and made available either as part of the contract and/or terms and conditions of such contract, or as a separate form. Consent clauses presented as part of the contract or any other document shall require a separate signature.

3.2 CLARIFICATION OF DECISION 4:

The same reasons for change are being suggested to the current Decision 4 in the Decision which reads:

Decision 4:

*PATS providers shall ensure that the consent clauses are returned by their subscribers, duly completed and signed, at the same time as, and together with, the signed contract. In the case of registered pre-paid subscribers wishing to be included in the directory information services, the consent clauses shall be returned by such subscriber **at the time of purchase if he/she wishes to be included in the directory information database.***

The sentence under review has been underlined, with the text requiring clarification highlighted in bold. The suggested amendment to this sentence is likewise highlighted below as follows:

In the case of registered pre-paid subscribers wishing to be included in the directory information services, the consent clauses shall be returned by such subscriber **at the time of registration.**

The reason behind this suggested amendment is the same as that being proposed in this consultation process for Decision 3.

Should the suggested changes not be objected to, Decision 4 in the Decision would be amended to read as follows:

Decision 4

PATS providers shall ensure that the consent clauses are returned by their subscribers, duly compiled and signed, at the same time as, and together with, the signed contract. In the case of registered pre-paid subscribers wishing to be included in the directory information services, the consent clauses shall be returned by such subscriber at the time of registration.

4. APPLICABILITY OF DECISION

In view of the fact that the Decision, as it currently stands, is supposed to be implemented by PATS providers by 20 November 2015, and given that specific aspects of the Decision are now the subject of consultation, the results of this consultation process shall be published in the format of a report, with the consolidated decision attached as an annex to the report, either including one or both of the suggestions being proposed in this consultation process, or in its original format should the suggestions both be rejected.

Furthermore, the implementation date of the Decision is being suspended until one month after the publication of the report together with the amended, consolidated decision or original Decision, whichever the case may be.

5. SUBMISSION OF RESPONSES

In accordance with its obligations under Article 4A of the Malta Communications Authority Act [Cap. 418 of the Laws of Malta], the Authority welcomes written comments and representations from interested parties and stakeholders during the national consultation period which shall run from the 16/11/2015 to the 04/12/15.

The Authority appreciates that respondents may provide confidential information in their feedback to this consultation document. This information is to be included in a separate annex and should be clearly marked as confidential. Respondents are also requested to state the reasons why the information should be treated as confidential.

For the sake of openness and transparency, the MCA will publish a list of all respondents to this consultation on its website, up to three days following the deadline for responses. The Authority will take the necessary steps to protect the confidentiality of all such material as soon as it is received at the MCA offices in accordance with the MCA's confidentiality guidelines and procedures¹. Respondents are however encouraged to avoid confidential markings, wherever possible.

All responses should be submitted to the Authority in writing by no later than 12.00hrs (noon) on 04/12/15 and addressed to:

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Extensions to the consultation deadline will only be permitted in exceptional circumstances and where the Authority deems fit. The MCA reserves the right to grant, or refuse, any such request at its discretion. Requests for extensions are to be made in writing within the first ten (10) working days of the consultation period.

¹ http://www.mca.org.mt/sites/default/files/articles/confidentialityguidelinesFINAL_0.pdf