

## **Subscriber Contracts**

### **Report on Feedback to Clarifications and Proposals**

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## **Background**

In July 2012, the Malta Communications Authority (hereafter the 'Authority') published a Decision on "Subscriber Contracts" which specifies the manner by which any undertaking providing any electronic communications service/s is required to conclude agreements with end-users and the information to be included in such contracts.

Since the publication of the aforementioned Decision, the Authority published a paper - 'Proposals and Clarifications' (September 2012) - aimed to address certain matters raised by undertakings further to the publication of the decision.

This report summarises the responses to the above mentioned paper and presents MCA's views and final decision. The final text of the decision, which was published separately is being updated accordingly and is being annexed to this document.

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## 1. Responses to MCA's Proposals and Clarifications

MCA's paper - 'Proposals and Clarifications' (September 2012), was published on the 4th of September 2012. Interested stakeholders were invited to submit their feedback by the 6th of September 2012.

Responses to MCA's paper were received from GO p.l.c., Melita p.l.c. and Vodafone Malta Limited.

## 2. Pre-Paid Agreements

MCA's decision on 'Subscriber Contracts', specifies that the subscription to and subsequent use of a pre-paid service, whereby the subscriber may terminate the contract without giving prior notice and without incurring any penalty fees, is sufficient proof of a subscriber's intention to enter into and accept the contract terms. Therefore, a physical signature is not required.

In the said paper, the Authority proposed that in such instances, the end-user is:

- 1) informed in writing about the applicability of a set of Terms and Conditions (hereafter 'Ts and Cs') governing the use of that service/s in line with the Authority's Decision referred to above;
- 2) referred to the location on the undertaking's website where the end-user may access, free of charge, the Ts and Cs; and
- 3) informed about his right to request a copy of the Ts and Cs at any of the undertaking's outlets, free of charge.

One undertaking expressed its concern on the logistical implications of implementing the above proposed measures with regard to end-users who purchase 'start-up packs' for the subscription of a standard pre-paid mobile service, due to the fact that existing information material has already been distributed to dealers all around Malta. **In the aforementioned circumstance only, the Authority considers that undertakings should ensure that the above proposals are fully implemented by not later than 1st April 2013.**

The Authority further proposed that, upon activation of a mobile pre-paid service and/or a mobile pre-paid offer, subscribers are informed about the voice, SMS and data tariffs as applicable for that respective service/offer by means of an SMS. No objections were received in this respect.

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### **3. Internet Minimum Access Speeds**

Regulation 35 (b) (iv) (5) of the "Electronic Communications Networks and Services (General) Regulations" SL399.28 of the Laws of Malta (hereinafter "ECNSR"), requires that subscriber contracts specify the minimum access speeds in case of Internet services, ensuring that these do not differ significantly from the marketed upper levels.

In its Decision on 'Subscriber Contracts', the Authority clarified that a separate decision on 'Broadband Internet - Quality of Service Framework', (which amongst other issues, is intended to clarify how ISPs are required to qualify broadband access speeds in subscriber contracts), is expected to be published in Q4 of 2012. In its consultation on this subject the Authority proposed that undertakings are provided a period of nine (9) months to calculate and publish the said information in new subscriber contracts, in line with the Authority's decision on the subject. Consequently, some undertakings contend that they will again be required to review the Ts and Cs of new contracts once MCA's decision on 'Broadband Internet - Quality of Service Framework' is published. For this reason, some undertakings requested that the Authority delays the implementation deadline of its Decision on 'Subscriber Contracts'. The Authority does not consider that the planned time frames to be allowed for the implementation of MCA's current decision on 'Subscriber Contracts' and MCA's forthcoming decision on broadband QoS will be in short succession of each other. Therefore the Authority cannot concede to such a request and the provisions of MCA's decision on 'Subscriber Contracts' need to be implemented in line with the deadlines specified by the Authority.

Without prejudice to any future decisions the Authority may take on mobile internet services, the Authority clarified in its paper that as a minimum, undertakings must ensure that subscriber contracts provide a description of the limitations and factors which may impact on the minimum access speeds available to end-users. In this respect, one undertaking requested that examples of the type of wording that should be used to specify such information is provided. The Authority would like to highlight that different networks are likely to have different limitations. In this respect, undertakings are required to list in a concise manner any applicable limitations in subscriber contracts.

### **4. Applicability of Decision**

All the provisions listed in this decision shall come into force by the 19<sup>th</sup> of November 2012, except for those provisions where an alternative date is specified by the Authority.