

**Number Portability
Statement of Decision on Win Back
During and After the Porting Process**

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1 Executive Summary

Number portability is a service which enables subscribers of publicly available telephone services to change their service provider and still keep their existing telephone number.

In March 2005 the MCA published a decision entitled 'Introducing Number Portability in Malta – Report on Consultation and Decision'. In section 9.4 the MCA directs that during the porting process donor operators may not initiate contact with a subscriber who has requested number portability to discuss the advantages or disadvantages of changing operator, nor make offers to such a subscriber that are not available to other subscribers. The MCA also decided that a subscriber who has ported their number should not be able to port it again until two months have elapsed.

Since the implementation of Number Portability on the 1st April 2006, thousands of mobile subscribers have successfully changed their network and retained their telephone number. Notwithstanding this accomplishment, service providers are interpreting the 'Win Back' decision differently. One of the donor operators does not consider exit surveys as 'Win Back', whilst the other considers them as such and claim that such surveys should not be allowed, arguing that they aggravate ported subscribers.

In August 2006 the Malta Communications Authority (MCA) published the document "*Proposed Statement of Decision on Win Back During and After the Porting Process*", inviting comments on whether a donor operator should be allowed to carry out exit surveys during the number portability process and until two months have elapsed since a porting took place, and if so, what forms of exit surveys should be allowed.

The scope of this statement of decision is to clarify the decision on 'WinBack' and will establish the means donor operators can contact the subscribers during the porting process and up to two months from the porting date. This decision extends to all forms of number portability irrespective of the technology by which number portability will be provided; it applies irrespective of whether the donor is a fixed or mobile operator.

2 Responses To Proposal

The consultation period for the proposed statement of decision ran from Wednesday, 9th August 2006 till Friday, 8th September 2006.

Responses were received from:

- Vodafone Malta Limited
- Telemail Ltd
- Maltacom plc

The MCA appreciates their constructive feedback.

3 Data Protection

Following the proposed decision and in view of particular comments by respondents, the MCA sought the advice of the Data Protection Commissioner as to possible data protection implications of the proposed decision.

The Commissioner informed the MCA that personal data of the subscribers may be processed for the purposes of contacting those who have ported or otherwise terminated their service only for the following reasons:

- For billing purposes, in the case of post-paid customers,
- Where the customer has agreed upon termination that his details may be retained and so processed,
- To contact the disconnected customer for the purpose of determining the reason of disconnection. This is deemed to be an extension of the service provided by the service provider to the subscriber and is an inherent part of the company's customer care.

However, in such cases, operators are only allowed to contact subscribers who have terminated their service if they are randomly selected from a list of all terminated subscribers and not from a filtered list of subscribers who ported their number. The data retained must be solely of those subscribers that are randomly selected. The sole scope for such a communication must be that of compiling information to analyse reasons why a subscriber has terminated subscription. Furthermore, the personal data retained shall be limited to those details required for contacting the terminated subscriber and shall be retained for the shortest time possible.

4 Decision

4.1 Scope of Decision

The scope of this decision extends to all forms of number portability; it applies to both fixed or mobile donor operators.

4.2 Definition of 'Win Back'

For the purposes of this Decision, 'win back' means the initiating of contact by a donor operator with a subscriber who has commenced the porting process or who has ported. In particular, it includes the contacting of such a subscriber to make offers such as discounts, free services or other incentives that are not available to the generality of subscribers.

Contacting the subscriber to discuss or to gather information on the reasons, advantages and, or disadvantages of deciding to port, terminating the donor operator's service or taking up the recipient operator's service is considered 'Win Back'. It also includes the initiating contact in any form including in person, by any form of communications such as by means of telephone, electronic mail, and contact by postal means.

4.3 Definition of 'Porting Process'

For the purposes of this Decision, 'porting process' refers to the period commencing at the time when the subscriber first requests porting and terminating at the time when the number is actually ported.

If for any reason the donor refuses porting, the porting process timeframe shall be extended that of a week following the date on which the subscriber has been refused porting.

4.4 'Win Back' during the Porting Process

The MCA reasserts that 'Win Back' is absolutely prohibited during the porting process. All the respondents agreed that 'Win Back' tactics should not be allowed during the porting process.

Decision 1

During the porting process, donor operators shall not initiate contact with a subscriber who has requested number portability and shall not otherwise engage in 'Win Back' tactics.

4.5 'Win back' after the Porting Process

The MCA has considered the benefits and counter-benefits of prohibiting 'Win Back' for a stipulated period even after the porting process and of disallowing the subscriber to port again within a two-month period following the porting process. By prohibiting such practices the MCA considered the risk in limiting competition in the market, since an alternative operator would be restricted from offering services to the subscriber during the stipulated period of time.

Nonetheless, the MCA is of the view that there is still scope for the prohibition of 'Win Back' even for a stipulated timeframe after the porting process. The contacting of a customer after the porting process – whether to discuss the advantages or disadvantages of porting or whether to make preferential offers to that customer would result in an added nuisance to the recently ported subscriber. Such an aggravation could risk hindering the porting process in that, in itself, it could potentially dissuade customers from porting if it became common practice that the donor operator would repeatedly contact the subscriber upon porting.

The MCA is of the view that by establishing a timeframe during which the donor operator is prevented from undertaking any 'Win-Back' action, it would allow the subscriber adequate time to try the service out and decide whether to continue the subscription with the new service, or not, without any external pressure. All the responses received on the proposal also supported this principle.

Decision 2

The MCA reconfirms that subscribers who ported their number shall not be able to port it again until two months have elapsed from the finalisation of the porting process.

Decision 3

The MCA directs that the donor operator shall not initiate contact with a subscriber who has ported his/her number and shall not otherwise engage in 'Win Back' until two months have elapsed from the finalisation of the porting process.

4.6 Exit Surveys

The MCA is aware that donor operators may wish to contact terminated subscribers after they ported their number in order to analyse the reasons why they chose to terminate their subscriptions by means of exit surveys. The MCA is desirous of finding the right balance between this requirement to collect information and the requirement not to aggravate the subscriber or attempt to 'Win-Back' the subscriber for a withdrawal period following the porting process.

In its proposed statement the MCA asked respondents for feedback on whether surveys should be sent by post or carried out personally such as over the phone. The MCA also asked whether the questions to be asked in the survey should be vetted by the MCA before application.

Whilst some of the operators expressed their opinion that the medium for conducting surveys should be left to the discretion of the operators, others felt that such surveys should only be allowed if they are applied in written format. None of the respondents objected to the proposal that survey questions are vetted by the MCA, however one of the respondents commented that since survey questions change from time to time such vetting could tend to be cumbersome for the parties involved.

Following consideration of these responses, the MCA has decided to allow exit surveys only when these are in written format primarily because oral surveys particularly over the telephone are very difficult to monitor. Furthermore, the MCA considers that written surveys would create the least aggravation for subscribers. The MCA finds no objection if such written surveys are conducted either by post or by electronic mail.

Decision 4

The MCA directs that donor operators may only provide exit surveys in written format and to randomly selected terminated subscribers within the stipulated two-month period after the porting process has taken place. No other type of exit surveys is being allowed and any such other type would be considered as 'Win-Back'. The MCA directs that it is not necessary for the exit surveys questions to be approved by the MCA *a priori*, nonetheless, the MCA reserves the right to request copies of such exit surveys and to direct that the said questions be amended accordingly.