

Please quote our ref. LEG 258

28th September 2010

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Mr. Andrei Torriani
Chief Executive Officer
Melita plc
Mriehel Bypass
Mriehel BKR 3000

Dear Sir,

Re: Final decision subsequent to letter of warning about failure to provide letter of comfort on Melita plc's billing system

Reference is made to the Malta Communications Authority's (hereinafter the 'Authority') letter of warning dated 9th August 2010 addressed to Melita plc (hereinafter "Melita"), to Melita's response thereto dated 14th September 2010 and to other related written communications including this Authority's letter dated 22nd April 2010 and Melita response to that letter dated 30th July 2010.

Background

The Authority in its communication dated 22nd April 2010, had requested Melita to provide it with a letter of comfort from an independent auditor stating that Melita's billing system is operating satisfactorily and is meeting generally accepted standards with regards to accuracy of bills issued to consumers. Melita replied that the Authority's request for an independent audit of Melita's billing system is disproportionate and that the Authority has no remit at law to make such request.

Subsequently the Authority notified Melita with a letter of warning dated 9th August 2010 whereby the Authority informed Melita that it is justified in asking Melita to provide it with the information in question – namely a letter of comfort from an independent auditor that Melita's billing system is operating satisfactorily. The Authority in this context noted that it had received various complaints and that moreover various complaints about Melita's billing had been voiced in the media. The Authority therefore informed Melita that it may impose an one off administrative fine of five thousand euros and a daily fine of one hundred euros which latter fine would commence as from the 1st September 2010 and continue until such time as Melita provides this Authority with a suitable letter of comfort as required.

Melita in its submissions to the Authority dated 14th September 2010 in response to the above mentioned letter of warning, argued that the Authority's concerns about Melita's billing system were not substantiated and that the Authority should forward to Melita the "facts known to it".

Melita argued that there is no breach of article 4(10) of the Malta Communications Authority Act (Cap. 418 of the Laws of Malta) and that the letter of comfort being requested does not constitute 'information' which the Authority may ask for under the aforesaid article.

Melita stated that if the Authority had the power to make such a request then there would have been no need to propose the inclusion of such a power as part of the proposed amendments to SL 399.28 made in the context of the consultative process to amend existing legislation by Government undertaken in June 2010 as per a consultative document entitled "Draft amendment to Communications Laws, transposition of revisions to the EU framework for electronic communications adopted in December 2009". Melita also questioned the proportionality of the Authority's requirement as this would require time and extra cost for Melita. Finally Melita opposed the backdating of the administrative fines to the 1st September as this would not be in accordance with article 33 of Cap. 418, questioning also how the provisions of articles 4(c)(ii), (iv) and 8 (a) are related to Melita's alleged breach of article

Decision

In the first instance Melita repeatedly contends that this Authority's concerns about Melita's billing system are not substantiated. This contention is unfounded. The Authority has both verbally and in writing communicated with Melita on numerous occasions about consumer complaints relating to Melita's billing system. The Authority even held a meeting on the 17th September 2009 to discuss such consumer complaints with Melita's then Chief Executive Mr. Stephen Wright. Reference in this regard is also made to the Authority's letter dated 22nd April 2010 and to its previous communication to Melita dated 27th August 2009 both addressed to Mr. Wright. Moreover the Authority on numerous occasions communicated with Melita on various separate consumer complaints about Melita's billing system. It is also relevant to note that various individuals wrote in different sections of the media complaining about Melita's billing system. Given such circumstances the Authority therefore considers that its concerns about Melita's billing system are justified.

Melita argues that the request by the Authority is disproportionate. The Authority disagrees that its request is disproportionate. In the first instance the Authority has a clear remit and responsibility at law to ensure not only that the rights of consumers are adequately protected¹ but to actually ensure "a high level of protection for consumers in their dealings with suppliers"². The Authority considers that it would be failing in its responsibilities at law, if it ignored the complaints made by various consumers about Melita's billing and did not intervene with Melita.

¹ See article 4(3)(a) and (r) of Cap.418 of the Laws of Malta, and article 4(c) of Cap.399 of the Laws of Malta.

² See article 4(c)(ii) of Cap. 399.

The Authority respectfully considers that continued complaints involving Melita's billing system with the evident anguish that this causes the impacted end-users cannot be left unattended to. In the circumstances the Authority believes that it was justified in asking for the required information from Melita so as to confirm or otherwise if the said billing system is operating satisfactorily.

Melita raise the point that the competent Government authorities have in the context of amendments to the present legislative framework, suggested the inclusion of a provision which empowers the Authority to require an undertaking to arrange for an independent audit with regard to billing issues. This legislative proposal does not mean that the Authority in any way cannot make a request for information under article 4(10) of Cap. 418 as it did in the present case or that the Authority considers that it has no right to do so. That such an amendment has been proposed by Government does not undermine the validity of the present measures taken by the Authority. If anything the fact that Melita is contesting the validity of the measures taken by the Authority demonstrates that the legislator is justified in considering such a legislative measure in order to dispel beyond any doubt any legal arguments that a non-compliant operator such as Melita may raise.

Melita argues that there it has not committed any breach of article 4(10) of Cap. 418 since according to Melita there does not exist any such breach by it. Melita argues that the required letter of comfort cannot be construed as being information which the Authority is entitled to ask for under that provision of the law. It is relevant in this context to cite the provision in question. Article 4(10) that "the Authority may require any persons to provide it with **any information**, including financial information, **that the Authority considers necessary for the purpose of ensuring compliance with the provisions of, or decisions or directives made in accordance with this Act or any other law which the Authority is entitled to enforce.**" (Emphasis in bold print is of the Authority).

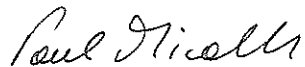
It is clear that under the above mentioned provision the Authority is empowered to ask for ANY information it may consider to be necessary to ensure compliance with any decisions or directives or with any provisions of any law that the Authority is empowered to enforce. Article 4(c)(iv) of the Electronic Communications (Regulation) Act (Cap. 399 of the Laws of Malta) expressly states that one of the core objectives of the Authority in the exercise of its functions is to promote "**the provision of clear information, in particular requiring transparency of tariffs** and conditions for using publicly available electronic communications services;" (emphasis in bold print is of the Authority). This means that the Authority in the exercise of its functions is required to ensure that operators such as Melita provide their clients with clear information especially with regard to the transparency of tariffs levied on the said clients. Moreover article 4(c) (ii) of Cap. 399 require the Authority in the exercise of its functions to ensure "a high level of protection for consumers in their dealings with suppliers". Finally article 8(a) of Cap. 399 imposes on Melita – as an undertaking authorised to provide a publicly available electronic communications service to "provide such 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."

In the present circumstances the Authority considers that the continued complaints by Melita's clients about its billing, justifies the Authority's request to Melita to furnish the information requested in terms of article 4(10) of Cap. 410 and of the provisions of articles 4(c) (ii) and (iv), and 8(a) of Cap. 399 cited above.

The Authority therefore in accordance with the provisions of articles 32 and 33 of Cap.418 **determines that Melita has acted in breach of its regulatory obligations under article 4(10) of Cap. 418 in failing to provide the requested information** – namely to provide the Authority with a letter of comfort from an independent auditor stating that Melita's billing system is operating satisfactorily and that it is meeting generally accepted standards with regards to accuracy of bills issued to consumers. Consequently the Authority orders Melita to pay:

- (1) a one off administrative fine of €5000; and
- (2) a daily administrative fine of €100, effective **as from the date of this decision** which daily fine shall continue to subsist until such time as Melita furnishes the Authority with a suitable letter of comfort from an independent auditor concerning the adequate operation of Melita's billing system.

Yours



Paul Edgar Micallef
Chief Legal Adviser

Cc.

- (1) *Dr. Theresienne Bezzina – Head of Legal & Regulatory Affairs Melita plc*
- (2) *Dr. Nicholas Borg – Legal Counsel – Melita plc*
- (3) *Ing. Philip Micallef – Chairman - MCA*
- (4) *Ms. Celia Falzon – Chief External Relations MCA*
- (5) *Mr. Ian Agius – Chief of Operations MCA*
- (6) *Ms. Ritianne Cassar – Manager Finance MCA*