



Contracts, Transparency and Termination of Services

Consultation and Proposed Decision on a set of rules applicable to Electronic Communications Service Providers to enhance end-user protection

MCA/C/22-4525

21st February 2022

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1. Background and Purpose

In October 2021, the European Electronic Communications Code (hereafter the 'EECC') was transposed into national legislation bringing into force, amongst other changes, a revised set of end-user protection measures to be adhered to by electronic communications services (hereafter 'ECS') providers.

In light of this development, the Malta Communications Authority (hereafter the 'Authority' and / or 'MCA') intends to update its decisions covered under '[Modifications to the Terms and Conditions of Subscriber Contracts](#)' (hereinafter referred to as the '2011 Decision') and '[Subscriber Contracts](#)' (hereinafter referred to as the '2012 Decision'), to ensure that any requirements contained in these decisions are aligned and complement the new rules contained in the revised [Electronic Communications \(Regulations\) Act¹](#) (hereafter the 'ECRA') and the [Electronic Communications Networks and Services \(General\) Regulations²](#) (hereafter the 'ECNSR'). The proposed decisions in this consultative document are without prejudice to any other Decisions adopted by the MCA, currently in force, addressing end-user protection.

Through this consultative process, the MCA aims to obtain the views of interested parties on which measures, currently contained in the above mentioned Decisions, should be maintained, reviewed or repealed. This consultative document also includes a new set of measures, which the MCA is proposing to enhance the protection of end-users of electronic communications services.

This consultation covers various subject matters which include:

1. Information requirements for contracts in addition to those mandated in regulation 87 of the ECNSR;
2. The conclusion of contracts between service providers and end-users;
3. Modifications of contractual conditions by providers;
4. Transparency measures relating to the publication of information on services offered;
5. Refund of any unutilised advance payment, refundable deposit or any monetary credit to end-users upon termination of a subscription or upon change of tariff plan;
6. The calculation of maximum early termination fees (hereafter 'ETF');
7. The provision of facilities that would ensure continued access of e-mails upon termination of an internet access service; and
8. Non-Payment of Bills.

As a result of this consultative process, the MCA intends to issue one consolidated decision which would replace both of MCA's Decisions referred to above. The MCA therefore encourages interested parties to contribute by providing feedback to the proposals being set out by the MCA.

¹ Chapter 399 of the Laws of Malta.

² Subsidiary Legislation 399.48 of the Laws of Malta.

2. Types of Electronic Communications Services

The below is a list of electronic communications services ('ECS') types as established in article 2 of the ECRA and regulation 2 of the ECNSR:

- Internet access service (**'IAS'**)
- Interpersonal communications service (**'ICS'**)
 - o Number-Based Interpersonal Communications Service (**'NB-ICS'**)
 - o Number-Independent Interpersonal Communications Service (**'NI-ICS'**)
- Services consisting wholly or mainly in the conveyance of signals such as transmission services used for the provision of machine-to-machine services (**'M2M'**) and for broadcasting.

3. Legal Basis

The legal instruments listed in the sections below empower the MCA to implement the measures being proposed in this consultation:

Information requirements for contracts

Regulation 87(1) of the ECNSR, requires that providers of publicly available ECS other than transmission services used for the provision of M2M services, provide consumers the information referred to in regulations 4 and 5 of the [Consumer Rights Regulations](#)³ (hereafter the 'CRR') and the information listed in the Eighth Schedule of the ECNSR. This requirement also applies to end-users that are micro-enterprises, small enterprises or not-for-profit organisations, unless such end-users have explicitly agreed to waive all or parts of those provisions.

Regulation 87(8)(c) of the ECNSR empowers the MCA to establish other information requirements to be included in contracts not related to aspects regulated under this regulation, in particular to address newly emerging issues. The additional contractual information requirements being proposed by the MCA are found in section 4.1.1. of this consultation.

Conclusion of Contracts

In addition to the requirement to provide consumers the information referred to in regulations 4 and 5 of the CRR and the information listed in the Eighth Schedule of the ECNSR, providers of publicly available ECS other than transmission services used for the provision of M2M services, must also provide consumers a concise and easily readable contract summary, which must contain specific information as stipulated in Regulation 87(3) of the ECNSR and as set out in Part B of the Annex of the European Commission's Implementing Regulation 2019/2243 establishing a template for the contract summary (hereafter the 'Contract Summary Implementing Regulation')⁴ before the contract becomes effective. This requirement also applies to end-users that are micro-enterprises, small enterprises or not-for-profit organisations, unless such end-users have explicitly agreed to waive all or parts of those provisions.

In accordance Regulation 87(4) of the ECNSR, the MCA is empowered to determine the manner as to how a consumer gives his consent to the contract. MCA's proposals are found in section 4.1.4 of this consultative document.

Modifications of contractual conditions by providers

Regulation 92(1) of the ECNSR provides that end-users shall have the right to terminate their contract without incurring any further costs upon notice of changes in the contractual

³ Subsidiary Legislation 378.17 of the Laws of Malta. These regulations are enforced by the Director General (Consumer Affairs) within the Malta Competition and Consumer Affairs Authority ('MCCAA').

⁴ European Commission [Implementing Regulation \(EU\) 2019/2243](#) of 17 December 2019 establishing a template for the contract summary to be used by providers of publicly available electronic communications services pursuant to Directive (EU) 2018/1972 of the European Parliament and of the Council (Text with EEA relevance)

conditions proposed by the providers of publicly available ECS other than NI-ICS, unless the proposed changes are:

- (a) exclusively to the benefit of the end-user;
- (b) are of a purely administrative nature and have no negative effect on the end-user; or
- (c) are directly imposed by European Union law or national law.

Regulation 92(2) of the ECNSR further states that providers shall notify end-users at least thirty (30) calendar days in advance of any change in the contractual conditions in a clear and comprehensible manner and on a durable medium, and that where applicable, providers shall simultaneously inform end-users of their right to terminate the contract without incurring any further costs if they do not accept the new conditions, which right is exercisable within thirty (30) calendar days from notification of the change in contractual conditions by the provider.

In accordance with regulation 92(3) of the ECNSR, providers shall notify the MCA of any proposed modifications to the contractual conditions of their service/s in writing. In accordance with this sub-regulation the MCA may specify the timeframes by when such written notifications are to be sent to the MCA prior to the notification to its end-users.

Regulation 92(4) of the ECNSR provides, that the MCA may, upon a written request by a provider, in cases where the proposed modifications to the contractual conditions are manifestly of benefit to all end-users to that service, exempt that provider from the requirement to grant its end-users the right to terminate the contract in accordance with this regulation. This sub-regulation empowers the MCA to lay down requirements to be adhered to by providers in such circumstances.

Regulation 92(5) of the ECNSR, empowers the MCA to determine the format, content and the manner of the notifications to be sent to end-users as required under Regulation 92 of the ECNSR. This sub-regulation also provides the MCA the possibility to increase the advance notice period to be provided to end-users prior to the implementation of any contractual changes to their services from a minimum period of thirty (30) calendar days to a minimum period of ninety (90) calendar days.

MCA's proposals are found in section 4.2 of this consultative document.

Transparency measures relating to the publication of information on services offered

Regulation 88(1) of the ECNSR, requires that where providers of IAS or publicly available ICS make the provision of such services subject to terms and conditions, then such providers shall ensure that the information referred to in the Ninth Schedule of the ECNSR is published in a clear, comprehensive, machine-readable manner and in an accessible format for end-users with disabilities in accordance with European Union legislation harmonising accessibility requirements for products and services.

Regulation 88(1) of the ECNSR, further states that the MCA may specify additional requirements regarding the form in which such information is to be published. MCA's proposals on the publication of this information are found in section 4.3 of this consultative document.

Refund of any unutilised advance payment, refundable deposit or any monetary credit to end-users upon termination of a subscription or upon change of tariff plan

In accordance with Regulation 91(3) of the ECNSR, the MCA is empowered to implement measures it considers necessary to ensure that conditions and procedures for contract termination are simple and do not act as a disincentive to changing a service provider. To this effect, the MCA is proposing measures to be adhered to by publicly available ECS providers to ensure that upon termination of a subscription or upon a change in tariff plan, end-users receive a refund of any unutilised advance payment and refundable deposit that would have been paid prior to the termination of the subscription or change of tariff plan. The MCA is also proposing a procedure to be adhered to by providers to refund consumers subscribed to pre-paid and hybrid tariff plans any monetary credit accumulated in their account upon termination of their subscription or upon change of their tariff plan.

MCA's proposals are found in section 4.4 of this consultative document.

The calculation of maximum early termination fees ('ETF')

Regulation 91(2)(b) of the ECNSR provides that any applicable charges due by the end-user for terminating a publicly available ECS (other than NI-ICS and transmission services used for the provision of M2M services) prior to the expiry of the initial contractual period shall be proportionate and reasonable. Regulation 91(2)(b) of the ECNSR empowers the MCA to take the necessary measures to ensure the effective application of this provision. The measures being proposed by the MCA on the maximum early termination fees that could be applied by providers are found in section 4.5 of this consultative document.

E-mail forwarding or access to e-mails after termination of the contract with a provider of an internet access service

Regulation 102(1) of the ECNSR stipulates that the MCA may require providers of IAS or publicly available NB-ICS to make available free of charge all or part of the additional facilities listed in Part B of the Sixth Schedule of the ECNSR, subject to technical feasibility, as well as all or part of the additional facilities listed in Part A of the Sixth Schedule of the ECNSR.

In accordance with Regulation 102(1) and Part B of the Sixth Schedule of the ECNSR, the MCA may introduce measures to enable end-users terminating an IAS to either continue accessing the e-mails received on the e-mail addresses based on the commercial name or trade mark of the former provider, or else to have those e-mails sent to those addresses transferred to a new e-mail address specified by the end-user. The MCA may determine a proportionate period of time during which such facilities are to be provided by IAS providers.

The facilities to be offered by providers being proposed by the MCA are found in section 4.6 of this consultative document.

Non-Payment of Bills

Regulation 102(1) of the ECNSR, empowers the MCA to require providers of IAS and publicly available NB-ICS to make available free of charge all or part of the additional facilities listed in Parts A and B of the Sixth Schedule of the ECNSR. Part A of the Sixth Schedule of the

ECNSR empowers the MCA to authorise specified measures to be adhered to by providers when taking actions as a result of non-payment of bills by end-users, provided that such measures are proportionate, non-discriminatory and published. In accordance with the second paragraph of Part A of the Sixth Schedule of the ECNSR the MCA is also empowered to establish the category of end-users to which such measures should apply. In addition to the above, as stipulated in Regulation 102(2) the MCA is empowered to go beyond the list of additional facilities in Parts A and B of the Sixth Schedule of the ECNSR in order to ensure a higher level of consumer protection.

The measures being proposed by the MCA are found in section 4.7 of this consultative document.

4. MCA's Proposals

Section 4 of this consultative document discusses a number of requirements arising from the ECNSR relating mainly to contracts, transparency and termination of services, and proposes a set of additional measures intended to further protect end-users and help them take more informed decisions. Some of these proposals are already established in MCA's 2011 Decision and 2012 Decision whereas other measures are being proposed in addition to the requirements established in these Decisions and in the ECNSR. Once adopted, MCA's final decision shall replace in full the above mentioned two MCA Decisions and shall be applicable in addition to the requirements established in the ECNSR. The proposals of the MCA are without prejudice to any other obligations arising from any other applicable legal requirements or decisions.

4.1 The provision of the 'Pre-Contractual Information' and the 'Contract Summary'

Regulation 87(1) of the ECNSR, requires that before consumers are bound by a contract, providers of publicly available ECS, excluding transmission services used for the provision of M2M services, are to provide such consumers with two sets of information, namely:

1. **the 'pre-contractual information' (which is to be included in the 'pre-contractual document'):** The 'pre-contractual information' refers to the requirement emanating from Regulation 87(1) of the ECNSR which requires that consumers are provided with the information contained in regulations 4 and 5 of the CRR and, the information listed in the Eighth Schedule of the ECNSR; and
2. **the 'contract summary':** The 'Contract Summary' must include the information referred to in Regulation 87(3) of the ECNSR and shall be provided in accordance with the Contract Summary Implementing Regulation.

The above requirement applies to the sales of all types of publicly available ECS (with the exception of transmission services used for the provision of M2M services), including therefore post-paid, pre-paid, hybrid and add-on services alike. In accordance with regulation 87(9) of the ECNSR, the above also applies to end-users that are micro-enterprises, small enterprises, or not-for-profit organisations unless such end-users have explicitly agreed to waive all or part of those provisions.

4.1.1 Information to be included in the 'Pre-Contractual document' and in the 'Contract Summary'

A number of 'pre-contractual information' requirements emanating from Regulation 87(1) of the ECNSR, are presently included in MCA's 2012 Decision. The MCA has however identified some information requirements currently included in the above mentioned Decision which are not included as part of the minimum set of 'pre-contractual information' requirements mandated in regulation 87(1) of the ECNSR, and which the MCA considers to be of relevance to consumers and to end-users that are micro-enterprises, small enterprises or not-for-profit organisations. These relate mainly to the following subject matters:

- E-mail forwarding or access to e-mails after termination of the contract with a provider of an IAS;

- Late payment and non-payment of bills – Procedures for suspending and terminating the service/s;
- The nature of any limitations that may apply for the re/transmission of EU football content.

The MCA is therefore proposing to repeal Decision numbers 3 to 11 of MCA's 2012 Decision and instead mandate the requirement to provide, in addition to the 'pre-contractual information' requirements emanating from regulation 87(1) of the ECNSR, an additional set of information as included in the Annex attached to this consultation.

This proposal is being made in accordance with regulation 87(8) of the ECNSR, which empowers the MCA to establish other information requirements to be included in contracts not related to aspects regulated under regulation 87 of the ECNSR.

The MCA is proposing the following 'Proposed Decision':

Proposed Decision 1

Before a consumer is bound by a contract for the provision of publicly available ECS excluding transmission services used for the provision of M2M services, in addition to the 'pre-contractual information' requirements mandated in regulation 87(1) of the ECNSR, providers shall also provide the additional information specified in "*Annex – Additional Information requirements to be included in the 'pre-contractual document'*" to the extent that such information relates to the service/s they provide.

The additional information specified in '*Annex – Additional Information requirements to be included in the 'pre-contractual document'*', shall also be provided to end-users that are micro-enterprises, small enterprises or not-for-profit organisations, unless such end-users have explicitly agreed to waive all or parts of those provisions.

The additional information specified in "*Annex – Additional Information requirements to be included in the 'pre-contractual document'*" shall together with the 'pre-contractual information' mandated in regulation 87(1) of the ECNSR also become an integral part of the contract and shall not be altered unless the contracting parties expressly agree otherwise.

This decision is without prejudice to any other information requirements emanating from any other laws or other relevant decisions published by the MCA which providers are required to adhere to.

Regulation 87(3) of the ECNSR requires that consumers and end-users that are micro-enterprises, small enterprises or not-for-profit organisations are provided a concise and easily readable contract summary, which shall contain specific information as stipulated in this sub-regulation and as set out in Part B of the Annex of the Contract Summary Implementing Regulation. For the time being, the MCA does not consider the need to propose additional requirements on information to be included in the contract summary beyond those already established in the above-mentioned norms.

4.1.2 The format in which the 'Pre-Contractual Information' and the 'Contract Summary' documents are to be provided

Regulation 87(2) of the ECNSR stipulates that the 'pre-contractual information' is to be provided in a clear and comprehensible manner on a 'durable medium'. A 'durable medium' is defined in the CRR as 'an instrument which enables the consumer or the trader to store information addressed personally to him in a way accessible for future reference for a period of time adequate for the purposes of the information and which allows the unchanged reproduction of the information stored'. This means that the 'pre-contractual information' may be provided in different formats and may therefore include, amongst others, any of the following formats: documents collected from the service provider's outlets; documents posted to the end-users' residential or business address; or a document attached and sent via e-mail.

The MCA notes that while this provision provides substantial flexibility to providers to deliver the 'pre-contractual information' in a variety of formats, providers are still responsible to ensure that the durable medium in which this information will be provided to the end-users is accessible to the end-user requesting it. The MCA is aware that currently end-users are provided the option, amongst others, to obtain this information in hard copy format. The MCA considers that this practice remains vital in order to address the needs of those end-users who have no access to the internet or who do not know how to access this information electronically. In view of the current practices adopted by service providers at large, at this stage the MCA does not intend to propose the introduction of new measures in this regard.

In addition to the above, providers must ensure that the pre-contractual information is, when requested, provided in an accessible format to end-users with disabilities in accordance with European Union law harmonising accessibility requirements for products and services.

Regulation 87(2) also provides that where the provision of the 'pre-contractual information' on a durable medium is not feasible, the information can be provided in an easily downloadable document made available by the provider subject that providers expressly draw the attention of the consumers and end-users that are micro-enterprises, small enterprises or not-for-profit organisations about the availability of that document and the importance of downloading it for the purposes of documentation, future reference and unchanged reproduction.

Providers are required to take all necessary measures to provide the 'pre-contractual information' on a 'durable medium' and to inform the MCA in short order of any instances where they consider that the provision of this information on a durable medium is not feasible. In doing so, providers are required to provide the MCA ample justification to demonstrate the difficulties encountered in providing this information in such format.

The ECNSR does not establish specific rules regarding the format in which the contract summary is to be provided. The MCA encourages providers to provide such contract summaries using the same methods in which the 'pre-contractual information' is provided to

consumers and end-users that are micro-enterprises, small enterprises, or not-for-profit organisations.

Notwithstanding the above, providers must ensure that contract summaries are provided using the template specified in Part A of the Annex of the Contract Summary Implementing Regulation and in accordance with the presentation requirements contained in Article 2 of the same Contract Summary Implementing Regulation.

4.1.3 When are the 'Pre-Contractual Information' and the 'Contract Summary' to be provided

Regulation 87(1) of the ECNSR requires that the 'pre-contractual information' is provided by providers 'before a consumer is bound by a contract or any corresponding offer'. Regulation 87(4) also provides that 'the contract shall become effective when the consumer has confirmed his or her agreement after reception of the contract summary'. (MCA emphasis).

Essentially, providers are therefore required to ensure that they have provided consumers with both the 'pre-contractual information' as well as the 'contract summary', and that these two sets of information have been received by the consumer before the contract comes into effect. The above requirements are also applicable to end-users that are micro-enterprises, small enterprises, or not-for-profit organisations.

In accordance with regulation 87(5) the 'pre-contractual information' as well as the 'contract summary' shall become an integral part of the contract and cannot be altered unless the contracting parties expressly agree otherwise.

4.1.4 Conclusion of a contract

In accordance with Regulation 87 of the ECNSR, a contract can only become effective if:

1. The provider has first provided consumers with the 'pre-contractual information' and the 'contract summary'; and
2. After providing the information referred to in point 1 above, the provider has obtained the explicit consent of the consumer to the contract.

The MCA notes that these requirements apply to the conclusion of all types of contracts, including post-paid, pre-paid, hybrid and add-on services alike, and also apply to end-users that are micro-enterprises, small enterprises, or not-for-profit organisations.

In accordance with Regulation 87(4) of the ECNSR, the MCA is empowered to determine the manner as to how consumers and end-users that are micro-enterprises, small enterprises or not-for-profit organisations give their consent to the contract. The MCA considers that certain contracts for services (such as subscriptions which are subject to a minimum contractual period exceeding thirty (30) calendar days or which are subject to the payment of services on a post-paid basis, etc.) need to have in place more stringent measures to ascertain and verify the consumer's intent to enter into that contract. The MCA is therefore proposing the implementation of the following requirements which would, if adopted in MCA's final decision, replace 'Decision 1' of MCA's 2012 Decision.

Proposed Decision 2

Part A

When concluding a contract for the provision of a publicly available ECS excluding NI-ICS and transmission services used for the provision of M2M services, after having provided the consumer with the applicable 'pre-contractual information' and 'contract summary', the provider must obtain the consumer's explicit consent by means of a signature on a durable medium indicating his/her agreement to enter into that contract.

A copy of the aforesaid consent obtained by the provider shall be provided to the consumer on a durable medium upon conclusion of the contract.

The provider shall store and maintain the consumer's consent for the entire duration of the contract and shall provide a copy of such consent free of charge to the consumer if he/she so requests during the course of his/her subscription.

Part B

When a consumer requests to subscribe to a pre-paid NB-ICS or to an add-on service purchased on top of an existing publicly available ECS subscription (excluding NI-ICS and transmission services used for the provision of M2M services), the provider after having provided the consumer with the applicable 'pre-contractual information' and 'contract summary', shall inform the consumer on a durable medium that his/her use of the service/s will be deemed to constitute his/her consent to enter into that contract. The consumer shall be provided information on how to easily contact his/her provider free of charge in case he/she does not wish to proceed and enter into that contract:

Provided that the subscription to such pre-paid NB-ICS or to an add-on service purchased on top of an existing publicly available ECS subscription (excluding NI-ICS and transmission services used for the provision of M2M services) is not subject to a minimum contractual period exceeding thirty (30) calendar days or to the payment of any form of termination fee/s.

A provider shall maintain proof of the consumer's request to subscribe to a pre-paid NB-ICS or to an add-on service purchased on top of an existing publicly available ECS subscription (excluding NI-ICS and transmission services used for the provision of M2M services) for the duration of the subscription and shall provide such proof to the consumer if he/she so requests during the course of his/her subscription free of charge.

Part C

The consent procedure set out in 'Part B' of this Decision can also be applied by a provider of a publicly available ECS other than NI-ICS and transmission services used for the provision of M2M services, when a consumer requests to upgrade / downgrade his / her service/s to a higher / lower tier during the course of his/her subscription. In doing so the provider shall ensure that:

- i. It has received an explicit request by the consumer to upgrade / downgrade the consumer's plan and that such request can be recorded and provided as proof to the consumer if so requested during the course of the subscription;
- ii. the 'pre-contractual information' and the 'contract summary' applicable to the plan being upgraded / downgraded have been sent to the consumer in accordance with regulation 87 of the ECNSR;
- iii. subsequent to points (i) and (ii) above, the provider informs the consumer on a durable medium that his/her use of the service/s will be deemed to constitute his/her consent to be upgraded / downgraded;
- iv. the minimum contract duration period is not re-started;
- v. during the course of the subscription, the consumer has the possibility to downgrade / upgrade his/her services back to the original services he/she subscribed to without incurring any penalty fees, provided the original service the consumer was subscribed to is still being offered at the time of the consumer's request;
- vi. no additional services are added to the consumer's subscription during the course of the downgrade / upgrade, unless explicitly requested in accordance with 'Part A' or 'Part B' of this Decision as may be applicable.

If any of the above conditions stipulated in Points (i) to (vi) cannot be met by the provider, the upgrade / downgrade of a plan must be completed in accordance with 'Part A' of this Decision.

Proposed Decision 3 - Applicable to providers of publicly available ECS excluding NI-ICS and transmission services used for the provision of M2M services

'Decision 2' shall also apply to bundles of services or bundle of services and terminal equipment offered to consumers which comprise at least an IAS, NB-ICS or a transmission service used for broadcasting.

'Decision 2' and the above paragraph shall also apply when concluding contracts with end-users that are micro-enterprises, small enterprises or not-for-profit organisations, unless such end-users have explicitly agreed to waive all or parts of those provisions.

4.2 Modifications of contractual conditions (applicable to publicly available ECS other than NI-ICS)

In its 2011 Decision the MCA, amongst other measures, stipulated:

1. The manner and format in which notifications are to be sent to end-users to inform them about modifications to their contractual conditions;
2. The content and information that such notifications shall include;
3. The timeframes by when such written notifications are to be sent to the MCA prior to the notification to end-users;
4. The procedure to be followed by providers to seek a waiver from the MCA from the requirement to grant end-users the right to terminate the contract without incurring any penalties in the event that the contractual modifications are manifestly of benefit to all end-users to that service;

5. Requirements to be adhered to by providers when terminating a package/s; when terminating a specific service/s; and/or when ceasing operations.

In this section the MCA is consulting about those measures contained in the 2011 Decision it believes should be maintained or updated coupled with new measures it believes should be introduced to provide more clarity to stakeholders and to provide enhanced end-user protection. As stated previously, the MCA intends to repeal the 2011 Decision referred to above and instead replace it with the following proposed decisions contained in section 4.2 of this consultation which will become applicable together with the new rules included in Regulation 92 of the ECNSR.

4.2.1 The end-users' right to terminate their contract without incurring any further costs upon notice of changes in the contractual conditions

In accordance with Regulation 92(1) of the ECNSR, end-users shall have the right to terminate their contract without incurring any further costs upon notice of changes in the contractual conditions proposed by the publicly available ECS other than NI-ICS unless the proposed changes are:

- (a) exclusively to the benefit of the end-user;
- (b) are of a purely administrative nature and have no negative effect on the end-user; or
- (c) are directly imposed by European Union or national law.

The provision is intended to ensure that when a provider proposes a contractual change/s to a service/s (with the exception of changes listed in points (a), (b) and (c) above), end-users subscribed to that service, may rescind their contract with their provider without incurring any financial penalty. The MCA believes that when terminating the service/s as a result of the contractual changes proposed by the provider, end-users should:

1. Be allowed to terminate the service/s forming part of the contract being amended by the provider without the need of giving any advance notice; and
2. Not be charged any further costs except for charges related to the provision of the service/s up until the date of termination and for any non-loaned equipment bundled with the service which is retained by the end-user in accordance with regulation 91(7) of the ECNSR.

In order to provide more clarity, the MCA proposes the adoption of the following decision:

Proposed Decision 4

When, in accordance with Regulation 92 of the ECNSR, an end-user avails of his/her right to terminate his/her contract as a result of changes in the contractual conditions proposed by providers of publicly available ECS other than NI-ICS, such end-user shall:

1. have the right to have the service/s under that contract terminated with immediate effect upon receipt of the notification of termination by the provider, unless the end-user has explicitly agreed to have such service/s terminated at a later date. This requirement shall be without prejudice to the end-user's right to port their

mobile, fixed, freephone or premium rate numbers to an alternative provider in accordance with [MCA's Decision establishing the number portability regime in Malta](#); and

2. not be charged any further costs except for charges related to the provision of the service/s up until the date of termination and for any non-loaned equipment bundled with the service which is retained by the end-user in accordance with regulation 91(7) of the ECNSR.

When proposing changes to the contractual conditions of publicly available ECS other than NI-ICS, providers shall ensure that all end-users terminating such contracts during the notice period are provided a refund of any unutilised advance payment or refundable deposit made or of any remaining monetary credit accumulated in their pre-paid or hybrid tariff plan accounts in accordance with 'Decision 11' and 'Decision 12' listed hereunder.

4.2.2 Content of the Notifications sent to end-users

Regulation 92(2) of the ECNSR states that providers shall notify end-users at least thirty (30) calendar days in advance of any proposed modifications to the contractual conditions of their services in a clear and comprehensible manner and on a durable medium. This regulation further states that where applicable, providers shall simultaneously inform end-users of their right to terminate the contract without incurring any further costs if they do not accept the new conditions, which right shall be exercisable within thirty (30) calendar days from notification of the change in contractual conditions by the provider.

In accordance with Regulation 92(5) of the ECNSR, the MCA may propose requirements regarding the content to be included in the notifications to be sent by providers to end-users before implementing any modifications to the contractual conditions of its service/s. Section 2.2 of MCA's 2011 Decision mandates a number of information requirements to be adhered to by providers when sending such notifications. The MCA believes that these requirements remain relevant and provide added transparency to end-users. The MCA is therefore proposing to maintain these requirements whilst proposing some amendments to provide more clarity and enhanced protection to end-users. The MCA is proposing the adoption of the following decision:

Proposed Decision 5

Any notifications sent in accordance with Regulation 92(2) of the ECNSR, shall be limited to contain only information about the modifications to the contractual conditions of the service/s which the provider of publicly available ECS excluding NI-ICS intends to implement.

The information in the notification shall clearly explain the modifications being introduced by the provider in such a manner that end-users can easily compare the original contractual conditions agreed to with the new contractual conditions being proposed by the said provider. Unless exempted by the MCA in line with 'Decision 7' hereunder, any notification to an end-user regarding modifications to the contractual conditions must also include information regarding:

1. the end-user's right to terminate the service/s within thirty (30) calendar days from receipt of the notification, without incurring any penalties, if he/she does not agree with the proposed modification/s;
2. the manner in which an end-user is required to notify a provider about his/her intention to terminate the contract during the thirty (30) calendar day notification period should he/she disagree with the proposed modification/s;
3. the possibility, in the event that the contractual modification/s relate to the provision of a mobile and/or fixed voice communications service, freephone service and/or premium rate service, of the end-user to port his/her number/s to any provider of his/her choice by lodging a porting request through the recipient provider, in which cases the end-user's contract is automatically terminated upon successful porting;
4. if applicable, the manner in which any refundable deposit, unutilised advance payment (including any pre-paid or hybrid monetary credit) made by the end-user for the original service may be refunded if the end-user chooses to unsubscribe from the service/s, switch to a new service/s, or switch or port to a new service provider; and
5. the contact channels which can be used by an end-user to enquire free of charge about the contractual changes being notified about, including, in the case of changes not impacting an IAS, the inclusion of information on the telephony support customer care number of the service provider.

Notifications to end-users can be sent out concurrently with other 'ordinary' communications (e.g. a monthly bill), however providers shall ensure that these are prominent and distinguishable from the 'ordinary' aspects of the communication to minimise the risk that such notification is overlooked by end-users.

4.2.3 The format in which notifications are to be sent to end-users

Regulation 92(2) of the ECNSR states that any notifications sent by providers to inform end-users about any proposed modifications to any contractual condition shall be sent on a **durable medium**⁵ at least thirty (30) calendar days before such changes become applicable. As stated previously, the MCA considers that in accordance with the definition of 'durable medium' in the CRR, providers have different solutions they may deem appropriate and which may include amongst others: documents posted to the end-user's residential or business address; a document attached and sent via e-mail; or an SMS notification (provided that the information requirements contained in 'Proposed Decision 5' fit in the type of 'durable medium' chosen by the provider). The MCA considers that sending an end-user a link which points to online information about the changes in the contractual conditions being proposed by the provider as set out in section 4.2.2 above, would **not** constitute a durable medium.

The MCA considers that Regulation 92(2) and the definition of 'durable medium' as contained in the CRR provides enough guidance to providers on the manner in which notifications about proposed modifications to changes to contractual conditions are to be sent to impacted end-users. For the time being the MCA is not proposing the implementation of additional

⁵ A 'durable medium' is defined in the CRR as 'an instrument which enables the consumer or the trader to store information addressed personally to him in a way accessible for future reference for a period of time adequate for the purposes of the information and which allows the unchanged reproduction of the information stored'.

measures in this regard whilst proposing that Decision 2.1 contained in MCA's 2011 Decision is repealed. The MCA however reserves the right to consult and adopt any end-user protection measures it may consider necessary at a later date should the need arise.

4.2.4 Notifications to the MCA

In accordance with Regulation 92(3) of the ECNSR, providers shall notify the MCA of any proposed modifications to the contractual conditions of their service/s in writing. In accordance with this sub-regulation the MCA may specify the timeframes by when such written notifications are to be sent to the MCA prior to the notification by the provider to its end-users.

The MCA is proposing to maintain the same timeframes currently laid down in Section 3.2 of MCA's 2011 Decision whereby providers notify the MCA about any proposed changes to the proposed modifications to the contractual condition/s of their service/s. The MCA is proposing the following 'Proposed Decision':

Proposed Decision 6

Providers of publicly available ECS other than NI-ICS shall notify the MCA about any modifications to the contract of service/s at least one (1) working day prior to the notification to the relevant end-users and shall:

1. provide the MCA with a draft copy of the notification which will be sent to end-users; and
2. indicate the type of 'durable medium' that will be used to notify end-users.

The notifications to be sent in accordance with the above proposed decision are to be sent to the MCA to enable it to monitor trends and practices in the sector. Whilst the MCA may at its own discretion provide its views on the content included in the said notifications, it does not in any way approve or sanction the notification or its contents including any modifications to the contractual conditions being implemented by providers. Such notifications shall be without prejudice to any action that may be taken by any relevant enforcement body, including the MCA, should it result that any modifications introduced by the provider are in breach of any applicable law or decisions. In cases where providers need to seek regulatory guidance regarding aspects related to the modifications they wish to implement, they are encouraged to write to the MCA seeking its feedback, doing so well in advance of any communication of draft notifications regarding modifications to the contractual conditions of services to the MCA. This would ensure that the process to implement the modifications that providers wish to introduce is done smoothly.

4.2.5 Exemption from the requirement to grant end-users the right to terminate the contract without incurring further costs

Regulation 92(1) of the ECNSR mentions three instances in which providers of publicly available ECS other than NI-ICS are exempted from granting end-users the right to terminate the contract without incurring further costs. These are limited to instances where the proposed changes are:

- (a) exclusively to the benefit of the end-user;
- (b) of a purely administrative nature and have no negative effect on the end-user; or

(c) are directly imposed by European Union or national law.

With reference to point (c) above, the MCA notes that Recital (275) of the EECC provides that such instances may for example include requirements imposed by EU or national Law to include new information in contracts. The MCA clarifies, that where a public authority or a court rules that a provider must amend a condition/s contained in any contract for the provision of publicly available ECS excluding NI-ICS, then such modifications shall be subject to the obligation enabling end-users to terminate the contract without incurring further costs in accordance with Regulation 92(2) and (3) of the ECNSR and with any decision published by the MCA.

As stipulated in Regulation 92(4) of the ECNSR, the MCA may, upon a written request by a provider, in cases where the proposed modifications to the contractual conditions are manifestly of benefit to all end-users to that service, exempt that provider from the requirement to grant its end-users the right to terminate the contract in accordance with this regulation. The procedure to be followed by providers to seek MCA's waiver, is discussed below in Section 4.2.6.

4.2.6 Notifications to the MCA in instances outlined in Section 4.2.5

Regulation 92(4) of the ECNSR stipulates that providers may send a written request to seek the MCA's waiver from granting end-users the right to terminate the contract without further costs in cases where the proposed modifications to the contractual conditions are manifestly of benefit to all end-users.

For the avoidance of any doubt, the MCA clarifies that in such circumstances, even if an exemption is granted by the MCA in accordance with the above, providers are still required to notify end-users about the modifications to the contractual conditions they intend to introduce. Such notification should be made on a durable medium.

In accordance with this sub-regulation the MCA may specify the timeframes by when such written notifications are to be sent to the MCA prior to the notification by the provider to its end-users. The MCA is proposing to maintain the same procedures currently laid down in Section 3.1 of MCA's 2011 Decision and is proposing some minor amendments as outlined in the 'Proposed Decision' hereunder:

Proposed Decision 7

A provider of publicly available ECS excluding NI-ICS may seek an exemption from the MCA from the requirement to grant its end-users the right to terminate their contract without incurring any further costs if it is determined by the MCA that the proposed modifications the provider intends to introduce are:

- (a) exclusively to the benefit of the end-user;
- (b) are of a purely administrative nature and have no negative effect on the end-user; or
- (c) are directly imposed by EU or national law.

Any requests by a provider for a waiver from the requirement to grant its end-users the right to terminate their contract without incurring any further costs when implementing changes in any of the above instances, shall be sent in writing to the MCA on e-mail address termsandconditions@mca.org.mt. When submitting such requests the provider shall send all of the following documentation listed below:

- the full description of the service/s in question;
- a brief statement providing considerations on the grounds on which the provider is requesting the exemption;
- the related terms and conditions of the service/s in question;
- the copy of the notification to be sent to the end-users; and
- any other relevant information which may be necessary for MCA's ruling.

Requests for exemptions must be communicated to the MCA not less than five (5) working days prior to the intended date of notification by the provider to its end-users. The MCA shall communicate its decision within a maximum of five (5) working days from the provider's request.

In the following instances contemplated in points (1) and (2) below, when the MCA grants a provider the waiver from the requirement to provide its end-users the right to terminate their contract without incurring any further costs, the provider concerned may implement the said changes with immediate effect as soon as the end-user is notified with the said modifications:

1. the changes are exclusively to the benefit of the end-user; or
2. the changes are of a purely administrative nature and have no negative effect on the end-user.

In all other instances not covered in points (1) and (2) above, notifications are to be sent to end-users thirty (30) calendar days in advance of any change in the contractual conditions.

In all circumstances, including in instances where the MCA grants a waiver in accordance with this Decision, providers shall notify end-users about the modifications to the contractual conditions they intend to introduce on a durable medium.

4.2.7 Termination of a service/s plan

In recent years, providers have on various occasions decided to terminate the provision of a service plan and have consequently, in a number of instances, migrated end-users from such service plans to an alternative service plan which they may offer providing end-users a thirty (30) calendar day notice to terminate their contract without incurring any further costs.

In order to safeguard the interests of end-users in such circumstances, the MCA is proposing a series of measures to be adhered to by providers to ensure that such procedures protect the rights of impacted end-users. 'Proposed Decision 8' contains the list of measures suggested by the MCA:

Proposed Decision 8

Part A

When terminating a service/s plan for the provision of a publicly available ECS other than NI-ICS, providers shall adhere to regulation 92(1), (2) and (3) of the ECNSR as well as MCA's 'Decisions 4, 5 and 6' included above.

Part B

Should a publicly available ECS provider other than a NI-ICS provider decide to terminate a service/s plan and migrate end-users from the service plan/s being terminated to another service plan, such a provider shall:

- i. adhere to all the requirements stipulated in regulations 92(1), (2) and (3) of the ECNSR as well as MCA's 'Decisions 4, 5 and 6'. This is without prejudice to the service provider's right to seek a waiver from MCA from providing end-users the right to terminate their contract without incurring any further costs if a request is submitted and approved by the MCA in accordance with Decision 7 above;
- ii. only migrate end-users to another service plan which includes solely the same services previously included in the service plan being terminated;
- iii. only migrate end-users to a plan which contains similar characteristics to the service plan the end-user is currently subscribed to (e.g. end-users cannot be migrated from a pre-paid plan to a post-paid plan);
- iv. ensure as much as is reasonably possible that end-users are migrated to a plan which applies similar or lower periodic fees, charges and allowances;
- v. not re-start the minimum contract duration period; and
- vi. send end-users a copy of the 'pre-contractual information' and 'contract summary' applicable to the plan on which they are being migrated to in accordance with Regulation 87 of the ECNSR.

The above proposed decision is intended to safeguard end-users' interests by enabling end-users to remain connected to their service/s in those circumstances where a provider decides to terminate the service/s plan.

The MCA clarifies that this proposed decision shall exclusively apply only in those instances where a provider is terminating the service plan to which end-users are currently subscribed to. Any initiatives undertaken by providers to upgrade end-users from their current plan to a higher tier plan (provided that the providers are not terminating the plan the end-users are currently subscribed to) shall adhere to MCA's 'Proposed Decision 2'.

4.2.8 Providers terminating the provision of a service/s or ceasing operations

Section 4.2 of MCA's 2011 Decision stipulates requirements to be adhered to by a provider in the event that it decides to stop providing a service or cease operating. The MCA considers that the current requirements contained in section 4.2 of MCA's 2011 Decision should be maintained factoring some minor amendments as outlined in the 'Proposed Decision' hereunder:

Proposed Decision 9

When terminating the provision of a service/s or ceasing operations, providers of publicly available ECS other than NI-ICS shall, in addition to obligations set out in Regulation 92(1), (2) and (3) of the ECNSR as well as MCA's Decisions 4 and 5' included above, also include information in the notification to impacted end-users to inform end-users on how to migrate their services to at least one (1) alternative provider and make available technical support services to assist impacted end-users so as to minimise any disruptions. Any migration of service shall be without prejudice to the obligations set out in Regulation 94, in particular sub-regulation (10), and to the provisions established in other relevant decisions published by the MCA such as the MCA's Decision establishing the number portability regime in Malta.

Providers shall take all the necessary measures, particularly when making agreements with third parties in relation to the publicly available ECS they provide, in order to ensure that such agreements do not act as an obstacle when implementing the above-mentioned norms in this Decision. In doing so, providers must ensure that wholesale agreements take into account the notice periods stipulated in the ECNSR and in this Decision.

Providers of publicly available ECS other than NI-ICS shall notify the MCA about their decision to terminate the provision of a service/s or ceasing operations at least ten (10) working days prior to the notification to the relevant end-users and shall:

1. Provide the MCA with a draft copy of the notification which will be sent to end-users;
2. Indicate the type of 'durable medium' on which the notification will be sent to end-users.

4.3 Transparency measures relating to the publication of information on services offered

Regulation 88(1) of the ECNSR, requires that where providers of IAS or publicly available ICS make the provision of services subject to terms and conditions, they shall ensure that the information contained in the Ninth Schedule of the ECNSR is published in a clear, comprehensive, machine-readable manner and in an accessible format for end-users with disabilities in accordance with EU legislation harmonising accessibility requirements for products and services. In accordance with Regulation 96(1) of the ECNSR, this requirement also applies in those cases where a bundle of services, or a bundle of services and terminal equipment comprises at least an IAS or a publicly available NB-ICS.

Regulation 88(1) of the ECNSR empowers the MCA to specify requirements regarding the form in which the information in the Ninth Schedule of the ECNSR is to be published. The MCA considers that as a minimum, such information should be published on the service providers' website and should be accessible on or from the same webpage where the service/s, offer or package is being publicised. Such a requirement, together with the right enabling end-users to obtain a copy of the 'pre-contractual information' and 'contract summary' as mentioned in Section 4.1 above, provides the necessary level of transparency to enable end-users to take more informed decisions about the service/s they wish to subscribe to.

The MCA is therefore proposing the adoption of the following proposed decision which shall replace the current requirement included in Decision 2 of MCA's 2012 Decision:

Proposed Decision 10

Where a provider of IAS or publicly available ICS makes the provision of services subject to terms and conditions, then such a provider shall ensure that the information referred to in the Ninth Schedule of the ECNSR, is published in a clear, comprehensive, machine-readable manner as a minimum on the provider's website and shall be accessible on or from the same webpage where the service/s, offer or package is being publicised.

The above shall be applicable also to a bundle of services, or a bundle of services and terminal equipment comprising at least an IAS or a publicly available NB-ICS service.

The requirements contained in Decision 10 shall also apply to services designed or marketed for micro-enterprises, small enterprises, or not-for-profit organisations.

4.4 Refund of any unutilised advance payment, refundable deposit or any monetary credit to end-users upon termination of a subscription or upon change of tariff plan

4.4.1 Refund of any unutilised advance payment and/or of any refundable deposit paid by the end-user

The MCA notes that for the past years publicly available ECS providers have been refunding end-users, upon termination of a subscription or upon change of tariff plan, any unutilised advance payment and/or refundable deposit end-users would have already paid prior to the termination of the subscription or prior to changing their tariff plan. Such unutilised advance payment or refundable deposit could typically, but not exclusively, include the unutilised advance payment of the applicable rental fee covering succeeding month/s; or the payment of a deposit paid for loaned equipment provided with the service.

The MCA considers that in a competitive market, such practices are necessary to ensure that end-users terminating their subscription, changing providers or changing their tariff plans, are not unnecessarily penalised. By means of this proposal, in accordance with the powers granted to it under Regulation 91 of the ECNSR, the MCA is proposing a set of measures that would ensure that upon termination of a publicly available ECS subscription or upon change of tariff plan, end-users are refunded in a timely and efficient manner any unutilised advance payment and/or refundable deposit paid prior to the termination of their subscription or change of tariff plan.

The MCA proposes that, such unutilised advance payment and/or refundable deposit, should, where technically possible, be refunded by providers automatically, for example by means of a bank transfer (in the case of an end-user who would have had a direct debit mandate with the provider); or a transfer to another account the same end-user has with the provider; or by deducting any unutilised advance payment and/or refundable deposit owed to the end-user from the total of outstanding payments due by the said end-user.

The MCA further proposes that when such unutilised advance payment and/or refundable deposit as described above cannot be refunded automatically, then providers should make

the refunds available for collection by the end-user from any outlet pertaining to the respective service provider.

The MCA is proposing the following 'Proposed Decision':

Proposed Decision 11

Providers of publicly available ECS, shall when technically possible, upon termination of a subscription or upon change of a tariff plan, automatically refund end-users any unutilised advance payment and/or refundable deposit they may have paid prior to the termination of their subscription or change of tariff plan. End-users shall be informed on a durable medium about the specific method to be used by the provider to automatically refund any unutilised advance payment and/or refundable deposit to end-users upon termination of their subscription or change of tariff plan.

If the above refunds cannot be reimbursed to end-users automatically, these shall be made available for collection by the end-user from any outlet pertaining to the respective service provider. In such instances, upon termination of the subscription or change of tariff plan, providers are to inform end-users, through a durable medium of their right to collect a refund of any unutilised advance payment and /or refundable deposit from any of the service provider's outlets. As a minimum, end-users shall be offered the facility to receive such refunds either in cash or cheque.

This decision shall also apply when the termination of a subscription of an end-user occurs following the successful porting of a number.

4.4.2 Refund of any monetary credit accumulated by consumers subscribed to pre-paid or hybrid tariff plans

The MCA considers that consumers subscribed to a pre-paid or hybrid tariff plan should be entitled to receive a refund of any monetary credit accumulated in their pre-paid or hybrid tariff plan accounts (hereafter 'monetary credit') upon termination of a subscription or change of tariff plan. The MCA is aware that in such instances it may not always be possible for providers to reimburse such monetary credit automatically and is therefore proposing that instead, consumers may receive a refund of any monetary credit by raising a request with their provider. This proposal is being suggested without prejudice to the provisions proposed in section 4.4.1 above, which also apply to consumers subscribed to a pre-paid or hybrid tariff plan, in respect of any unutilised advance payment and /or refundable deposit which such consumers may have paid prior to the termination of their subscription or change of tariff plan in accordance with 'Proposed Decision 11' above.

The MCA is proposing the following 'Proposed Decision':

Proposed Decision 12

Consumers subscribed to a pre-paid or hybrid tariff plan, shall be entitled to request a refund of any monetary credit accumulated in their account upon termination of a subscription or change of tariff plan subject to the following conditions. The following conditions shall also

apply to consumers in instances where pre-paid or hybrid services are terminated as a result of an automatic disconnection carried out by the provider (such as for example when services are terminated by the provider following a period of service inactivity):

- The refund shall be requested by the consumer within a period of at least two (2) weeks starting from the date of termination of the subscription or change of tariff plan;
- Consumers are, as a minimum, provided with the possibility to request the refund in person at any of the service provider's outlets;
- Such monetary credit shall be equal to the monetary amount which would have been indicated to the consumer should he/she had performed a credit check immediately prior to the termination of the subscription or change of tariff plan, provided that:
 - o Where the consumer can distinguish between topped up/purchased credit and any credit provided through bonuses or promotions via the credit check facility, the credit to be refunded by the service provider may be exclusive of any bonus or promotional credit accordingly.
 - o In cases where the value calculated for the credit refund would be lower than the refund fee due, the provider shall inform the consumer accordingly without further processing the request, and the consumer shall not be charged any refund fee in these circumstances.
- The processing of the refund may be subject to a fee only if provided for in the contract for the subscription being terminated provided that:
 - o The fee to be imposed shall be fixed (i.e. not dependent on the amount of credit to be refunded) and shall not exceed €5.00;
 - o When consumers avail of their right to terminate their service as a result of the changes in the contractual conditions proposed by the provider in accordance with section 4.2 above, any requests for refund made by the consumer in accordance with the above, shall not be subject to any administrative fees imposed by providers to process such refunds, including in cases where consumers subscribed to pre-paid or hybrid tariffs opt to terminate their subscription by porting their number to an alternative provider during the notification period.
 - o Consumers are offered, as a minimum, the facility to avail of the refund in cash or by cheque; and
 - o The fixed refund fee (up to the maximum cap) imposed may vary depending on the mechanism made available to and voluntarily selected by the consumer.
- The provider shall perform the necessary validation checks to confirm the consumer's eligibility, and shall refund eligible consumers within one (1) month from receipt of the request:
 - o Provided that requests for refund by consumers who are unregistered shall not constitute grounds for the provider to refuse refund requests.

Upon termination of the subscription or change of tariff plan, providers are to inform consumers, through a durable medium of the right granted to eligible consumers to request a refund for any remaining monetary credit, the manner in which the refund may be requested and the time period from the date of termination of the subscription or change of tariff plan within which a refund may be requested. Providers are to acknowledge the receipt of the consumer's credit refund request through a durable medium.

4.5 The calculation of maximum early termination fees ('ETFs')

In accordance with Regulation 91(2) of the ECNSR, providers of publicly available ECS other than NI-ICS and transmission services used for the provision of M2M services are required to ensure that any ETFs payable by end-users terminating their contract prior to the expiry of their minimum contractual period are proportionate and reasonable. This requirement is intended to ensure that the faculty of end-users to switch provider is not unduly hindered. The correct application of this requirement is also important so as not to undermine competition and result in practices detrimental to end-users. In accordance with Regulation 91(2) of the ECNSR, the MCA is empowered to establish a methodology to calculate maximum early termination fees to ensure the effective application of this sub-regulation.

MCA's 2012 Decision mandates that any ETFs applied to end-users terminating their service/s prior to the expiry of their minimum contractual period '*shall not exceed the sum of the remaining periodic fees that the end-users would be liable to pay, should he/she complete his/her initial term*'. Notwithstanding this provision, along the years, the MCA encountered instances where end-users wishing to terminate their service prior to the expiry of their minimum contractual period were nonetheless charged hefty ETFs which discouraged end-users from switching to another provider. To this effect, the MCA intends to propose measures intended to ensure that the applicability of such ETFs are more proportionate and reasonable. The full text the MCA is proposing to be adopted in its final decision is the following:

Proposed Decision 13

Any early termination fees payable by end-users terminating a publicly available ECS other than NI-ICS and transmission services used for the provision of M2M services prior to the expiry of the initial contractual period shall be justified and reasonable, and shall not exceed the total sum of any discounts received by the end-user until the date of the termination of the service/s (if applicable) or 30% of the total sum of the remaining periodic fees that the end-user would be liable to pay should he/she complete his/her initial term, whichever sum is lesser.

Such charges shall exclude any other charges which may be applied by providers and which are intended to recover the costs of any terminal equipment (excluding rented equipment) discounted or provided for free to the end-user with the service. Service providers shall nevertheless ensure that such charges are fair and justified.

This decision shall be without prejudice to the regulations 91(5) and 91(7) of the ECNSR.

The MCA clarifies that no early termination fees can be applied in the instances referred to in Regulations 91(5) and 91(7), which respectively provide that:

- i. Where a contract or national legislation provides for automatic prolongation of a fixed duration contract for publicly available ECS other than NI-ICS, then after such prolongation, end-users may terminate the contract without incurring any costs except the charges for receiving the service during the notice period and any applicable reasonable and justified charges in connection with unreturned loaned equipment; and
- ii. Where an end-user has the right to terminate a contract for a publicly available ECS, other than NI-ICS, pursuant to the ECNSR or to other provisions of EU or national law, no compensation shall be due by the end-user other than for retained non-loaned subsidised terminal equipment.

4.6 E-mail forwarding or access to e-mails after termination of the contract with a provider of an internet access service

In accordance with Regulation 102(1) and with the Sixth Schedule Part B of the ECNSR, the MCA is empowered to introduce, amongst other measures, facilities that enable end-users terminating their internet access service, to continue to have access to e-mails received on the e-mail addresses based on the IAS provider's commercial name or trade mark. To this effect, the MCA is proposing the introduction of the following:

Proposed Decision 14

Upon termination of an IAS, providers who also offer the provision of e-mail services provided with e-mail addresses based on their commercial name or trade mark, shall offer at least one of the following facilities:

1. E-mail forwarding services: This facility shall allow an end-user to request that e-mails sent to e-mail addresses based on the commercial name or trade mark of the former IAS provider are transferred to a new e-mail address specified by the end-user for a minimum period of one (1) year free of charge. When providing this facility, the IAS provider shall send an automated reply to any e-mail received on the e-mail address operated by that IAS provider with a message informing the sender of the forwarding service. The message shall also provide the new e-mail address provided by the end-user; or
2. Continued access to e-mails: This facility shall allow an end-user to opt to continue accessing and receive the e-mails sent to the e-mail addresses based on the commercial name or trade mark of the former IAS provider, for a minimum period of one (1) year free of charge.

The MCA also proposes that in the event that an IAS terminates the provision of e-mail services provided with e-mail addresses based on their commercial name or trade mark, then the provider concerned will be required to inform end-users on a durable medium thirty (30)

calendar days prior to the termination of the e-mail services advising them about the possibility to avail of one or both facilities referred in Decision 14, above.

Proposed Decision 15

IAS providers terminating the provision of e-mail services provided with e-mail addresses based on their commercial name or trade mark shall notify end-users on a durable medium thirty (30) calendar days prior to the termination of the services. Such notification shall inform end-users of the possibility to avail of one or both facilities referred to in Decision 14. A copy of the notification to end-users is to be sent to the MCA ten (10) working days before being sent to impacted end-users.

4.7 Non-Payment of Bills


In accordance with Regulation 102(1) of the ECNSR, the MCA is empowered to require providers of IAS and publicly available NB-ICS to make available free of charge all or part of the additional facilities listed in Part A and B of the Sixth Schedule of the ECNSR, including mandating measures to be adhered to by providers when taking action as a result of non-payment of bills by end-users, provided that such measures are proportionate, non-discriminatory and published. The MCA notes that currently a number of providers take action to safeguard their interests whenever their end-users fail to adhere to their obligations to pay for their services. Such action includes the applicability of 'late payment charges', suspension of services, and in extreme cases termination of services. The MCA does not dispute the need for providers to take action against end-users in order to ensure that any dues they are owed are collected in a timely manner, however the MCA wishes to ensure that any such actions are reasonable and proportionate.

In view of the above, the MCA is proposing that providers of IAS and publicly available NB-ICS services adhere to a set of rules when taking any action against a consumer or end-users that are micro-enterprises, small enterprises or not-for-profit organisations if they fail to pay their bills, this without prejudice to the provisions established in other relevant decisions published by the MCA including the MCA's Decision "A Framework for Premium Rate Services in the '5' Numbering Range". The MCA hereby proposes the following:

Proposed Decision 16

Without prejudice to other MCA decisions, providers of IAS and publicly available NB-ICS shall ensure that they adhere to the following measures when taking action against end-users who fail to pay their bills within the deadline indicated by providers:

- i. Providers shall allow a time period of at least thirty (30) calendar days starting on the date when a new bill has been issued before applying any late payment charges to end-users;
- ii. Any late payment charges which may be applied to end-users shall be reasonable and justified;

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- iii. Providers shall allow end-users a minimum period of at least two (2) months to settle any outstanding dues before suspending a service. The two (2) month period shall commence on the expiry date indicated by the provider for the payment of the outstanding bill.
 - iv. Providers shall send an advance notice on a durable medium not less than fifteen (15) calendar days before any service suspension action is taken.
 - v. During the period of suspension, publicly available NB-ICS providers, shall ensure, that end-users have continued access to calls that do not incur a charge including receipt of incoming calls, calls to "112" and other national emergency numbers and calls to the customer service of the provider in question;
 - vi. Providers shall only terminate a service after the expiration of a minimum period of suspension of service of not less than one (1) month;
 - vii. During the suspension period, providers shall inform end-users in writing on a durable medium of the imminent termination of a service at least five (5) calendar days prior to the stipulated termination date, unless any outstanding bills are settled beforehand;
 - viii. As far as is technically feasible, any suspension or termination of the service should be confined to the part of the service to which the action or omission leading to the suspension or termination relates;
 - ix. The notice referred to in points (iv) and (vii) shall specify as a minimum:
 - the reasons for suspension and / or termination;
 - the period during which the service/s will be suspended and the stipulated termination date if the suspension is not lifted;
 - any available course of action which can be taken by the end-users to avoid termination and to have the service restored;
 - any charges due for reconnection of service/s, subject that such charges are reasonable and justified;
 - any charges due on termination;
 - the end-user's right to lodge a complaint with their provider in the event that the aforesaid end-user is disputing any charges contained in his/her bill;
 - the end-user's right to lodge a complaint with the MCA in the event that the dispute with the provider is not addressed to their satisfaction, including MCA's contact details (telephone number and customer care e-mail address).

5. Applicability of MCA's Final Decision Notice

The MCA shall take into consideration all the feedback it will receive before issuing its final decision on any of the subject matters covered in this consultative paper.

The MCA recognises that some of the proposed decisions will require providers to implement internal administrative, technical and/or operational updates. In this regard, the MCA is of the view that the proposed decisions contained in this consultative document shall become applicable within three (3) months from publication of the Decision Notice, at which point all providers will be required to adhere with the new norms as reflected in the final MCA decision.

In the meantime, until the date when the new final MCA decision comes into force, the MCA's 2011 Decision and 2012 Decision shall remain effective and applicable along with any other requirements arising from any other applicable legislation.

6. Submission of Responses

In accordance with the requirements of Article 4A of the Malta Communications Authority Act [Cap 418 of the Laws of Malta], the MCA invites written comments from interested stakeholders on MCA's Consultation and Proposed Decision on Contracts, Transparency and Termination of Services.

The MCA appreciates that respondents may provide confidential information in their feedback to this consultation paper. Such information is to be included in a separate annex and should be clearly marked as confidential. Respondents are requested to state the reasons why the information should be treated as confidential. The MCA will take the necessary steps to protect the confidentiality of such material as soon as it is received at the MCA offices in accordance with the MCA's confidentiality guidelines and procedures⁶. Respondents are however encouraged to avoid confidential submission wherever possible.

The MCA will, after taking into consideration all the responses received to this consultation, publish a Decision Notice on 'Contracts, Transparency and Termination of Services'. For the sake of openness and transparency, the MCA will publish a list of all respondents to this Consultation Paper in the ensuing Decision Notice.

All responses should be addressed to the **Chief Executive Officer** and submitted to the MCA electronically on consultations@mca.org.mt.

The consultation period will run until 17.00hrs CET of 11/04/2022.

Extensions to the consultation deadline will only be permitted in exceptional circumstances and where the MCA 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.

⁶ http://www.mca.org.mt/sites/default/files/articles/confidentialityguidelinesFINAL_0.pdf

Annex – Additional Information requirements to be included in the ‘pre-contractual document’

Pursuant to ‘Proposed Decision 1’ contained in section 4.1.1 of the MCA’s consultative document, this Annex contains the proposed information which publicly available ECS, excluding transmission services used for the provision of M2M services, are to include in the ‘pre-contractual document’ in addition to the information requirements provided for in regulation 87 of the ECNSR.

E-mail forwarding or access to e-mails after termination of the contract with a provider of an internet access service

IAS providers that also offer the provision of e-mail services provided with e-mail addresses based on their commercial name or trade mark, shall include in the ‘pre-contractual document’, information on the end-user’s right to request upon termination of the IAS one or both of the following facilities, whichever the IAS provider offers:

1. The forwarding of any e-mail received on the commercial name or trade mark of the former provider to a new e-mail address specified by the end-user for a minimum period of one (1) year free of charge. The ‘pre-contractual document’ shall also specify that an automated reply to any e-mail received on the e-mail address operated by that internet access service provider will be sent to the sender informing him/her of the forwarding service; and/or
2. The facility allowing end-users to continue accessing and receiving e-mails sent to the e-mail addresses based on the commercial name or trade mark of the former IAS provider, for a minimum period of one (1) year free of charge.

Non-payment of bills

The ‘pre-contractual information’ shall include information about any actions that IAS and publicly available NB-ICS providers may take in instances arising as a result of non-payment of bills. Providers shall include information about:

- i. The time period allowed to end-users to pay their bills before any late payment charges become applicable, if any;
- ii. Details about the cost of any applicable late payment charges; and
- iii. Information about any suspension or termination measures, including applicable timeframes within which such measures could be triggered by the provider in the event that outstanding bills are not settled by the end-user.

The nature of any limitations that may apply for the re/transmission of EU football content (Applicable to Transmission services used for broadcasting)

The ‘pre-contractual document’ shall include the nature of any limitations that may apply for the re/transmission of European football content. When a provider of transmission services used for broadcasting is aware *a priori* of any expiry dates after which the re/transmission of any European football event (the rights of which have been acquired through a public bidding processes) cannot be guaranteed, that service provider must make available information pertaining to the expiry date to re/transmit that content in the ‘pre-contractual document’.



Contracts, Transparency and Termination of Services

Consultation and Proposed Decision on a set
of rules applicable to Electronic
Communications Service Providers to
enhance end-user protection

