



Ensuring that 'contracts' contain only information specific to the tariff plan and services requested by the end-user

Guidance Note published by the Malta Communications Authority

MCA/O/22-4538

21st February 2022

www.mca.org.mt

(+356) 2133 6840

info@mca.org.mt

Valletta Waterfront, Pinto Wharf,
Floriana FRN1913, Malta





Contents

1. Background	3
2. Purpose of the Publication of this Guidance Note.....	3
3. MCA's Interpretation.....	4
4. Next Steps.....	4

1. Background

Regulation 87(1) of the [Electronic Communications Networks and Services \(General\) Regulations¹](#) (hereafter the 'ECNSR'), requires that before consumers are bound by a contract, providers of publicly available electronic communications services (hereafter 'ECS'), excluding transmission services used for the provision of machine to machine (hereafter 'M2M') services, provide consumers with a set of 'pre-contractual information' which includes the information referred to in regulations 4 and 5 of the [Consumer Rights Regulations²](#) and the information listed in the Eighth Schedule titled 'Information Requirements for Contracts' of the 'ECNSR'. Besides the 'pre-contractual information', providers must provide consumers with a concise and easily readable 'contract summary' in accordance with the European Commission Implementing Regulation (EU) 2019/2243 establishing a template for the contract summary (hereafter, 'CIR').

Regulation 87(5) of the 'ECNSR', further provides that the 'pre-contractual information' and the 'contract summary' provided to consumers as indicated above shall become an integral part of the 'contract' and cannot be altered unless the contracting parties expressly agree otherwise. The above requirement applies to the sale 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.

2. Purpose of the Publication of this Guidance Note

During the past months, the Malta Communications Authority (hereafter the 'MCA' and/or the 'Authority') conducted a review of the 'pre-contractual information' and of the 'contract summaries' provided to end-users by various local providers to ensure that the above requirements are being appropriately implemented. During this review, the MCA came across practices which *prima facie* may be in breach of the requirements mentioned above.

These related mainly to instances in which the 'pre-contractual information' as well as the 'contract summaries' provided by some publicly available ECS providers contained details of more than one possible tariff plan or more than one tariff plan option. By way of example, the MCA came across instances in which a 'pre-contractual information' document and/or a 'contract summary' document included the details of more than one possible recurring periodic fee; or different possible download / upload speeds (in the case of an internet access service); or different possible contract durations. The MCA considers that besides misleading end-users, such practices do not comply with requirements emanating from Regulation 87 of the ECNSR.

¹ Subsidiary Legislation 399.48 of the Laws of Malta.

² 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').

3. MCA's Interpretation

Two of the main objectives³ which Regulation 87 of the ECNSR transposing Article 102 of the European Electronic Communications Code (hereafter the 'EECC') seeks to achieve, are to provide end-users with: a) information which is transparent and b) legal certainty.

To this effect, Regulation 87 of the ECNSR, mandates a number of requirements to be adhered to by publicly available ECS (excluding transmission services used for the provision of M2M services). Amongst others, it requires that providers provide:

- the 'pre-contractual information' to end-users in a clear and comprehensible manner (refer to Regulation 87(2) of the ECNSR); and
- the 'contract summary' to end-users in a concise and easily readable manner. It also provides that the 'contract summary' identifies the main elements of the 'pre-contractual information' [refer to Regulation 87(2) of the ECNSR].

In order to be able to adhere to the above requirements, the 'pre-contractual information' documents and/or the 'contract summary' documents should only include information which is pertinent to the tariff plan being requested by the end-user. Similarly, providers must ensure that in the case of tariff plans which provide end-users the flexibility to design their own plan by selecting their preferences from a list of options, any 'pre-contractual information' documents and/or 'contract summary' documents must only contain information which is pertinent to the tariff plan option being requested by the end-user.


In addition to the above requirements, the MCA notes that Regulation 87(5) of the ECNSR requires that the 'pre-contractual information' as well as the 'contract summary' provided to end-users 'shall become an integral part of the contract and shall not be altered unless the contracting parties expressly agree otherwise' (emphasis added by the MCA). This means that the 'pre-contractual information' documents and/or the 'contract summary' documents cannot contain information about different options (such as different pricing and different contract duration options) since not all of these options will become part of the contract.

Prior to publishing this Guidance Note, the MCA sought the opinion of the European Commission (hereafter the 'EC') who in turn confirmed the MCA's interpretation of the relevant provisions contained in the 'EECC'.

4. Next Steps

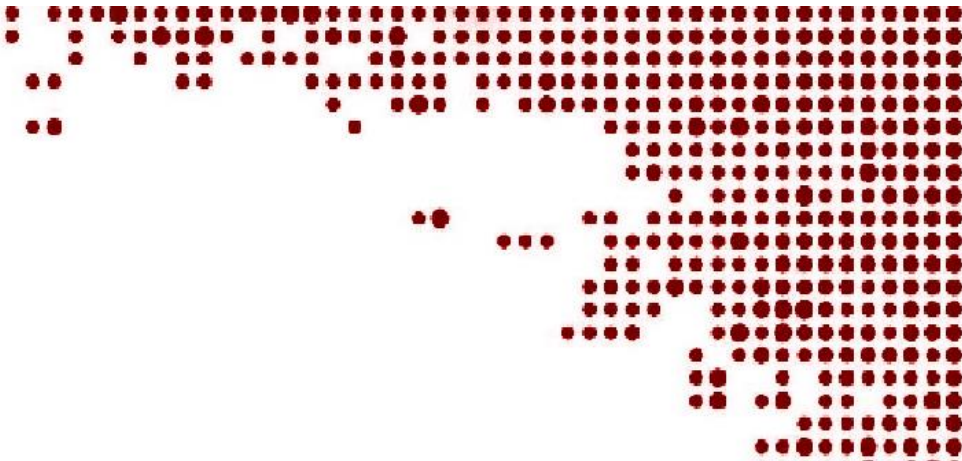
By means of this publication, the MCA is providing industry players the opportunity to review the information in the 'pre-contractual information' documents and in the 'contract summary' documents, to ensure adherence to the above referred requirements.

³ The objective of Article 102 of the EECC is explained in Recital 258 of the European Electronic Communications Code and which states that 'contracts are an important tool for end- users to ensure transparency of information and legal certainty'



In accordance with its role to enforce the laws that it administers, the MCA will conduct further reviews of the 'pre-contractual information' documents and/or the 'contract summary' documents provided by providers to end-users to ensure that these fully comply with Regulation 87 of the ECNSR and with the CIR.

The MCA remains available to assist and provide guidance to all industry players on the correct application of these rules as the need may arise.



**Ensuring that ‘contracts’ contain
only information specific to the
tariff plan and services requested
by the end-user**

**Guidance Note published by the Malta
Communications Authority**

