

MCA's approach to regulation during COVID-19

When the Malta Communications Authority published its 2020 annual plan on its website on the 6th of February a business-as-usual environment for the rest of the year was taken as a given. The subsequent global upheaval, which will go down in history, led rapidly to the current volatile situation. The impact, from whichever perspective it is observed, cannot be ignored.

The MCA's stated mission is to 'promote and safeguard a communications environment that is conducive to investment, innovation, economic growth and social well-being'. Through sector regulation and promotion, we contribute to the making of a healthy communications environment. It is however the sector players that ultimately make the difference through their market behaviour within the established regulatory framework. Thankfully, this behaviour is largely reflected in the robust performance of the respective infrastructures and services that has so far played out.

The communications environment is proving its worth on a number of key fronts, notably in enabling the required physical social distancing whilst maintaining virtual social proximity and an element of harmony. It is also enabling whatever economic activity can currently be sustained via remote working. On top of all this it enables the required coordination between key emergency services and access by the public to such services.

Communications infrastructures, including postal, have so far taken the load in their stride despite the inevitable strain stemming from various quarters. At the moment, the communications players are focused almost exclusively on ensuring an ongoing supply of communications services to their clients. In the meantime, however, service providers have also been forthcoming towards their clients in providing additional services and solutions to assist people in their business and social lives under the new forced regime.

On its part the MCA maintains ongoing liaison between operators and the Government with the focus now on uninterrupted service provision. Meanwhile the Authority continues with the required coordination with the European Commission, as well as other bodies such as the Body of European Regulators for Electronic Communications (BEREC) and the European Regulators' Group (Postal).

It is essential that the communication between the main stakeholders subsists in real-time in order to ensure that the service continues to be given uninterruptedly and to the highest possible quality to all and sundry at a time of absolute need. Moreover, the identification of issues can be addressed with the immediacy that is critical in these delicate times.

In light of all that is happening the MCA acknowledges the need to review its 2020 business plan deliverables. The Authority will be taking the necessary steps in order to ensure that, whilst its core business maintains an element of continuity and congruency with business plan targets, it takes into account the unique nature of the issues being faced by all and sundry, whilst to the extent possible maintaining pre-established timelines that may be difficult to push back.

Apart from the operators it is pertinent to mention two key stakeholders that have a bearing on the regulatory process. Firstly, in the case of the courts, a number of activities, including the timeframes relating to the contestation by aggrieved undertakings of regulatory decisions taken by the MCA before the Administrative Review Tribunal (which Tribunal determines appeals from MCA regulatory

decisions) have of necessity been suspended. Meanwhile, the European Commission, has placed timelines on deliverables that are co-ordinated and agreed upon by Member States at the EU level. Due account needs to be taken of these and other aspects that make up the overall context.

Thus, the MCA feels compelled to review the timing of a number of deliverables in its business plan. We do not feel that we can be prescriptive in our intended course of action and can only foresee a clearer way forward after a detailed analysis of the individual activities has been finalised. However, even at this stage of the proceedings we can split the forthcoming activities into a number of distinct clusters and determine by and large how we see things moving forward.

The clusters and envisaged action are as follows:

- **Consultations and Decisions** - Treatment will be on a case-by-case basis, taking particular account of mandated EU timelines and the current suspension of timeframes whereby an aggrieved party may contest regulatory decisions before the competent adjudicative forum [notably the Administrative Review Tribunal]. The prudence concept is applicable in all such circumstances.
- **Reporting requirements and ongoing operations** – To the extent possible these are expected to continue, taking due cognizance of underlying urgency, circumstances and priorities. The impact of the pandemic may render some requirements more important, whilst in other cases it may be considered as valid reason to admit a degree of latitude.
- **Legislative proposals** – These will continue along established timeframes to the extent possible, given that bottlenecks can result along various points in the process.
- **Strategies and Guidelines (not subject to legal challenge)** – These are seen to continue as established, however due consideration now needs to be given to the possible socio-economic impact of the pandemic on future activities addressed in the relevant strategies and guidelines.

Time is a key underlying factor and the Authority will maintain a flexible approach and adapt it in line with unfolding developments.

The above considerations are being made in cognizance of the delicate role that the sector is playing in keeping the country's socio-economic fabric in place.

16th April 2020