

Subscriber Contracts

Proposals & Clarifications

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Background

In July 2012, the Malta Communications Authority (hereafter 'Authority') published a Decision on "Subscriber Contracts" which specifies the manner by which any undertaking providing any electronic communications service/s is required to conclude agreements with end-users and the information to be included in such contracts.

Since the publication of the aforementioned Decision, there have been further representations by undertakings relating to a variety of technical, operational and commercial matters. Following the publication of its Decision, the Authority felt the need to revise this and is doing so by virtue of this proposal for amendment.

1. Proposal - Pre-Paid Agreements

The Authority considers that the subscription and subsequent use of a pre-paid service, whereby the subscriber may terminate the contract without giving prior notice and without incurring any penalty fees, is sufficient proof of a subscriber's intention to enter into and accept the contract terms. Therefore, a physical signature is not required.

The Authority is hereby proposing that in such instances, where an end-user purchases a 'start-up pack' for the subscription of a standard pre-paid service, the end-user is:

- 1) informed in writing about the applicability of a set of Terms and Conditions (hereafter 'Ts and Cs') governing the use of that service/s in line with the Authority's Decision referred to above;
- 2) referred to the location on the undertaking's website where the end-user may access, free of charge, the Ts and Cs; and
- 3) informed about his right to request a copy of the Ts and Cs at any of the undertaking's outlets, free of charge.

The Authority is further proposing that, upon activation of a pre-paid service and/or a pre-paid offer, subscribers are informed about the voice, SMS and data tariffs as applicable for that respective service/offer by means of an SMS.

2. Clarifications – Internet Minimum Access Speeds

Regulation 35 (b) (iv) (5) of the "Electronic Communications Networks and Services (General) Regulations" SL399.28 of the Laws of Malta (hereinafter "ECNSR"), requires that subscriber contracts specify the minimum access speeds in case of Internet service, ensuring that these do not differ significantly from the marketed upper levels.

In its Decision on 'Subscriber Contracts', the Authority clarified that a separate decision on 'Broadband Internet - Quality of Service Framework', which is intended, amongst other issues, to clarify how ISPs¹ are required to qualify broadband access speeds in subscriber contracts', is expected to be published in quarter four (4) of 2012. In its consultation on this subject the Authority has proposed that undertakings are provided a period of nine (9) months to calculate and publish the said information in subscriber contracts, in line with the Authority's decision on the subject.

¹ Internet Service Provider

With regard to mobile internet services, without prejudice to any future decision on the subject, the Authority would like to clarify that, as a minimum, undertakings must ensure that, subscriber contracts provide a description of the limitations and factors which may impact on the minimum access speeds available to end-users.

3. Feedback to Proposals

Interested stakeholders are invited to send their submissions on MCA's proposal by not later than **Thursday, 6th September 2012**. Any such submissions are to be sent by email at termsandconditions@mca.org.mt.