



MALTA COMMUNICATIONS AUTHORITY

## Review of the Administrative Charges and Number Usage Fees Structures

Electronic Communications Networks and Services

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Consultation Document

MCA/C/16-2454

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27 JANUARY 2016

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## EXECUTIVE SUMMARY

In line with the Electronic Communications Networks and Services (General) Regulations, SL399.28 of the Laws of Malta (the 'Regulations'), the Malta Communications Authority (MCA) collects administrative charges from operators of electronic communications networks and/or services to cover the costs necessary for the purpose of carrying out its tasks relating to the regulation of the electronic communications sector. The MCA also collects fees, on behalf of Government, for the right of use of numbers in such manner as to ensure the optimal use of such resource.

Changes are being proposed to the current administrative charges and number usage fee structures found in the Regulations. The proposed changes, which are to be introduced following amendments to the relevant provisions of the Regulations, are required in order to minimise the impact on the annual administrative charges receivable by the MCA, resulting from changes in the corporate structures of large operators, as well as to encourage more efficient use of numbering resources.

The MCA is proposing to revise the current administrative charging structure as follows:

<b>Administrative charges to be paid on an annual basis:</b>		
<i>Fixed Fees paid on an annual basis:</i>		
(a)	Public communications networks	€11,645
(b)	Publicly available telephone services	€11,645
(c)	Television and radio distribution services	€11,645
(d)	Other publicly available electronic communications services	€2,325
(e)	Non-public electronic communications services	€2,325
(f)	Publicly available telephone directories and directory enquiry services	€2,325
(g)	Alternative roaming provider services	€2,325
<p>Provided that an undertaking authorised to provide publicly available telephone services shall be exempt from the payment of administrative charges pertaining to the provision of publicly available telephone directories and directory enquiry services.</p>		
<i>Variable Fees paid on an annual basis:</i>		
<p>Furthermore, undertakings providing any of the services under (b), (c), (d), (e) or (g) above shall also pay to the Authority:</p> <p>1.1% of the total gross revenue.</p>		

The MCA is proposing to revise the current number usage fee structure as follows:

Usage fees for number to be paid on an annual basis:		
(a)	Numbers in the two, three, seven and nine range excluding such numbers as the Minister may, after consultation with or on the advice of the Authority, from time to time establish by Order in the Gazette.	€700 per allocated numbering block of 10,000 numbers or proportionate depending on the size of the allocated block
(b)	Carrier select/pre-select codes	€5,000 for each code

With the proposed administrative charges structure the MCA is expected to be in a position to retain its current annual revenue levels and continue to have an adequate cashflow in order to cover its annual costs in carrying out its tasks relating to the regulation of the electronic communications sector. In addition, the proposed number usage fee structure is expected to positively affect those operators which implement a resource-efficient numbering plan.

The MCA is proposing that amendments at law implementing the proposed revised administrative changes will come into effect as from 1<sup>st</sup> July 2016, and those pertaining to number usage fees will come into effect as from 1<sup>st</sup> January 2017, thereby giving adequate notice to the operators of electronic communications networks and/or services.

### Consultation Process

By way of this consultation, the MCA is seeking views from interested parties on the administrative charges and number usage fees structures proposed in this document. The consultation period will run from the 4<sup>th</sup> January 2016 until the 27<sup>th</sup> January 2016. Please refer to **Section 5** of this Consultation for further details about the submission of comments.

### Next Steps

The MCA will, after taking into consideration the responses received to this consultation, submit to the Minister responsible for communications its proposed amendments to the current administrative charges and number usage fee structures, as specified in the Eight Schedule of the Regulations.

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## 1. INTRODUCTION

The MCA's tasks relating to the regulation of the electronic communications sector are funded from the administrative charges that it collects from the undertakings operating in the sector.<sup>1</sup> In this respect, the MCA accounts for its activities and expenditure in relation to the sector's regulation through a published statement of income and expenditure which reconciles its expenditure with the administrative charges collected from the sector.<sup>2</sup> Furthermore, the MCA is legally obliged to return any surplus funds remaining at the end of the year to the industry, or request additional funds from the industry if required.

Providers of electronic communications networks and services currently pay the MCA an annual administrative charge based on a minimum fixed fee together with a turnover related distribution key. The table below shows the current administrative charges structure provided for in **Part A of the Eighth Schedule of the Regulations**.<sup>3</sup>

Administrative charges to be paid on an annual basis:		
<i>Fixed Fees paid on an annual basis:</i>		
(a)	Public communications networks	€11,645
(b)	Publicly available telephone services	€11,645
(c)	Television and radio distribution services	€11, 645 plus €0.35 per subscriber
(d)	Other publicly available electronic communications services	€2,325
(e)	Non-public electronic communications services	€2,325
(f)	Publicly available telephone directories and directory enquiry services	€2,325
(g)	Alternative roaming provider services	€2,325
Provided that an undertaking authorised to provide publicly available telephone services shall be exempt from the payment of administrative charges pertaining to the provision of publicly available telephone directories and directory enquiry services.		
<i>Variable Fees paid on an annual basis:</i>		
Furthermore, undertakings providing any of the services under (b), (c), (d), (e) or (g) above shall also pay to the Authority the following:		
(i)	1.5% of the first €23,293,735 tranche of the total gross revenue or part thereof,	
(ii)	1% of the second €23,293,735 tranche of the total gross revenue or part thereof, and	
(iii)	0.5% of any remaining gross revenue.	

<sup>1</sup> Refer to the register of authorised undertakings providing electronic communications networks and services: <http://www.mca.org.mt/sites/default/files/pageattachments/2015-06-22%20Register%20ECS.PDF>

<sup>2</sup> Refer to the overview of total sum of charges collected and administrative costs for the year ending 31<sup>st</sup> December 2014 extracted from the income statement forming part of the 2014 Audited Financial Statements of the Authority: <http://www.mca.org.mt/sites/default/files/articles/MCA%20Overview%202014.pdf>

<sup>3</sup> Refer to: <http://justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=10563&l=1>

In addition to administrative charges used for funding the regulation of the electronic communications sector, usage fees are levied for the use of numbers in such manner as to ensure the optimal use of such resource. Operators providing publicly available telephony services currently pay an annual fixed fee per block of numbers, together with a charge for each utilised number. The table below shows the current number usage fee structure provided for in **Part C of the Eighth Schedule of the Regulations**.<sup>4</sup>

Usage fees for numbers to be paid on an annual basis:		
(a)	Geographic numbers, mobile numbers excluding any such numbers as the Minister may, after consultation with or on the advice of the Authority, from time to time establish by order in the Gazette.	€0.35 per individual number allocated and €230 per block of 10,000 numbers
(b)	Carrier select/pre-select codes	€2,325 for each code.

The MCA is proposing changes to the administrative charges structure in order for the MCA to continue to have an adequate cashflow to cover its annual costs in carrying out its tasks relating to the regulation of the electronic communications sector; and is proposing changes to the numbering usage fee structure to be more proportionate to resource usage and to encourage more efficient use of numbers by authorised undertakings.

This consultation document sets out the MCA's views on the proposed changes to the aforesaid administrative charges and number usage fee structures.

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<sup>4</sup> Refer to: <http://justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=10563&l=1>

## 2. LEGAL BASIS

The statutory provisions relating to the administrative charges required to cover the costs of the MCA, incurred in the performance of its functions relating to the regulation of electronic communications network and services, and to the fees due to Government for the optimal use of numbers, are found in the Electronic Communications (Regulation) Act, Cap 399 of the Laws of Malta (the 'Act') which transposes various requirements of the applicable EU Directives.<sup>5</sup>

In line with article 18(1) of the Act administrative charges are imposed on undertakings providing an electronic communications network and/or service under the general authorisation or to whom a right of use has been granted. These charges shall, in total, cover the administrative costs incurred in the management, control and enforcement of the general authorisation scheme and of rights of use and specific obligations.

Article 18(1) of the Act establishes that administrative charges shall be imposed upon the individual undertakings in an objective, transparent and proportionate manner which minimises additional administrative costs and attendant charges.

Article 18(2) of the Act requires the MCA, in relation to the imposition of such administrative charges, to publish an annual overview of its administrative costs and of the total sum of charges collected.

Article 18(3) of the Act requires the MCA, in the case of charges imposed on an annual basis, to make appropriate repayments or compensation in the case of overcharging, or impose additional charges in the case of undercharging of a person to whom a charge is imposed in the light of any difference between the total sum of administrative charges collected and the administrative costs incurred.

Article 18(4) of the Act establishes that any fees that may be imposed for rights of use for radio frequencies and/or numbers shall reflect the need to ensure the optimal use of the radio frequency spectrum and the national numbering scheme.

Article 18(5) of the Act establishes that any fees imposed for rights of use of for radio frequencies and/or numbers shall be objectively justified, transparent, non-discriminatory and proportionate in relation to their intended purpose and shall take into account the objectives as set out in Article 4 of the Act.

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<sup>5</sup> Refer to Directive 2002/20/EC of the European Parliament and of the Council of 7<sup>th</sup> March 2002 on the authorisation of electronic communications networks and services (Authorisation Directive) as amended by Directive 2009/140/EC.

### 3. CONSULTATION ISSUES

This section discusses the issues identified with the current administrative charges and number usage fees structures and sets out the MCA's views on the proposed revised structures.

#### 3.1 ADMINISTRATIVE CHARGES

The current administrative charges structure is designed to provide gradual regression in the administrative charges. One main flaw with the existing administrative charging structure is that the MCA's income from administrative charges is prone to unpredictable movements due to changes in corporate structures of authorised undertakings.

The MCA is proposing to remove the current regressive charging bands and instead apply a single fixed charging rate to relevant turnover (i.e. a single fixed percentage of relevant turnover) when calculating the annual administrative charge. The application of a single fixed charging rate to relevant turnover would allow the MCA's cashflow to be stable over time, and not be prone to unpredictable movements due to changes in corporate structures of authorised undertakings.

Fixed fees ensure that there is an element of fixed-cost recovery for regulating the electronic communications sector from all operators, independently of their size, and therefore no changes are being proposed. The MCA is proposing to remove the €0.35 per subscriber fee for the provision of television and radio distribution services, thereby rationalising the charge-out algorithm by having a similar one for all services. In addition, various subscribers switch operator during the year, thus rendering verification of the number of subscribers difficult.

The MCA is proposing a revised administrative charges structure that would allow it to retain its current annual revenue levels whilst minimising as much as possible the impact on operators. The MCA's current annual income from administrative charges is in the region of €3m<sup>6</sup> and the MCA has therefore based the proposed administrative charges structure to retain its current annual income.

With the proposed administrative charges structure the MCA is expected to be in a position to continue to have an adequate cashflow in order to cover its annual costs in carrying out its tasks relating to the regulation of the electronic communications sector. In line with national law and with the applicable EU Directives the MCA makes appropriate repayments to operators in case of overcharging.

#### 3.2 NUMBER USAGE FEES

In 2005 Government introduced changes, as proposed by the MCA, in the number usage fees in the light of the introduction of number portability, the entry into the market of new operators and numbers from other ranges being allocated to service providers. The revised number usage fee structure was based on a cost-neutral solution. Although the structure was introduced in a manner

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<sup>6</sup> Refer to: <http://www.mca.org.mt/sites/default/files/articles/MCA%20Overview%202014.pdf>

that would have the least impact on the operators functioning at the time, due to the manner in which the industry has evolved over the years it is no longer considered to be the most proportionate and efficient mechanism in relation to the use of numbering resources.

A revision of the number usage fee structure is being proposed in order to introduce a more resource-oriented policy vis-à-vis numbering, whilst maintaining the current Government revenue levels. Although the number usage fee structure was revised in 2005 with the scope of catering for planned industry developments, the current model neither reflects nor entices the most efficient use of numbering resources.

The current number usage fee structure mainly consists of a €230 charge for each 10,000 number block allocated to an operator, together with an additional charge of €0.35 for each number utilised or in service. Although at present there are no resource depletion issues in the National Telephony Numbering Plan,<sup>7</sup> the MCA is of the opinion that the present mechanism could result in a potentially inefficient numbering resource allocation. In addition the current charging mechanism does not cover services like Direct Dial In (DDI) in which the assigned number block is managed by the subscriber.

In order to render the current number charging mechanism more efficient and proportionate, the proposed revised number usage fee structure eliminates the charging for individual numbers whilst increasing the annual cost for each 10,000 block assigned prefixed with the '2' (fixed telephony), including those assigned for DDI purposes, '3', '7' (mobile telephony) and '9' (mobile telephony) numbering ranges, irrespective of the type of service being provided, from €230 to €700.

Due to an element of social value it is being proposed that the numbering ranges prefixed with '1' (short codes services) and '8' (free phone services) will not be subject to any charges except for the Carrier Select codes within the '1' range, amounting to €5,000 per annum. In addition, the '5' (premium rates services) numbering range will also not be subject to any charges due to the minimal number of block assignments.

The proposed number usage fee structure is expected to positively affect those operators which implement a resource-efficient numbering plan. As already stated the proposed number usage fees will also apply in the case of DDI number ranges. To this effect operators and businesses will be encouraged to make optimal use of DDI number ranges.

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<sup>7</sup> Refer to the National Numbering Plan - <http://www.mca.org.mt/general/numbering>

#### 4. PROPOSED ADMINISTRATIVE CHARGES AND NUMBER USAGE FEES

In view of the above considerations, the MCA is proposing changes to the administrative charges and number usage fee structures found in the Eight Schedule of the Regulations as follows:

<b>Administrative charges to be paid on an annual basis:</b>		
Fixed Fees paid on an annual basis:		
(a)	Public communications networks	€11,645
(b)	Publicly available telephone services	€11,645
(c)	Television and radio distribution services	€11,645
(d)	Other publicly available electronic communications services	€2,325
(e)	Non-public electronic communications services	€2,325
(f)	Publicly available telephone directories and directory enquiry services	€2,325
(g)	Alternative roaming provider services	€2,325
Provided that an undertaking authorised to provide publicly available telephone services shall be exempt from the payment of administrative charges pertaining to the provision of publicly available telephone directories and directory enquiry services.		
Variable Fees paid on an annual basis:		
Furthermore, undertakings providing any of the services under (b), (c), (d), (e) or (g) above shall also pay to the Authority:		
1.1% of the total gross revenue.		

<b>Usage fees for numbers to be paid on an annual basis:</b>		
(a)	Numbers in the two, three, seven and nine range excluding such numbers as the Minister may, after consultation with or on the advice of the Authority, from time to time establish by order in the Gazette.	€700 per allocated numbering block of 10,000 numbers or proportionate depending on the size of the allocated block
(b)	Carrier select/pre-select codes	€5,000 for each code

The MCA is of the opinion that proposed administrative charges continue to ensure the effective collection of its funding requirements for the regulation of the electronic communications sector with minimum administrative burden on the operators and are imposed in a manner which is fair and equitable. In addition, the proposed number usage fee structure maximises the efficient use of numbering resources.

The MCA is proposing that amendments at law implementing the proposed revised administrative changes will come into effect as from the 1<sup>st</sup> July 2016, and those pertaining to number usage fees will come into effect as from 1<sup>st</sup> January 2017, thereby giving adequate notice to the operators of electronic communications networks and/or services.

## 5. REQUEST FOR COMMENTS AND NEXT STEPS

The MCA would like to seek the views and comments from interested parties on the proposed administrative charging and number usage fees structures put forward in this consultation document.

All views and comments should be submitted in writing in electronic format (such as Microsoft Word or PDF Format). Respondents are required to include their personal or company particulars, correspondence address, contact number and email address in their submissions.

The Authority appreciates that respondents may provide confidential information in their feedback to this consultation document. This information is to be included in a separate annex and should be clearly marked as confidential. Respondents are also requested to state the reasons why the information should be treated as confidential. The Authority will take the necessary steps to protect the confidentiality of all such material as soon as it is received at the MCA offices in accordance with the MCA's confidentiality guidelines and procedures.<sup>8</sup> Respondents are however encouraged to avoid confidential markings wherever possible. For the sake of openness and transparency, the MCA will publish a list of all respondents to this consultation.

The MCA will, after taking into consideration the responses received to this consultation, submit to the Minister responsible for communications the proposed changes to the current administrative charges and number usage fees structures found in the Eighth Schedule of the Regulations.

The consultation period will run until close of business of **27<sup>th</sup> January 2016**.

Comments should be sent to:

**Chief, Policy and Planning**  
**Malta Communications Authority**  
**Valletta Waterfront**  
**Floriana FRN1913**  
**Malta**

Email: [info@mca.org.mt](mailto:info@mca.org.mt)

Tel: +356 21 336840

Fax: +356 21 336846

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<sup>8</sup> In accordance with the MCA's confidentiality guidelines and procedures:

[http://www.mca.org.mt/sites/default/files/articles/confidentialityguidelinesFINAL\\_0.pdf](http://www.mca.org.mt/sites/default/files/articles/confidentialityguidelinesFINAL_0.pdf)