



Broadband QoS Framework – Amendment to the current Framework

Consultation Document

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1. EXECUTIVE SUMMARY

In February 2013 the Malta Communications Authority (hereinafter “the Authority”) published a Decision notice MCA/D/13-1475 titled “Broadband Internet – Quality of Service Framework” (hereinafter “Framework Decision”). This decision, applicable to all broadband services delivered over fixed access technologies established the basis by which Quality of Service (hereinafter “QoS”) is measured and reported in the case of services offered using fixed broadband networks.

In response to recent market developments, the Authority is now publishing for consultation two amendments to the current framework which will:-

- a) Extend the scope of the Framework Decision to all broadband services which are inherently of a fixed nature due to the technology used to deliver them or by virtue of marketing and/or product positioning strategies employed by the providers;
- b) Provide an exemption mechanism in specific circumstances, where either the technology in use, or its setup, might restrict the operator from exerting a level of control on the network performance and hence impacting the QoS experience of the end-user.

The Authority is also proposing a time frame, spread over a period of nine months from the publication of the final decision, for the implementation of the amended framework as follows:

- a) In the case of fixed broadband services which are already offered on the market and which, as a result of these proposed changes, will become subject to the Framework as amended, the transitory periods are proposed as follows:
 - i. A nine-month period, starting from the date of publication of the amended Framework Decision is allowed for the implementation of section 5 titled “Measurement Methodology” and section 6 titled “Network Performance Parameters”, both as stated in the current version of the Decision Framework
 - ii. A four-week period, starting from the date of publication of the amended Framework Decision is allowed for the implementation and publication of section 7 titled “Service Contract Obligations” as stated in the current version of the Decision Framework.
- b) The Authority is proposing that no transitory period is applicable in the case of fixed broadband services, which are offered after the publication of the amended Framework Decision.

2. INTRODUCTION

On the 1st February 2013, the Authority published its Decision notice MCA/D/13-1475, titled “Broadband Internet – Quality of Service Framework”, which Decision had three main objectives:

- a) the identification of a minimum number of parameters considered suitable to characterise a broadband Internet service;
- b) the establishment of the relevant methodology to measure the established QoS parameters and;
- c) the establishment of a set of obligations applicable to Internet Service Providers (hereinafter ‘ISPs’) and which are tailored to establish, with a level of confidence, that the service available to the subscriber is the service contracted.

Following the coming into force of the Framework Decision, the providers of services which are addressed by the decision are, required to:

- a) measure a number of QoS parameters that reflect the QoS experience at the subscriber’s end. This information is compiled in a report and made available to the Authority on a quarterly basis;
- b) publish on their website and other related medium, such as subscribers’ contracts, information related to the access speed referred to as Typical Speed Range (TSR)¹;
- c) measure and monitor a number of network performance indicators as established in the same Framework Decision.

The Authority published a separate consultation document (MCA/C/14-2074)² on January 2015 proposing that those service providers to whom the Framework Decision applies should make available their QoS information to the public. The proposals lay down the requirements related to formatting and other details associated with the publication of QoS performance by the service provider.

The Framework Decision distinguishes between broadband services delivered using fixed access networks, which can be either of a wired or fixed wireless nature and those using mobile access networks. On the basis of this distinction, broadband services delivered over mobile access networks are not subject to the provisions of the Framework Decision. This approach was deemed necessary on the basis of two main points prevalent at the time of writing. The first point related to the fact that broadband services delivered over mobile access networks, were not intended as a direct replacement of fixed broadband services and therefore could not be directly compared. This was reflected in both the commercial and technical offers provided on the market. Furthermore, the products were neither marketed by their providers, nor generally used as a direct substitute to a fixed broadband product. Secondly, a number of technical differences existed between both technologies, which differences impacted the level of performance achievable at the end-user’s end,

¹ The Typical Speed Range is established in Section 7 of the Framework Decision

² <https://www.mca.org.mt/sites/default/files/attachments/consultations/2015/consultationbbqosjan15.pdf>

and the level of control which the technology allows the operator to establish and control the QoS levels.

In recent years, mobile broadband technologies have benefited from significant improvements in their throughput capabilities allowing for services which can be comparable in nature to those delivered over fixed networks. As a result, mobile services are now being provided and marketed in such a manner that these would be in direct competition with fixed services. In the light of these developments, the Authority considers that the continued application of the Framework Decision to only a portion of the market will create a regulatory imbalance and therefore requires adjustment. The Authority, given these circumstances, believes that the current applicable regulatory norms need to be revised so that they are brought in line with the actual realities of the market.

In summary, the main proposals put forward in the Consultation Paper aim to ensure that all broadband products which are either fixed in nature, or which are knowingly and actively marketed as fixed broadband services, or broadband offers which the Authority considers to be an effective substitution to fixed broadband services, should be equally subject to the same regulatory conditions. This will ensure a level playing field between all competing products.

This Consultation also proposes that subject to a specific set of restricted conditions, a service providing Internet access to an end-user may be exempted from the provisions of the amended Framework Decision.

The outcome of this Consultation will be an amended version of Decision MCA/D/13-1475.

3. LEGAL BASIS

The proposals put forward in this Consultation are intended to bring about a number of changes to the Framework Decision. The proposed changes will not impact the substantive content of the Decision, but will serve to extend the scope of the Framework Decision. Therefore, the legal basis in Section 2 of the Framework Decision remains valid.

Regulation 35[1][b][iv][5] of the Electronic Communications Networks and Services (General) Regulations (ECNSR) as reproduced below provides that:

“(1) In accordance with the provisions of article 23 of the Act an undertaking providing connection to a public communications network and, or publicly available electronic communications services shall provide its subscribers with a contract that shall specify in a clear and comprehensive manner at least: ...

(b) details of the services provided, including in particular: ...

*(iv) the service quality levels offered, including, as a minimum **unless determined otherwise by the Authority**, the: ...*

(5) minimum access speeds in case of Internet service, ensuring that these do not differ significantly from the marketed upper levels; and where appropriate, other quality of service parameters as defined by the Authority.” (emphasis is of the Authority)

On the basis of Regulation 39 of ECNSR, the Authority is proposing that undertakings which provide Internet services marketed as fixed broadband services or sold as a substitute to fixed broadband services should also adhere to the QoS parameters and other related obligations established in the Framework Decision. The Authority, in exercising its power to decide on the applicability or otherwise of these obligations, takes due consideration of commercial practices and/or the technology employed. The applicability or otherwise of these obligations depends either on how a service is sold and marketed, or on the technology used to deliver it.

As stated in the Framework Decision, on the basis of Regulation 37 of ECNSR, all service and network providers must publish the QoS information specified in Regulation 39 of ECNSR in at least the following manner:

- a) in writing at all retail outlets so as to be easily accessible to the general public; and
- b) on the website of the network or service provider, in a form and manner, which allows for the easy identification thereof.

Through the proposed amendments to the Framework Decision, the abovementioned transparency and publication obligations will also be applicable in the case of products marketed as a substitute for fixed broadband services.

The Authority is empowered at law to vary the service quality levels stated in Regulation 35[1][b][iv][5] of the ECNSR. In this Consultation, the Authority is proposing the extension of the scope of the application of this Regulation and of the Framework Decision to all services sold and marketed as fixed broadband services, irrespective of the technology used.

The Framework Decision as amended will establish a mechanism by which the QoS information related to any fixed broadband service, however provided, is qualified and quantified.

The Authority in accordance with the discretion afforded to it at law considers that mobile broadband services, however delivered, should not be subject to the regulatory norms as established in the Framework Decision. Furthermore, for the purposes of clarity and to ensure uniformity in dealing with the matters under consideration, the Authority is proposing that given the above reasons, the norms under Regulation 35[1][b][iv][5] should also not apply to mobile broadband services. This is without prejudice to the Authority's right to review its position in this respect in order to meet the requirements of the sector as it evolves from time to time.

4. DISCUSSION

The proposals laid down in this Consultation are intended to ensure that all services offered as fixed broadband services and therefore competing in the same market are treated equally irrespective of the underlying technology. This will ensure a regulatory level playing field, while simultaneously providing subscribers with the necessary service level assurance and information expected from a fixed broadband service offer.

Proposal 1:

All broadband services which are of a fixed nature either due to the technology used to deliver them **or** by virtue of marketing **and/or** product positioning strategies employed by the ISP, should be within the scope of the Framework Decision as amended.

This is further elaborated as follows:

- a) **Technology:** Broadband services, which are provided over fixed broadband infrastructure, whether wired or wireless, shall remain subject to the provisions of the Framework Decision.
- b) **Marketing:** All broadband services, which are actively marketed as fixed broadband services, or which are so designed to serve as a direct replacement to the fixed broadband service shall also be subject to the same regulatory provisions to those which are provided over fixed broadband infrastructure as a result of the proposed amendments to the Framework Decision. For the purposes of this proposed Decision the technology used to deliver the service will become, to a large extent, irrelevant.

Other broadband services, which do not qualify under either of the abovementioned categories, will not be subject to the Framework Decision.

Exemptions

The Authority recognises that in certain circumstances, either the technology in use or its setup, might restrict the operator from exerting a level of control on the network performance and hence impacting the QoS experience of the end-user. For example, the technology in use may be provided over 'unlicensed' spectrum, which is used by other users independent of the service or network provider. Such circumstances may cause the network operator to experience sporadic interference on those segments of the network which rely on that 'unlicensed' spectrum and may in turn hinder the provider from being able to furnish predictable and consistent levels of service. This is in contrast with networks which are delivered over licensed spectrum where the spectrum assignment process ensures, either through assignment mechanisms or through obligations arising from spectrum licenses, that different users of spectrum do not cause harmful interference or interact with the networks deployed using the licensed spectrum. The Authority considers that, in these circumstances, the application of the Framework Decision may not be reasonably justified and is

therefore proposing that exemptions to the applicability of the Framework Decision be granted in specific circumstances.

Proposal 2:

An exemption from the application of the provisions of the Framework Decision may be granted if all the following conditions are met:

- a) The cause for the lack of control or predictability of the QoS on its broadband network is beyond the reasonable control of the provider, and is neither a limitation arising from contractual obligations that the provider has entered into with third parties nor is it the result of the absence of such contractual obligations. The limitations must likewise not result from a lack of network resources on the part of the service provider;
- b) the service is not marketed as a fixed broadband service. In order to meet this condition, the product must neither be marketed as a fixed product, nor be made to look equivalent to, or a replacement of, a fixed broadband service. It should only be marketed as a service which is complimentary to a fixed broadband service; and
- c) the service provider adequately discloses any limitations related to the provision of QoS performance. This disclosure should be made both in the advertising material, as well as in more detail in the relative terms and conditions.

It is being further proposed that such exemption is not assumed automatically but should be requested in writing from the Authority. In its analysis, the Authority will assess the claim presented by the service provider in the light of the conditions listed above.

Expected Outcome

It is expected that existing services marketed as fixed broadband services but which are not provided over a fixed access platform, will now become subject to the provisions of the Framework Decision, unless such services are no longer marketed as such.

5. OTHER CORRECTIONS AND CLARIFICATIONS

The Authority is proposing that as part of the update to the Framework Decision, a revision of sections 4[a][i] and 4[a][ii] thereof be included. The proposed correction will bear no impact on the method suitable to collect data, and the proposed changes to the terminology simply reflect the common understanding of the terms used.

Changes Proposed:

Section 4[a][i] will read as follows:

Data Transmission Speed in the Download Direction shall refer to the Data Transmission Speed achieved by the broadband connection when data is flowing from a machine connected to the Internet, acting as a data transmitter located at point B, in the direction of the subscriber's end of the connection;

Data Transmission Speed in the Upload Direction shall refer to the Data Transmission Speed achieved by a broadband connection when data is flowing from the subscriber's end of the connection towards a machine connected to the Internet and acting as a data receiver at Point B.

6. IMPLEMENTATION TIMEFRAMES

In this section a proposal for the implementation of Framework Decision as amended will be discussed.

In proposing suitable timeframes for the implementation of the proposals, a balance is required to ensure gradual implementation of the Framework Decision by existing players, thus allowing sufficient time for stakeholders to adjust to the new regulatory requirements, as well as the wellbeing of the market, thus ensuring that subscribers have access to all information required to make informed choices.

The Framework Decision may be summarised into three main outcomes as follows:

- a) Section 5 of the Framework Decision sets the requirement for the measurement of a number of QoS performance indicators. This section also specifies the method for the measurement and reporting of the same QoS performance indicator. To date, the reporting is done to the Authority and none of the information is made public. Therefore, the Authority considers that providers of existing services, which as a result of the proposed changes will become subject to Framework should be allowed reasonable time to be able to set up their systems, and provide their reporting to the Authority;
- b) Section 6 of the Framework Decision sets the requirement for the setting up and measurement of Network Performance indicators which are designed to ensure that the networks are capable of delivering the services promised. However, these parameters are only required by the Authority on specific instances as listed in the same Framework Decision;
- c) Section 7 of the Framework Decision also establishes the Typical Speed Range (TSR), and also sets the requirement for its publication. This requirement has direct relevance to the subscriber since it is currently the only parameter which is published and intended to inform the subscriber on the expected speed performance proposed by the ISP. The same section also lays out the two mechanisms which are applicable to existing products on the market and new products on the market.

Proposal 3:

In the case of fixed broadband services which are already offered on the market and are now also required to implement the Framework, the Authority proposes that:

- a) A transitory period of 9 months from the date of publication of the Framework Decision as amended allows for the implementation of the provisions as laid down in sections 5 and 6 of the Framework Decision in a timely manner. This proposal is based on the considerations listed below:
 - a. The same period was granted in the Framework Decision, as published; requirements laid down in sections 5 and 6 of the Framework Decision are considered to be the most elaborate to implement;
 - b. The outcome of these requirements are either not public, until such time when a decision requiring the publication of QoS reporting is published by the Authority or not intended for public consumption.
- b) A transitory period to publish the TSR should not extend longer than 4 weeks from the publication of the Decision. This proposal is based on the considerations listed below:
 - a) The outcome of this requirement is immediately available and relevant to the end user;
 - b) A number of products on the market are already required to provide a TSR;
 - c) A mechanism already caters for the publication of a TSR which is based on estimates, rather than actual figures;
 - d) All providers proposing a service on the market should be in a position to know the expected performance of the product.

In the case of fixed broadband services which will be offered after the publication of the final Decision the Authority proposes that no transitory period to implement the framework should apply. This proposal is based on the fact that such operator would be aware of the requirements associated with setting up and offering a broadband service during the planning stage of the service and therefore no transitory periods shall be required.

7. SUBMISSION OF RESPONSES

In accordance with its obligations under Article 4A of the Malta Communications Authority Act [Cap. 418 of the Laws of Malta], the Authority welcomes written comments and representations from interested parties and stakeholders during the national consultation period, which shall run from the 11th July 2016 to the 8th August 2016.

The Authority also notes that there may be a linkage between this Consultation, MCA/C/16-2614, and consultation MCA/C/14-2074. In view of this linkage, and given further that the consultation period of MCA/C/14/2074 is already closed, the Authority is accepting feedback, specifically, on any impact that the proposals laid down in this consultation may have on the proposals put forward in MCA/C/14-2074.

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.

For the sake of openness and transparency, the MCA will publish a list of all respondents to this Consultation on its website, within three days following the deadline for responses. The Authority will take the necessary steps to protect the confidentiality of all such material as soon as it is received, in accordance with the MCA's confidentiality guidelines and procedures³. Respondents are however encouraged to avoid confidential markings wherever possible.

All responses should be submitted to the Authority, in writing by no later than 5:00PM CET on the 8th August 2016 and addressed to:

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

³ http://www.mca.org.mt/sites/default/files/articles/confidentialityguidelinesFINAL_0.pdf