

A FRAMEWORK FOR SPECIAL TARIFF SERVICES

Consultation

December 2005

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1 INTRODUCTION

The market for special tariff services in Malta is relatively undeveloped compared to other EU countries. The main services are freephone and premium rate services.

Freephone services are services where the caller pays nothing and the called party pays for the call.

Premium rate number services are services where the caller pays a relatively high rate for the call and the operator passes a proportion of the payment to the called party.

The market for these services in Malta is relatively undeveloped compared to other EU countries. The majority of such services are currently available only "on-net", ie where the caller and the called party are subscribers of the same network. These services are not interconnected at present and number portability is not available.

Freephone services are supported mostly on the Maltacom fixed network and include a wide variety of service types.

The majority of premium rate services at present are:

- Phone-ins associated with television and radio programmes
- Voting by telephone
- Voting by SMS

These services have generally run without causing problems to consumers, but in some countries there is a high level of consumer complaints relating to premium rate services, and there have been cases of widespread fraudulent activity to the detriment of consumers and operators. For example the level of complaints in the UK has peaked at 10 000 per month which, if taken per capita, would equate to 66 per month in Malta.

As competition develops in the Maltese market, the MCA expects that the new entrants may express strong interest in the provision of special tariff services because new entrants have done so in other countries. The MCA has already received enquiries about the availability of numbers for premium rate services from several potential providers of such services.

The MCA is therefore consulting on the framework that it should establish for special tariff services, and to what extent it should allow premium rate services to develop.

The main issues are:

- How should numbering be organised for freephone and premium rate services?
- Should interconnection be required between similar networks, eg between different fixed networks or between different mobile networks, or between dissimilar networks, eg between mobile and fixed networks? Should on-net only services be allowed to continue?
- What premium rate services should be allowed and what consumer protection measures are required?

The objective is to strike a sensible balance that allows the growth of services that add value whilst protecting the consumer from abuses.

The MCA invites comments not only from telecommunications operators but also from content service providers, individual consumers and consumer interest groups on the issues presented and the draft framework that is proposed.

2 LEGISLATIVE BACKGROUND

2.1 Maltese legislation

Regulation 21 of the Electronic Communications Networks and Services (General)

Regulations, 2004 (Cap 399) gives the MCA the power to impose on undertaking with significant market power the obligation to meet reasonable requests for access to, and use of, specific network elements and associated facilities.

The Regulations do not contain specific provision on freephone and premium rate services.

The MCA Decision on Number Portability of March 2005 requires operators to provide number portability for special tariff numbers within one year.

2.2 EU legislation

Directive 2002/19/EC on access to, and interconnection of, electronic communications networks and associated facilities (Access Directive) requires operators of public communications networks to negotiate interconnection with each other for the purpose of providing publicly available electronic communications services (Article 4). National Regulatory Authorities are empowered under Article 12 to impose obligations upon undertakings enjoying significant market power to meet reasonable requests for access to, and use of, specific network elements and associated facilities.

Various recitals of Directive 2002/22/EC on universal service and users' rights relating to electronic communications networks and services (Universal Service Directive) also refer to freephone and premium rate services as follows:

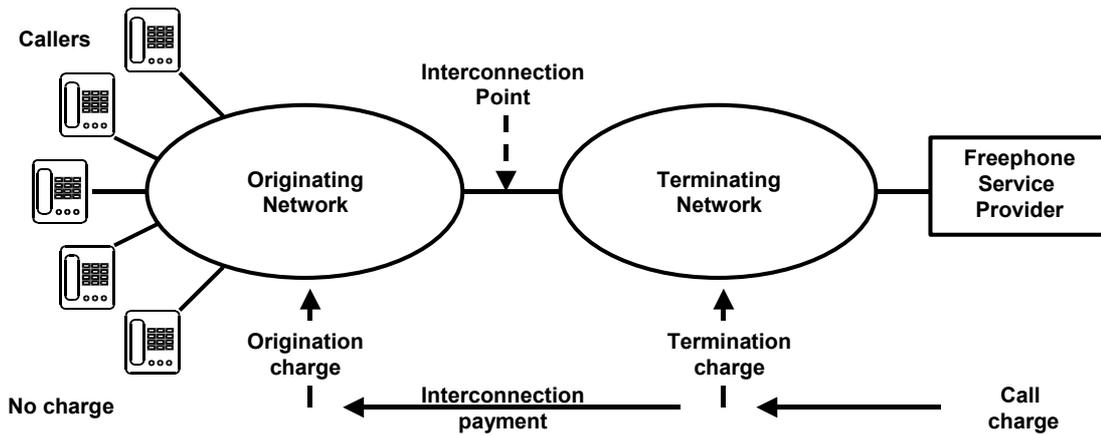
Whereas (15) Member States should monitor the situation of consumers with respect to their use of publicly available telephone services and in particular with respect to affordability. The affordability of telephone service is related to the information which users receive regarding telephone usage expenses as well as the relative cost of telephone usage compared to other services, and is also related to their ability to control expenditure. Affordability therefore means giving power to consumers through obligations imposed on undertakings designated as having universal service obligations. These obligations include a specified level of itemised billing, the possibility for consumers selectively to block certain calls (such as high-priced calls to premium services), the possibility for consumers to control expenditure via pre-payment means and the possibility for consumers to offset up-front connection fees. Such measures may need to be reviewed and changed in the light of market developments. Current conditions do not warrant a requirement for operators with universal service obligations to alert subscribers where a predetermined limit of expenditure is exceeded or an abnormal calling pattern occurs. Review of the relevant legislative provisions in future should consider whether there is a possible need to alert subscribers for these reasons.

Whereas (16) Except in cases of persistent late payment or non-payment of bills, consumers should be protected from immediate disconnection from the network on the grounds of an unpaid bill and, particularly in the case of disputes over high bills for premium rate services, should continue to have access to essential telephone services pending resolution of the dispute. Member States may decide that such access may continue to be provided only if the subscriber continues to pay line rental charges.

Whereas (38) Access by end-users to all numbering resources in the Community is a vital pre-condition for a single market. It should include freephone, premium rate, and other non-geographic numbers, except where the called subscriber has chosen, for commercial reasons, to limit access from certain geographical areas. Tariffs charged to parties calling from outside the Member State concerned need not be the same as for those parties calling from inside that Member State.

3 CHARGING AND INTERCONNECTION ARRANGEMENTS

Figure 1 shows a basic reference model for freephone services.



Callers do not pay the originating network for the call. The freephone service provider (FSP) pays the terminating network and the terminating network pays the originating network.

Figure 2 shows a basic reference model for premium rate services.

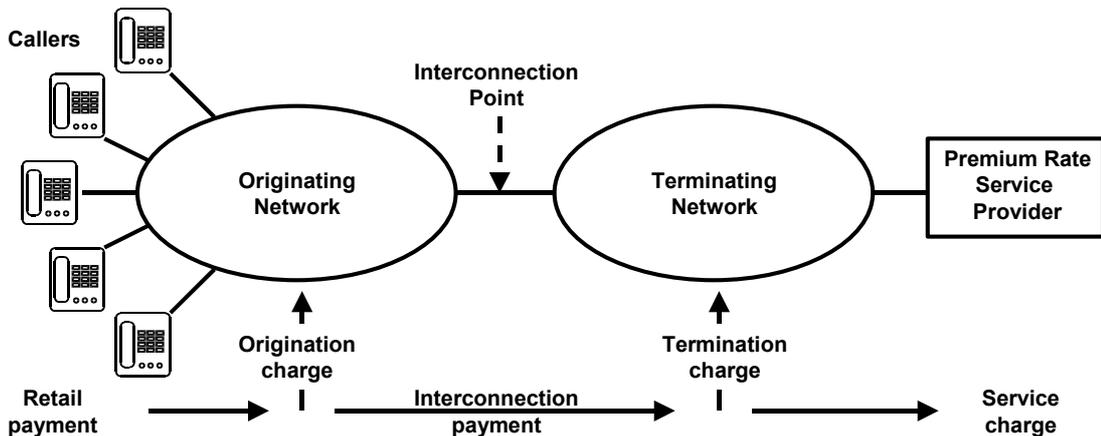


Figure 2 shows a basic reference model

Callers pay the originating network for price of the premium service call. The originating network pays normally the majority of the money it receives to the terminating network who passes on a share to the PRSP.

Most callers use the network of a dominant operator to originate the calls and the origination charge is commonly regulated to be either:

- Cost based with a mark-up for profits
- Determined on a revenue sharing basis.

Calls to premium rate numbers may be charged on a duration basis or a flat rate, or a combination of the two.

Call originating to freephone numbers is similar to call origination for carrier selection where the origination charge is paid by the interconnected operator. Call origination to premium rate numbers is different because the originating network is collecting a high tariff rate from the subscriber and passing the majority on to the terminating operator. This means that the originating operator carries a potential bad debt risk and a consumer complaint risk if there are abuses by the premium rate service provider.

4 PREMIUM RATE SERVICE TYPES

Premium rate services are used with both normal calls and SMS messages. Premium rate services at present are limited to the following:

- Phone-ins associated with television and radio programmes
- Voting by telephone
- Voting by SMS
- Gifts to charity
- Ring tones
- Information services accessed by telephone
- Information services accessed by SMS

In other countries, premium rate calls are also used for:

- Recorded Information
- Live professional advice (eg legal advice, health advice)
- Complaint lines¹ and customer service / advice lines (eg software support)
- Games and competitions
- Gambling
- Services that may be needed by less informed and vulnerable people, eg loans to people with a poor credit record, where the aim is to take the revenue from the call rather than to provide the service
- Live chat rooms
- One-one adult chats
- Donations to charity, especially with celebrities taking the live calls
- The first stage of two stage dialling for low price international calls
- Dial-up Internet access
- Services of a sexual nature.

SMS services are also used for:

- Games and competitions
- Payments for use of local WiFi access
- Purchase of products and services eg drinks from drink dispensers and car parking

¹ A well know consumer electronics company used premium rate lines for complaints

With the introduction of live video capabilities on some third generation mobile phones, access to live adult video material is becoming a new application and experiencing fairly rapid growth.

5 CONSUMER PROBLEMS WITH PREMIUM RATE SERVICES

5.1 High and unexpected bills

Premium rate services can lead to many problems for consumers that result in an unexpectedly high bill. There are five possible causes:

- The subscriber was unaware of the tariff that applied to the call
- The subscriber was unaware that they can have premium rate calls barred or thought that a call bar applied when it did not
- The call was made by another individual and was not authorised by the subscriber (the caller may have been unaware of the tariff or may have deliberately stolen the call)
- The call was made automatically by a computer activated by a virus without the subscriber being aware of what was happening
- The caller fails to clear the call to a recorded message and the call is not forcibly released.

Consumers in Malta are well protected against these problems at present because:

- Many services involve a fixed charge
- The nature of the services limits the likelihood of unauthorised calls
- The nature of the services are non-addictive and unlikely to involve long holding times
- There is no interconnection and so operators are able to handle any complaints themselves and there is no scope for fraud
- Premium rate numbers are not used for dial-up internet access

5.2 Content issues

Content is regulated or subject to restrictions in some countries. Example of illegal content or illegal activities that have used premium rate services are:

- Gambling
- Prostitution
- Extreme pornography
- Abuse of chat rooms to "groom" minors by adults who often give false descriptions of themselves and try to set up meetings with minors

These abuses have led to various controls such as regulatory requirements for the recording of chat room conversations and live monitoring of conversations with any offenders being disconnected.

Calls can have their durations extended by the caller being kept on hold or by the live conversation being deliberately inefficient so that the call charge is maximised.

5.3 Consumer protection measures

Consumer protection measures differ widely from country to country. Annex 1 describes the various consumer protection measures that are used in different countries. Most countries use a combination of measures. The approach proposed for Malta uses a selection of these measures.

6 ABUSES OF PREMIUM RATE NUMBERS

6.1 Abuses by Premium Rate Service Providers

The following is a list of the main abuses detected so far in other countries:

- Inadequate warning of the tariff. This may be a failure to provide warning required by regulation, or guidelines or licence conditions. Mobile operators are starting to use premium rate SMS to pay for temporary use of WiFi Internet access and may state only that "WiFi roaming charges apply". This is inadequate information as such charges may be very high compared to the charge for a user with a local subscription.
- Call back messages. Messages may be left requesting a call back. The number to call back may be given and a tariff warning omitted, or with mobiles the user may call back without seeing the number being called. This approach is taken frequently for announcing that someone has won a prize or a holiday and they must call a certain number quickly to claim their prize. The number is a premium rate number.
- Services without any normal rate complaint line. The premium rate line may be used for the sale of services or products and that are faulty and the caller may have no way to make a complaint and seek a refund or the only way to do so is to call another premium rate number. Problems have been detected with the sale of ring tones where there is an incompatibility between the ring tone and the handset and further downloads are required and charged for without the user having any means to demand a refund.
- Unreasonable extension of the length of calls. The PRSB may organise the answering of the call so that the call duration is maximised by slow answering, putting callers on hold and making conversations unnecessarily long.

6.2 Fraudulent abuses on premium rate numbers

6.2.1 Billing cycle abuse

Premium rate services have attracted a number of frauds that exploit the interconnection of premium rate services. The basic scheme is that a fraudster contracts with a terminating operator to provide a premium rate service and then separately subscribes for several lines with an originating

operator, normally not the same operator as the terminating operator. The subscriber lines are often at rented premises.

The fraudster then runs autodiallers on the subscriber lines and calls the premium rate numbers continually running up very large bills. The interconnection payments are made monthly and the fraudulent amounts are small in the overall interconnection bills between the operators. The terminating operator makes monthly payments to the PRSP. The subscriber's bills may however be 3-monthly and the fraudster continues until a bill arrives or starts to be investigated for non-payment. The fraudster then closes the service and disappears leaving the bills unpaid at the expense of the originating operator who probably has no redress against the terminating operator.

6.2.2 Autodialling viruses

This is a variant of the billing cycle abuse that uses the computers of existing subscribers as the callers. The fraudster contracts for a premium rate service and then distributes viruses through email or web sites that become resident in the computers of legitimate subscribers. If the subscribers have a modem connected to their computer for Internet access, the viruses control the modem to dial the premium rate numbers often in the quiet hours of the night or during the working day when they may be less noticeable. This runs up high bills that are the responsibility of legitimate subscribers and may not be detected for up to three months. After a period, the PRSP will disappear and repeat the fraud from a new location with a different number and a different identity.

6.2.3 Viruses affecting mobiles

This seems to be a new and growing area of fraud. Receipt of the viruses may be associated with text or voicemail messages announcing that you have won a prize or there is a special offer available if you call back a special number or just press '9' to reply and confirm details.

6.3 The significance of interconnection

Interconnection, which is an essential part of liberalisation and competition at least for normal calls, is the cause of much of the difficulty in controlling abuses. Generous interconnection terms can make the provision of premium rate services highly attractive to new entrants, who do not need a substantial network to provide such services. The established operators are likely to be serving most of the callers and have the problems of handling the complaints about unexpected bills and abuses whereas the terminating operator receives the revenue and avoids the problems. Furthermore the originating operator

does not have any opportunity for introducing controls over the PRSP such as withholding payments for longer than the retail billing cycle or disconnecting the PRSP as soon as an abuse is discovered. The net result is a situation where no party has overall responsibility and the originating operator has not retained enough money to cover any refunds to callers. This means that there is a need for much more pro-active regulation with greater resources needed for independent complaint handling.

Theoretically the benefit of interconnection and in some cases number portability is that it promotes competition in the hosting of PRSPs. Without it, the providers of PRSPs would need to establish separate connections to each originating operator with a substantial number of subscribers. This would increase their costs, but not too much in those countries where there are only a small number of operators.

7 PROPOSED FRAMEWORK FOR MALTA

7.1 Freephone services

Freephone services have a valuable role in the market. The two main motivations for offering a freephone number are:

- Removing the charge barrier for a potential caller
- Enabling calls to be made by callers who may not have the means to pay for the call in the circumstances when they need to make the call

The first motivation is expected to become less common if fixed subscribers migrate to flat rate tariffs so that the marginal price of making an extra call becomes zero.

In line with the discussion in the EU's COCOM committee, the MCA considers that freephone numbers should be reachable by all subscribers in Malta and by international callers and therefore plans to require interconnection of all freephone numbers that use the 800 numbering range. Operators who run on-net only freephone numbers including short codes in other number ranges would be free to continue these services without having to interconnect them but should not allocate further on-net only freephone numbers. All new freephone numbers should be in the 800 numbering range

In terms of access to freephone numbers from mobile subscribers, the MCA considers that it would be too disruptive to the existing freephone providers if calls from mobile subscribers were required to be free because it would lead to a substantial increase in call tariffs. The MCA therefore proposes that mobile operators should be allowed to charge callers for the mobile part of the call but should always play an announcement, free of charge at the start of the call, to say that the call is being charged. Overseas operators also charge for calls to freephone numbers.

The operators may at any time introduce a freephone service in which calls from mobile subscribers are also free.

Q1: Do you agree with the overall approach proposed for freephone connectivity? If not, what changes would you suggest?

In terms of charging for call origination, the MCA has taken account of the various discussions in other countries over cost-based charging or revenue sharing charging for call origination and has concluded that there is no economically perfect solution.. It also considers that it is in the interests of all operators to reach a pragmatic solution as soon as possible so that protracted disputes are avoided and new entrants can plan their services within a stable framework. The MCA therefore proposes that originating fixed operators should be allowed to choose any of the following charges for originating calls:

- The same charge as they are charged by the operator that they are interconnecting to for an equivalent service, or
- The charge that they charge for call origination, or
- A charge agreed by negotiation.

Where calls are originated by mobile subscribers and terminated on fixed networks with the caller paying for the mobile part of the call, the MCA would expect there to be no interconnection charges. The mobile originating operator would charge their subscriber for their part of the call and the fixed terminating operator would charge the freephone service provider for their part of the call.

Q2: Do you agree with the approach proposed for freephone interconnection charges? If not, what changes would you suggest?

7.2 Premium rate services

Premium rate services offer a micro-payment system for information, services and products. This function is of value to users especially for occasional calls where alternative payment arrangements are less practicable - for repeated calls pre-payment or subscription using a credit card is quite practicable. However the existence of high tariff calls introduces several potentially severe problems including:

- Unauthorised calls
- High unexpected bills
- Fraud
- General abuse of the incentive to make calls as long as possible

The MCA therefore approaches premium rate services with considerable caution and proposes to give priority to effective consumer protection whilst allowing a modest expansion of the market. In particular the MCA wants to avoid a situation that leads to a high volume of complaints that it would not have the resources to handle and one where a rise in consumer problems is blamed on liberalisation. To this end, the MCA proposes:

- to require and empower operators to exercise control over the nature of the services offered
- to require operators to protect consumers by offering effective call barring free of charge and by requiring opt-in in some circumstances
- to require operators to protect consumers by applying a menu of limits on calls and total spend per month
- not to permit types of service that have been the subject of most abuse and fraud in other countries
- to empower the originating operators much more than is the case in other countries so that they can handle complaints effectively including the provision of refunds.

Q3: Do you agree with the overall approach proposed for premium rate services? If not, what changes would you suggest?

7.2.1 Interconnection and call charges

The question of whether to require interconnection for premium rate services is more difficult than for freephone services because the originating operator carries a potential bad debt risk and a consumer complaint risk if there are abuses by the premium rate service provider, and yet has not direct contract with or control over the premium rate service provider.

The relative absence of problems with premium rate services to date is due in part to the absence of interconnection.

Without interconnection, premium rate service providers would have to establish services with each operator separately to achieve full coverage. It would be difficult for new entrants to offer to host premium rate services because they would be unlikely to reach an adequate number of potential callers to justify the costs involved at least while their subscriber base is low. In consequence a proportion of the market would not be open to them in practice. Furthermore, if PRSPs connect only to the networks with the most subscribers and there is no requirement for interconnection, the unavailability of connectivity may deter other subscribers from subscribing on the smaller networks.

With interconnection, new entrants are likely to seek to grow the premium rate industry quickly because it will give them customers with a high call volume. This could be characterised as cream skimming and the framework needs to provide an appropriate degree of balance.

The MCA therefore proposes to require interconnection but with important safeguards for the originating operators and with a level of profit sharing that will recompense originating operators for the consumer complaints that they may have to handle and maintain a reasonable balance within the industry. The requirement for interconnection when imposed on operators enjoying an SMP status, ie the requirement to provide calls to premium rate services, will apply to operators who serve numbers in the 02, 79 and 99 ranges². Operators who serve numbers in the 03 range will be allowed to choose whether or not to provide calls to premium rate services, but if they do provide them, they will have to provide the same consumer protections. All operators would be required to itemise the subscriber's bill for premium rate calls.

² If other ranges are allocated new mobile operators they will also be included.

Q4: Do you agree that the MCA should require interconnection for premium rate services, or do you think that the disadvantages in terms of risks to consumers outweigh the benefits?

The framework needs to provide a reasonable balance between tariff transparency for subscribers and competition in the separate areas of

- call origination
- call termination and
- premium rate service provision.

The MCA wishes to avoid the complexity that has developed in some countries such as the UK and proposes to take the following approach:

- The MCA considers that tariff transparency and consistency for the price to call a given service is of greater importance than competition in call origination. It doubts whether consumers will exercise choice over the originating operator for an amount that is a small proportion of the total cost of the call. Therefore the MCA proposes to set a number of price points including both price per minute and price per call or SMS and to require originating operators to charge the price chosen by the premium rate service provider. The same price points will apply to both fixed and mobile originating operators.
- The MCA proposes to promote competition between PSRPs by allowing them to choose the price point for their service from the range specified.
- In all cases where carrier selection or pre-selection is utilised to make calls to premium rate services, carrier selection operators shall meet the requirements on originating operators.
- In view of the absence in price competition for call origination, the MCA proposes to fix the proportion of the call charge that the originating operator may retain. The details are given below.

The MCA proposes to promote competition in call termination by allowing terminating operators to compete in terms of the proportion of their revenue that they pass to the PRSP.

- In order to keep retail and interconnection price structures aligned and to prevent arbitrage, the MCA proposes to require the interconnection charging type (ie per minute or per call) to match the charging type of the retail price point.

Annex 2 gives the proposed price points and interconnection charges. Although the time dependent prices and charges are shown as a per minute charge, billing for both retail and interconnection should be per second.

As for freephone, the MCA considers that it is in the interests of all operators to reach a pragmatic solution as soon as possible over interconnection charges so that protracted disputes are avoided and new entrants can plan their services within a stable framework. The MCA therefore proposes that originating operators should be allowed to choose either:

- The interconnection rates specified in Annex 2, or
- Cost based interconnection rates, or
- A charge agreed by negotiation.

The rates specified in Annex 2 contain limits to reflect to some extent the structure of the costs of the operators.

The share for the originating operator is a relatively high figure and takes account of the consumer complaints that the originating operator may receive, the charging limits that they will have to apply and the increased complexity in billing and administration (see later).

The interconnection charges will be reviewed periodically by the MCA.

In order to prevent cross subsidies from call origination to call termination by operators with significant market power in call origination for call to premium rate services, the MCA has set a minimum threshold for the charges to be retained by terminating operators who have significant market power. Where calls are handled on-net by such operators, they would be required to retain at least the sum of the call origination and the call termination charge.

It should be noted that mobile operators may act as terminating operators although they are required to use numbering in the range for premium rate services. The arrangements for fixed and mobile terminating operators are the same because the mobile access systems would not normally be used.

Q5: Do you agree with the overall approach proposed for interconnection of premium rate services? Are the arrangements for charging and interconnection payments fair and reasonable, and also practicable? If not, what changes would you suggest?

7.2.2 Complaint handling

The MCA proposes to make originating operators primarily responsible for handling complaints because they are the operator that the subscriber pays for the call. To avoid the problem of the originating operator not being in a position to give refunds or to block calls to numbers that are the source of many consumer complaints, the MCA proposes to allow originating operators to:

- Delay interconnection payments for a period that is one month longer than their retail billing cycle
- Deduct from interconnection payments any sums that they have refunded to subscribers through their complaints procedure
- Block calls to numbers that are the subject of many consumer complaints but to notify the MCA and the terminating operator immediately when they do this.

The MCA also proposes that the established operators should cooperate together to:

- adopt a common complaints policy consisting of guidance to their complaints department staff
- make this policy available to the MCA and to other operators and
- adopt any further provisions that the MCA may from time to time require.

The MCA may require new entrants also to adopt the same policy.

MCA proposes that the complaints policy should include the resolution of complaints within one month and the provision of a freephone complaint line where the holding time to speak to an attendant does not exceed two minutes on average in the busy hour. Existing customer care numbers could be used for this purpose.

MCA proposes that the complaints policy should include:

- the right to a refund in the event of unauthorised calls on the first occasion when such calls are detected
- the right to withhold payment of itemised premium rate call charges while a dispute is resolved without their other telecommunications services being affected.

MCA proposes to require the originating operators to provide a freephone number through which a subscriber may find the number of the complaints department of the premium rate service provider.

Because of the delayed interconnection payments, the MCA proposes to allow terminating operators to delay payments to the premium rate service providers by corresponding times. This is necessary to prevent the opportunity for fraud. Because payments may be delayed, the MCA considers that it is not necessary to require bonds from premium rate service providers.

Q6: Do you agree with the approach to complaint handling? If not, what changes would you suggest?

7.2.3 Permitted services

The MCA proposes to allow any service with the exception of the following:

- Internet dial-up access
- Live one-to-one conversations that are charged on a per minute basis.

Internet dial-up access is excluded because it is open to dialler scam abuses and because broadband access and other forms of dial-up access are readily available and widely used in Malta and so its unavailability should not disadvantage consumers.

Live one-to-one conversations that are charged on a per minute basis are excluded as these services are most likely to contain content that is or questionable legality and because they are capable of generating long calls and hence high bills. Services that provide lengthy valuable information and advice can readily use other forms of billing and normal types of numbers.

Live one-to-one conversations and Internet dial-up access are allowed if charged on a fixed price call basis with an upper limit of Lm1.

In addition, the MCA proposes to require all operators to bar the sending of a premium rate number as a CLI which could be used inadvertently by a caller when returning a call. This should prevent many of the scams associated with fictitious competition prizes.

These are the areas that have seen the greatest level of abuse in other countries.

There is also an issue with gambling, adult services and other services considered to be harmful to minors. If some of these services are to be subject to special restrictions, then issues arise over how the services should be assessed as to whether or not they fall into these categories. The possible options include requiring opt-in by the subscriber, possibly with evidence of age.

Q7: What approach do you think should be taken towards gambling and adult services? Should special measures be taken to protect minors? Should they be made subject to opt-in by the subscriber?

In addition, the MCA proposes that the operators should provide a degree of self-policing over the types of service that they offer. Each premium rate service provider should be required to provide a short description of each service that they provide to their chosen terminating operator. This description should be circulated by email to all other operators and they should have a one week period to raise an objection on public interest grounds. If an objection is raised the operators should consult together to resolve it. If the objection is supported by two unrelated operators then the service shall not be introduced. If an operator continues to have an objection but is not supported by other operators, it may refer the matter to the MCA who may require the withdrawal of the service. Operators may agree a code that identifies categories of service that can be introduced without applying this process because the nature of the service is clearly unobjectionable.

Some countries do not allow services to be delivered to entities located outside their jurisdiction. The MCA has considered applying this constraint but considers that it is not necessary because the framework in Malta empowers the originating operator much more than is the case in other countries.

Q8: Do you agree with the self-policing approach of operators exchanging information and "vetting" new services? Is it needed? Is it practicable? If not, what changes would you suggest?

7.2.4 Separation of sub-ranges

Different sub-ranges of numbers can be allocated to different types of service or to different price bands.

- The use of different sub-ranges for different prices would improve tariff transparency for users.
- The use of different sub-ranges for different service types would enable call barring or opt-in to be applied selectively to different sub-ranges.

For example the following different service categories could be distinguished:

- Business and factual information services
- Other information services including information of an entertainment character
- Games, competitions and phone-ins
- Product sales and related services, ie the sale of products and services that are supplied by means other than the call to the premium rate number. This would include ring tones.
- Donations to charity
- Adult services
- Gambling

A maximum of ten service categories or price levels could be distinguished by values of a specific digit.

Theoretically both service categories and price could be distinguished using different digits but the result might be too complex.

Since the MCA is proposing to take other measures over tariff transparency, it takes a preliminary view that it would be preferable to distinguish service types only. This would also allow a greater range of prices to be used.

Q9: Do you think that sub-ranges should be used to distinguish service types or price or both? Are the categories of service type appropriate? If not, what changes would you suggest? Can the operators implement barring by service type based on values of the 4th or 5th digits? If not, how much would it cost to implement it?

7.2.5 Protection against unexpected high bills and unauthorised use

The most effective protection against unexpected high bills and unauthorised use is to require opt-in. However part of the benefit of premium rate services is the ability to use a service in unexpected circumstances when there is not time for the subscriber to go through an opt-in procedure. For this reason, the MCA proposes to allow calls to be made without opt-in up to a certain limit. This will protect against unexpected very high bills.

In order to protect against unauthorised calls, the MCA proposes to require all originating operators, fixed and mobile, to offer call barring free of charge that applies to all calls from a given line or mobile irrespective of whether the caller invokes carrier selection. The alternative would be to require any carrier selection operator that offers calls to premium rate services to offer call barring, but many consumers would assume that if they invoke call barring with their access operator then this barring will apply to all calls including carrier selection calls and will not think to invoke call barring from carrier selection operators. If this proposal is not practicable, then the MCA proposes to require all carrier selection operators to apply opt-in for all calls to premium rate numbers. The call barring status and any opt-in status should be shown on all subscribers' bills.

If the MCA allocates different sub-ranges of numbers to different types of services (see above), this would permit selective call barring for each sub-range so that for example subscribers could bar calls to adult and entertainment services but not to business services. The implementation of selective call barring may be difficult for operators and not essential given the other protections proposed, and therefore the MCA is not proposing to require selective call barring at present.

In order to limit the scope for unexpected high bills, the following limits could be considered:

- The total payable for calls to premium rate numbers in any month should be limited by the originating operator to Lm12 unless the subscriber has opted-in to higher sums. The opt-in process should include the checking of the subscriber's ID and the recording of their signature. Originating operators who do not wish to implement opt-in would be required to apply the Lm12 limit in all circumstances. The Lm12 is chosen to give room for charitable donations of Lm10.

- Irrespective of opt-in, all calls that may result in a charge of Lm1 or more should contain a price warning played free of charge at the start of the call. (This means all fixed price calls of Lm1 or more and all per minute price calls where the maximum duration times the price rate is Lm1 or more). The price warning would probably be played by the service provider but the originating operator would be responsible for the consumer protection i.e it would not be allowed to charge if the warning is missing.
- Irrespective of opt-in, the originating operator would not be allowed to charge Lm10 or more for a single call or SMS.
- SMS based payments, either:
 - Payments in the range Lm5 to Lm10 should be limited to donations to charity, or
 - Payments and donations should be less than Lm5 unless an SMS reply is sent within five minutes advising the client of a cooling-off period and a free SMS number than can be used to cancel the transaction.
- All advertisements or publications that publicise premium rate numbers should include the price in print no smaller than the generality of other print in the advertisement or publication.
- In addition the MCA would like to seek views on whether all originating operators should be required to provide a general consumer protection measure for all post-pay calls whereby the subscriber is given a warning whenever their spend on calls in one month exceeds twice the level in the previous month. The originating operator could give this warning by a recorded message to be played on all calls over the limit, or a phone call or letter to the subscriber. This measure would protect against high bills due to overseas and other calls as well as calls to premium rate numbers. If this is not practicable then the MCA invites originating operators to propose alternative general consumer protection measures against unexpected high bills.

Q10: Do you have any comments on the proposed measures? Are they practicable for operators? Do they provide adequate protection? If not, what changes would you suggest?

7.2.6 Requirements on terminating operators premium service providers

The MCA proposes that all terminating operators should:

- check the identity of a responsible director or officer of the premium rate service provider and retain a copy of their ID card, or their passport in the case of a foreign national
- obtain a description of the service to be offered in writing or electronic form and circulate it to other operators
- obtain information on the freephone number for complaints and circulate it to originating operators so that they may maintain an up-to-date directory of complaint numbers.

7.2.7 Requirements on premium rate service providers

The MCA proposes that all premium rate service providers should:

- provide a description of their service
- provide in-call price warnings as specified above
- where a product or service is provided separately from the call or SMS to the premium rate number, provide a freephone number for complaints relating to the service or the product supplied, and maintain service on that freephone number during normal office hours with a reasonable grade of service or call waiting time.

Q11: Are the proposed requirements on terminating operators and premium rate service providers reasonable and practicable? If not, what changes would you suggest?

7.3 Summary of roles and responsibilities for premium rate services

The responsibilities proposed for each party are listed in the following table.

Originating operator	Terminating operator	Premium rate service provider
<ul style="list-style-type: none"> • Free itemised billing • Free call barring applicable also to 	<ul style="list-style-type: none"> • Adjustment of charges for free price warnings 	<ul style="list-style-type: none"> • Provide service description • Provide in call price

<p>carrier selection</p> <ul style="list-style-type: none"> • Call barring by service type (optional) • Show barring status on bills • Application of retail price points • Application of retail price limits • Opt-in for bills over Lm12 per month • Warning if call spend doubles • Adjustment of charges for free price warnings • Vetting of new services • Complaint handling including freephone complaints line • Freephone number to find complaints line of PRSP • Bar use of premium rate numbers as CLIs • Development of complaints policy • Refunds • Delaying i/c payments to cover refunds • Deduction of refunds from i/c payments 	<ul style="list-style-type: none"> • Check and record identity of PRSP • Obtain and circulate service description before launch • Obtain and circulate freephone numbers for complaints 	<p>warnings</p> <ul style="list-style-type: none"> • Provide freephone number for complaints on services or products • Specify price in all advertisements
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7.4 Summary of the arrangements from the perspective of the consumer

The proposed arrangements may appear complex but are much less complex than the arrangements in some other countries. The following statements summarise how the proposed arrangements will appear to a subscriber:

- The subscriber will be able to access new premium rate services from any operator who has allocated them a number in the ranges 2, 79 or 99 (ie from any "full service" fixed or mobile operator). They will be able to use carrier selection operators only if such operators have chosen to provide access to premium rate services.
- The subscriber will be able to spend up to Lm12 per month on calls to premium rate services but will have to sign forms and provide identity to be able to spend more than Lm12 per month, but their originating operator is not required to offer spends of more than Lm12 per month. The subscriber will never be charged more than Lm12 per month unless they have signed an opt-in agreement.
- The maximum price per call or SMS will be limited to Lm10.
- The caller will receive a verbal price warning free of charge at the start of all calls that may cost Lm1 or more
- The subscriber will be able to ask their originating operator to bar all calls to premium rate and may be able to obtain selective call barring for specific types of calls
- In the event of an unexpected high bill the subscriber will have:
 - a right to a refund on the first occurrence
 - a right to withhold payment of itemised premium rate call charges while a dispute is resolved without their other telecommunications services being affected
- The subscriber will have access to a freephone complaints line from the originating operator and the originating operator will have the discretion to make refunds
- The subscriber will have access to a freephone complaints line from each premium rate service provider for complaints about their service content or any product supplied.

8 SUMMARY OF CONSULTATIVE QUESTIONS

Q1: Do you agree with the overall approach proposed for freephone connectivity? If not, what changes would you suggest?

Q2: Do you agree with the approach proposed for freephone interconnection charges? If not, what changes would you suggest?

Q3: Do you agree with the overall approach proposed for premium rate services? If not, what changes would you suggest?

Q4: Do you agree that the MCA should require interconnection for premium rate services, or do you think that the disadvantages in terms of risks to consumers outweigh the benefits?

Q5: Do you agree with the overall approach proposed for interconnection of premium rate services? Are the arrangements for charging and interconnection payments fair and reasonable, and also practicable? If not, what changes would you suggest?

Q6: Do you agree with the approach to complaint handling? If not, what changes would you suggest?

Q7: What approach do you think should be taken towards gambling and adult services? Should special measures be taken to protect minors? Should they be subject to opt-in by the subscriber?

Q8: Do you agree with the self-policing approach of operators exchanging information and "vetting" new services? Is it needed? Is it practicable? If not, what changes would you suggest?

Q9: Do you think that sub-ranges should be used to distinguish service types or price or both? Are the categories of service type appropriate? If not, what changes would you suggest? Can the operators implement barring by service type based on values of the 4th or 5th digits? If not, how much would it cost to implement it?

Q10: Do you have any comments on the proposed measures? Are they practicable for operators? Do they provide adequate protection? If not, what changes would you suggest?

Q11: Are the proposed requirements on terminating operators and premium rate service providers reasonable and practicable? If not, what changes would you suggest?

9 CONSULTATION FRAMEWORK

The MCA invites comments from interested parties in relation to this consultation.

The consultation period will run until 12.00pm on Tuesday 15 February 2006.

Comments should be sent to:

Simon Mizzi
Acting Chief of Operations
Malta Communications Authority
“Il-Pjazzetta” Suite 43/44
Tower Road
Sliema SLM 16
MALTA

Tel: +356 21 336 840
Fax: +356 21 336 846
E-mail: coo@mca.org.mt

Written representations may be made public by the MCA subject to MCA’s Internal Guidelines on Confidentiality published on 16 December 2004.

19 December 2005

ANNEX 1: CONSUMER PROTECTION MEASURES

A1.1 Limitations in the types of services that may be offered

Various types of services may be prohibited.

A1.2 Organisation of the numbering ranges used

Most regulators require premium rate services to use a specific numbering range so that consumers can learn to distinguish premium rate numbers and so that call barring can be applied using simple algorithms.

Different sub-ranges may be used for different types of premium rate service eg to distinguish business and entertainment services.

A1.3 Price warnings

Many countries require advertisements of premium rate services to include the price and to do so with a specified form of words and/or print of at least a given size.

Some countries require a price warning announcement to be played without charge at the start of each premium rate call.

A1.4 Itemised billing

A requirement can be imposed for all calls to premium rate numbers to be itemised even if the caller has not subscribed to itemised billing for normal calls. This measure does not protect, however, against the first occurrences of high bills due to unawareness of the risks associated with premium rate numbers. *This could deter the business case for few services since subscribers would not like to show they were using a particular service. Too bad - surely the subscriber should see what they are paying for*

A1.5 Call barring or opt-out

Many regulators require operators to offer to subscribers call barring to premium rate numbers. To be effective, subscribers need to know to consider whether or not to have call barring applied. Efforts such as advertising are needed to promote this awareness amongst consumers especially if new service types in the premium rate market are opened up.

Call barring can be rendered ineffective if it is required only if the operator who provides the physical access line and carrier pre-selection is used or carrier selection with a smart box to add the selection code automatically. Unless the call barring applies to all calls, the use of carrier (pre)-selection may bypass the barring. Usually the subscriber will be unaware of this

weakness. Call barring needs to be provided by all operators who may be selected by the subscriber.

In the EU, the Universal Service Directive, article 10.2 requires call barring to be provided free of charge by undertakings that are subject to universal service requirements, but this does not apply to many operators who offer services by carrier selection and hence may be bypassed.

Whereas (15) of this Directive reads:

"Member States should monitor the situation of consumers with respect to their use of publicly available telephone services and in particular with respect to affordability. The affordability of telephone service is related to the information which users receive regarding telephone usage expenses as well as the relative cost of telephone usage compared to other services, and is also related to their ability to control expenditure. Affordability therefore means giving power to consumers through obligations imposed on undertakings designated as having universal service obligations. These obligations include a specified level of itemised billing, the possibility for consumers selectively to block certain calls (such as high-priced calls to premium services), the possibility for consumers to control expenditure via pre-payment means and the possibility for consumers to offset up-front connection fees. Such measures may need to be reviewed and changed in the light of market developments. Current conditions do not warrant a requirement for operators with universal service obligations to alert subscribers where a predetermined limit of expenditure is exceeded or an abnormal calling pattern occurs. Review of the relevant legislative provisions in future should consider whether there is a possible need to alert subscribers for these reasons."

A1.6 Opt-in

Opt-in is where the subscriber is required to register their willingness for premium rate calls to be made from their line before such calls are enabled. This is a strong form of protection for the consumer.

A1.7 Charging or duration limits of individual calls

The call charge rate or the maximum charge for a call may be limited, or the duration may be limited. It is important for there to be a duration limit where automated systems are used by the PRSP in case the caller fails inadvertently to clear a call and it remains active for a long period.

A1.8 Pre-pay

Pre-pay provides considerable protection against high bills because the problems are detected when the pre-pay limit is reached and this likely to be much earlier than would be the case with a subscription account. Pre-pay allows a subscriber to limit their liability and also protects the operator against bad debts. A large proportion of mobile users pay by pre-pay.

It would be possible for an operator to charge all premium rate calls using pre-pay even if subscribers use a subscription for normal calls. In this case pre-pay would include opt-in.

A1.9 Removal of the right of an operator to suspend service for non-payment of the calls to premium rate numbers

This protection is to remove the right of an operator to suspend service for non-payment of calls to premium rate numbers. The right could be limited to the premium element, ie exclude the basic call charge. The aim would be to break the link that enables PRSPs to leverage the consumers' need of a basic telephone service in obtaining debt recovery. This would put debt recovery for premium rate services on the same footing as ordinary consumer debts. This would have the effect of increasing publicity over high and unexpected premium rate charges.

Such a measure is referred to in the Universal Service Directive, "Whereas" 16 reads:

"Except in cases of persistent late payment or non-payment of bills, consumers should be protected from immediate disconnection from the network on the grounds of an unpaid bill and, particularly in the case of disputes over high bills for premium rate services, should continue to have access to essential telephone services pending resolution of the dispute. Member States may decide that such access may continue to be provided only if the subscriber continues to pay line rental charges."

However this protection is not required of Member States under the articles of the Directive.

A stronger requirement would be to remove the right for payment of the premium element to be enforced at all through suspension or disconnection. *Could this measure be abused by subscribers? Abusing PRS knowing that their line would not be disconnected?*

A1.10 Right to a refund for the first high bill

This is a protection against the first occurrence of a high bill. The subscriber is given a right to a refund unless it can be proved that the subscriber was aware that premium rate calls were being made on their account. The aim is to provide an opportunity for the subscriber to become aware of the risks and to request call barring or other protections.

This protection, however, raises the question of who should provide the refund. One regulator places this requirement on the PRSP because they are the party who has collected the main part of the revenue and who may have designed the service to attract unauthorised calls. The originating operator in contrast is the party whom the subscriber can most easily contact and complain to. Furthermore there is a risk that the PRSP will go out of business before paying refunds if there are many demands for refunds. There is also an issue of whether the refunds can be enforced legally or depend on the voluntary cooperation of the PRSP.

In order to provide more security for refunds, some regulator require PRSPs to deposit bonds of several thousand Euros before starting to offer services so that these funds can be used for refunds if needed.

A1.11 Credit limits and warnings when specified levels are exceeded

Operators could be required to limit the spend in each billing period on premium rate services. This limit could be set by the regulator, the operator, or the subscriber.

An alternative is to require the operator to notify the subscriber when a limit is reached and optionally to require specific authorisation if the limit is to be increased.

A1.12 Faster billing

Some of the fraud problems arise because the operators use a longer billing period for retail services than for interconnection. The fraud risks would be reduced if the retail billing period was reduced to be no longer than the period for interconnection.

A1.13 Traffic monitoring

Frauds such as autodiallers and billing cycle abuse generate sudden increases in traffic. Routine monitoring of traffic levels by operators should be able to detect such abuses and routine monitoring of subscriber call records could detect potentially unauthorised calls. Where operators are able to communicate with subscribers by email or automated calls or leaving

messages in network based message systems, they could easily advise the subscriber of the potential problems.

A1.14 Delays in payments to PRSPs

This protection is aimed at reducing fraud. Originating or terminating operators would be required to delay interconnection payments or payments to PRSPs by at least one complete retail billing cycle. This would provide time for abuses to be detected before the money is passed to the PRSP. Withholding of payments by the originating operator would give them more effective control and enable them to use the money for refunds.

A1.15 Registration of PRSPs and identity checks on staff at PRSPs

Registration would make it easier for the regulator to investigate complaints and for consumers to contact the PRSP themselves.

Identity checks on senior staff and directors would be aimed at reducing fraud and making it more difficult for fraudsters to repeat frauds using different companies.

A1.16 Termination of premium rate calls within the country

This requirement is that all calls to premium rate numbers must be terminated in the same country as the originating network. The aim is to ensure that the PRSP is under the same regulatory and legal regime as the callers.

A1.17 Requirements on auto-dialling software

This would require all auto-dialling software used with premium rate numbers to contain a warning about the charge rate in sufficiently large print, which has to be explicitly accepted by the user, and would require registration of all such software. PRSPs would not be allowed to collect money for calls from software that did not carry an appropriate signature from the registration process. Germany for example requires registration of each individual copy of the software which receives a unique signature and their scheme involves opt-in through explicit acceptance by the user of the call charges.

A1.18 Constraints on CLI presentation

A protection that would reduce abuse of mobile subscribers through automated call backs, especially on SMS, would be for the mobile operators to inhibit the presentation of any CLI that is a premium rate number, this a legitimate caller would need to leave the number within the message and so the called subscriber would be more likely to see that the number is premium rate.

ANNEX 2: PRICE POINTS FOR RETAIL CHARGES

The following prices will apply at all times, ie there will be no differences for peak time, evenings and weekends. All prices are in Lm.

A2.1 Calls charged on a time basis up to a maximum of Lm10

Retail price	Fixed Originating I/c Charge	Mobile originating I/c charge	Retention by terminating operator	Lower limit retention for SMP terminating operator	Price warning required if maximum duration is (minutes) or more
0.15	0.03	0.060	Competitive	0.02	6.7
0.25	0.05	0.075	Competitive	0.02	4.0
0.50	0.10	0.150	Competitive	0.02	2.0
0.75	0.15	0.225	Competitive	0.02	1.3
1.00	0.20	0.300	Competitive	0.02	1.0
1.50	0.30	0.450	Competitive	0.02	0.7

A2.2 Fixed price calls

Retail price	Fixed Originating I/c Charge	Mobile originating I/c charge	Retention by terminating operator	Lower limit retention for SMP terminating operator	Notes
0.25	0.05	0.060	Competitive	0.02	
0.50	0.10	0.150	Competitive	0.02	
0.75	0.15	0.225	Competitive	0.02	
1.00	0.20	0.300	Competitive	0.02	Maximum for live calls and Internet dial-up
2.00	0.40	0.600	Competitive	0.02	Free price warning required
3.00	0.40	0.600	Competitive	0.02	Free price warning required
5.00	0.40	0.600	Competitive	0.02	Free price warning required
7.00	0.40	0.600	Competitive	0.02	Free price warning required
10.00	0.40	0.600	Competitive	0.02	Free price warning required

A2.3 SMS messages

Retail price	Applications allowed	Mobile originating I/c charge	Retention by terminating operator	Lower limit retention for SMP terminating operator
0.25	Any	0.05	Competitive	0.01
0.50	Any	0.10	Competitive	0.01
0.75	Any	0.10	Competitive	0.01
1.00	Any	0.10	Competitive	0.01
2.00	Any	0.10	Competitive	0.01
3.00	Any	0.10	Competitive	0.01
5.00	Charity donations	0.10	Competitive	0.01
7.00	Charity donations	0.10	Competitive	0.01
10.00	Charity donations	0.10	Competitive	0.01