



Modalities of Payment for General Authorisations and Rights of Use under the Electronic Communications (Regulation) Act

Consultation and Proposed Amendments

July 2007

Malta Communications Authority

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1 Introduction

On the 4th of November 2004, the Malta Communications Authority (MCA) had issued a Directive on the Modalities of Payment for General Authorisations and Rights of Use. The purpose of the directive was to regulate the manner in which fees established under the Eleventh Schedule of the Electronic Communications Networks and Services (General) Regulations, 2004 are paid to the MCA.

Since the issue of this Directive, the MCA has been collecting fees for general authorisations and rights of use, and has since then identified various amendments that could be made to the Directive so as to render the administration and collection of such fees more efficient. The following is a summary of the proposed amendments:

- Deletion of transitional provisions relating to authorisations in place on the 14th September 2004 when the new regulatory framework for electronic communications was brought into force;
- Restatement of the deadline for submitting the statement of projected revenues (GR1) to 30th September;
- Details of any unregulated activities are to be provided by the undertakings together with the audited statement of actual quarterly revenues (GR2);
- Undertakings having their financial year coinciding with the calendar year will be able to submit a statement of the actual revenues for the entire calendar year and shall not be required to provide a quarterly analysis;
- The MCA may determine the final charges and fees which should have been paid by an undertaking, in the event that the undertaking fails to submit the audited statement of actual quarterly revenues (GR2) within the prescribed period of 12 months;
- The undertaking may remedy a failure to deliver the audited statement of actual quarterly revenues within 30 days of being served with the MCA determination.

2 Proposed Amendments

Proposed Amendments:

The MCA proposes to amend the directive No 1 of 2004 with the amendments laid out in Appendix A.

3 Consultation Framework

The MCA invites comments from interested parties regarding this Consultation and Proposed Decision.

The consultation period will run until 12:00pm on Monday, 6th August 2007. Comments should be sent to:

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APPENDIX A – PROPOSED AMENDMENTS TO THE DIRECTIVE ON MODALITIES OF PAYMENT FOR GENERAL AUTHORISATIONS AND RIGHTS OF USE UNDER THE ELECTRONIC COMMUNICATIONS (REGULATION) ACT

In exercise of its powers conferred by Article 4 of the Malta Communications Authority Act, the Malta Communications Authority has made the following Directive.

Title

1. The title of this Directive is the Modalities of Payment for General Authorisations and Rights of Use under the Electronic Communications (Regulation) Act, (Amendment) Directive 2007, and it shall be read and construed as one with the Modalities of Payment for General Authorisations and Rights of Use under the Electronic Communications (Regulation) Act, Directive of 2004.

Purpose

2. The purpose for this Directive is to amend the Modalities of Payment for General Authorisations and Rights of Use under the Electronic Communications (Regulation) Act, Directive of 2004, (hereinafter referred to as the “principal Directive”), to enable the Malta Communications Authority (hereinafter referred to as the “Authority”) to take appropriate measures if an undertaking fails to submit its projected gross revenues for a given year and, or fails to make any payments as may be required in accordance with the Directive.

Amends article 3 of the principal Directive

3. Article 3 of the principal Directive shall be amended as follows;

(a) The definitions of “licence” and “licence fees” shall be deleted:

(b) Immediately after the definition of “total gross revenue” there shall be added the following new definition:

“ “Unregulated activities” means those activities which do not require to be authorised under paragraphs (b), (c), (d) or (e) of Part A of the Eleventh Schedule to the Electronic Communications Networks and Services (General) Regulations.”

Deletion of articles 11 to 13 of the principal Directive

4. Articles 11 to 13 of the principal Directive shall be deleted.

Renumbering and amendment of Part VI of the principal Directive

5. Part VI of the principal Directive shall be renumbered as Part V.

Renumbering of article 14 of the principal Directive

6. Article 14 of the principal Directive shall be renumbered as article 11.

Deletion of article 15 of the principal Directive

7. Article 15 of the principal Directive shall be deleted.

Renumbering of Part VIII of the principal Directive

8. Part VIII of the principal Directive shall be renumbered as Part VI.

Renumbering and amendment of article 16 of the principal Directive

9. Article 16 of the principal Directive shall be renumbered as article 12 thereof and as renumbered shall be amended as follows:

(a) the words "by not later than the 30th November of the previous year, a statement of projected revenues for the relevant year" shall be substituted with the words "by not later than the 30th September of the previous year, a statement of projected revenues for the relevant year (GR1)"; and

(b) in the first proviso thereto the words "shall be submitted by not later than the first quarter" shall be substituted by the words "shall be submitted by not later than the end of the first quarter".

Renumbering and amendment of article 17 of the principal Directive

10. Article 17 of the principal Directive shall be renumbered as article 13 and as renumbered shall be substituted with the following:

" 13.1 The Authority shall reconcile charges and fees paid on the basis of projected revenues, against the charges and fees, which should have been paid, on the basis of actual revenues. For this purpose, each undertaking shall submit to the Authority in respect of every relevant year, within a maximum period of 12 months after the 31st December of the relevant year, an audited statement of actual quarterly revenues (GR2).

13.2 The audited statement of actual quarterly revenues shall indicate separately the total gross turnover as represented in the undertaking's financial statements less turnover from unregulated activities. Precise details, together

with the nature, of any turnover from unregulated activities shall be provided by the authorised undertaking. Such details will be submitted to the authority with the audited statement of actual revenues (GR2):

Provided that an undertaking whose financial year coincides with the calendar year may submit a statement of actual revenues (GR2) for the entire year and shall not be required to provide a quarterly analysis:

Provided further that an undertaking whose financial year coincides with the calendar year, and whose actual revenues agrees with the total gross turnover as represented in the undertaking's financial statements without deduction for unregulated activities, may attach to the statement of actual revenues (GR2) an unabridged copy of the audited financial statements and shall not be required to submit to the authority a separate report by the undertaking's auditors.

13.3 Where an authorised undertaking does not submit to the Authority, within the specified period of 12 months after the 31st December of the relevant year, the audited statement of actual quarterly revenues (GR2) as prescribed in sub-article 13.1, the Authority may determine the final charges and fees which should have been paid in such manner and by such method as the Authority deems fit without prejudice to any liability or to further administrative penalties otherwise incurred by that undertaking by reason of its failure or neglect to deliver the audited statement of actual quarterly revenues (GR2):

Provided that an authorised undertaking, on whom a final determination has been served in accordance with this article, may remedy its failure to deliver the audited statement of actual quarterly revenues (GR2) within 30 days of being served with such a determination.

Provided further that this sub-article shall also be applicable in respect of any relevant year in respect of which an audited statement of actual quarterly revenues (GR2) should have been submitted to the Authority before the date of coming into force of this Directive."

Renumbering and amendment of article 18 of the principal Directive

11. Article 18 of the principal Directive shall be renumbered as article 14 and as renumbered shall be substituted by the following:

" 14.1. Where the amount paid by an undertaking in accordance with article 12 is less than the amount payable in accordance with article 13, the undertaking concerned shall, within such time as may be specified by the Authority in a request in writing, pay to the Authority the balance of the charges and, or fees so payable.

14.2 Where the amount paid by an undertaking in accordance with article 12 is more than the amount payable in accordance with article 13, the

Authority shall, as soon as may be after the receipt of all the audited statements referred to in article 13 of this Directive repay to the undertaking concerned the excess amount so paid by way of a credit note against fees payable in the following year.”

Renumbering of Part IX of the principal Directive

12. Part X of the principal Directive shall be renumbered as Part VII.

Renumbering and amendment of article 19 of the principal Directive

13. Article 19 of the principal Directive shall be renumbered as article 15 thereof and as renumbered, article 15.1. thereof shall be substituted with the following:

“15.1 The Authority in accordance with the requirements under article 18(2) of the Act to publish an annual overview of its administrative costs and of the total sum of charges collected, shall publish such an overview by not later than six months following the 31st December of each relevant year.”

Renumbering and amendment of article 20 of the principal Directive

14. Article 20 of the principal Directive shall be renumbered as article 16 and sub-article 16.1 thereof as renumbered shall be substituted with the following:

“ 16.1 The Authority shall in the case of administrative charges imposed on an annual basis, make appropriate repayments or compensations in the case of overcharging, as referred to in article 14.2, or impose additional charges in the case of undercharging of an undertaking 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:

Provided that the Authority shall carry out this exercise by not later than six months after it has received all the statements of actual quarterly revenues (GR2) of all the undertakings required to pay administrative charges.”