



## **Consultation on Decision regarding Proposed Modifications to the Terms and Conditions of Subscriber Contracts**

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Proposed Decision

**27<sup>th</sup> August 2007**

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## Background

Article 22 of the Electronic Communications (Regulation) Act (Cap.399) (hereinafter the "ECRA") states that undertakings providing any electronic communications service<sup>1</sup>, that wish to modify the related contractual terms must notify every subscriber to that service.

The notification should include the proposed modification to the conditions of the contract and inform subscribers of their right to withdraw without penalty from such contract if they do not accept the proposed modification. Such notification must be given at least thirty days prior to the coming into effect of any proposed modification.

The Malta Communications Authority (hereinafter the "Authority") notes that the manner in which this article is being implemented by undertakings does not necessarily always leave subscribers in the best place to know and safeguard their rights.

The Authority has identified three areas of current concern where it considers implementation of contract modifications, on the part of undertakings, to be unsatisfactory and is proposing to issue a Decision to address these concerns.

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<sup>1</sup> Generally this refers to telephony service (both mobile and fixed line), internet access service, and broadcast transmission service.

## **1. Areas of concern and proposed decision**

### **1.1 Illegal terms and conditions regarding amendments to contracts**

Some contracts for service specify a pre-notification period that is unlawful, being less than the thirty days specified by law. The MCA has taken steps with the undertakings concerned to ensure that these clauses are rectified.

### **1.2 Insufficiently informative terms and conditions regarding amendments to contracts**

Some contracts of service used by providers of electronic communications services include an 'Amendment Clause' which does not clearly state that:

1. The undertaking will notify its subscribers of any proposed modifications to the terms and conditions of an existing contract at least thirty days in advance of the changes taking place; and
2. The subscriber has the right to withdraw from the contract without penalty during the said period should he/she not accept the proposed modifications.

Regulation 40(e) of the Electronic Communications Networks and Services (General) Regulations (S.L.399.28) states that subscribers of telephony services and subscribers which enter into a written contract for service should be provided with a contract specifying the conditions for termination of services and of the contract.

Since the 'Amendment' clauses in the contracts for service govern the termination of such contracts, the above-mentioned information should be clearly outlined in the terms and conditions, irrespective of the duration of the contract of service.

#### **Proposed Decision 1:**

Subscriber contracts must include a clause that relates to the possible future modification or termination of such contracts which shall clearly and unambiguously state that:

1. Any proposed modification will be notified in writing to the subscriber at least 30 days prior to the implementation of the proposed modification; and
2. Should the subscriber not agree to this modification, he/she has the right to withdraw from such contract without penalty.

### **1.3 Manner of notification of changes to contract**

Another matter of concern to the Authority is that while a notification, as required by Article 22(4) of the ECRA, may be given within the minimum legal time-frame, the manner in which such notification is given as well as the content of such notification may not always allow subscribers a proper assessment of:

1. The suggested change;
2. The impact on their individual requirements and expectations of the given service and, consequently,
3. Whether or not they would like to terminate their subscription to such service.

Therefore, the Authority is proposing that sufficiently detailed notifications be sent to all potentially affected subscribers via ordinary mail, or email if the subscriber has given his/her consent, prior to any verbal communication in this regard.

In instances where the suggested change in the terms and conditions of service relates to pre-paid mobile telephony, the Authority considers notification via SMS to be sufficient notification. In the event that sufficient information cannot be provided entirely by SMS, the undertaking must make available a freephone service for subscribers wishing to obtain full information on the proposed modification.

In all other cases, notification via SMS shall be considered supplementary and additional to notification by ordinary mail.

As a minimum, the notification must always contain the following details:

1. The proposed modifications to the conditions of the service currently being offered, that is, the exact provisions of the revised contract; and
2. The manner in which any deposit or advance payment made by the subscriber for the original service will be refunded if the subscriber chooses to unsubscribe to the service or switch to a new service.

In the event of termination of service, the Authority strongly recommends that the undertaking provides its subscribers with written information on the possible service options available and all related terms and conditions; in particular all costs that subscribers would incur, should they decide to take up any proposed service option. The Authority considers that in the case of subscribers to internet access services, a referral in the notice to a web-page where such information is available would be sufficient.

In all cases the subscriber should be provided with a telephone number (preferably toll-free) and physical address to be contacted in order to seek further clarifications on the proposed changes should these be required.

**Proposed Decision 2:**

Any notifications regarding proposed modifications to the contract of service shall be sent in writing to subscribers via ordinary mail or email if the subscriber has given his/her consent. In the case of subscribers of a pre-paid mobile telephony service, notifications of proposed modifications to such service may be sent via SMS.

**Proposed Decision 3:**

All notifications regarding proposed modifications to the contract of service shall always contain the following information as a minimum requirement:

1. The proposed modifications to the conditions of the service currently being offered, that is, the exact provisions of the revised contract; and
2. The manner in which any deposit or advance payment made by the subscriber for the original service will be refunded if the subscriber chooses to unsubscribe to the service, or switch to a new service.

In all cases, subscribers must also be given the opportunity to seek further information and clarifications on the proposed modifications from the undertaking in a simple manner and at minimal cost.

**1.4 Provision of advance information to the Authority**

The Authority, in line with its powers under Article 4(10) of the Malta Communications Authority Act (Cap. 418) (hereby referred to as 'MCA Act') to request information from any person in order to ensure compliance with the provisions of, or decisions and directives made in accordance with, the MCA Act or any other law which the Authority is entitled to enforce, is hereby proposing that any modifications to the terms and conditions proposed by an undertaking and the related communication to subscribers be notified to the Authority prior to notification to the relevant subscribers.

The Authority is proposing that such advance notification be sent to the Authority at least three (3) working days before notification to subscribers is planned. Such advance notification will allow the Authority to be better placed to fulfil its obligations towards subscribers under Article 4 of the ECRA.

**Proposed Decision 4:**

Any proposed modifications to the contract of service and related communications must be notified to the Authority by the relevant undertaking at least three (3) working days prior to notification to the relevant subscribers.

## 2. Request for Input

The Authority, in accordance with its obligations under Article 10(1) of the ECRA, is seeking the views of all interested parties and stakeholders who have an interest in the subject matter being dealt with before issuing the proposed decision referred to above.

Any person who wishes to make submissions relevant to the consultation must ensure that submissions are received by the Authority by not later than **Friday, 12<sup>th</sup> September 2008**.

Any such submissions are to be addressed to:

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All submissions shall be made publicly available by the Authority on its website unless the person making any such submission gives valid reasons acceptable to the Authority as to why such submissions should not be made public.