

# **Tariff Approval Procedures**

## **Draft Guidelines**

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**Malta Communications Authority**

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## **1 Introduction**

### **1.1 Background**

The Malta Communications Authority (MCA) is responsible for the regulation of the Maltese telecommunications sector in accordance with the powers and duties conferred on it by the Telecommunications (Regulation) Act and subsidiary legislation enacted under this Act.

The Act provides that until such time as telecommunications markets become subject to effective competition, tariffs for telecommunications services shall be regulated by the MCA. The purpose is to ensure that tariffs are just, reasonable and promote the interests of consumers and other users of telecommunications services in Malta.

The Act also provides that where effective competition is lacking, tariffs shall be subject to proportionate controls and regulations which may also grant power to the MCA to issue proportionate and non-discriminatory directives and establish rate control mechanisms. In the absence of such provisions, an operator wishing to make a change in an existing rate or to provide a new service must submit the rates it proposes to charge to the MCA for its approval.

In June 2002 the MCA published a consultative paper on the subject of Price Control Review. The paper sought the views of interested parties on the methodology and approach in developing a price control policy which promotes the interests of consumers and users of telecommunications services, stimulates effective competition, and encourages efficiency on the part of organisations providing such services.

Four organisations responded to the consultation, as listed below:

- Maltacom plc,
- Melita Cable plc,
- Mobisle Communications Limited (Go Mobile), and
- Vodafone Malta Limited.

The Report on Consultation and Decision relating to the Price Control Review was published in January 2003 and established that the MCA will consult further on two topics namely:

- the administrative procedures to be followed when introducing new, or proposing changes in, tariffs for telecommunications services, and;

- the determination of a suitable price control mechanism for fixed telecommunications services provided by the dominant operator based on an RPI-X price control regime.

These Draft Guidelines address the subject of administrative procedures to be followed when introducing new, or proposing changes in, tariffs for telecommunications services. The MCA looks forward to releasing the final Guidelines after reaching consensus with all operators concerned. It is envisaged that the consultation addressing the determination of a suitable price control mechanism for fixed telecommunications services will be also published early in 2003.

The MCA recognises the need to communicate its proposals on the subject and recognises the importance of consultation and input from all interested parties. The purpose of this document is to obtain the views of all interested parties on the subject.

*This document is without prejudice to the legal position or the rights and duties of the MCA to regulate the market generally. This is not a legal document; the MCA is not bound by this document and may amend it from time to time.*

## **2 Legislative background**

### **2.1 Telecommunications (Regulation) Act**

The legislative provisions governing price control were set out in the Consultative Paper on Price Control Review and are summarised in this document.

Article 19 of the Telecommunications (Regulation) Act applies to all authorised providers of telecommunications services. The law introduces a distinction that is based on the level of competition in the market. Regulations enacted under the Act also regulate different telecommunications services separately.

Article 19 provides that in markets or market segments which in the opinion of the MCA lack effective competition, tariffs shall be subject to proportionate controls and regulations which may also grant power to the MCA to issue proportionate and non-discriminatory directives as it may deem appropriate.

The Act further provides that the MCA may establish rate mechanisms allowing for changes in the tariffs to be made in respect of telecommunications services. Where a tariff has not yet been established, or where an authorised provider wishes to make a change in an existing tariff not provided for in an existing rate mechanism, the operator must submit the proposed tariff in respect of any service it is authorised to provide, to the MCA for its approval.

Operators are also required to forward to the MCA, and the MCA shall, unless it rejects any of them, register the terms and conditions including approved tariffs for the provision of telecommunications services. Operators may make changes to terms and conditions subject to the approval and registration by the MCA.

### **2.2 Telecommunications Services (General) Regulations**

Regulations 30, 31 and 32 of the Telecommunications Services (General) Regulations address the subject of price controls on telecommunications services.

Regulation 30 states that an operator providing telephony services (other than mobile) having a DMP must use cost-oriented tariffs which it is obliged to publish. This regulation entitles the MCA to define price cap formulae and other regulation schemes on operators for services provided in markets which lack effective competition. The MCA may choose not to apply controls over the tariffs of operators that do not have a DMP, or in respect of services that are provided in market segments which are subject to effective and efficient competition. Tariff changes can be implemented only after a public notice period of thirty days has been observed.

Regulation 31 mandates that an operator providing telephony services (other than mobile) having a DMP must propose changes to its tariffs for approval to the MCA at least fifteen weeks prior to their intended effective date. In such cases the operator must provide support based on costs and other factors for its proposed tariffs. Other operators and customers must also be given the opportunity to make representations. The MCA is required to give its decision on such changes within six weeks of receiving the required information.

Regulation 32 addresses the subject of tariff controls for mobile services. The regulation lays down that, in principle, such tariffs are to be established by the operator but the MCA may impose tariff regulations if necessary to reach objectives of national interest such as consumer protection, fair competition and the implementation of open network provisions.

The MCA may also require an operator to provide support based on costs and other factors for its proposed tariffs, and the MCA may offer an opportunity for comment upon the proposed tariffs by other operators and by customers. Where the MCA decides that it is necessary to exert tariff controls for mobile services, it is required to give a decision about the proposed tariffs within six weeks.

### **2.3 Cable Systems (General) Regulations**

Regulations 11 and 12 of the Cable Systems (General) Regulations address the subject of tariff controls on cable television and radio services.

Regulation 11 states that an operator providing Cable TV and Radio Services having a DMP must use cost-oriented tariffs, which it is obliged to publish. This regulation also entitles the MCA to define price cap formulae and other regulation schemes for services provided in markets, which in its opinion lack effective competition. The MCA may choose not to apply controls over tariffs of operators that do not have a DMP or in respect of services that are provided in market segments, which, in its opinion, are subject to effective competition.

Tariffs must be transparent and non-discriminatory, appropriately published, and guarantee equality of treatment except for justifiable restrictions compatible with national or international regulations. Tariff changes can be implemented only after a public notice period of thirty days has been observed.

Regulation 12 states that an operator having a DMP must propose changes to its tariffs for approval to the MCA at least fifteen weeks prior to intended effective date. In such cases the operator must provide support based on costs and other factors for its proposed tariffs. Other operators and customers must also be given the opportunity to make representations. The MCA is required to give its decision on such changes within six weeks of receiving the required information.

### 3 Proposed Administrative Procedures

#### 3.1 Preliminary

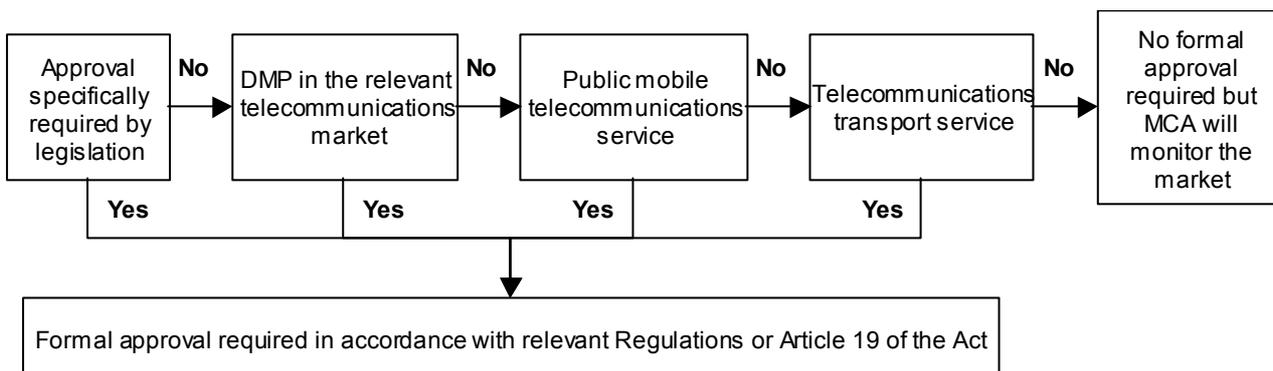
These guidelines do not replace, detract or supplement in any manner the provisions of any legislation. In case of doubt on the application or interpretation of these guidelines, the relevant legislation shall prevail.

#### 3.2 Scope

The Telecommunications (Regulation) Act establishes that where the MCA considers that a market lacks effective competition, tariffs shall be subject to proportionate controls and regulations, which may also grant the MCA powers to issue proportionate and non-discriminatory directives, as it may deem appropriate. Where no regulations have been issued tariffs are regulated in accordance with Subarticles (2) to (7) of Article 19 of the Act.

In accordance with the current legislation, formal approval from the MCA should be sought by the following providers of telecommunications services:

- By operators having a DMP, for all those services provided in the relevant market in which they have a DMP, in accordance with the relevant legislation;
- By operators of public mobile telecommunications systems and services, in accordance with the relevant legislation;
- By telecommunications transport providers<sup>1</sup>, for those services provided in respect of telecommunications transport, in accordance with the relevant legislation.



<sup>1</sup> Second Schedule to the Internet and Other Data Networks (Service Providers) Regulations

This requirement at present is not being applied to other authorised providers (such as ISPs). However, the MCA reserves the right to initiate investigations and direct any authorised provider to provide it with information as required by the relevant legislation. In particular the MCA may intervene in order to ensure that no illegal cross-subsidisation is taking place.

The above list of services will be subject to review depending on the results of the study on effective competition in telecommunications, which is to be undertaken in 2003, in accordance with the Decision on Price Control Review.

In accordance with the Decision on Price Control Review, certain services provided by the fixed telephony DMP operator will be regulated by a separate price control mechanism based on an RPI-X price cap. The final decision on the price cap may provide for an alternative form of approval (e.g. replace the obligation to seek approval with the obligation to notify).

Furthermore, where specific control over tariffs for any of the above services already exists in terms of Regulations currently in force, tariffs shall be regulated accordingly.

### **3.3 Application Contents**

The legislation requires operators of telecommunications services to register terms and conditions of service, including approved tariffs, with the MCA.

All submissions for new tariff approvals should include the proposed tariffs as well as the complete set of proposed terms and conditions of service. Failure to include both the proposed tariffs as well as the terms and conditions of service may result in the MCA not accepting the application.

When submitting applications for changes to existing tariffs or terms and conditions of service, an operator should indicate clearly the changes for which it is seeking approval. Apart from indicating the changes, the operator should also re-register the amended tariff plan as well as the terms and conditions of service.

The legislation mandates that in a number of instances tariffs should be cost-oriented. Where tariffs are required to be cost-oriented the applications should be accompanied by detailed cost submissions.

### **3.4 Timeframes**

The legislation establishes a number of different timeframes for the submission, publication and approval of tariffs.

The MCA is fully cognisant of the competitive pressures and market dynamics impinging on the operators, which often result in the submission of applications for urgent approval. For this reason the MCA always attempts to give its decision on proposed tariffs sooner than the timeframes allowed by law. At the same time the MCA needs adequate time to analyse rigorously the applications it receives from the operators. It is the responsibility of every operator to make sure that applications are submitted in good time (at least 15 working days, without prejudice to the timeframes established by law) before the intended launch of the new tariffs.

### **3.5 Special Offers**

On a number of occasions operators apply to the MCA for the approval of temporary special offers relating to tariffs and/or tariff plans, including, amongst others:

- Waiving or reduction of installation or connection fees;
- Reduction of periodic or usage charges;
- Free service/product for an introductory or limited period of time.

In order to simplify the administrative process and increase flexibility for operators in responding to the market needs, the MCA is proposing that special offers be regulated as follows:

- a) A “special offer” shall mean a temporary promotion being made available to an operator’s customers for not longer than one continuous period of 45 calendar days, or multiple periods not exceeding 45 days in any 180 day interval.
- b) An operator is to notify the MCA of any special offer at least ten working days prior to the intended launch date. The MCA will acknowledge receipt of all notifications. If a request for information or rejection is not received from the MCA within this timeframe, the special offer will be deemed approved;
- c) Such deemed approval will not prejudice the MCA from carrying out investigations or requiring further information with respect to such special offers;
- d) A special offer must not include terms and conditions which are anti-competitive, discriminatory, predatory or which may have a negative impact on competition in the market;
- e) Promotions which do not qualify as a special offer (as defined above) require the MCA’s prior approval.

The MCA is also interested in obtaining the views of operators regarding the establishment of a set of parameters, agreed to by the operators, with the objective of introducing a self-regulation type of environment. This will help avoid any unnecessary disputes between operators on the applicability or otherwise of certain offers.

### **3.6 Confidentiality**

The law allows (and in some cases requires) the MCA to offer the opportunity for comment upon proposed changes by other operators and by customers. In the majority of cases the operators ask the MCA to embargo publication of the proposed tariffs until the date on which the tariffs come into effect, or until the operator announces the tariffs.

Operators may mark as confidential those parts of an application that they would not wish to be made public for reasons of confidentiality. The MCA will only consider requests for confidentiality if the operator in question gives valid reasons at law in writing to justify such request.

If there is no such request then it will be assumed that none of the documentation submitted is confidential.

### **3.7 Publication**

Operators should ensure that new or revised tariff plans are not marketed or offered to subscribers before formal approval is granted by the MCA (or in the case of special offers before the relevant procedures have been fully complied with).

In publishing tariffs and terms and conditions of service relating to telecommunications services, operators should ensure that:

- Any new or revised tariffs or special offers must not be communicated in a discriminatory manner to customers or other operators;
- The full terms and conditions, including tariffs, approved by the MCA must be made available to all new clients upon provisioning of the service;

- The full terms and conditions, including tariffs, approved by the MCA should be made publicly available;

Preferably authorised providers are to keep an updated Internet tariff page, and new tariffs and/or changes to existing tariffs should be publicised on local media by the operator.

### **3.8 Method of Application**

All applications should be submitted (preferably in electronic format) to:

Joseph Cuschieri  
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: [jcuschieri@mca.org.mt](mailto:jcuschieri@mca.org.mt)

Receipt of applications and special offer notifications will be acknowledged by the MCA.

All applications should indicate clearly the name of the company submitting the application and the contact details including the name of the person in charge of tariff applications, postal address, phone and fax numbers and e-mail addresses.

## **4 Consultation framework**

### **4.1 Consultation Period**

The consultation period will run until 12.00pm on Friday 14 March 2003. Comments should be sent to:

Joseph Cuschieri  
Chief of Operations  
Malta Communications Authority  
“Il-Piazzetta” Suite 43/44  
Tower Road  
Sliema SLM 16  
MALTA

Tel: +356 21 336 840  
Fax: +356 21 336 846  
E-mail: [jcuschieri@mca.org.mt](mailto:jcuschieri@mca.org.mt)

Written comments may be made publicly available at the MCA unless confidential. Respondents are therefore asked to separate out any confidential material into a clearly marked annex. Respondents are also kindly requested to refer their comments to the specific sections of this document.

### **4.2 Finalisation of the MCA’s Position**

The MCA will consider comments received in response to this consultative document before publishing final Guidelines.

### **4.3 Conclusion**

In conclusion, this consultation on tariff approval procedures is proposed by the MCA for comment by interested parties. The MCA recognises the subject to be a very important one for the regulation of the telecommunications market, both now and in the future. This consultation has been prepared with a view to being comprehensive, clear and accurate with the flexibility to be amended having regard to the changing structure and nature of the telecommunications market in Malta and globally.