

# **Preventing anti-competitive winback tactics in a Number Portability, Wholesale Line Rental and a Carrier Pre-Selection environment**

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## **Consultation paper**

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**Malta Communications Authority**

Valletta Waterfront, Pinto Wharf, Valletta VLT 01, MALTA

Telephone: +356 21 336 840 Fax: +356 21 336 846 URL: <http://www.mca.org.mt>

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## **1 Background**

Number Portability, Wholesale Line Rental and Carrier Pre-Selection are all facilities that enable subscribers of publicly available telephone services to change their telephony service provider with ease, hence contributing towards an improved competitive environment to the benefit of the general public.

'Winback', in the context of this document, is the term used to describe a situation when telephony service providers initiate contact with subscribers who are, or were previously, subscribed to their network with the intention to dissuade them from leaving or persuade them to return during a stipulated period commencing from the signing of an application form.

Winback may cause problems to subscribers who receive unwanted calls from operators. The problem may arise with any of Number Portability, Wholesale Line Rental and Carrier Pre-Selection services. Furthermore winback tactics targeted on clients who apply for these facilities are likely to reduce the benefits of competition to the wider general public who do not attempt to migrate to alternative service providers. Savings on operators' costs to engage in winback could also be distributed evenly to the benefit of their entire subscriber base.

By establishing a short timeframe preventing winback, the MCA is of the view that it would give the general public sufficient time to try the service without external pressure. Furthermore, if such winback tactics become common practice, customers could be discouraged from availing themselves of facilities such as Number Portability and Wholesale Line rental due to the harassment that they may be subjected to.

The MCA has already taken steps to prohibit winback however still received a number of complaints that operators are not following the regulations. Investigating winback allegations is problematic due to divergent accounts of the sequence of events. In many cases the

operator making an allegation has incomplete information, while the operator against whom an allegation is made would find it difficult to prove its adherence to regulations. Subscribers fail to collaborate when they would have benefited from offers made to them in the form of winback. Moreover, it could well be that the subscriber would be the one to initiate the request for an offer and counter-offer hence staging a winback situation to benefit from special offers.

This document consults on further measures designed to achieve a consistent prohibition of winback in all the circumstances where it may be used, and to further reduce the opportunity for donor operators to break the regulations, and on the other hand to reduce the possibility for donor operators being falsely accused of deploying winback tactics. The measures being proposed extend the timeframe for the prohibition of winback to include the ordering process.

## 2 Number Portability.

Number Portability, is a service which enables subscribers to retain their telephone number when subscribing to a different service provider.

Mobile Telephony Number Portability was introduced in Malta in April 2006. The success of the implementation of this service is evidenced by the fact that since its introduction tens of thousands of subscribers have ported their numbers. Fixed Telephony Number Portability was introduced in early 2007 as a result of a new publicly available fixed telephony service provider entering the market. The uptake of fixed telephony number portability is also showing an exponential growth since its inception.

There are clear indications that a number of new telephony providers will be entering the market in the near future rendering Number Portability an even more effective tool to enhance competition.

The current legal position is as follows. The *Report on Consultation and Decision Introducing Number Portability in Malta* (March 2005)<sup>1</sup> Decision 10 states:

*"The MCA directs that donor operators may not initiate contact with a subscriber who has requested number portability to discuss the advantages or disadvantages of changing operator nor make offers to such a subscriber that are not available to the generality of subscribers. Contacts to solve problems that affect the subscriber's service that have arisen during the porting process are allowed."*

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<sup>1</sup> URL: <http://www.mca.org.mt/infocentre/openarticle.asp?id=624&pref=1>

It should be noted that during the consultation and implementation phase of Number Portability all participating service providers unanimously agreed that such winback tactics should be prohibited. Notwithstanding this, the MCA still received a substantial number of allegations from recipient operators that their donor counterparts were adopting winback tactics. This motivated the MCA to publish a consultation followed by a statement of decision entitled "*Number Portability Statement of Decision on Winback During and After the Porting Process*"<sup>2</sup> in December 2006, with the objective to define in more detail the prohibitions on winback<sup>3</sup>. This decision included the prohibition of winback tactics by the donor operator during the porting process; it prohibits subscribers from porting again until two months have elapsed since the completion of the porting process; probation of winback during this period; and allowing written exit surveys to randomly-selected terminated subscribers who happen to have ported their number.

Nevertheless subscribers are still allowed to cancel their instructions requesting number portability before the porting process is completed and the MCA is still receiving complaints about winback.

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<sup>2</sup> URL: <http://www.mca.org.mt/infocentre/openarticle.asp?id=925&pref=3>

<sup>3</sup> A Communications Appeals Board decision relating to the prohibition of exit surveys in this document is pending at the time of publishing

### **3 Carrier pre-selection**

Carrier Pre-Selection (CPS) enables subscribers to choose in advance an alternative service provider to carry their calls without the need of dialing in a prefix or installing any new equipment in their premises. A local "All Calls" Carrier Pre-Selection service provider using an interim single billing arrangement has recently launched its service offering subscribers alternative fixed telephony tariff plans pending the full implementation of WLR (Wholesale Line Rental).

Carrier pre-selection also involves the exchange of customer instructions between operators in a way similar to number portability.

The current regulations are given in Report on Consultation and Decision May 2004<sup>4</sup>.

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<sup>4</sup> <http://www.mca.org.mt/infocentre/openarticle.asp?id=434&pref=1>

## 4 Wholesale Line Rental

Single Bill Wholesale Line Rental (SB-WLR) enables service providers to rent access lines from the Fixed incumbent at wholesale prices to be able to offer an own branded telephony service to subscribers providing a single bill covering both line rental and telephone calls.

The current legal position is that winback is controlled through the use of the SB-WLR offer that Maltacom is required to provide under Report on Consultation and Decision on Wholesale Line Rental dated 11 July 2007<sup>5</sup>.

Paragraph 13 of Appendix 1 to the Reference Wholesale Line Rental Offer on Subscriber Contact reads as follows:

*"The Operator will handle all subscriber contact for SB-WLR. A Losing Operator will not have any contact with subscribers for SB-WLR until a period of two (2) months has elapsed following notification of the loss of service, except in the following circumstances:*

*(a) when sending the subscriber a one-time unsolicited anti slamming letter within five (5) days following notification of the loss of service. This unsolicited contact with the subscriber must take the form of the anti-slamming letter in Appendix 10.*

*(b) where necessary in relation to all appointments, changes to appointments and access arrangements with the subscriber for on-site engineering visits from Maltacom representatives on behalf of the Operator;*

*(c) where the subscribers avail themselves of services from Maltacom that are directly billed to them by Maltacom;*

*(d) where the Operator requests Maltacom to contact the SB-WLR subscriber directly; or*

*(e) to assist with the provision of service and/or maintenance or repair, provided that such contact is necessary for, and is limited to, the carrying out of such maintenance or repair.*

*If a subscriber contacts Maltacom with queries applicable to a SB-WLR account, Maltacom will direct the subscriber to contact the operator providing the service for assistance.*

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<sup>5</sup> <http://www.mca.org.mt/infocentre/openarticle.asp?id=1070&pref=1>



*The above contacts from the subscriber cannot be used as a winback opportunity unless the subscriber specifically requests information in relation to services offered.*

*When all existing Maltacom services are converted to SB-WLR, Maltacom's contract with the subscriber will be terminated.*

Thus in summary winback is already prohibited for two months from the point where Maltacom is notified of the loss of service. Nevertheless the subscribers are still allowed to cancel their instructions at any time; however the MCA still receives complaints about winback.

## **5 Proposed Decisions**

As mentioned earlier, notwithstanding the MCA has already taken steps to prohibit winback, a number of complaints that operators are not following the regulations are still being received. Investigating winback is potentially problematic due to divergent allegations and accounts of the sequence of events, and at times the operator making the allegation has incomplete information. On the other hand operators against whom allegations are made find it difficult to prove their adherence to regulations.

Unlike in number portability, where service providers could be both donor and recipient operators, in WLR and CPS, the WLR/CPS service provider is at all times the recipient operator, whilst the incumbent operator is always the donor.

This has led to a situation which has become frustrating and taxing on operators making allegations as well as the operators against whom allegations are made.

The MCA has considered a number of alternative solutions to address the current situation. These include:

- a. Prohibiting the wholesale arm of a donor operator to pass on customer migration information to its retail arm. In the case of Number Portability, WLR and CPS, this is felt not to be a viable solution, since it is difficult to enforce and prove. Furthermore, if the retail arm of the donor service provider is not informed that a subscriber has applied to change service provider, it could still unknowingly contact the subscriber during the ordering process in contravention to the current winback decisions.
- b. Amending the current winback regulations to clearly extend their applicability on a uniform basis to Number Portability, WLR and CPS and prohibiting customer migration to the donor or other operator from the time the customer signs the instruction or application

form. Such a solution could address most of the current winback related issues.

- c. In addition to paragraph (b) above, recipient operators shall not accept requests from other operators or the subscriber to cancel the porting request, or port the respective number again, until two months have elapsed from when the porting is functional. The benefits derived from implementing this measure far outweigh any inconvenience subscribers can experience when subjected to winback tactics, as well as anti-competitive effects that such tactics have on the whole of the market. This solution is also considered viable.

The MCA is therefore proposing:

- a. To apply the same restrictions on winback uniformly for Number Portability, Wholesale Line Rental and Carrier Pre-Selection ("All-Calls" option). The donor operator shall be prohibited from contacting the subscriber who has decided to change the service provider, from the time when they are first informed by another operator that the subscriber has decided to change account up to two months after the account is closed. The exceptions allowed in the existing decision on SB-WLR and number portability specification will still apply.
- b. The recipient operator shall not accept applications from subscribers of Number Portability, CPS and WLR services, if less than a period of two months has elapsed from the commencement of the latter's current service, or during any pending ordering process they might have which commenced from the signing of the application form.

The MCA is of the view that with the removal of the possibility of cancellation, the donor operator shall have little, if any incentive, to attempt win back with the subscriber during the period when the change in arrangements is taking place and for the subsequent two month period.

In view of the above, the MCA proposes that the following decisions be adopted:

**Proposed Decision 1:** Where an operator or service provider is the donor operator for number portability; or the losing operator in the case of carrier pre-selection ("All Calls" option) or in the case of single billing wholesale line rental, it shall not contact the subscriber from the time when it is first informed by the recipient operator that the subscriber decided to change the account, and up to two months after the account is closed or modified.

The exceptions allowed for customer contact in the existing decision on SB-WLR as well as any other exceptions allowed in the number portability specifications would still apply.

**Proposed Decision 2:** Once subscribers have signed the application form pertaining to Number Portability, Wholesale Line Rental or Carrier Pre-Selection ("All Calls" option), recipient operators shall not accept the cancellation of the instruction request during the ordering process, i.e. between the time the application form is signed until the request is implemented or rightfully refused by the operator or service provider to which the request is directed.

**Proposed Decision 3:** The recipient operator shall not accept the migration of a subscriber back to the donor or to another service provider using the same facility for a period of two months after completion of the migration process.

**Proposed Decision 4:** All application forms pertaining to Number Portability, WLR and CPS shall clearly indicate that once the forms are duly signed applicants cannot change the service provider as per the above mentioned decisions.

Without prejudice to the generality of the above Proposed Decisions, in order to avoid any inconsistencies between these Proposed Decisions and the respective decisions already published by the MCA, it is being

proposed that the latter be amended as detailed in Annex 1 to this document.

## 6 Consultation Framework

The MCA invites comments from interested parties regarding this consultation paper.

The consultation period will run until 1200hrs on 21<sup>st</sup> December 2007. The MCA believes this period is sufficient to give interested parties the opportunity to comment on the proposed decision.

Comments should be sent to:

Mr Ian Agius  
Chief of Operations  
Malta Communications Authority  
Valletta Waterfront,  
Pinto Wharf,  
Valletta VLT01  
Malta

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

Written representations will be made public by the MCA subject to MCA's Internal Guidelines on Confidentiality published on 16<sup>th</sup> December 2004.

Joseph V Tabone  
Chairman

22<sup>nd</sup> November 2007

## **Annex A: Proposed Amendments**

**Proposed Amendment A.1:** The MCA proposes that Decision 10 of the 'Introducing Number Portability in Malta Report on Consultation and Decision' will be amended to read as follows:

"The MCA directs that donor operators may not initiate contact with a subscriber who has requested number portability to discuss the advantages or disadvantages of changing operator, nor make offers to such a subscriber that are not available to the generality of subscribers. Contacts to solve problems that affect subscriber's service that have arisen during the porting process are allowed.

Commencing as from the signing of the Number Portability Application Form, recipient operators shall not accept requests from other operators or the subscriber to cancel the porting request, or port the respective number again, until two months have elapsed from when the porting is functional."

**Proposed Amendment B.1:** The MCA proposes that paragraph 13 of Appendix 1 to the Reference Wholesale Line Rental Offer detailed in Annex A of the 'Report on Consultation and Decision of the Wholesale Line Rental' will be amended to read as follows:

"The Operator will handle all subscriber contact for SB-WLR. Users subscribed to a SB-WLR service provider should not be able to subscribe to another SB-WLR service provider, or subscribe back to the Losing Operator, from the moment when the WLR application form is signed until two months have elapsed from when the migration is implemented. A Losing Operator will not engage in any contact with subscribers for SB-WLR during this period except in the following circumstances:....."

**Proposed Amendment B.2:** The MCA proposes that clause (b) of Appendix 7 to the Reference Wholesale Line Rental Offer detailed in

Annex A of the 'Report on Consultation and Decision of the Wholesale Line Rental' will be deleted.

**Proposed Amendment C.1:** The MCA proposes that all ancillary documentation, including the various published specifications, pertaining to Number Portability, Wholesale Line Rental and Carrier Pre-Selection shall be updated to reflect the principle that donor operators are prohibited to initiate contact with customers availing themselves from such services from the moment of the signing of the application form of the pertaining service and up to a period of two months following the functional use of the same service; and the subscriber may not migrate back to the donor or to another service provider using the same facility for a period of two months after completion of the migration process.