

Subscriber Contracts

Decision of the 20th of July 2012 as amended on the 20th of September 2012

Document No:	MCA/D/12-1348
Date of Publication:	20 th July 2012
Date of Amendment:	20 th September 2012

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Introduction

This Decision addresses the manner in which undertakings are required to provide subscriber contracts for the provision of an electronic communications service/s, in line with Article 23 of the Electronic Communications (Regulation) Act (Cap.399) (hereafter ECRA).

The Decision addresses the following points:

- 1) agreement and conclusion of a contract;
- 2) form of a contract;
- 3) means by which the contracts should be made available to consumers; and
- 4) provisions that are legally required to be included in contracts related to electronic communications service/s.

The MCA's 'Report on Decision – Subscriber Contracts' annexed to this Decision provides an overview of the consultation conducted by the MCA on the subject matter, the responses to the Consultation and the rationale for the various Decisions captured in this Decision Notice.

1. Decision 1 - Contracts

Undertakings providing any electronic communications service/s shall provide subscribers with either:

- 1) A written physical contract which is signed by the subscriber; or
- 2) An electronic contract.

1.1. Physical Contracts

Service providers are to ensure that, in the case of physical contracts, the subscriber's signature is included on the contractual document containing the applicable Terms and Conditions (hereafter 'Ts and Cs') (which also includes the date of signature). In all cases, particularly when these 'Ts and Cs' exceed one page, the space reserved for the subscriber's signature shall be preceded by an explicit statement which declares that upon accepting, the subscriber agrees to the 'Ts and Cs' listed in the contract.

1.2. Electronic Contracts

The conclusion of a contract by electronic means shall comply with the requirements of the Electronic Commerce Act (CAP 426) of the Laws of Malta and other applicable legislation.

When an undertaking concludes an agreement by means of an electronic contract, it shall maintain evidence of the subscriber's:

- manifest consent to subscribe to the specific service/package/offer; and
- acceptance of the specific 'Ts and Cs' attached to the provision of that service/package/offer.

1.3. Pre-paid Services¹

The subscription and subsequent use of a pre-paid service, whereby the subscriber may terminate the contract without giving prior notice and without incurring any penalty fees, is sufficient proof of a subscriber's intention to enter into and accept the contract terms, and therefore, a physical signature is not required.

In such circumstances the end-user shall be:

¹ Decision 1.3 as **amended** on the 20th of September 2012.

- 1) informed in writing about the applicability of a set of 'Ts and Cs' governing the use of that service/s in line with the Authority's Decision referred to above;
- 2) referred to the location on the undertaking's website where the end-user may access, free of charge, the Ts and Cs; and
- 3) informed about his right to request a copy of the Ts and Cs at any of the undertaking's outlets, free of charge.²

Upon activation of a mobile pre-paid service and/or a mobile pre-paid offer, subscribers shall be informed of the voice, SMS and data tariffs as applicable for that respective service/offer by means of an SMS.

1.4. Add-on Services

A physical signature is not mandatory for the subscription of add-on 'premium' services as well as upgrades/downgrades to the service/s, as long as that these are not subject to a minimum contractual period and/or to any early termination fee (hereafter 'ETF'). The undertaking shall maintain adequate proof of the subscriber's request to un/subscribe from/to the package/offer/service as well as the subscriber's acceptance of any new 'Ts and Cs' and provide such evidence to MCA if requested.

2. Decision 2 – Provision of a Contract

All 'Ts and Cs' governing a package and/or service and/or offer shall be published on the undertaking's website and shall be accessible from the same web-page where the service, offer or package is being publicised.

Those 'Ts and Cs' applicable to a service/package/offer which is no longer available for take-up, but which are still governing the use of that service/package/offer, shall remain available on the undertaking's website until the termination of all services/packages/offers being governed by those 'Ts and Cs'.

All 'Ts and Cs' for services currently being offered to the public shall be made available in writing at all retail outlets such that upon request, they are readily available for inspection free of charge by the general public during normal business hours. Copies of these contracts shall be provided in hard copy format free of charge should these be requested by prospective subscribers.

² Implementation timeframes of above requirement only, are specified in MCA's paper 'Subscriber Contracts – Report on Feedback to Clarifications and Proposals (i.e. 1st April 2013)

3. Decision 3 - Conditions Limiting Access to and/or Use of Services and Applications

Any important limitations or conditions impacting the service/s being provided shall be included in subscriber contracts. As a minimum the following information shall be included:

- Coverage of services (subscriber contracts shall make reference to the existence of such information and refer to a location where the end-user may obtain this information free of charge); and
- Any restrictions imposed by the undertaking, which limit the subscriber's ability to access other services/features.

4. Decision 4 - Limitations that may Apply for the Re/Transmission of Content

Subscriber contracts shall describe the nature of any limitations that may apply for the re/transmission of content.

When an undertaking is aware *a priori* of any expiry dates after which the re/transmission of any European football event (the rights of which have been acquired through a public bidding processes) cannot be guaranteed, that undertaking must make available information pertaining to the expiry date to re/transmit that content.

This information shall be made available to end-users on the undertaking's website as well as at all of the undertaking's retail outlets, and shall be provided in hard copy format, if so requested by the end-user, free of charge. Subscriber contracts shall, in turn, make reference to the availability of such information, including a reference as to where this information can be obtained.

5. Decision 5 – Quality of Service

5.1. Minimum Access Speeds³

An undertaking shall specify the minimum access speeds in case of fixed Internet service, ensuring that these do not differ significantly from the marketed upper levels. Such information shall be specified in subscriber contracts in line with any decisions published by the Authority on this matter.

As a minimum, undertakings shall ensure that subscriber contracts for the provision of mobile internet services provide a description of the limitations and factors which may impact on the minimum access speeds available to end-users.

5.2. Maximum Time for Initial Connection and Disconnection

Subscriber contracts shall specify the maximum time for initial connection of the service/s. If the service/s is not installed within the timeframe for initial connection, the subscriber shall have the right to exit the contract without incurring penalties. The subscriber's right to exit without penalty shall not apply in the event that the initial time for connection was exceeded for reasons which are outside the undertaking's control.

Subscriber contracts shall specify the maximum time for disconnection. When the subscriber adheres to the disconnection process established in the contract, the subscriber shall not be liable to pay for the service/s after the disconnection advance notice lapses, if applicable.

Undertakings shall ensure that there are no unnecessary discrepancies between the procedure for connection and disconnection.

5.3. Types of Maintenance Services Offered

Information regarding the types of maintenance services and customer support services offered shall be made available to end-users on the undertaking's website as well at all the undertaking's retail outlets. Such information shall be provided in hard copy format, if so requested by the end-user, free of charge. Subscriber contracts shall, in turn, make reference to the availability of such information, including reference as to where this information can be obtained.

5.4. Maximum Repair Time for Faults or Other Service Faults

Subscriber contracts shall specify the maximum repair time required to restore services free of charge in the event of faults resulting from failures to the service provider's equipment and/or

³ Decision 5.1 as **amended** on the 20th of September 2012.

infrastructure (excluding cases of force majeure). In this respect, the contract should specify the minimum service availability or up-time, excluding cases of force majeure.

6. Decision 6 - Particulars of Prices, Tariffs and Charges

All information pertaining to the details of prices, tariffs and other applicable charges for the use of the service/s shall be either listed in:

1. the subscriber's contract; or
2. a separate document which is signed by the subscriber and annexed to the contract.

7. Decision 7 - Billing and Payment Methods

Post-paid contracts shall provide information on the right of subscribers to request at any time a basic level of itemised bill, free of charge, through their preferred medium in line with regulation 38 of the Electronic Communications Networks and Services, SL 399.28 of the Laws of Malta (hereafter 'ECNSR').

In addition, subscriber contracts shall also provide information on:

- methods of issuing bills/invoices and the billing frequency (including any available subscriber options);
- the different methods of payment available and any charges/discounts available with respect to each of these methods, if any;
- any timeframes for the payment of bills; and
- applicable charges for late payment of bills and any other action that may be taken by the service provider in this regard in line with Proposed Decision 9 below.

8. Decision 8 - Email Forwarding services

Subscriber contracts shall include information on the subscriber's right to request upon termination of his internet service:

- 1) the forwarding of any e-mail received on the original e-mail address to a new e-mail address, free of charge, for a minimum period of twelve (12) months; and
- 2) an automated reply to any electronic mail received on the original e-mail address informing the sender of the forwarding service referred to above and the new email address where the subscriber so requests.

Undertakings shall take the necessary measures to ensure that the process to request email forwarding services, is specified in the disconnection procedure outlined in the Ts and Cs of the respective undertaking, in line with **Proposed Decision 9** hereunder.

9. Decision 9 - Duration of the Contract, Conditions for Renewal, Suspension and Termination

Any clauses specifying any contractual periods, shall also include a the following information:

- 1) the duration of the contract;
- 2) the minimum advance period of notice to be given by either party to terminate the contract, if any;
- 3) the means by which subscriber decision to terminate the contract is to be communicated to the service provider;
- 4) the steps that the subscriber is required to take in order to terminate the contract;
- 5) the conditions under which either party would have a right to suspend and/or terminate the contract. Furthermore, contracts must specify the method by which a subscriber may rescind the contract without incurring any penalties if it is proved that the contracted services are not being provided in line with the contract terms;
- 6) any penalties applicable in the event that the subscriber terminates his contract prior to the lapse of the contracted period, (ensuring that these are reasonable and proportionate)
- 7) the manner in which the contract may be renewed.

The information pertaining to the duration of the contract, as well as the charge applicable for terminating the contract before the end of its term shall be either written in:

- 1) **bold** and in a font size which is at least **20% larger** than the other clauses in the contract of service; or
- 2) **bold** and inserted as **the final clause before the subscriber's signature** (given that the font size is the same used for the other clauses in the contract).

Any early termination charges and/or fees to subscribers requesting termination of contracts shall be justified and reasonable, and shall not exceed the sum of the remaining periodic fees that the subscriber would be liable to pay, should he complete his initial term.

9.1. Suspension and/or Termination of Service due to Non-Payment

Any measures taken by an undertaking with regard to suspension and/or termination of service due to non-payment, excluding cases of persistent late or non-payment, shall be clearly listed in the contract. The contract shall clarify that subscribers will be adequately informed in advance about the actions that will be undertaken in this regard, specifying the courses of action available to them to avoid suspension and/or termination of service/s.

10. Decision 10 - Initiating Procedures for Settlement of Disputes

The undertaking's complaint and enquiry handling process, along with the information specified in points (1) to (7) listed hereunder, shall be made available to end-users on the undertaking's website as well at all the undertaking's retail outlets, and shall be provided in hard copy format, if so requested by the end-user, free of charge. Subscriber contracts shall, in turn, make reference to the availability of such information, including reference as to where this information can be obtained.

As a minimum such information shall include:

- 1) Available channels for submitting claims;
- 2) Any reasonable time limit for submitting claims;
- 3) Maximum time limit for undertakings to acknowledge receipt of claims;
- 4) Maximum time limit for responding to claims;
- 5) Claims resolution procedure;
- 6) Information about the subscribers right to lodge a complaint with the MCA if not satisfied with the response and/or remedy offered by the service provider; and
- 7) MCA's contact details.

11. Decision 11 - Compensation or Refund Schemes

The compensation and refund schemes provided by undertakings, for losses incurred where contracted service quality levels are not met by the undertaking for reasons not attributable to the subscriber (excluding cases of force majeure), shall be made available to end-users on the undertaking's website as well at all of the undertaking's retail outlets. Such information shall be provided in hard copy format, if so requested by the end-user, free of charge. Subscriber contracts shall, in turn, make reference to the availability of such information, including a reference as to where this information can be obtained.

12. Decision 12 – Applicability of Decision

This Decision shall apply to all new subscriber contracts and relevant terms and conditions for publicly available electronic communications services introduced on the market as from **Monday 19th November 2012**.