

Please quote our ref: LEG 438/MCA-LEG/mb/16-2511

25th February 2016

Mr. Yiannos Michaelides
The Chief Executive Officer
GO plc
Triq Fra Diegu
Marsa MRS 1501

Dear Mr. Michaelides,

Re: Final Decision Further to GO plc's Failure to Notify

The Malta Communications Authority (the MCA) is issuing this decision further to its letter of warning dated 2nd February 2016 concerning GO plc's (GO) failure to notify the MCA with various 'notification letters' sent to its subscribers informing them about changes to the terms and conditions of certain packages. In doing so the MCA has considered the various communications in writing with GO including GO's response dated 16th February 2016 to the MCA's letter of warning.

Background and issue of letter of warning

The MCA as per its letter dated 13 November 2015 wrote to GO about an instance whereby GO failed to notify the MCA about its communication to its subscribers in accordance with the MCA's regulatory decision entitled "Modifications to the Terms and Conditions of Subscriber Contracts" (published in October 2011) and with article 23(4) of the Electronic Communications (Regulation) Act. In its response to the MCA's letter, GO explained that the failure to notify was due to an oversight by a new employee. Given this explanation the MCA decided not to take any further action on the clear understanding that it would consider taking regulatory action if similar shortcomings would occur.

Regrettably in a matter of few weeks the MCA was again confronted with similar failures to notify the MCA with notifications to GO's subscribers advising them of changes to the applicable terms and conditions. Reference in this regard is made to various e-mail communications between the MCA and GO, specifically the MCA's enquiry dated 5th January 2016 whereby the MCA asked GO as to why it was not informed by GO of a notice GO had sent to its clients advising them of changes to specified mobile telephony plan, and to GO's e-mail dated 8th January 2016 which states that the repeated failure to notify the MCA was due to oversight by a new employee in GO's commercial department.

Given such circumstances the MCA issued a letter of warning dated 2nd February 2016 informing GO that it was considering the imposition of an administrative fine of 1000 euros given that GO had committed the same breach and this with regard to at least five different instances. GO was afforded the opportunity to make its submissions in response to the aforesaid letter of warning.

GO's response to the letter of warning

GO as per its communication dated 16th February 2016 in response to the letter of warning of the MCA , said that internal investigations that it conducted revealed the incidents referred to by the MCA and that these were communicated to the MCA as per GO's communication dated 8th January 2016. GO argues that the said incidents pre-date the MCA's letter of November 2015, and that 'technically' it did not cause the shortcoming referred to in that letter (of November 2015) to occur again taking measures to prevent any reoccurrence. GO contends that all the incidents 'are tied to the same reason and timeframe' as referred to in the first letter (of November 2015) of the MCA.

Decision


The MCA however notes that in its letter of the 13th November 2015 it had expressly warned GO that it would take regulatory measures if such shortcomings should occur again. Regrettably in January 2016 MCA became aware of similar shortcomings in the course of monitoring that it does. The MCA consequently communicated with GO seeking explanations as to why GO had yet again failed to notify the MCA about such changes.

Furthermore whilst the MCA does not contest GO's statement that it had no intention to 'hide' the above mentioned instances of non-compliance, it is pertinent to note that GO did not at any stage inform the MCA about the re-occurrence of such shortcomings until the MCA detected this shortcoming and enquired with GO. The detection by the MCA of such shortcomings was the result of information that the MCA had in the exercise of its regulatory functions.

GO argues that 'technically' it did not cause the shortcomings to occur again. The MCA considers that ultimately GO is responsible towards the MCA for any shortcomings – even if done in good faith – of its employees or agents however so described, if as a result there are instances of non-compliance with regulatory requirements.

Given the above the MCA determines that GO acted contrary to the regulatory requirements under Decision 3.2 of its Decision Notice entitled "Modifications to the Terms and Conditions of Subscriber Contracts" (published in October 2011) and under article 23 of the Electronic Communications (Regulation) Act and is therefore imposing an administrative fine of one thousand euros (€1,000) in accordance with its powers under articles 31, 32 and 33 of the Malta Communications Authority Act.

Yours



Paul Edgar Micallef
Chief Legal Adviser

cc: Mr. Stefan Briffa – Senior Manager - GO plc
Mr. Robert Mifsud – Chief External Relations - MCA
Mr. Mark Stivala – Senior End-User Officer - MCA