



MALTA COMMUNICATIONS AUTHORITY

## Revision of Decisions 3 and 4 of the Decision on the Wholesale Access to Data and the Provision of Publicly Available Directory Information Services

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**Final Decision**

MCA/D/15-2245 REV 1

**Publication Date:**

24 FEBRUARY 2016

## EXECUTIVE SUMMARY

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In April 2014, following consultation with the public, the MCA published the Decision on Wholesale Access to Data for the Provision of Publicly Available Directory Information Services (hereinafter referred to as 'the First Decision Notice'). However, before this First Decision Notice became applicable, the MCA considered that a phrase used in Decisions 3 and 4 of the First Decision Notice could be misconstrued. For this reason, on 16 November 2015, the MCA launched a second consultation process in order to consult limitedly on the re-wording of Decisions 3 and 4 of the First Decision Notice. This consultation ended on 4 December 2015.

This document contains the Decision Notice amending Decisions 3 and 4 of the First Decision Notice while reporting on the feedback received from the relevant consultation process of November 2015. It shall hereinafter be referred to as 'the Amending Decision Notice'.

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## 1. INTRODUCTION

Following the publication of the First Decision Notice, it was brought to the Authority's attention that the first sentence of Decision 3 may benefit from minor textual clarifications in the case of subscribers of pre-paid mobile telephony services. As a result, it was considered that Decision 4 of the First Decision Notice could also benefit from the same textual clarification.

The purpose of the consultation process held between 16 November and 4 December 2015 was therefore limited to suggesting clarifications to the text in these two specific decisions of the First Decision Notice in order to provide more clarity and to assist operators in their implementation of these two decisions.

In the consultation process which ensued, it was made clear that these suggestions were either to be accepted or, if objected to, the original text as contained in the First Decision Notice would apply.

Due to the fact that the consultation process straddled the implementation date of the First Decision Notice, the consultation document had also stated that the implementation of the First Decision Notice, whether revised or unchanged following this consultation process, would be postponed to one month following the publication of the report on the consultation, that is, one month following this Amending Decision Notice.

## 2. FEEDBACK ON ISSUES CONSULTED UPON

As already indicated in the introduction, the consultation document only addressed two issues, namely the wording of Decisions 3 and 4 of the First Decision Notice.

Feedback was received from 3 sources, all of which are providers of Publicly Available Telephony Services. These are GO plc, Melita plc (hereinafter 'Melita') and Vodafone Malta Ltd. The MCA would like to thank all three respondents for their comments which have been duly considered.

### 2.1 CLARIFICATION OF DECISION 3:

The first proposed amendment to the First Decision Notice referred to the first sentence of Decision 3 which read as follows:

*'Consent clauses should be presented by PATS providers to new customers at the same time as they are provided with their contract of service or, in the case of pre-paid subscribers of mobile telephony services who wish to register their personal details, **at the time of purchase.**'*

In the consultation process which preceded this Amending Decision Notice and which was launched in November 2015 it was suggested that the text highlighted in bold above be replaced as per the text in the paragraph below and which is also in bold as follows:

*'Consent clauses should be presented by PATS providers to new customers at the same time as they are provided with their contract of service or, in the case of pre-paid subscribers of mobile telephony services, **whenever they express their wish to register their personal details.**'*

All three operators which provided feedback agreed to and welcomed the suggested text.

Decision 3 has therefore been amended to read as follows:

'Decision 3

Consent clauses should be presented by PATS providers to new customers at the same time as they are provided with their contract of service or, in the case of pre-paid subscribers of mobile telephony services, whenever they express their wish to

register their personal details. The consent clauses should be presented in all such cases and made available either as part of the contract and/or terms and conditions of such contract, or as a separate form. Consent clauses presented as part of the contract or any other document shall require a separate signature.'

## 2.2 CLARIFICATION OF DECISION 4:

It is for the same reasons that changes were suggested to the second sentence of Decision 4 in the First Decision Notice which read:

*'In the case of registered pre-paid subscribers wishing to be included in the directory information services, the consent clauses shall be returned by such subscriber **at the time of purchase if he/she wishes to be included in the directory information database.**'*

In the consultation process it was suggested that the text highlighted in bold above be replaced as per the text in the paragraph below and which is also in bold as follows:

*'In the case of registered pre-paid subscribers wishing to be included in the directory information services, the consent clauses shall be returned by such subscriber **at the time of registration.**'*

Once again, all three operators which provided feedback agreed to and welcomed the suggested text.

Decision 4 has therefore been amended to read as follows:

'Decision 4

PATS providers shall ensure that the consent clauses are returned by their subscribers, duly compiled and signed, at the same time as, and together with, the signed contract. In the case of registered pre-paid subscribers wishing to be included in the directory information services, the consent clauses shall be returned by such subscriber at the time of registration.'

## 2.3 OTHER FEEDBACK:

As already stated earlier in this Amending Decision Notice, due to the fact that the consultation process which preceded it straddled the implementation date of the First Decision Notice, the consultation document had also stated that

the implementation of the First Decision Notice, whether revised or unchanged following this consultation process, would be postponed to one month following the publication of the report on the consultation, that is, one month following the publication of this Amending Decision Notice.

Due to the fact that the publication of this Amending Decision Notice could have coincided with the Christmas period, Melita requested in its feedback that the time given to implement the First Decision Notice, whether amended or otherwise, be longer than the one month from publication as indicated in the consultation document.

Given that the Amending Decision Notice is being published towards the end of February 2016, the MCA considers that the difficulties highlighted by Melita relating to the Christmas period should no longer present themselves. Therefore the one month time-frame shall apply. This means that the substantive clauses – namely Decisions 2, 3 (as revised in the Amending Decision), 4 (as revised in the Amending Decision), 5, 6<sup>1</sup>, 7, 8, 9 and 10 – shall all come into effect on 24 March 2016.

Contrary to what was stated in the consultation which preceded this Amending Decision Notice, a Consolidated Decision shall not be published as an annex to this Amending Decision Notice. Rather, for the benefit of all operators, the MCA shall be publishing a consolidated version of both the First and the Amending Decision Notices as a separate document and for information purposes only by end March 2016, subsequent to the lapse of the period allowed by law to appeal this Amending Decision Notice.

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<sup>1</sup> The time-frame of seven months referred to in Decision 6 of the First Decision shall not apply since such time-frame has been superseded by the time-frame of one month that has been established by this Amending Decision.