

Modifications to the Terms and Conditions of subscriber contracts

Decision

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Introduction

This Decision addresses the manner in which undertakings are expected to meet their obligations when modifying the terms and conditions of subscriber contracts in line with Article 23 of the Electronic Communications (Regulation) Act (Cap.399) (ECRA).

The Decision addresses the following points:

1. terms and conditions in subscriber contracts regarding amendments to contracts;
2. notifications to subscribers regarding modifications to the terms and conditions of subscriber contracts;
3. modifications to the terms and conditions of subscriber contracts which are manifestly of benefit to subscribers; and
4. undertakings terminating a package and undertakings terminating a specific service or ceasing operations.

This Decision comes into force with immediate effect.

1. Terms and conditions in subscriber contracts regarding amendments to contracts

Decision 1

In accordance with Regulation 35(1) (i) subscriber contracts must include a clause that relates to the possible future modification or termination of such contracts which shall clearly and unambiguously state that:

1. any modification will be notified in writing to the subscriber at least thirty (30) days prior to the implementation of the proposed modification; and
2. should the subscriber not agree to this modification, he/she has the right to withdraw from such contract without penalty, unless the undertaking concerned has been expressly exempted by the Authority from this obligation, in accordance with article 23(5) of Cap.399 of the Laws of Malta.

2. Notifications to subscribers regarding modifications to the terms and conditions of subscriber contracts

Decision 2.1

Prior to any verbal notification of the proposed amendment, any notifications regarding modifications to the contract of service shall be sent in writing to subscribers by ordinary mail or by email if the subscriber has given his/her consent. In the case of subscribers of a pre-paid mobile telephony service, notifications of proposed modifications to such service may be sent by SMS.

Decision 2.2

Any communication intended to notify subscribers of modifications to the terms and conditions of subscriber contracts shall be limited to contain only information about the modifications to the conditions of the service/s currently being offered, including the amended provisions of the contract as revised.

Unless exempted by the Authority in line with Decision 3.1 hereunder, any notification to subscribers regarding modifications to the terms and conditions of subscriber contracts is also required to include information regarding:

1. the subscriber's right to terminate the service/s within thirty (30) days from notification, without incurring any penalties, if he/she does not agree with the proposed change/s;
2. the manner in which any deposit or advance payment made by the subscriber for the original service (if any) will be refunded if the subscriber chooses to unsubscribe to the service/s or switch to a new service; and
3. the manner in which subscribers are required to notify undertakings about their intention to terminate the contract during the thirty (30) day notice period should they disagree with the proposed change/s.

Notifications regarding modifications to the terms and conditions of subscriber contracts must be a separate and distinct document (or email / sms in accordance with Decision 2.1 above) although these can be delivered to subscribers concurrently with other communications.

In all cases, subscribers must also be given the opportunity to seek further information and clarifications on the proposed modifications from the undertaking in a simple manner and at minimal cost.

3. Notification to the Authority

Decision 3.1

When an undertaking considers that modifications to contract terms and conditions which it intends to introduce will positively affect all impacted subscribers, that undertaking may notify the MCA regarding the proposed modifications to terms and conditions of subscriber contracts and seek a waiver from the MCA from the obligation to provide subscribers with the option to terminate the contract without penalty in accordance with Article 23, subarticle 5 of the ECRA.

Any proposed modifications to subscriber contracts shall be communicated to the Authority together with all the relevant documentation:

- the full description of the service/s impacted;
- a brief statement providing considerations on how the undertakings believe that the proposed change/s will positively affect impacted subscribers;
- the related terms and conditions of the service/s impacted;
- the copy of the notification letter to be sent to the subscribers; and
- any other relevant information which may be necessary for MCA's ruling.

Requests for exemption may be communicated to the Authority at the undertaking's discretion, up to ten (10) working days prior, but not less than five 5 working days prior to the intended date of notification to subscribers. The Authority shall communicate its decision within a maximum of 5 working days from the undertaking's request.

Requests for a waiver of subscribers' right to exit from contracts, when these are modified by undertakings are to be sent to the following contact point:

Email Address: termsandconditions@mca.org.mt

Decision 3.2

In instances where:

- the Authority decides that the modifications do not necessarily impact, in a manifestly positive manner, some or all of the concerned subscribers; or
- undertakings have already determined that the modifications to the subscribers' contract are not positively affecting impacted subscribers; or
- where for any other reason, the undertaking decides not to seek the Authority's ruling,

modifications to the contract of service must be implemented in line with Decision 2 above.

Any proposed modifications to the contract of service and related communications shall be notified to the Authority by the relevant undertaking at least one (1) working day prior to notification to the relevant subscribers.

In instances where the Authority decides that the proposed changes are manifestly of benefit to all subscribers to that service, in line with Decision 3.1 above, the obligation that requires undertakings to notify the Authority about any modifications to the contract of service/s at least one (1) working day prior to the notification to the relevant subscribers, shall be automatically waived if the notification provided previously to the Authority is not altered.

Any changes to subscriber contracts, including for example changes to a TV channel line-up should be notified to the Authority a minimum of 31 days prior to such change/s coming into force. In the event that the change is outside of the undertaking's control, and must be implemented in a period of less than 31 days, the notification to the Authority should be made immediately upon the undertaking becoming aware of the fact.

4. Undertakings terminating a package/s and undertakings terminating a specific service/s and/or ceasing operations

Decision 4.1

Undertakings shall inform their subscribers about the termination of a package/s at least 30 days prior to the termination of the package/s.

The notification of termination shall:

- provide information about the manner in which any deposit or advance payment however so described (if any), made by the subscriber for the original service will be refunded;
- be notified to the Authority accompanied by any relevant communications by the relevant undertaking to its subscribers at least five (5) working days prior to notification to the relevant subscribers.

Decision 4.2

An undertaking terminating the provision of a service or ceasing operations shall, in addition to obligations set out in decision 4.1 above, shall include information in the notification to impacted subscribers on how to migrate services to at least one (1) alternative provider and make available technical support services to assist impacted subscribers so as to minimise any disruptions.

Undertakings shall take all the necessary measures, particularly when making agreements with third parties in relation to the electronic communications services that they provide, in order to ensure that such agreements do not act as an obstacle when implementing the above mentioned provisions addressed in the MCA's decision. In particular, undertakings are to ensure that wholesale agreements take into account the notice periods stipulated in the Act and in this Decision.