



Review of the Administrative Charges and Number Usage Fees Structures

Electronic Communications Networks and Services

Response to Consultation

MCA/O/16-2607

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EXECUTIVE SUMMARY

In line with the Electronic Communications Networks and Services (General) Regulations, SL399.28 of the Laws of Malta (the 'Regulations'), the Malta Communications Authority (MCA) collects administrative charges from operators of electronic communications networks and/or services to cover the costs necessary for the purpose of carrying out its tasks relating to the regulation of the electronic communications sector. The MCA also collects fees, on behalf of Government, for the right of use of numbers in such manner as to ensure the optimal use of such resource.

On the 4th January 2016, the MCA published a consultation document entitled '*Review of the Administrative Charges and Number Usage Fees Structures*'.¹ The Consultation, which ran through to the 27th January 2016, sought the views from the industry and members of the public on the proposed changes to the administrative charges and number usage fee structures.

Vodafone Malta Limited ("Vodafone") and GO Plc ("GO") submitted their views to the Consultation.

The MCA is of the opinion that the responses received to the Consultation with respect to the proposed administrative charges and number usage fees structures presented no new perspective or proposal.

On the basis of the Consultation and the responses received, the MCA submitted to the Minister responsible for communications the proposed changes to the current administrative charges and number usage fees structures in line with the Consultation.

The MCA proposed that the revised administrative charges would come into effect as from 1st July 2016, whereas the revised number usage fees would come into effect as from 1st January 2017.

This document provides the salient points of the feedback provided by the respondents to the issues and proposals raised in the Consultation and the MCA's reflections on the feedback provided.

¹ Refer to:

<http://www.mca.org.mt/consultations/review-administrative-charges-and-number-usage-fees-structures-electronic>

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1. INTRODUCTION

The MCA's tasks relating to the regulation of the electronic communications sector are funded from the administrative charges that it collects from the undertakings operating in the sector. In this respect, the MCA accounts for its activities and expenditure in relation to the sector's regulation through a published statement of income and expenditure which reconciles its expenditure with the administrative charges collected from the sector. Furthermore, the MCA is legally obliged to return any surplus funds remaining at the end of the year to the industry, or request additional funds from the industry if required. The MCA also collects fees on behalf of Government for the allocation of the right of use of numbering resources.

On the 4th January 2016, the MCA published a consultation document entitled 'Review of the Administrative Charges and Number Usage Fees Structures'. The Consultation, which ran through to the 27th January 2016, sought the views from the industry and members of the public on proposed changes to the administrative charges and number usage fee structures.

Administrative charges to be paid on an annual basis:

Fixed Fee		Proposed	Current
(a)	Public communications networks	€11,645	€11,645
(b)	Publicly available telephone services	€11,645	€11,645
(c)	Television and radio distribution services	€11,645	€11,645 plus €0.35 per subscriber
(d)	Other publicly available electronic communications services	€2,325	€2,325
(e)	Non-public electronic communications services	€2,325	€2,325
(f)	Publicly available telephone directories and directory enquiry services	€2,325	€2,325
(g)	Alternative roaming provider services	€2,325	€2,325
Undertaking authorised to provide services under (b) shall be exempt from the payment of administrative charges pertaining to the provision of services under (f).			
Furthermore, undertakings providing any of the services under (b), (c), (d), (e) or (g) above shall also pay to the Authority the following:			
Variable fee: Proposed		Current	
1.1% of the total gross revenue		(i) 1.5% of the first €23,293,735 tranche of the total gross revenue or part thereof,	
		(ii) 1% of the second €23,293,735 tranche of the total gross revenue or part thereof, and	
		(iii) 0.5% of any remaining gross revenue.	

Usage fees for numbers to be paid on an annual basis:

		Proposed	Current
(a)	Numbers in the '2', '3', '7' and '9' number ranges excluding such numbers as the Minister may, after consultation with or on the advice of the Authority, from time to time establish by order in the Gazette.	<i>€700 per allocated numbering block of 10,000 numbers or proportionate depending on the size of the allocated block</i>	<i>€0.35 per individual number allocated and €230 per block of 10,000 numbers</i>
(b)	Carrier select/pre-select codes	<i>€5,000 for each code</i>	<i>€2,325 for each code.</i>

The MCA proposed that amendments at law implementing the revised administrative charges would come into effect as from the 1st July 2016, and those pertaining to number usage fees would come into effect as from 1st January 2017.

Changes to the administrative charges structure is required in order for the MCA to continue to have an adequate cashflow to cover its annual costs in carrying out its tasks relating to the regulation of the electronic communications sector due to changes in the corporate structures of large operators. Changes to the numbering usage fee structure are targeted towards as well as to encouraging more efficient use of numbers by authorised undertakings.

The proposed administrative charges will continue to ensure the effective collection of the MCA's funding requirements for the regulation of the electronic communications sector with minimum administrative burden on the operators and are imposed in a manner which is fair and equitable. In addition, the proposed number usage fee structure will maximise the efficient use of numbering resources.

2. LEGAL BASIS

The statutory provisions relating to the administrative charges required to cover the costs of the MCA, incurred in the performance of its functions relating to the regulation of electronic communications network and services, and to the fees due to Government for the optimal use of numbers, are found in the Electronic Communications (Regulation) Act, Cap 399 of the Laws of Malta (the 'Act') which transposes various requirements of the applicable EU Directives.²

In line with article 18(1) of the Act administrative charges are imposed on undertakings providing an electronic communications network and/or service under the general authorisation or to whom a right of use has been granted. These charges shall, in total, cover the administrative costs incurred in the management, control and enforcement of the general authorisation scheme and of rights of use and specific obligations.

Article 18(1) of the Act establishes that administrative charges shall be imposed upon the individual undertakings in an objective, transparent and proportionate manner which minimises additional administrative costs and attendant charges.

Article 18(2) of the Act requires the MCA, in relation to the imposition of such administrative charges, to publish an annual overview of its administrative costs and of the total sum of charges collected.

Article 18(3) of the Act requires the MCA, in the case of charges imposed on an annual basis, to make appropriate repayments or compensation in the case of overcharging, or impose additional charges in the case of undercharging of a person to whom a charge is imposed in the light of any difference between the total sum of administrative charges collected and the administrative costs incurred.

Article 18(4) of the Act establishes that any fees that may be imposed for rights of use for radio frequencies and/or numbers shall reflect the need to ensure the optimal use of the radio frequency spectrum and the national numbering scheme.

Article 18(5) of the Act establishes that any fees imposed for rights of use of for radio frequencies and/or numbers shall be objectively justified, transparent, non-discriminatory and proportionate in relation to their intended purpose and shall take into account the objectives as set out in Article 4 of the Act.

² Refer to Directive 2002/20/EC of the European Parliament and of the Council of 7th March 2002 on the authorisation of electronic communications networks and services (Authorisation Directive) as amended by Directive 2009/140/EC.

3. CONSULTATION ISSUES

This section outlines the rationale for the revision of the administrative charges and number usage fees structures put forward in the Consultation.

3.1 ADMINISTRATIVE CHARGES

In its Consultation the MCA proposed to remove the current regressive charging bands and instead apply a single fixed charging rate to relevant turnover (i.e. a single fixed percentage of relevant turnover) when calculating the annual administrative charge. The application of a single fixed charging rate to relevant turnover would allow the MCA's cashflow to be stable over time, and not be prone to unpredictable movements due to changes in corporate structures of authorised undertakings.

Fixed fees ensure that there is an element of fixed-cost recovery for regulating the electronic communications sector from all operators, independently of their size, and therefore no changes were proposed. However, the MCA proposed to remove the €0.35 per subscriber fee for the provision of television and radio distribution services, thereby rationalising the charge-out algorithm by having a similar one for all services. In addition, various subscribers switch operator during the year, thus rendering verification of the number of subscribers difficult.

The proposed administrative charges structure would allow the MCA to retain its current annual revenue levels whilst minimising as much as possible the impact on operators. The MCA's annual income from administrative charges is in the region of €3m³ and the MCA therefore based the proposed administrative charges structure to retain its current annual income.

With the proposed administrative charges structure the MCA would be in a position to continue to have an adequate cashflow in order to cover its annual costs in carrying out its tasks relating to the regulation of the electronic communications sector. In line with national law and with the applicable EU Directives the MCA makes appropriate repayments to operators in case of overcharging.

3.2 NUMBER USAGE FEES

In 2005 Government introduced changes, following proposals by the MCA, in the number usage fees in the light of the introduction of number portability, the entry into the market of new operators and numbers from other ranges being allocated to service providers. The revised number usage fee structure was based on a cost-neutral solution.

Although the structure was introduced in a manner that would have the least impact on the operators functioning at the time, due to the manner in which the industry has evolved over the

³ <http://www.mca.org.mt/sites/default/files/attachments/notices/2016/Overview%20Year%202015.pdf>

years it is no longer considered to be the most proportionate and efficient mechanism in relation to the use of numbering resources.

The MCA proposed a revision to the number usage fee structure in order to introduce a more resource-oriented policy vis-à-vis numbering, whilst maintaining the current Government revenue levels. Although the number usage fee structure was revised in 2005 with the scope of catering for planned industry developments, the current model neither reflects nor entices the most efficient use of numbering resources.

The current number usage fee structure mainly consists of a €230 charge for each 10,000 number block allocated to an operator, together with an additional charge of €0.35 for each number utilised or in service. Although at present there are no resource depletion issues in the National Telephony Numbering Plan,⁴ the MCA is of the opinion that the present mechanism could result in a potentially inefficient numbering resource allocation. In addition the current charging mechanism does not cover services like Direct Dial In (DDI) in which the assigned number block is managed by the subscriber.

In order to render the number charging mechanism more efficient and proportionate, the MCA proposed a revised number usage fee structure which eliminates the charging for individual numbers whilst increasing the annual cost for each 10,000 block assigned prefixed with the '2' (fixed telephony), including those assigned for DDI purposes, '3', '7' (mobile telephony) and '9' (mobile telephony) numbering ranges, irrespective of the type of service being provided, from €230 to €700.

Due to an element of social value the MCA proposed that the numbering ranges prefixed with '1' (short codes services) and '8' (free phone services) will not be subject to any charges except for the Carrier Select codes within the '1' range, amounting to €5,000 per annum. In addition, the '5' (premium rates services) numbering range will also not be subject to any charges due to the minimal number of block assignments.

The proposed number usage fee structure is expected to positively affect those operators which implement a resource-efficient numbering plan. As already stated the proposed number usage fees will also apply in the case of DDI number ranges. To this effect operators and businesses will be encouraged to make optimal use of DDI number ranges.

⁴ Refer to the National Numbering Plan - <http://www.mca.org.mt/general/numbering>

4. RESPONSES RECEIVED TO THE CONSULTATION

This section outlines the respondents' views on the Consultation and the comments made by the MCA.

4.1 ADMINISTRATIVE CHARGES

a) Financing the activities of the MCA

Respondents' Views:

GO claimed that the MCA's regulatory workload has seen a consistent reduction over the past few years, thus necessitating a smaller budget for the regulation of electronic communications networks and services.

Vodafone commented that it is facing ever-increasing competitive constraints from other players and sectors, both local and foreign, which are not subject to the same regulatory regime as itself, if at all. Vodafone believes that these pressures should be reflected in the way the MCA conducts its operations. Vodafone commented that *prima facie* this does not seem to be the case, especially when looking at the MCA's financial statements. These indicate that the MCA's administrative costs, amongst other things, are increasing year-on-year rather than decreasing (this notwithstanding the perceived decline in regulated markets).

Comments by the MCA:

The MCA disagrees with GO and Vodafone's comments relating to the reduction of the regulatory workload over the past few years, as evidenced by its audited annual report. It is true that the focus of the MCA's activities has changed over time, in line with the dynamic nature of the sector but the volume of work has not subsided.

In line with the EU Authorisation Directive of electronic communications networks and services and the Electronic Communications (Regulation) Act, the administrative charges finance the MCA's regulatory activities in managing the general authorisation system and rights of use of radio frequencies and numbers, and specific obligations imposed on individual undertakings. The administrative charges also finance the MCA's work relating to international cooperation, harmonisation and standardisation, market analysis, monitoring compliance and other market control, as well as regulatory work involving compliance with the applicable legislation and the preparation and enforcement of any decisions issued by the MCA in accordance with its functions at law.

In carrying out its regulatory tasks relating to the electronic communications sector the MCA has kept its annual expenditure, in relation to electronic communications activity between €2.5 and €2.8 million over the past few years.⁵ The contention that the MCA's expenditures in this area have

⁵ Refer to the overview of the total sum of charges collected and administrative costs (extracted from the income statement forming part Audited Financial Statements of the Authority) - [2015](#), [2014](#), and [2013](#).

tended to increase is not borne out by the audited statements. In line with applicable legislation the MCA returns any surplus funds remaining at the end of the year back to the industry.

b) Administrative Charging Mechanism

Respondents' Views:

Vodafone claimed that the administrative charging mechanism (both current and proposed) is perceived to be flawed as it results in double charging. This occurs due to the fact that the authorised mobile and fixed telephony undertakings charge their clients for utilising their mobile and fixed and telephone services, a charge which incorporates interconnection / termination charges. The MCA will ultimately be charging and collecting administrative fees from two authorised undertakings for the same revenues. Vodafone commented further that the administrative charging mechanism should factor and take into account that certain revenues generated by the authorised undertakings should not attract such regulatory administrative fees (particularly with regard to revenues that are not related to the local market or revenues that do not concern the regulatory functions of the MCA). Vodafone also noted that the proposed change in administrative charges seems to penalise undertakings with larger gross revenues whilst benefiting those with lower gross revenues.

Comments by the MCA:

The MCA disagrees with Vodafone's view that both the current and proposed administrative charging structures based on gross revenues are perceived to be flawed. The MCA notes that all operators pay a percentage of their gross relevant turnover and therefore the charging algorithm is non-discriminatory, objectively justifiable and proportionate. Furthermore, the charging algorithm based on gross revenues is simple to administer and does not impose undue accounting responsibilities and/or additional costs on operators.

The MCA disagrees with Vodafone's view that the proposed change in administrative charges penalises those operators with larger gross revenues whilst benefiting those with lower gross revenues. The MCA notes that it is the current regressive charging bands that could be seen as benefiting those operators with larger gross revenues. A single fixed charging rate to relevant turnover ensures a fair and equitable application of administrative charges across all operators.

The MCA disagrees with Vodafone's view that the administrative charging mechanism includes revenues generated from activities that do not concern the regulatory functions of the MCA. The total gross revenues collected from authorised undertakings relate only to the total gross turnover generated from electronic communications services that are required to be authorised in accordance with the applicable legislation and these as specified in Part A of the Eighth Schedule of the Regulations.

c) Date of coming into effect

Respondents' Views:

GO remarked that, considering the impact on the operators' cash flows, changes should take effect not before 1st January 2017. Vodafone objected to the proposed implementation date of 1st July 2016 as this will negatively impact undertakings' financial projections which will have already been

completed. Vodafone questioned the need for a different implementation date to that proposed for the changes to the number usage fee structure. Vodafone suggested that any such changes should come into effect at a later stage or at the same time as the proposed changes regarding the numbering fee structure.

Comments by the MCA:

Implementing the revised administrative charges as from 1st January 2017 as opposed to the 1st July 2016 could result in the MCA not having an adequate cash flow to cover its expenditure required to effectively carry out its tasks relating to the regulation of the electronic communications sector. Despite the possibility of the MCA claiming further funds from operators in case of a deficit in any particular accounting period, it does not make administrative sense to do so. Thus, changes to the current administrative charges structure are deemed necessary in order for the MCA to be in a position to maintain its current annual revenue streams without the need to resort to impractical end-of-year measures to calculate and collect additional sums from each individual operator.

4.2 NUMBER USAGE FEES

Respondents' Views:

GO commented that the proposed changes in numbering fees impact primarily the DDI number ranges. GO estimated that the impact on GO in this area will exceed €130,000 per year. GO stated that in the last 10 years it has made efforts to size the DDI ranges according to each business customer's size, limiting the scope for further optimisation of the DDI number ranges. GO commented that it would appear that this is more a case of increased taxation on the telecoms business rather than an attempt at having optimisation of resources.

Vodafone on the other hand agreed with the proposed number usage fees structure as it will positively affect operators that implement a resource efficient numbering plan. Vodafone also commented that it required further clarification behind the proposed increase from €230 to €700 per allocated numbering block of 10,000 numbers.

Comments by the MCA:

As mentioned in the Consultation the proposed number usage fee structure is expected to positively affect those operators which implement a resource-efficient numbering plan. The MCA notes that when taking into consideration savings on charges emanating from other number resources the overall impact on GO from the change in numbering fee structure is estimated to be around €46K and not €130k per year. It is noted that GO is also in a position to encourage its clients to make optimal use of DDI numbers.

In response to the request from Vodafone for a clarification on the proposed increase from €230 to €700 per allocated numbering block of 10,000 numbers, under the current regime the annual numbering related charge of €230 per block of 10,000 numbers includes an additional charge of €0.35c for each utilised individual number within the same block. Under the revised number charging mechanism the annual charge of €700 per numbering block would not include any additional charges for utilised individual numbers, ensuring a more efficient use of number resources.