



DECISION NOTICE

NUMBER PORTABILITY IN MALTA

Report on Consultation and Decisions

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 (+356) 2133 6840  info@mca.org.mt  www.mca.org.mt

 Valletta Waterfront, Pinto Wharf, Floriana FRN1913, Malta

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1. Introduction

1.1 The rationale for number portability

Number portability refers to the ability of end-users subscribed to voice communications services¹ to retain their telephone number when they change their service provider, or switch to another location or service. The key premise behind number portability is that subscribers are predominantly reluctant to change their telephone number. The absence of number portability can therefore be a major inconvenience and a potential barrier, preventing users from taking advantage of the available options in a developed competitive telecommunications market. Indeed, having to change one's telephone number may create a barrier to switch provider, and give incumbent providers significant competitive advantages over new entrants in the market.

Number portability is therefore essential to maximise the benefits of a competitive telecommunications market. Where number portability allows users to keep their telephone number when changing provider, it leads to significant benefits:

- to the porting user as it eliminates the cost of informing other parties of the number change, changing of stationery and other signage and, in the case of business users, potential loss of business;
- to callers as it eliminates the need to consult directory enquiries and/or change entries in their address books or computer systems;
- to the development of competition by providing further choice in the market and enabling all users to switch to more beneficial tariff plans and conditions from time to time.

1.2 Number portability regime in Malta

Malta's number portability regime was brought into effect in March 2005, when the Malta Communications Authority (MCA) published its Decision entitled '*Introducing Number Portability in Malta*' (hereafter the '*2005 Decision*'). The *2005 Decision* was the result of a comprehensive process of consultation and cross-industry collaboration that was initiated by the MCA in October 2003.

When the European Electronic Communications Code (hereafter the 'EECC') came into force in December 2018, the Authority embarked on the task of contributing to the transposition of the EECC into national law, and in tandem, to study the effect that such transposition would have on the respective Maltese regulatory framework for electronic communications networks and services².

The process of transposing the EECC was finalised in October 2021, when the updated Maltese legislation for electronic communications networks and services came into force. In particular, this process led to the making of SL 399.48, 'Electronic Communications Networks and Services (General) Regulations', (hereafter 'SL 399.48'), which establishes the legal basis for number portability in Malta.

¹ All references to the term 'voice communications service' in this document are in accordance with the definition included in article 2 of the Electronic Communications (Regulation) Act (CAP. 399).

² An assessment of the impact is addressed in Section 1.3.

Subsequently, the Authority put to public consultation its '*Consultation and Proposed Decision on Number Portability in Malta*' (MCA/C/21-4466, hereafter '*Consultation Paper*'). The *Consultation Paper* put forward the proposed updates and decisions intended to realign the Maltese number portability regime with the new legal framework. This Decision Notice '*Number Portability in Malta*' (hereafter the '*2022 Decision*') thus reports on and evaluates the feedback received during this consultation process and subsequently establishes the respective Decisions which shall apply going forwards.

1.3 The EECC's impact on number portability in Malta

The EU regulatory framework for electronic communications networks and services experienced a significant overhaul in December 2018 with the issue of Directive (EU) 2018/1972 establishing the EECC. At its core, the EECC brought together four key, and previously distinct Directives, namely the Access, Authorisation, Framework and Universal Service Directives. The EECC established a "*harmonised framework for the regulation of electronic communications networks, electronic communications services, associated facilities and associated services, and certain aspects of terminal equipment*" [article 1(1) of the EECC].

With a view to transposing the EECC into national legislation, following a holistic review of multiple electronic communications laws in Malta, the proposed legal amendments were put forward for public consultation by Government with the process running from 11 January 2021 to 15 March 2021.

Within this context, public input was sought on a number of legal amendments relative to number portability which continues to be considered as "... *a key facilitator of consumer choice and effective competition (...)*" in relation to competitive electronic communications markets [recitals (278) and (281) of the EECC]. These amendments were necessary to reflect the new or updated measures introduced in the EECC, such as the establishment of new end-user rights (e.g. right for pre-paid consumers to request a refund from the transferring provider; right to request porting within a period of at least one (1) month following contract termination) and protections (e.g. prohibition of charges by the receiving provider). The responses received during the public consultation revealed that local providers were keen on obtaining additional clarity on the impact of the new provisions on existing processes and requirements.

To this effect, in April 2021 the MCA sent an email to local providers of voice communications services listing the areas of the existing Number Portability Decision and Specifications that required updating, as a result of the EECC transposition under Maltese legislation. This was intended to pre-empt any technical or commercial difficulties which could arise with the implementation of these updates.

Following the coming into force of the national legislation transposing the EECC in Malta on 1 October 2021³, and drawing from the responses to the public consultation and the preliminary industry feedback gathered, the Authority proceeded with the publication of the *Consultation Paper* on the 15 December 2021.

³ As a result of the EECC transposition, the Electronic Communications (Regulation) Act (Cap. 399) was amended by Act Number LII of 2021, and the Electronic Communications Networks and Services (General) Regulations (SL 399.28) was repealed by LN 379 of 2021 and replaced by SL 399.48 with effect from 1 October 2021.

1.4 Responses to the Consultation

The consultation period ran from the 15 December 2021 to 15 February 2022. Responses were received from the following three local providers of voice communications services:

- Epic Communications Ltd.
- GO p.l.c.
- Melita Ltd.

All the respondent providers welcomed the opportunity to submit their comments to the *Consultation Paper*. Comments were also submitted on some aspects, related to number portability, which had not been specifically addressed in the *Consultation Paper*.

The MCA wishes to thank all these providers for their constructive responses. Due to potential business sensitive information, the Authority is refraining from associating particular comments with any specific provider. Furthermore, the Authority took note of the comments provided on the aspects not specifically addressed in the *Consultation Paper*, such as a high-level proposal to introduce further digitalisation in the Maltese number portability framework. Feedback related to these aspects is addressed in Chapter 6 – Other considerations.

1.5 Structure of the document

This *2022 Decision* is structured as follows.

Definitions and abbreviations are presented in Chapter 2 and the **Legal basis** for number portability in Malta follows in Chapter 3. Next, Chapter 4 brings together a set of **General principles**, stemming from the EECC and the updated legal framework in Malta, as well as text recast from the *2005 Decision*.

Chapter 5 – **Decisions on number portability in Malta**, presents a discussion on the feedback received on the *Proposed Decisions* in the *Consultation Paper*, and establishes the new framework for number portability in Malta. This is followed, in Chapter 6, by a summary of **Other considerations**, which includes aspects raised by providers during the consultation period that were not specifically addressed in the *Consultation Paper*, and the Authority's corresponding reaction. Lastly, Chapter 7 outlines the **Implementation** aspects envisaged for the *2022 Decision*, specifying any interim arrangements until all Decisions take full effect.

2. Definitions and abbreviations

2.1 Definitions

Block operator: The service provider to whom the Authority allocated the number block containing the number that is being ported.

Consumer: As defined in article 2 of the Electronic Communications (Regulation) Act (CAP. 399), any natural person who uses or requests a publicly available electronic communications service, for purposes which are outside his trade, business, craft or profession.

Donor network: (also referred to as *donor operator's network*); Subscription network from which a number is ported in the porting process. This may or may not be the number range holder network.

Donor provider/operator: (also referred to as *Transferring provider*); The service provider (including any agents or other persons however so described acting on its behalf) that provides service to a subscriber number *before* porting. The donor provider/operator is referred to as the *Transferring provider* in the EECC and applicable national legislation (SL 399.48).

Number portability: A facility whereby subscribers who so request can retain their number on a telephony system independent of the service provider providing the service at the network termination point of the subscriber.

Originating network: The network that either provides service to a subscriber who is placing a call or other communication, or first handles an incoming international call or other incoming communication within Malta.

Recipient network: (also referred to as *recipient operator's network*); Network that receives the number in the porting process. This network becomes the subscription network when the porting process is complete.

Recipient provider/operator: (also referred to as *Receiving provider*); The service provider (including any agents or other persons however so described acting on its behalf) that provides service to a subscriber number *after* porting. The recipient provider/operator is referred to as the *Receiving provider* in the EECC and applicable national legislation (SL 399.48).

Subscriber: In line with recital (281) of the EECC, *subscriber* refers to any person or entity that is a party to a contract or other similar arrangement that is in force with a provider for the supply of voice communications services as defined in article 2 of the Electronic Communications (Regulation) Act (CAP. 399). Pre-paid customers are also regarded as subscribers.

Terminating network: The network that provides service to a subscriber who is receiving a call or other communications.

Note (1): Where the term 'subscriber' is used in terms of the 'subscriber number' (i.e. the number to be ported), it shall be understood to also include the number in a porting request submitted by an applicant, i.e. a person without an active subscription.

Note (2): Where the term 'person' is used, it applies to both natural and legal persons, unless otherwise specified.

2.2 Abbreviations

CLI	Calling Line Identification
DDI	Direct Dial-In
ECN/S	Electronic Communications Networks and/or Services
EECC	European Electronic Communications Code
eSIM	Embedded Subscriber Identity Module
EU	European Union
HLR	Home Location Register
HSS	Home Subscriber Server
IBAN	International Bank Account Number
ICS	Interpersonal Communications Services
IMSI	International Mobile Subscription Identity
IoT	Internet of Things
ISDN	Integrated Services Digital Network
KYC	Know Your Customer
LN	Legal Notice
M2M	Machine-to-Machine
MCA	Malta Communications Authority
MVNE	Mobile Virtual Network Enabler
MVNO	Mobile Virtual Network Operator
Non-ICS	Non-Interpersonal Communications Services
NRA	National Regulatory Authority
OTA	Over-the-Air
OTP	One-Time-Password
PSTN	Public Switched Telephone Network
PUK	Personal Unblocking Key
SEPA	Single Euro Payments Area
SL	Subsidiary Legislation
SIM	Subscriber Identity Module
SIP	Session Initiation Protocol
SMS	Short Message Service

3. Legal basis

The obligation to provide number portability upon request is incumbent on undertakings authorised to provide voice communications services in Malta on the basis of regulation 94 of SL 399.48, which transposes article 106 of the EECC.

More specifically, regulations 94(5) to 94(16) establish the legal parameters for number portability. By way of overview, **regulation 94(5)** establishes the right to number portability for *“end-users subscribed to voice communications services with numbers from the national numbering plan (...) independently of the undertaking providing the service”*. **Regulation 94(6)** provides the parameters for a new right, introduced following the transposition of the EECC, for such end-users to request number portability *“for a minimum of one month after the date of termination”*. Subsequently, **regulation 94(7)** prohibits direct charges on end-users associated with number portability, and imposes a cost-orientation for related charges between providers.

Next, **regulation 94(8)** establishes that porting should be carried out *“within the shortest possible time on the date explicitly agreed with the end-user”*, provided that when an end-user *“has concluded an agreement to port a number to a new provider”*, a timeframe of one (1) working day applies for the activation of the number from *“the date agreed with that end-user”*. Furthermore, the same sub-regulation also provides for a fall-back, on the transferring provider (donor operator), in case of failure in the porting process. In any case, it is stated that the transferring provider (donor operator) is to reactivate the number and related end-user services on the same terms and conditions until the porting is successful, and that any loss of service *“shall not exceed one working day”*.

On a related note, **regulation 94(9)** addresses *“operators whose access networks or facilities are used by either the transferring provider or the receiving provider, or both”*, and obliges these operators to *“ensure that there is no loss of service that would delay the switching and porting process”*.

This is followed by an obligation, in **regulation 94(10)**, on the receiving provider to *“lead the switching and porting processes”*, and on *“both the receiving and transferring providers (to) cooperate in good faith”*. The same sub-regulation also establishes a prohibition for activity that delays or abuses of the porting process, as well as any activity that ports numbers or switches end-users without their explicit consent. Lastly, a further proviso in this sub-regulation mandates that *“the contracts of the end-users with the transferring provider shall be terminated automatically upon conclusion of the switching process”*.

Regulation 94(11) empowers the Authority to *“establish the details of the switching and porting processes”*, together with related parameters that need to be taken into account whilst establishing such process. A particular parameter, introduced following the transposition of the EECC, is that the Authority should *“include, where technically feasible, a requirement for the porting to be completed through over-the-air provisioning, unless an end-user requests otherwise”*. In addition to the Authority’s mandate to establish the details of the porting process, **regulation 94(12)** empowers the Authority to take appropriate measures, as necessary, to ensure that during the switching and porting processes *“end-users are adequately informed and protected”* and that they *“are not switched to another provider without their consent”*.

Another novelty in the regulatory framework resulting from the EEECC transposition is reflected in **regulation 94(13)**, which places an obligation on the donor operator to *“refund, upon the request of a consumer using a pre-paid service, any remaining credit to that consumer”*. The refund contemplated in this sub-regulation *“may be subject to a fee only if provided for in the contract between the transferring provider and the consumer”*, and *“any such fee shall be proportionate and commensurate with the actual costs incurred by the transferring provider in offering the refund”*.

The Authority is further empowered, through **regulation 94(14)**, to establish rules as it may consider appropriate in relation to sanctions applicable *“in the case of the failure of a provider to comply with the obligations laid down in this regulation, including in relation to delays in, or abuses of, porting by or on behalf of a provider”*. **Regulation 94(15)** further establishes that the Authority is also empowered to set rules, as it considers appropriate, in relation to *“the award of compensation of end-users by their providers, in an easy and timely manner”* for instances of providers’ non-compliance with the regulation as well as in the case of delays in, or abuses of, porting and switching processes, and missed service and installation appointments. Lastly, **regulation 94(16)** empowers the Authority to take measures as it considers necessary to ensure that end-users are adequately informed by their providers *“about their rights to compensation as provided for in sub-regulations (14) and (15)”*.

4. General principles

This Chapter presents the underlying general principles informing the Authority's rationale behind the Decisions established in Chapter 5. Section 4.1 delineates the different types of number portability services, whereas Section 4.2 establishes which types are required under the Maltese framework for number portability. Additional principles are included to ensure clarity on end-user's eligibility (Section 4.3), numbering implications (Section 4.4), and the principle that number portability should be recipient-driven (Section 4.5). A further section clarifies the obligations pursuant on authorised providers to comply with the Number Portability Specifications in parallel with the respective Decisions established in this document (Section 4.6). Lastly, Section 4.7 presents considerations in relation to number portability databases.

4.1 Types of number portability

It is important to distinguish between three different types of number portability services, since they are not all subject to the same regulatory obligations:

1. **Provider portability:** refers to the ability of an end-user subscribed to voice communications services to retain the same telephone number when changing from one service provider to another.

There are three types of provider portability:

- Fixed number portability – provider portability, which allows numbers assigned for fixed voice communications services to be ported between providers. The term is considered technology neutral and includes fixed wireless technologies as well as line technologies provided that the retail tariff arrangements and wholesale termination charges are comparable to those of the Public Switched Telephone Network (PSTN) scenario and/or its evolution;
 - Mobile number portability - provider portability, which allows numbers assigned for mobile voice communications services to be ported between providers;
 - Special tariff number portability - provider portability which allows special tariff numbers (e.g. freephone numbers and premium rate numbers) to be ported between providers.
2. **Service portability:** refers to the ability of a subscriber to retain the same telephone number as he/she changes from one type of service to another. The extent of a change in service can be minor as in a change from normal fixed line to ISDN/SIP trunk or major as in a change from a fixed to a mobile service.
 3. **Location portability:** refers to the ability of a fixed subscriber of voice communications services to retain the same telephone number when moving from one physical location to another. Location portability is only applicable to fixed numbers, as by their nature, mobile and special tariff numbers do not incorporate location information.

4.2 What kinds of number portability are required?

Regulation 94(5) of SL 399.48 states that: *“end-users subscribed to voice communications services with numbers from the national numbering plan may request that they retain their numbers, independently of the undertaking providing the service, in accordance with Part C of the Sixth Schedule”*.

In this regard, Part C of the Sixth Schedule further qualifies that the right applies:

- (a) in the case of geographic numbers, at a specific location; and
- (b) in the case of non-geographic numbers, at any location.

This means that the requirement for **provider portability** applies for numbers assigned for fixed voice communications services, mobile voice communications services and special tariffs, namely freephone numbers and premium rate numbers.

It is further established (in §2, Part C of the Sixth Schedule of SL 399.48) that the right does not apply to the porting of numbers between networks providing services at a fixed location and mobile networks, so called '**service portability**'. Such **service portability** is therefore not required under the current regulations. Given that there are generally differences in the tariffs for calling numbers for different services (e.g. mobile and fixed voice communications services), service portability would introduce problems of lack of tariff transparency for callers. Since the numbering range of the called party is the main criterion used to determine the applicable wholesale voice termination rates⁴, service portability could also lead to over- or under- recovery of costs by the terminating operator. Furthermore, even when the extent of service change is minor such as when a number would be utilised as an individual fixed number prior to porting and as a fixed DDI number after porting or vice-versa, complexities would be expected to arise if the distinction between individual fixed numbers and DDI numbers is no longer maintained. Based on these considerations, the MCA does not allow the provision of service portability for numbers associated with interpersonal communications services.

Further to the above, it should be noted that in the case of M2M/IoT connectivity services and other Non-Interpersonal Communications Services (Non-ICS), which benefit from a solely dedicated E.164 national numbering range with prefix '4', the Authority recognises that such electronic communications services may rely on different service platforms with underlying networks that may be both fixed or mobile in nature. In this respect, there is therefore no obligation to provide number portability for numbers from this range as this could, in some cases, constitute service portability. This norm is also established in the MCA Decisions '*Development of the Numbering Plan*' (MCA/D/11-0073) and '*Numbering Resources for M2M/IoT Connectivity Services (and other Non-Interpersonal Communications Services (Non-ICS))*' (MCA/D/19-3645). Nevertheless, numbers from the '4' range may be ported out, to another provider of M2M/IoT connectivity service or other Non-ICS, subject to a voluntary agreement between the donor and recipient operators.

Lastly, **location portability** is relevant only to fixed numbers, and is not required under the current regulations. Nevertheless, at the time of writing, local providers of fixed voice communications services avail of technology that can permit location portability. Notwithstanding, the Authority does not intend to impose location portability as a requirement but encourages providers of fixed voice communications services to provide subscribers with this facility where possible.

⁴ Commission Delegated Regulation (EU) of 18 December 2020 supplementing Directive (EU) 2018/1972 of the European Parliament and of the Council by setting a single maximum Union-wide mobile voice termination rate and a single maximum Union-wide fixed voice termination rate.

4.3 Who can request porting?

In accordance with regulation 94(5) of SL 399.48, the right to retain numbers pertains to end-users *subscribed* to voice communication services (*our emphasis*), thereby implying some form of relationship with the service provider in question. This implies that the right belongs to the subscriber, (which may, in some cases, be distinct from the actual end-user). In this regard, subscriber, (as defined in Section 2.1), is understood along the lines of recital (281) of the EECC, stating that *“the right to port the number should be attributed to the end-user who has the relevant (pre- or post-paid) contract with the provider”* (*our emphasis*).

Furthermore, regulation 94(6) extends the right of end-users who no longer have an active subscription for a voice communications service to request number portability for a minimum of one (1) month after the date of termination of their contract (or other similar arrangement) with their last serving provider.

4.4 Numbering

Number portability does not affect allocations of national numbering resources, but it does mean that individual telephone (E.164) numbers may no longer be served by the service provider to whom they were originally allocated, (i.e. the block operator). Thus, upon termination of service on ported-in numbers by the recipient operator, numbers are to be returned to the block operator in line with the process determined in the respective Specifications.

4.5 Recipient-driven process

Recital (281) of the EECC prescribes that, *“in order to facilitate a one-stop-shop enabling a seamless switching experience for end-users, the switching process should be led by the receiving provider of electronic communications to the public”* (*our emphasis*). In this respect, Malta’s number portability regime has, since its inception, been shaped around the principle of having a ‘recipient-driven’ approach. Nevertheless, this principle is now also reflected in regulation 94(10) of SL 399.48 which transposes article 106(6) of the EECC.

4.6 Specifications

This Decision Notice (2022 *Decision*) should be understood to form part of the whole framework governing number portability in Malta, which includes not only the 2022 *Decision* but also all the relative Specifications governing distinct aspects of the number portability process.

4.7 Number portability databases

In the *2005 Decision*, after considering a number of factors in consultation with the steering committee, such as Malta's limited size, expected implementation costs, and prevalent market conditions, the Authority had decided against imposing an obligation for a centralised number portability database and instead decided that it would be up to the providers implementing number portability to resolve these issues in the best way possible. A distributed number portability solution was subsequently adopted whereby each service provider would maintain its own database of all ported numbers. Each provider of voice communications services is assigned a distinct 4-digit Number Portability Routing Prefix by the MCA in order to facilitate traffic routing and correct billing.

A Webservice protocol, as defined in the *Number Portability Inter-Operator Webservice Specification*, is used for inter-operator communication between the recipient and donor operators during the porting process. Once a porting is completed, the recipient operator also sends a porting announcement via the Webservice to all local providers of voice communications services to ensure that each provider is kept informed of the individual ported numbers and updates its own database accordingly. Through the use of the Webservice protocol, a provider may make use of other facilities related to number portability such as the possibility to request lists of active ported-in and ported-out numbers from other providers.

The number portability databases being utilised serve the following two main functions:

- Enabling the implementation of the porting process between the donor operator and the recipient operator; and
- Maintaining an up-to-date list of ported numbers and the providers who are serving them for the benefit of all providers who may need this information for routing.

When considering that the number portability process proved to be effective and efficient since its introduction in Malta, the MCA's decision is to maintain its position not to introduce any specific requirements with respect to the number portability database solution to be adopted by providers of voice communications services. It is therefore up to the providers to resolve any related issues in the best way possible.

5. Decisions on number portability in Malta

5.1 Overview

This Chapter brings together all the Decisions that comprise the framework for number portability in Malta. For each Decision, the MCA's rationale is presented, together with a discussion of any respective feedback received during the consultation period.

For ease of reference, Decision numbers are suffixed with '/2005' where these refer to Decisions that had been established in the *2005 Decision*, and '/2022' for the Decisions as proposed in the *Consultation Paper* or those in force under this Decision Notice.

5.2 Decisions

5.2.1. Implementing number portability in Malta

Regulation 94(5) of SL 399.48 establishes the right of end-users subscribed to voice communications services with numbers from the national numbering plan to request that they retain their numbers, independently of the undertaking providing the service, thereby establishing the obligation to support number portability on all providers of voice communications services.

The parameters tied to this right are further specified in Part C of the Sixth Schedule of SL 399.48, mandating that providers need to support number portability: (a) in the case of geographic numbers, at a specific location; and (b) in the case of non-geographic numbers, at any location. A further parameter established in Part C of the Sixth Schedule of SL 399.48 is that the right does not apply to the porting of numbers between networks providing services at a fixed location and mobile networks.

There was no feedback submitted in relation to Proposed Decisions 1/2022, 2/2022 and 3/2022 of the *Consultation Paper*. Consequently, no substantive changes were considered necessary by the Authority to the Proposed Decisions, and in accordance with the General Principles addressed in Chapter 4 above, the Authority mandates the following:

Decision 1/2022

Providers of voice communications services who serve fixed numbers (including DDI numbers) are to satisfy requests to port such fixed numbers to another voice communications services provider who serves fixed numbers subject that all established Specifications, in particular the *Fixed and DDI Number Portability Ordering Process Specification*, are adhered with when processing the request:

- Provided that in porting DDI numbers, the DDI number to be ported shall represent a block of 10, 100, 1,000 or 10,000 numbers depending on the type of DDI number in the request (i.e. '7+1', '6+2', '5+3' or '4+4' respectively), that is, the porting of individual numbers within a DDI number (e.g. '7+1'/'6+2'/'5+3'/'4+4') is not permitted.⁵

⁵ Following consultation with all local providers of voice communications services, the MCA is permitting fixed DDI number assignments to also be made in a '7+1' configuration as from 1 October 2025 onwards. Accordingly, Decision 1/2022 was updated in October 2025 to reflect this possibility.

Decision 2/2022

Providers of voice communications services who serve mobile numbers are to satisfy requests to port such mobile numbers to another voice communications services provider who serves mobile numbers subject that all established Specifications, in particular the *Mobile Number Portability Ordering Process Specification*, are adhered with when processing the request:

- Provided that where the same number is used for a subscription which includes more than one service (e.g. telephony, SMS and data services) that are supported on both the donor and recipient operators' networks, the implementation shall enable all such services on the new network to be used with the ported number.

Decision 3/2022

Providers who serve non-geographic special tariff numbers, specifically freephone numbers or premium rate numbers, are to satisfy requests to port such numbers to another provider who serves such non-geographic numbers subject that all established Specifications, in particular the *Number Portability Specification for Freephone Numbers* and the *Number Portability Specification for Premium Rate Numbers*, are adhered with when processing the request.

In all cases, providers are not permitted to carry out service portability where the numbers in question are associated with interpersonal communications services as detailed further in Section 4.2.

5.2.2. Network solutions for number portability

In the *Consultation Paper*, the Authority recalled the process that had been undertaken in the drawing up of the *2005 Decision* in respect of the network solution to be adopted. Namely, following consultations on the preferred routing mechanism (and related implications), the *2005 Decision* had concluded that an 'independent solution' would be preferable, and consequently directed providers to use their preferred routing methodology so long as they make sure that communications to ported numbers are delivered correctly either directly or via the block operator.

Specifically, the MCA had decided that providers who originate calls, or who bring calls into Malta, should be able to determine for themselves the routing technology that they choose, provided that this was carried out:

- within a charging framework that correctly reflects the cost implications of their decisions; and
- within an information framework that enables the originating provider to route calls to ported numbers directly to the recipient network, i.e. that ensures that all providers have access to an up-to-date list of all ported numbers and the providers who are serving them.

This 'independent solution' thus enabled providers to determine themselves whether to deploy techniques such as 'All Call Query' or 'Onward Routing' in routing calls, as well as other forms of communications such as SMS and other signalling messages. For example, local mobile service providers had adopted an 'All Call Query' solution based on signalling relay technology since the introduction of mobile number portability, and this was subsequently specified in the *Number Portability Specification of the Network Functionality*. This rationale withstood the test of time and was retained in the Proposed Decision 4/2022 of the *Consultation Paper*.

Only one provider commented on Proposed Decision 4/2022, specifically requesting a clarification on whether, where requested by the MCA, the list of ported numbers would be provided to the MCA in the same format and manner currently in place between providers, thereby preventing procedural changes.

In this regard, the Authority considers that, provided that the list can be used 'as is' by the MCA to draw the necessary *information* for the requested purposes, no specific changes to this list would be necessary on the part of providers. However, if the list of ported-in numbers is provided to other providers in a format and/or manner which cannot be used 'as is' by the Authority to draw the necessary information, then the MCA and the provider in question would be required to agree on the format and manner in which the provider is to make the list of ported-in numbers available to the Authority when requested. In the interest of further clarity, Decision 4/2022 includes a change in the last bullet of the text in the Proposed Decision 4/2022, as can be noted hereunder, intended to emphasise that useful information may be drawn by the Authority from the list provided.

Decision 4/2022

The MCA directs as follows:

- All providers who originate communications to ported numbers, or who handle incoming international communications to ported numbers, are to ensure that the communications are delivered correctly to the ported number either directly or via the block operator;
- All providers who receive an incoming communication either from one of their own subscribers or from another interconnected provider to a ported number in one of their own number ranges, are to onward route the communication to the provider who is currently serving the ported number;
- All providers who originate communications to ported numbers, or who handle incoming international communications to ported numbers, and who do not route such communications directly to the provider who is currently serving the ported number, are to pay on request, the reasonable additional conveyance costs of the other providers that arise from the number having been ported. Such originating providers shall not charge callers more for communications to ported numbers than they charge for communications to non-porting numbers on the same network. Providers may waive their rights to charges or simplify/modify these arrangements including the additional conveyance charges under this Decision by mutual agreement and with the consent in writing of the MCA; and
- All providers who serve ported numbers are to make available to other providers, free of charge in a convenient electronic format, an up-to-date list of the ported-in numbers that they are currently serving, and to keep that list of numbers updated in respect of both additions and deletions at least once a day on every day that porting is offered to subscribers. The information in this list of ported-in numbers is also to be made available to the MCA upon request.

The requirement to make available a list of ported-in numbers may be satisfied either by:

- bi-lateral exchanges of information between all the providers;
- publication of lists on the Internet, with the option of the list being encrypted; or
- the use of a central reference database.

The providers are free to choose the most appropriate method amongst themselves for the above requirement to make available this list of ported-in numbers to the other providers.

5.2.3. Charging solutions for number portability

There are three main types of costs associated with number portability as follows:

- **General system setup costs:** These are one-off costs mainly incurred by the providers in modifying their network and support systems to enable number portability. System provisioning costs are incurred even before a single number is ported and are therefore independent of provider demand. These costs include all the capital costs of network upgrading and system development, as well as those involved in creating an agreed porting procedure and determining commercial terms and procedures;
- **Transaction costs:** These are mainly administrative costs incurred in implementing number portability for individual subscribers. These include the cost of complying with the agreed porting procedures, activating ported-in numbers, testing, and communicating the necessary call routing information to other providers; and
- **Additional conveyance costs:** These are additional costs involved in routing a call or other communication to a subscriber with a ported number, compared to the costs involved in routing a call or other communication to a subscriber with a non-porting number.

5.2.3.1. Principles for cost apportionment

The following guiding principles, adopted in the *2005 Decision*, were used as a basis for determining number portability cost allocations, namely:

- a. **Cost causation:** the party responsible for causing costs should bear the costs;
- b. **Distribution of benefits:** the parties benefiting from the process should bear the costs;
- c. **Effective competition:** the cost allocation mechanism should inherently encourage competition;
- d. **Cost minimisation:** the cost allocation mechanism should encourage providers to minimise costs and in particular to adopt technically efficient solutions;
- e. **Reciprocity:** charges between providers should be equal for the same service;
- f. **Practicability:** the allocation mechanism should be practical to implement; and
- g. **Relevance:** charges should represent the costs of an efficient operator using a least cost approach.

In the *Consultation Paper*, the rationale behind the respective *2005 Decision* was re-proposed, namely that the MCA had considered carefully the application of these principles to number portability in Malta, especially in respect of the setup costs, because they are much higher per subscriber than in other countries where the number of subscribers is much greater. The MCA had concluded that the approach taken in other countries, namely that each provider should bear its own setup costs, should also be applied in Malta. The main reason is that this approach spreads the costs of number portability over all subscribers. This is fair because all subscribers will benefit from the increase in the effectiveness of competition that should arise from number portability. The alternative of attempting to recover the setup costs from those subscribers who port would be counter-productive because the cost of porting would become too high and very few, if any, subscribers would port. Furthermore, charging such costs to subscribers who requested porting would be tantamount to charging for number portability, and would thus run contrary to regulation 94(7).

Thus, the MCA considered that this conclusion remained valid and proposed to maintain the same approach. The MCA also proposed to maintain its conclusion in the *2005 Decision* that the originating provider should bear the cost of additional conveyance as this gives the originating provider the incentive to use the most cost effective method for call routing. This is an integral part of the concept of the ‘independent solution’.

Regulation 94(7) of SL 399.48 stipulates that: “*The pricing among providers related to the provision of number portability shall be cost-oriented, and no direct charges shall be applied to end-users*”. In this respect and building on the premise established in the *2005 Decision*, the MCA considers that the donor operator should be entitled to recover the reasonable costs of operating the porting transaction from the recipient operator but not from the subscriber. Providers may find that it is not worth billing for these charges if the volume of portings between them in each direction is approximately the same.

On the other hand, the *2005 Decision* had established that the recipient operator should be entitled to charge the subscriber for porting if it wishes to do so but should be allowed alternatively not to charge and so to spread these costs over all its subscribers, as all benefit from the increased effectiveness of competition. However, as noted above, such provision can no longer be retained given that regulation 94(7) prohibits direct charges on end-users, and this was reflected in the MCA’s Proposed Decision 5/2022. It was expected that this revision would not have any market impact since, based on industry feedback, local recipient operators were not applying any charges to subscribers for porting.

Indeed, only one provider provided feedback in this regard and while welcoming the proposal that neither the recipient operator nor the donor operator may apply charges, it also confirmed that no such direct charges are imposed on end-users for number portability. The same provider also expressed its support to the functionality that allows a subscriber to retain his/her number as this is an element that keeps the fixed and mobile telephony market competitive and facilitates consumer choice.

In this regard, Decision 5/2022 stands as proposed in the *Consultation Paper*.

Decision 5/2022

The MCA directs:

- Each provider affected by number portability shall bear its own setup costs;
- Neither the donor operator nor the recipient operator shall apply any charge to the porting subscriber for number portability;
- The donor operator and the block operator may charge the recipient operator for the reasonable recurring costs for:
 - An unsuccessful porting transaction; and/or
 - A successful porting transaction.

Providers are also required to adhere with the requirements established in the *Charging for Number Portability Specification*.

5.2.4. The porting process

5.2.4.1. Initiation of porting

A subscriber who wants to port his/her number needs to open an account with the recipient operator and therefore needs to have contact with the recipient operator. In the *Consultation Paper*, it was recalled that an important issue considered in the *2005 Decision* was whether or not the subscriber should be able to order portability from the recipient operator, or whether the subscriber would need to separately contact the donor operator. At the time, the MCA had considered that 'one-stop' porting should be available and that the porting process should be recipient-driven. The reasons that underpinned the *2005 Decision* were that:

- The arrangement made the process easier for the subscriber;
- The recipient operator has the motivation to make the process as easy as possible, whereas the donor operator may have the opposite motivation; and
- The donor operator could abuse contact with the subscriber to make special offers to deter the subscriber from porting.

In order to avoid invalid porting requests, the *2005 Decision* also mandated the need for the recipient operator to carry out basic validation checks on the subscriber's right to port a number where necessary, depending on the specific subscription type for the number to be ported.

Whilst the above rationale remains valid, it should be noted that such an approach was not legally mandated through *regulations* prior to the coming into force of SL 399.48. Indeed, SL 399.48 imposes a mandate for a recipient-driven process through regulation 94(10), (transposing article 106(6) of the EEC), which specifically provides that "*the receiving provider shall lead the switching and porting processes*". This provides a *legal* basis for having a recipient-led number portability process, albeit this practice was already mandated and implemented in Malta by virtue of the *2005 Decision*. No feedback from the providers was forthcoming on this aspect.

Further to the above, the same sub-regulation also mandates that the subscriber's contract with the donor operator is to be terminated automatically upon porting. In this respect, the MCA proposed to continue to impose a recipient-driven porting process with an additional obligation on the recipient operator to ensure that subscribers would be informed that their contract (or other similar arrangement) with the donor operator for the number to be ported will be automatically terminated upon successful porting, and that such automatic termination can have implications on any other services, such as in a bundled offer, that they may have with the donor operator.

One provider remarked that the introduction of automatic contract termination upon porting was appreciated, noting that some providers had adopted the practice of forcing terminating clients to retain the service for a further thirty (30) days after the porting request was made, even if the client would have subscribed to a new identical service with a new provider. This provider also expressed its view that it believes that this practice created an unfair and expensive deterrent for some customers to switch to another provider.

In this respect, the Authority wishes to remind all providers that such practices are not in line with the number portability regime in Malta, and the MCA reserves the right to take any necessary action in accordance with its powers at law should any non-compliance with the established number portability regime be determined. Furthermore, it should be noted that the implementation of an automatic termination upon porting out is without prejudice to any terms and conditions, between the donor operator and the subscriber, that deal with early termination fees or other conditions that may be triggered upon such termination. This is further addressed in sub-section 5.2.4.2.

Furthermore, feedback was received from two providers on the additional obligation proposed for the recipient operator to inform subscribers on the automatic termination of their contract with the donor operator upon successful porting, and the implications that there may be on any other services that the subscriber may have with the donor operator. One provider remarked that, given that the subscriber has a contractual relationship with its current provider, the main responsibility to check the consequences that the porting of a fixed/mobile number can have on any other services or bundle offered, rests with the said subscriber. This provider further argued that it would be cumbersome for the recipient operator to check the contract consequences of porting for each subscriber requesting porting, further noting that it should suffice to provide generic information to the subscriber since the recipient operator would not have details of the subscriber's tariff/bundle and/or contract. On this latter point, the other provider remarked that the notification introduced on the porting form regarding automatic termination of the subscriber's contract with the donor operator upon successful porting adequately meets the new obligation mandated on the recipient operator to notify the client of such termination.

The MCA would like to point out that Proposed Decision 6/2022 was not intended to imply that the recipient operator would be responsible to check the nature and extent of the implications of successful porting on other services which each subscriber requesting porting may have with the donor operator, but merely for the recipient operator to inform the said subscriber that there could be implications on such services. Nonetheless, some changes were introduced to the Decision to further clarify matters and emphasise that there is no obligation on the recipient operator to **check** the consequences on the contract (or other similar arrangement) on behalf of the subscriber requesting porting. Rather, the intention is to ensure that all subscribers who are considering to request porting, in particular those on contracts (or other similar arrangements) for bundled offers, are **made aware** that there could be consequences on their contract (or other similar arrangement) with the donor operator, and that it is their responsibility to check such consequences prior to submitting their porting request.

Further to the above, the note on the porting form is indeed intended to be used as a means to bring this aspect to the subscriber's attention. Nevertheless, recipient operators are also encouraged to adopt more direct means to highlight the automatic termination of contracts and the possibility of consequences, such as via verbal warnings to this effect whilst handling in-store porting requests, through prompts on online interfaces where porting requests may be submitted by subscribers, and/or through dedicated information sections or Frequently Asked Questions (FAQs) on the provider's website.

Furthermore, the MCA reserves its right to review and update this Decision should it be established that the practices being adopted by recipient operators to inform subscribers about the automatic termination of contracts (or other similar arrangements) and the possibility of consequences are not adequate in safeguarding end-users' interests.

Taking the above into consideration, the Authority mandates, through Decision 6/2022, the following:

Decision 6/2022

The MCA directs that the porting process should be recipient-driven with the recipient operator making validation checks of the subscriber's right to the number that the subscriber wishes to port. The subscriber should not be required to contact the donor operator to obtain the porting.

Recipient operators should also inform subscribers who are considering to request porting that:

- (a) their contract (or other similar arrangement) with the donor operator for the number to be ported will be automatically terminated upon successful porting; and
- (b) such automatic termination can have implications on any other services, such as in a bundled offer, that they may have with the donor operator.

In this respect, the process of informing subscribers that there may be implications on any other service contracted with the donor operator should not be understood as implying an obligation on the recipient operator to inform subscribers, on a case-by-case basis, of the nature and extent of such implications. Rather, subscribers should be informed that it is the subscriber's responsibility to carry out such checks with the donor operator *prior* to submitting a porting request.

5.2.4.2. Closure of previous accounts and bundled offers

(a) Preamble

As mentioned in the preceding sub-section, the coming into force of SL 399.48 has brought with it a legal obligation on providers to automatically terminate the contract (or other similar arrangement) for subscribers who opt to port out their number. Indeed, regulation 94(10) of SL 399.48 states that *"the contracts of the end-users with the transferring provider shall be terminated automatically upon conclusion of the switching process" (our emphasis)*. This provides a specific legal obligation on the donor operator to terminate the subscriber's contract (or other similar arrangement) associated with the number in the porting request and to cease the provision of all services included under the same contract (or other similar arrangement) at the conclusion of the porting process. In keeping with the spirit of Decision 8 of the 2005 *Decision*, the Authority considers that subscribers should be allowed to port their number before paying off their outstanding bills with the donor operator, provided that there are no bills that have already been issued where payment has not been received within the normal credit period.

One provider noted that subscribers terminating their current contract to port out to a new provider might be subject to early termination fees and, given that the porting process is recipient-driven, the donor operator has very limited safeguards to ensure that any unsettled early termination fees are recovered, without engaging into lengthy and costly court proceedings. This provider stated that in most cases, and especially for residential customers, the early termination fees are not substantial and, as a result, it would not be feasible for providers to open court proceedings to recover these early termination fees. This notwithstanding, such instances add up.

The same provider explained that, more significantly, there are instances where the impact of early termination of certain business contracts amounts to thousands of euros and donor operators face huge difficulties to try to recover these fees. This provider mentioned that it considers that the introduction of the automatic termination of the contract mandated by regulation 94(10) of SL 399.48 would exacerbate these issues and therefore suggested that safeguards for both residential and business contracts should be introduced in the number portability decision.

Whilst this provider noted that Proposed Decision 7/2022 to some extent provides some safeguards for situations where outstanding bills remain unpaid, it proposed that this decision should be amended to also include safeguards specifically targeted at limiting the non-payment of early termination fees, and other related charges associated with the provision of free or discounted devices.

In this regard, the Authority reiterates that clear communication with the subscriber, in accordance with Decision 6/2022, would constitute one such safeguard even for cases where high early termination fees may apply. In any case, the recovery of any other dues in respect of the provider, such as early termination fees, is to be handled in the same manner as outstanding payments on the subscribers' bills. It is worth reminding that this aspect was already addressed in Proposed Decision 7/2022, and was thus retained.

The same provider also noted that, where there is non-payment of early termination fees, as well as other charges related to free or discounted devices, the donor or block operator should also be given the possibility to cease providing onward routing or messaging, and to implement other arrangements and controls in such cases. This provider also believes that the right to block onward routing should be implicit and that other arrangements and controls should only be introduced with the prior written agreement of the MCA.

The Authority would like to point out that Decision 7/2022 already includes safeguards to protect providers' interests should it be established that number portability is leading to an increase in bad debts amongst post-paid subscribers who have ported their number, (taking into account that bad debts may also be in relation to unpaid early termination fees or other charges as mentioned). However, the Authority is not amenable to accept the proposal on implicit blocking of onward routing, since the ceasing of onward routing or messaging by the donor or block operator is a sensitive matter as it could impact the conveyance of traffic and other signalling messages towards the number in question. In this respect, the MCA considers that the right of the donor or block operator to cease to provide onward routing or messaging shall continue to require the prior written agreement of the MCA, as per Decision 7/2022 hereunder. Nevertheless, to further emphasise this point, Decision 7/2022 reflects some changes from the Proposed Decision 7/2022 to better link the need for the MCA's written agreement to both the cessation of onward routing and messaging, as well as to any other arrangements or controls proposed.

Furthermore, it must be clarified that porting may not be refused by the donor operator for pending payments related to early termination fees, pending device payments, and/or bills that are not overdue (that is, still within their eligible credit period). As indicated above, whilst the Authority is sensitive that bad debts may also arise in respect of such pending payments, providers are reminded that there are permissible technical safeguards that may be applied in such circumstances, provided that *prior* written agreement of the MCA is obtained in line with Decision 7/2022.

After taking all the above into consideration, the Authority is maintaining the position proposed in the *Consultation Paper*, namely that providers must ensure that terms and conditions related to advance notice periods for the termination of contracts (or other similar arrangements), as per regulation 91 of SL 399.48, include an exception in the case of port-out requests, without prejudice to any applicable and established fees such as those for early termination. In such cases, such advance notice periods shall not constitute grounds for the donor operator to refuse incoming porting requests, and the subscriber should not be obliged to notify its provider at least one (1) month prior to contract termination, in line with the recipient-driven approach.

(b) Bundled offers

In the *Consultation Paper*, the Authority took the opportunity to address the increased take up of 'bundled offers'⁶ among local subscribers, and to explicitly direct that the donor operator cannot refuse porting requests on the basis that the number to be ported forms part of such a bundled offer. It was noted that for such bundled offers, and in line with regulation 91(3)(a) of SL 399.48, the respective terms and conditions should not act as a disincentive to changing a service provider. Rather, service providers should endeavour to ensure that subscribers are able to understand the benefits and risks associated with such bundled offer, including by providing information, possibly in the terms and conditions, on what would happen in the case of number portability for the number(s) in the bundle, in order for subscribers to make an informed choice prior to committing to number portability.

Recipient operators are reminded of their obligation under Decision 6/2022 to inform subscribers that porting a number which forms part of a bundled offer may have implications on any other services that such subscribers may have with the donor operator, and that it is the subscriber's responsibility to carry out the necessary checks with the donor operator prior to submitting the porting request. Lastly, upon a successful porting of a number in a bundled offer, the donor operator should cease utilising this number with any of the services which it may continue to offer the subscriber after porting.

On the topic of porting of numbers forming part of a bundled offer, one provider expressed its agreement that the donor operator should not hamper the porting process since the number to be ported forms part of a bundled offer, however it also expressed its disagreement with the proposal for the contract for more than one service (a bundled offer) to be terminated automatically. This provider explained that automatic termination without further notice or contact from the donor operator would leave subscribers without access to the other service(s) abruptly, hence leading to increased subscriber complaints which can be avoided with prior arrangement with the donor operator. This would also increase reconnection costs on subscribers who may have only wanted to port out their telephony number. The same provider stated that in such cases only, the donor operator should be allowed to reach out to the subscriber requesting porting to explain that given that the fixed/mobile number is going to be ported out, a new contract for the new bundled offer (less the fixed/mobile telephony service) needs to be signed by the subscriber to retain his/her remaining services with the donor operator. This provider suggested that, should the subscriber refuse, the contract would be terminated and an early termination fee would be invoiced by the donor operator if the initial term of the contract had not yet expired.

Another option, proposed by this provider, was to replace the number to be ported with a random number in the bundled offer, so that the other services in the bundled offer would not be affected. The subscriber would then be expected to contact the donor operator for termination of the bundled offer in case he/she did not wish to retain all services.

In view of these proposals, the Authority wishes to clarify that it is sensitive to the possibility that some subscribers may feel burdened by the termination of the bundled offer as a result of porting out a number in their contract (or other similar arrangement), albeit the opposite may be true for some others, who might feel burdened with having to terminate the contract (or other similar arrangement) for their bundled offer themselves. Nevertheless, the alternatives proposed are not consistent with regulation 94(10) of SL 399.48 and it would be superfluous to evaluate these proposals or commenting on them further.

⁶ In line with regulation 96 of SL 399.48, "*bundled offer*" is to be understood as a bundle of services or a bundle of services and terminal equipment, which comprises at least an internet access service or a publicly available number-based interpersonal communications service. In accordance with recital (283) of the EEC, a bundle should be considered to exist in situations where the elements of the bundle are provided or sold by the same provider under the same or a closely related or linked contract.

Furthermore, the measures identified under Decision 6/2022 should go a long way to ensure that diligent subscribers are able to make an informed decision when considering porting out a number that is part of a contract (or other similar arrangement) for a bundled offer. It is also worth repeating that, even though the subscriber is responsible to check the nature and extent of any consequences of automatic termination, the recipient operator is nevertheless required to inform the subscriber who is considering to request porting of his/her responsibility to check, prior to submitting the porting request, what implications may arise on any other service contracted with the donor operator.

After taking the feedback received on the termination of bundled offers into consideration, the Authority maintains its position as proposed in the *Consultation Paper* on this specific aspect.

The Authority therefore mandates the following:

Decision 7/2022

Subscribers should be able to port their numbers without giving advance notice for termination of their contract (or other similar arrangement) and without first paying off their account with the donor operator, provided that they do not have outstanding unpaid bills where the payment has not been received within the normal period allowed for payment. Subscribers who are subject to suspension of incoming or outgoing calls because of late payment may be refused porting.

If number portability is found to lead to an increase in bad debts amongst post-paid subscribers who have ported their number, the donor or block operator may cease to provide onward routing or messaging, or the operators may implement other arrangements and controls, subject that such cessations or any other arrangements and controls would only be implemented with the *prior* written agreement of the MCA.

The MCA further directs that, upon the successful conclusion of a porting process, the subscriber's contract (or other similar arrangement) with the donor operator shall be terminated automatically. This applies also when the contract (or other similar arrangement) is for more than one service. Furthermore, the following conditions should also apply:

- Donor operators may not refuse porting requests on the basis that the number to be ported forms part of a bundled offer; and
- Donor operators should cease utilising the ported-out number with any other service offered to the subscriber after porting.

5.2.4.3. Porting requests following contract termination

Regulation 94(6) of SL 399.48 establishes that *“where an end-user subscribed to a voice communications service terminates a contract, that end-user shall retain the right to request to port a number from the national numbering plan to another provider for a minimum of one month after the date of termination, unless that right is renounced by the aforesaid end-user”*.

Here, ‘contract’ is being understood to also include other similar arrangements with the end-user, which would be applicable in the case of certain subscription types such as pre-paid mobile voice communications service subscriptions.

To ensure that end-users may avail of this right, multiple aspects related to eligibility, procedures, and additional validations are addressed hereunder, as follows: Part (a) addresses aspects related to the general procedure that is to be applied to determine eligibility and handle requests received under this regulation. Part (b) then addresses the provision in this regulation dealing with end-users who renounce this right. Lastly, Part (c) presents the MCA's rationale to address requests submitted by terminated mobile subscribers with unregistered pre-paid SIMs.

(a) General procedure

The Authority notes that this provision has an impact on the treatment of terminated numbers in general as well as on the number portability process whenever such porting requests are received. In this regard, the Authority had sought preliminary feedback on implementation options from local providers of voice communications services prior to the publication of the *Consultation Paper*. The considerations put forward in the *Consultation Paper* had taken this feedback into account.

The MCA considers that, for the purposes of this right to *request* porting, it is immaterial whether the contract (or other similar arrangement) was terminated by the subscriber directly or otherwise (e.g. subscriptions terminated due to inactivity). Notwithstanding, eligibility to actually *port the number* in question would still rest on satisfying all the applicable conditions for a successful porting as addressed in this Decision Notice.

Given that these requests would emanate from persons (natural or legal) whose contract (or other similar arrangement) was terminated, such requests for number portability would thus be received from persons that are no longer 'subscribers' per se, given the absence of an active contract (or other similar arrangement) with a provider of voice communications services. In this respect, the term 'applicant' is used to refer to such persons wishing to avail of this right, to distinguish such persons from subscribers.

With a view to ensure a level-playing field, the Authority considers it appropriate to extend this right such that the applicant could also choose to request the reactivation of his/her number with the last serving provider, as opposed to porting it to another provider.

The Authority also considers that it would be reasonable for applicants to have a timeframe of one (1) month after the date of termination of the contract (or other similar arrangement) to request the porting (or reactivation) of terminated numbers.

A further point considered is the impact on the mandatory quarantine period for terminated numbers. Given the nature of the right emanating from regulation 94(6), the quarantine period is to commence one (1) month following termination of the contract (or other similar arrangement), thereby allowing a 'transitory period' (correspondingly, with a duration of one (1) month) during which the person concerned could apply to port (or reactivate) the number. During this transitory period, the number would still appear as belonging to the last serving provider, regardless of whether the number pertained to a block allocated to this provider or was ported to it.

Subsequently, in the case of terminated ported-in numbers which are neither reactivated nor ported during the transitory period, the last serving provider should send out an e164Terminated message after the lapse of this one (1) month transitory period, that is, not after the lapse of three (3) days following the date of termination as previously directed. Further information on the applicable timeframes is provided in the respective Number Portability Specifications.

Lastly, where a recipient operator submits a porting request on behalf of an applicant, the last serving provider shall act as the donor operator and facilitate all validation checks as per norm, depending on the nature of the last subscription type held by the applicant with the donor operator. The applicant is to be treated as an active subscriber once eligibility to avail of this right is confirmed by the donor operator, and all Decisions and Specifications become applicable. In parallel, an applicant's request to reactivate a terminated number with the last serving provider should also be processed in such a manner that all necessary validations (e.g. request received within the eligible period, no overdue bills that have not been paid within the normal credit period, etc.) are carried out before reactivation.

Significant feedback was received from providers on the Proposed Decision 8/2022 and the respective rationale identified above. A summary of all the feedback received, together with the MCA's response, is presented hereunder, grouped in relation to the specific aspect targeted in the submission.

Feedback on the introduction of additional obligations

One provider remarked that the instances where a customer terminates the contract and does not port the number to another provider are comparatively few and currently end-users already have the possibility to port such numbers after the contract is terminated. The same provider also pointed out that, in the case of pre-paid subscribers, these are not formally terminated but are generally kept inactive from when the end-user decides to stop using the service. Accordingly, pre-paid subscriptions are kept active for a period of one (1) year from the last credit top-up. According to the aforesaid provider, this situation also renders the provision in regulation 94(6) unnecessary.

Specifically, this provider observed that, under the current quarantine rules as defined in the MCA's '*National Numbering Conventions*', a number that ceases to be used by a subscriber cannot be re-allocated to another subscriber for a period of at least three (3) months. Thus, it is possible for both post-paid and pre-paid subscribers to port out or reactivate numbers after termination, subject to a verification of previous ownership, and provided that the number is still in the mandatory quarantine period of at least three (3) months (and thus still available for assignment). This situation, according to the aforesaid provider, renders the right established in regulation 94(6) unnecessary as the respective obligation is already being fulfilled. The same provider also commented that when a ported-in number is returned to its block operator upon termination, the latter can verify the previous ownership with the last serving provider and given the low frequency of such cases the process can be easily handled directly between the providers as has always happened in the past. This provider also highlighted that neither article 106 of the EECC nor S.L 399.48 specify that the customer must port out the number from the last serving provider, and thus argued the reconnection of the service and porting out of the number from a separate provider (the block operator) should be allowed.

In this regard, the Authority can confirm that the practice of block operators reactivating numbers during the quarantine period, and potentially also beyond the quarantine period for numbers which remain unassigned, was already being implemented prior to the coming into force of regulation 94(6). Once a number would be reactivated, then the subscriber could pursue number portability of an *active* subscription. Nevertheless, it should be clarified that this practice of reactivating quarantined numbers was *voluntary* in nature, and the MCA had no authority to impose on the block operator the obligation to accept such reactivation, even during the quarantine period proper.

On the other hand, with the coming into force of regulation 94(6), there is now an express legal obligation onerous on providers to provide applicants with an avenue to submit a porting request during the period of one (1) month following termination of the contract (or other similar arrangement) through an established recipient-driven process. In this regard, it is important, when determining the applicant's eligibility to avail of this right, to distinguish between cases where the applicant is within his/her right to request such porting or reactivation, as opposed to situations where the last serving provider may de facto turn down the request following verifications (e.g. request submitted after the eligible one-month period). Notwithstanding, applicants deemed ineligible *by right* may still be considered for reactivation by the block operator on a *voluntary* basis as mentioned in the preceding paragraph.

Moreover, the MCA maintains its position that the last serving provider is best placed to act as the donor operator for requests to port terminated numbers since it would be in a better position to carry out all validation checks as per norm, depending on the nature of the last subscription type held by the applicant with the last serving provider. Similar checks by the last serving provider would also apply when applicants request the reactivation of terminated numbers. In this respect, Decision 8/2022 reflects some changes from Proposed Decision 8/2022 to better emphasise that a request for reactivation is to be submitted by the applicant to the last serving provider who would then process the request and determine eligibility or otherwise.

Furthermore, the Authority notes that practices adopted for the lifecycle management of pre-paid subscriptions, whereby these subscriptions are not terminated immediately upon being identified as inactive but are generally kept inactive for a limited period of time prior to termination, do not run contrary to regulation 94(6). This said, the termination date for a pre-paid subscription should correspond to the date of its *deactivation*, not merely the date from when this subscription is considered as inactive.

It should also be noted that Decision 8/2022 imposes an obligation on providers to clearly inform all subscribers of an impending termination, and this therefore also applies to all pre-paid subscribers if, at any point, service to such subscribers is in the process of being terminated (e.g. deactivation of a pre-paid SIM as a result of a significant period of inactivity).

Feedback on eligibility to request porting (or reactivation) following contract termination

It was remarked by one provider that both regulation 94(6) of SL 399.48 and article 106(3) of the EECC clearly state that the right to port a number for one (1) month applies "*where an end-user subscribed to a voice communications service terminates a contract*", and not in cases where a contract is terminated by the provider. Consequently, this provider suggested that the MCA removes the following text from Proposed Decision 8/2022: "*Provided that this right to request porting (or reactivation) applies also in the case when the termination of the contract (or other similar arrangement) is carried out by the provider of voice communications services.*" The same provider explained that whilst in principle it does not rule out the possibility to allow porting in cases the services were terminated by the provider, it is of the view that, as a minimum, providers should be allowed to refuse to porting requests in instances where they have evidence that a number is being used for money laundering or to commit fraud, or in cases where it is reasonable for the provider to assume this is the case.

In such situations, where the donor operator is in possession of evidence suggesting money laundering, misuse of numbers and/or fraudulent use of numbers, the Authority would like to point out that providers must raise these issues with the competent authorities in line with established procedures. This would be applicable regardless of whether the number in question is associated with an active or terminated subscription. If in such circumstances a request for porting (or reactivation) of a number is submitted, the donor operator is required to handle the request *as directed by the competent authorities on a case-by-case basis*.

Lastly, the Authority would like to clarify here that eligibility to avail of the right to *apply* for porting (or reactivation) following the termination of the contract (or other similar arrangement) does not imply eligibility to *actually port (or reactivate)* that number and there may be valid grounds for refusing the porting (or reactivation) request, as elaborated further in Decision 12/2022.

Feedback on handling of requests for porting following contract termination

One provider also noted that significant changes to automated systems would be required to implement this right. These would entail complex system changes required in order to include logic to check whether such a number was deactivated and, if that is the case, to check whether it is eligible to be ported out (check that deactivation took place in the thirty (30) days or less from contract termination). This provider also remarked that this applies in particular to pre-paid port-outs that are fully automated and handled with no human intervention, and concluded that the implementation of such changes requires substantial effort in terms of planning and execution and the implementation timeline of three (3) months from publication of the Decision Notice as proposed in the *Consultation Paper* is not viable.

The same provider further proposed that, in the interim, implementing this right could be addressed by a manual solution where any requests to port a number after contract termination would be automatically rejected by the donor operator. This would be followed by a discussion between the donor and recipient operators on the merits of the request. Once it is confirmed that the number was deactivated within the past thirty (30) calendar days, the donor operator can then proceed with reactivating the number on its network, following which the donor operator would need to notify the recipient operator to submit the port-in request from its end.

The Authority took note of the provider's concern that a three (3) month timeline for implementation from the publication of this Decision Notice would not be viable. However, it should be clarified that the Authority only established this timeline as a minimum, and that the Authority is amenable to extend timeframes for implementation where duly justified. In the meantime, the Authority is amenable to allow providers to adopt an interim solution for a limited time period as explained in Chapter 7 of this Decision Notice. Further details on the implementation of the interim solution are presented in the respective Number Portability Specifications.

A further point raised by another provider was in relation to requests for reactivation of services received from post-paid subscribers, noting that such reactivation would have to be under a new contract reflecting currently available tariffs, not a continuation of the previous contract and term. In this respect, the Authority agrees that any reactivation of terminated numbers would need to take place under new contract terms (or other similar arrangements) as agreed with the subscriber in question. For clarity's sake, the number could therefore be reactivated under different contract terms as previously enjoyed, and reactivation, as considered in Decision 8/2022, is merely in reference to the number concerned, not the contract (and its terms, conditions, tariffs, etc.) per se or the type of subscription (pre-paid, personal post-paid, etc.).

It was also argued by the same provider that, for the fulfilment of this Decision, the MCA should allow the digitalisation of the porting process, as this was deemed a “critical need” to ensure a timely and less burdensome process for all. On this point, whilst one could agree that digitalisation may indeed provide some benefits, it is the Authority’s view that it is the quality of internal systems and subscriber records, more generally, that is critical to the proper handling of such requests, given that the eligibility checks rely on aspects and internal systems that are predominantly and exclusively within the provider’s domain of control. Subsequently, once an application is deemed to be eligible to avail of the right established in regulation 94(6) of SL 399.48, it is expected to be handled in the same manner (and porting process) as any other porting request.

Feedback on information provision to subscribers in the process of being terminated

In relation to the provisions emanating from Proposed Decision 8/2022, one provider noted that in sub-section 6.5.2 of the *Mobile Number Portability Ordering Process Specification*, the MCA recommends that an SMS is sent to the number being terminated, to detect erroneous terminations, regardless of whether the number being terminated is served by the block operator or by another provider. This provider remarked that block numbers (i.e. numbers that are not ported) should not fall under the same process and have this SMS sent too as this will needlessly complicate the deprovisioning process.

However, the Authority considers that it is important for all mobile subscribers to be informed through an SMS that their number is to be terminated, regardless of whether the number in question is ported or not ported. In the case of unregistered pre-paid mobile subscribers, this SMS could potentially also be used by the provider to fulfil its obligations emanating from Decision 10/2022 hereunder.

Furthermore, the MCA is introducing some additional text in Decision 8/2022 to clarify that subscribers in the process of being terminated are to be informed by their respective provider of their right to request to port (or reactivate) the number for a period of one (1) month following the date of termination, provided that this communication should be made as early as possible prior to termination, and, where the termination is triggered by the provider itself, at least thirty (30) calendar days prior to terminating the subscription. It should be noted that where a provider may terminate a subscription on pre-established terms and conditions (such as following long periods of inactivity by the subscriber), such termination is to be considered as having been triggered by the provider itself.

The Authority appreciates the extensive feedback received on aspects related to the general procedure applicable for requests for porting (or reactivation) of terminated numbers. Drawing from this feedback, the Authority is introducing some changes to Proposed Decision 8/2022, for improved clarity, whilst generally maintaining its position as proposed in the *Consultation Paper*.

Decision 8/2022

Where a person (natural or legal) terminates a contract (or other similar arrangement) with a provider of voice communications services, that person shall retain the right to request to port (or reactivate) any corresponding number which is subject to portability as per Decisions 1-3/2022 for a period of one (1) month after the date of termination, provided that:

- this right to request porting (or reactivation) applies also in the case when the termination of the contract (or other similar arrangement) is carried out by the provider of voice communications services;
- where the request is for the reactivation of a number, this number is to be reactivated by the last serving provider under a new contract (or other similar arrangement), as reactivation is merely in reference to the number concerned, rather than the last contract (or other similar arrangement) associated with this number.

When the contract (or other similar arrangement) of a subscriber is in the process of being terminated, the MCA directs the respective provider of voice communications services to inform, through a durable medium (e.g. email, letter, SMS), the subscriber concerned of his/her right to request to port (or reactivate) the number for a period of one (1) month following the date of termination:

- Provided that the subscriber should be informed of this right as early as possible and, where the termination is triggered by the provider itself, at least thirty (30) calendar days prior to terminating the subscription:
 - Provided further that where a provider may terminate a subscription on pre-established terms and conditions (such as following long periods of inactivity by the subscriber), such termination is to be considered as having been triggered by the provider itself.

Where the serving provider is not the block operator and the terminated number is neither ported nor reactivated during the one (1) month period following termination, that provider is to send an e164Terminated message to all other providers after the lapse of the one (1) month transitory period, as specified in the respective Number Portability Specifications.

Furthermore, where an applicant submits a porting request for a terminated number, the donor operator charged with authenticating the applicant's eligibility shall be that provider which last provided service to the applicant:

- Provided that, if an applicant's request is deemed to be eligible in line with the right to request the porting of a terminated number, the applicant's porting request should then be processed in line with all applicable Decisions and Specifications for handling subscribers' porting requests.

Where an applicant requests reactivation of a terminated number, this request should be submitted by the applicant to the last serving provider who would in turn process the request in such a manner that all necessary validation checks are carried out before reactivation. Such reactivation within one (1) month following the date of termination should exclusively be in favour of the same person who last held the number in subscription.

(b) Renouncing the right established in regulation 94(6) of SL 399.48

Regulation 94(6) of SL 399.48 also provides for the possibility that a subscriber may opt to renounce the right to request to port the number within a minimum period of one (1) month following contract termination, bringing about additional implications.

In the *Consultation Paper*, the MCA proposed that upon informing the end-user concerned of his/her right under regulation 94(6) of SL 399.48 (as per Proposed Decision 8/2022), the provider should also indicate that this right may be renounced. This possibility should not be taken as an opportunity to impose on the subscriber concerned an automatic renunciation of this right. Similarly, automatic renunciation should not be included in clauses on documentation related to contract or service termination. Thus, the Authority proposed that a specific declaration on a durable medium (e.g. letter, email) must be received from the subscriber concerned explicitly indicating that he/she is renouncing the right to request porting his/her number as per regulation 94(6) of SL 399.48.

Furthermore, the MCA proposed that where a renunciation is received in respect of numbers that are ported-in, the last serving provider should send the e164Terminated message after a minimum lapse of three (3) working days, and no later than one (1) month, following the date of termination.

In relation to this particular aspect, one provider observed that the option for subscribers to renounce the right to request porting is “unnecessary”, as a (terminated) number cannot be assigned to another subscriber before a minimum period of three (3) months from the termination date due to quarantine rules, even if the subscriber that is terminating the contract renounces the right to port out that number. The same provider remarked that the introduction of new response codes for use in the Authorisation Response (27 and 28 in the *Mobile Number Portability Ordering Process Specification*, and 56 and 57 in the *Fixed Number Portability Ordering Process Specification*) to account for this eventuality are also unneeded and would add complexity to keep track of this renunciation, without any gain to the subscriber. On a related note, another provider commented that providing the opportunity for subscribers to renounce to this right creates further complexity to this process. This provider noted that a donor operator would require further technical development to segregate the said subscribers which comes at additional costs. The same provider argued that not providing this right does not take away anything from the subscriber, who would merely not use this right. Furthermore, it argued, if a subscriber reconsiders his/her decision to renounce this right, they would actually be able to reverse the renunciation accordingly.

In respect of the above feedback, the Authority acknowledges that the quarantine rules foresee a minimum period of three (3) months during which – regardless of a renunciation or otherwise – a terminated number would not be assigned to another subscriber. One could therefore argue that the choice by the end-user to renounce this right or otherwise would have no bearing on the provider’s freedom to re-assign that number during the one (1) month period established in regulation 94(6).

Nevertheless, the Authority wishes to clarify that this right stems from regulation 94(6) of SL 399.48, (transposing article 106(3) of the EEC), and is therefore not being ‘granted’ to the end-user by the provider per se. Indeed, this is a legally established right that end-users may trigger if so required. In this respect, the MCA acknowledges that, to date, it is unclear what justifications an end-user may have to specifically renounce this right, and thus request that the terminated number is not kept ‘available’ to it for at least one (1) month following the date of termination of the contract (or other similar arrangement). In any case, however, such a possibility cannot be completely ruled out by the Authority. Therefore, providers should, as a minimum, be in a position to *receive, acknowledge and record* such requests from end-users wishing to renounce this right, in line with the regulation. This requirement is reflected in Decision 9/2022.

In this regard, Decision 9/2022 does not prescribe the method to be employed by providers in receiving, acknowledging and recording such renunciation requests, when or if they materialise. Furthermore, beyond the obligation established in Decision 8/2022, namely to inform subscribers of this right to request porting (or reactivation) of a terminated number for one (1) month from the date of termination of the contract (or other similar arrangement), providers are not being required to specifically inform such terminating subscribers that they may also *renounce* this right. However, the MCA reserves its right to review and update this Decision should it be established that this practice may not be safeguarding end-users' interests.

Decision 9/2022

Providers are prohibited from adopting practices that presume a '*renunciation by default*' with regards to the right addressed in Decision 8/2022. To this effect, providers are prohibited from including clauses on documentation related to contract or service termination that implement an automatic renunciation of this right, nor any generic terms in applicable Terms and Conditions that implement such automatic renunciations.

In view of the possibility that an end-user may wish to renounce his/her right to port (or reactivate) a terminated number for one (1) month from the date of termination of the contract (or other similar arrangement), the last serving provider should ensure that it is able to receive, acknowledge and record such a request in its systems.

(c) Requests from applicants with unregistered pre-paid SIMs

When a request to port (or reactivate) a number is received from an applicant with an unregistered pre-paid SIM within the stipulated one (1) month following termination, due to the very nature of an unregistered subscription, providers would lack the subscriber information required to authenticate the request, which would otherwise be available in the case of conventional registered subscribers.

Consequently, the number portability authentication process for such cases warrants bespoke treatment. To this effect, in the *Consultation Paper*, the MCA proposed the Options (i) to (v) below to provide stakeholders the opportunity to revert with their respective preference.

Option (i) - CLI Check

For a period of one (1) month following termination, SIMs for unregistered pre-paid subscriptions are to be kept active with restrictive access solely to receive incoming SMS. This would enable the recipient operator to carry out a CLI Check by means of sending an SMS towards the number to be ported.

Option (ii) - Verification code sent to subscriber prior to termination

A verification code (e.g. PUK1/PUK2, a newly generated code, etc.) is sent to the unregistered pre-paid subscriber through a durable medium (e.g. via SMS, etc.) upon the sending of any notification of imminent termination, so that the same provider would be able to authenticate the applicant requesting porting within one (1) month following termination.

Option (iii) – Authentication based on SIM Serial Number

The serial number of the SIM in possession of the applicant requesting porting within one (1) month following termination would be recorded by the recipient operator and sent to the donor operator who would verify whether the SIM in question had been used in association with the number to be ported prior to termination.

Option (iv) – Reactivate SIM with donor operator prior to porting using the normal process

For a period of one (1) month following termination, the applicant with an unregistered pre-paid SIM is to physically present the donor operator with his/her deactivated SIM for authentication purposes and to confirm that the number in question is associated with the SIM. Once re-activated by the donor operator, the applicant (now equivalent to a regular subscriber) may then proceed in porting the number using the conventional number portability process through the recipient operator.

Option (v) – Registration requirement prior to termination

The unregistered pre-paid subscriber would be informed that he/she is required to register prior to termination in order to be entitled to port his/her number. The provider is required to clearly inform the subscriber of this option and its consequences on a durable medium (e.g. via SMS, etc.) prior to terminating the subscription.

In respect of the above, the feedback received was consistently in support of Option (v), whereby unregistered pre-paid subscribers are required to register their details prior to termination as a means to 'safeguard' their entitlement to request porting after termination of the contract (or other similar arrangement). Indeed, one provider mentioned that Option (v) is the most viable while another provider specifically ruled out all the other Options presented (i.e. Options (i) to (iv) above), stating that each of these could give rise to unauthorised individuals gaining access to a number belonging to a lost, stolen or misappropriated SIM. It was also argued that service providers should be allowed to refuse porting of unregistered terminated SIMs as part of the consequences of not registering a SIM prior to termination as this makes it even more difficult to identify the true user of the said SIM.

Another provider noted that Option (v) is the most feasible, whereas Option (i) is the most difficult to implement. This provider also stated that Option (i) would introduce risks for providers as SIMs can remain active whilst the service is not covered by a contract. Notwithstanding the above, this same provider had previously argued that the right established in regulation 94(6) is unnecessary since the respective obligation is already being fulfilled as detailed in sub-section 5.2.4.3 (a), as reported above. In this respect, this provider noted that the support for Option (v) should be taken as being without prejudice to its position expressed on this matter. Indeed, this provider pointed out that, for the reasons mentioned earlier, the proposed authentication options for unregistered SIMs need not even be considered and that any further obligations would only introduce unreasonable costs and further complexities in the number portability process.

The MCA reiterates its position above that the right established in regulation 94(6) inevitably requires that some changes are implemented in handling number portability requests, as detailed in Decision 8/2022 and Decision 9/2022. Still, given the complexities and risks associated with safely authenticating requests from applicants with unregistered pre-paid SIMs, the Authority took note of the providers' feedback and the expressed preference for Option (v), and agrees with the rationale presented to support this Option.

To this effect, Decision 10/2022 was introduced to specifically implement Option (v) for the handling of unregistered pre-paid subscriptions within the context of the right to request porting (or reactivation) after termination of the contract (or other similar arrangement). The MCA is introducing text in Decision 10/2022 to clarify that providers may comply with the notification requirements in this Decision using the same notification sent to an unregistered pre-paid subscriber in compliance with Decision 8/2022.

Notwithstanding the above, the Authority understands that unregistered pre-paid subscriptions may need to be phased out in due course, and took note of the feedback raised by one provider referring to past investments undertaken by providers in relation to the phasing out of unregistered SIMs.

Therefore, taking into account the feedback received, the MCA directs as follows:

Decision 10/2022

In the case of an impending termination of an unregistered pre-paid subscription, the provider is to inform its subscriber that, in order to be entitled to request the porting (or reactivation) of the number for a period of one (1) month after the date of termination, he/she is required to register his/her details prior to the termination of the subscription. The provider is required to clearly inform the subscriber of this option and its consequences on a durable medium (e.g. via SMS, etc.):

- Provided that the subscriber should be informed of this requirement as early as possible and, where the termination is triggered by the provider itself, at least thirty (30) calendar days prior to terminating the subscription:
 - Provided further that where a provider may terminate a subscription on pre-established terms and conditions (such as following long periods of inactivity by the subscriber), such termination is to be considered as having been triggered by the provider itself.

This notification need not be separate from the notification to be sent by providers whilst complying with the provisions of Decision 8/2022.

The Authority reserves its right to review and update this Decision should it be established that there is lack of compliance with Decision 10/2022 to the detriment of the interests of unregistered pre-paid subscribers.

5.2.4.4. Timing of the porting process

In the *Consultation Paper*, the MCA presented a detailed rationale to establish the parameters related to the availability ('shopping hours') and timeframes for the receipt and processing of number portability orders. It also confirmed the continued validity of the principles which had been set out in 2005 to guide the development of the Number Portability Specifications. In general, the arguments presented in the *Consultation Paper* demonstrated that the former Decision 9/2005 remained largely applicable, and recast this decision as Proposed Decision 10/2022, with some changes to reflect the shift in the legal basis from the former regulation 47(4) of SL 399.28, to the current regulation 94(8) of SL 399.48. The rationale behind these changes follows.

Firstly, following the publication of the *2005 Decision*, the various Specifications covering the different number portability scenarios were since developed, on the basis of the principles that had been established, providing detailed procedures and timeframes as applicable. Thus, the aspects relating to procedure and timeframes are addressed only in the respective Specification depending on the type of number portability request being processed.

Secondly, a difference brought about by the current regulations (SL 399.48) is that the facility to request number portability on a future date was not *legally* mandated in 2005 (no reference to such facility in the former regulation 47(4) of SL 399.28), whereas this end-user right is now specifically provided for in regulation 94(8) of SL 399.48, which states that the *“porting of numbers and their subsequent activation shall be carried out (...) on the date explicitly agreed with the end-user”* (our emphasis). This said, Decision 9/2005 had nevertheless included this facility as a requirement on providers, so the inclusion of this right in regulation 94(8) of SL 399.48 should not, in practice, bring about any specific changes in the process.

Nevertheless, one provider remarked that it was unclear whether the obligation on future porting is on the donor operator or the recipient operator, and noted that there are burdens either way. In particular, this provider mentioned that while it agrees that a subscriber has the right to request porting at his/her convenience, putting the onus on either the recipient operator to request porting on a future date or the donor provider to port-out a number at a future date is onerous in both cases and leaves room for human error. In the former case, the provider in question observed that the recipient operator would have to align the contract of service or else ensure that the number assigned to the subscriber is replaced by the number the subscriber wishes to port in on the specified date. On the other hand, if this obligation is on the donor operator, then that provider would need to implement measures to trigger a number of port-outs on particular dates which would require both time and technical effort.

This provider expressed its opinion that this process is ultimately initiated upon the subscriber's initiative and is always readily available to customers. It suggested doing away with the option of ordering porting on a future date, as this option is shifting responsibility on service providers and is considered excessive. The same provider went on to claim that porting is *“a real-time process by nature which a customer can avail from at any time”* and that *“subscribers should exercise such right when necessary”*.

The Authority disagrees with this assessment. First, the provision of this facility has been incumbent on providers since the publication of the *2005 Decision*, and it is therefore a facility that all providers of voice communications services ought to have had in place ever since, regardless of whether subscribers actually made use of such facility or otherwise. Secondly, with the coming into force of SL 399.48, this facility is an end-user right enshrined in the Maltese legal framework, and the Authority cannot disregard such right in the formulation of this Decision Notice. Moreover, this facility provides subscribers with the possibility to minimise disruption that may arise as a result of an ongoing porting process, and allow them to submit the porting request at their convenience, such as on a specific day when they are visiting an area close to a recipient operator's retail outlet, but agree with the recipient operator that porting is finalised (and thus takes place) on a future date, for instance on a day when these subscribers would be least impacted. Lastly, it should be noted that the facility to request porting on a future date is primarily an end-user *right*, and the onus is on the recipient operator to lead the porting process, and cooperate with the donor operator as necessary, to fulfil this request in a manner that is consistent with the timeframes and parameters established in the applicable Number Portability Specifications. The MCA stands by this rationale, and no changes are therefore being made to the text of Proposed Decision 10/2022.

Decision 11/2022

The MCA directs providers of voice communications services to ensure that:

- Subscribers may order number portability during at least 09:00 – 18:00 hours Monday – Friday and 09:00 – 13:00 hours on Saturdays, excluding public holidays;
- Subscribers may order number portings to take place either as soon as possible or on a specified date in the future excluding Sundays and public holidays.

Providers are also required to adhere with the timeframes of the porting process as established in the applicable Number Portability Specifications.

5.2.4.5. Reasons for refusal

International best practices in number portability show that a reliable process is best achieved when it is the recipient operator that leads the validation process, and where the reasons to refuse a porting by the donor operator are limited by regulation.

In the *Consultation Paper*, the developments emanating from the coming into force of SL 399.48 were reflected through some additional justifiable reasons to those that had been listed in Decision 11/2005, which was therefore recast as Proposed Decision 11/2022. In respect of this Proposed Decision, one provider remarked that additional justified reasons could be included in the list, such as where the provider has evidence that a number is being used for money laundering or to commit fraud or in cases where it is reasonable for the provider to assume this is the case.

The Authority reiterates that, as explained in sub-section 5.2.4.3 (a), whenever providers are in possession of evidence suggesting money laundering, misuse of numbers and/or fraudulent use of numbers, then they must raise these issues with the competent authorities in line with established procedures. If in such circumstances a request for porting (or reactivation) of a number is submitted, the donor operator is required to handle the request *as directed by the competent authorities on a case-by-case basis*.

Lastly, as detailed in sub-section 5.2.4.2 above, neither advance notice periods as per regulation 91 of SL 399.48, nor requests for porting of number(s) utilised for voice communications services that are part of a bundle of services, shall constitute grounds for the donor operator to refuse incoming porting requests.

Decision 12/2022

The MCA directs that donor operators may refuse a porting for the following reasons:

- the number to be ported is not a valid number for a subscriber on the donor operator's network;
- in the case of post-paid accounts, the account number in the request is not the account number used by the donor operator for the number for which porting is requested;
- in the case of mobile numbers, the classification of the account does not match, e.g. a request is made under the pre-paid procedure for a post-paid account;
- in the case of post-paid accounts, the subscriber has an outstanding bill that has not been paid within the normal period allowed;
- the subscriber is already subject to suspension of outgoing or incoming calls because of failure to pay a bill;
- the number is already subject to a porting process;
- the number has already been ported in the last two (2) months;
- more than one (1) month has elapsed since the subscription associated with the number to be ported was terminated;
- the subscriber formerly assigned this number had renounced the right to request porting when terminating his/her subscription;
- in the case of multi-user post-paid subscriptions held by legal entities (and therefore excluding natural persons), the subscriber has informed the donor operator in a form that can be recorded for future verification (e.g. writing, fax, email, recorded conversation) that the porting request is not correctly authorised; or
- any other reason agreed to by the Authority and notified to the providers in writing.

More detailed scenarios for refusing a porting may be found in the respective Number Portability Specifications.

5.2.4.6. Continuity of service

Notwithstanding the safeguards in place at both the regulatory and operational level of number portability, it is possible for problems to arise during the porting process. Therefore, it is important to ensure that the subscriber is always able to make an outgoing call from the number to be ported. This means that the account associated with the number to be ported should be activated on the recipient network before the account is closed on the donor network, thus creating an overlap during which both accounts are active. In the case of mobile number portability, this includes the recipient operator provisioning a subscription in the HLR/HSS which associates the number being ported with the International Mobile Subscription Identity (IMSI) included in the SIM profile issued by the recipient operator to the subscriber requesting porting. The alternative, namely, allowing a gap where neither account is active, leaves the subscriber vulnerable to being unable to make any outgoing calls from the number to be ported.

With a view to maintain continuity of service, regulation 94(8) mandates that in the case of *failure* of the porting process, the donor operator shall reactivate the subscriber's number and related services until porting is successfully concluded, offering the subscriber service under the same terms and conditions previously offered. It also mandates, as was already the case as per the former regulation 47(5) of SL 399.28, that loss of service should not exceed one (1) working day.

Furthermore, regulation 94(9) mandates that network operators whose access networks or facilities are used by the donor and/or recipient operator(s) involved in the porting request *“shall ensure that there is no loss of service that would delay the switching and porting process”*. This suggests that responsibility to safeguard against loss of service may, in some circumstances, be extended to or shared with third party operators or service providers upon whose networks/facilities the donor and/or recipient operator(s) rely to provide service to their subscriber. In this respect, further detail on the allocation of responsibility in such cases is provided in the respective Number Portability Specifications.

Nevertheless, providers of voice communications services are to assume primary responsibility to safeguard against loss of service or delays in any porting process where they are either the recipient operator or the donor operator, including where there are dependencies on access networks, facilities and/or technical solutions provided by third parties. Where any underlying access networks, facilities and/or technical solutions are provided by undertakings authorised with the MCA as providers of electronic communications networks and/or services (ECN/S) in Malta (e.g. Mobile Virtual Network Enabler (MVNE), Access Provider), these authorised undertakings are to conform with all applicable Number Portability Decisions and Specifications.

To reflect the implications of these two sub-regulations, Decision 12/2005 was recast as Proposed Decision 12/2022 in the *Consultation Paper*. In respect of this proposal, one provider commented that, in general, a loss of service should not occur because the donor operator only deprovisions services once the recipient operator confirms correct behaviour on its network. However, if a failure does occur, re-provisioning of donor operator services would need to be done manually, particularly where post-paid services are involved, and thus the term *“with immediate effect”*, (citing Proposed Decision 12/2022), may not be appropriate. The same provider mentioned that regulation 94 of SL 399.48 mentions that loss of service shall not exceed one (1) working day and thus the said provider argued that the Proposed Decision goes beyond the requirements of the SL 399.48 and of article 106 of the EECC. Furthermore, this provider mentioned that Proposed Decision 12/2022 does not specify who shall inform the donor operator, contending that this should be clearly mandated on the recipient operator, to avoid possible inter-operator issues that could occur if for instance the subscriber informs the donor operator directly. Thus, this provider proposed to replace the phrase *“with immediate effect”* with *“within one day”* from when the donor operator is notified, by the recipient operator, that there was a failure in the process leading to loss of service.

The Authority considered this proposal to be acceptable, albeit the change introduced in the Decision hereunder also includes emphasis that efforts are undertaken for the recipient operator to inform the donor operator with immediate effect and for the donor operator to reactivate its services *“as soon as possible, and in any case not later than one (1) working day”*. The change is meant to encourage providers to address such matters without delay, thereby minimising the loss of service for the affected subscriber. It also takes into account that the regulation specifies working days, not calendar days in general. Furthermore, it should be noted that, in cases where a subscriber informs the donor operator directly of a failure in the porting process, the subscriber should be directed by the donor operator to bring this issue to the attention of the recipient operator.

Another provider remarked that while it recognises and supports the importance that subscribers should not remain without services, the Decision should clarify that *“(a) the service provider either in its capacity as donor or recipient operator, is not liable for damages caused for loss of services”* and *“(b) the transferring provider shall be allowed to bill the customer until the porting is successful and shall not be liable for any delay out of its control”*.

In respect to the providers' exposure to liability, the Authority cannot include blanket statements on liability in a Decision Notice, as these matters fall outside the scope of the Number Portability Decision Notice.

Furthermore, with respect to the point, raised in part (b) of this feedback, regarding the continued billing until porting is successful, the Authority considers that it is implied that billing by the donor operator would not cease until the porting is successfully concluded, as it is at this point that the donor operator's contract (or other similar arrangement) with the subscriber should be terminated automatically, in line with Decision 7/2022. By way of clarification, the Proposed Decision 12/2022 also stated that service would be resumed under the same terms and conditions previously offered. One could surmise that this would also include terms related to tariffs and respective billing.

Lastly, the same provider also mentioned that since the donor operator has no visibility as to whether the recipient operator has activated the service, the donor operator should remain responsible to continue providing the service up until the porting process is concluded. In this respect, the Authority would like to point out that, in general, the donor operator remains responsible for service provision to the subscriber until his/her account is deactivated, without prejudice to the donor operator's responsibility to reactivate the subscriber's number and related services in those cases where the donor operator is informed by the recipient operator of a failure in the porting process as per Decision 13/2022. Furthermore, it should be stressed that the Number Portability Specifications already prescribe the point at which the recipient operator should activate the number being ported on its network and the point at which the donor operator should deactivate the subscriber during the porting process. The ordering approach in the respective Specifications is precisely intended to reduce the risk of subscribers losing service and to lower the incidence of failure in the porting process.

Decision 13/2022

The MCA directs that, as far as possible, the porting process should not involve a gap where the account associated with the number to be ported is neither active on the recipient network nor on the donor network. The subscriber should always be able to make an outgoing call on one of the networks from the number to be ported.

Moreover, in order to safeguard continuity of service for the subscriber, whenever there is a failure in the porting process which may result in some loss of service, the recipient operator shall inform the donor operator with immediate effect. The donor operator shall in turn proceed, as soon as possible, and in any case not later than one (1) working day, to reactivate the subscriber's number and related services under the same terms and conditions previously offered until porting is successfully concluded and the services are activated by the recipient operator.

Furthermore, in order to clarify lines of responsibility where third parties' access networks, facilities and/or technical solutions are used by the recipient and/or donor operator(s) involved in the porting request, the Authority directs as follows:

- Providers of voice communications services are to assume primary responsibility to safeguard against loss of service or delays in any porting process where they are either the recipient operator or the donor operator, including where there are dependencies on access networks, facilities and/or technical solutions provided by third parties:
 - Provided that where any underlying access networks, facilities and/or technical solutions are provided by undertakings authorised with the MCA as providers of electronic communications networks and/or services (ECN/S) in Malta (e.g. MVNE, Access Provider), these authorised undertakings are to adhere with all applicable Number Portability Decisions and Specifications.

In any case, where there is a loss of service as a result of a failure in the porting process, this should not exceed one (1) working day.

5.2.4.7. General provision on the porting process

Since its inception, the mobile number portability process in Malta was designed around a scenario whereby the porting subscriber would need to replace the physical SIM of the donor operator by the SIM card of the recipient operator. At the time of publication of the *Consultation Paper*, there were no locally authorised providers of mobile voice communications services that were relying on embedded SIM (eSIM) technology for the delivery of their respective connectivity services. Nevertheless, in the *Consultation Paper*, the Authority explained that it is also aware that market and technology trends in the mobile telecommunications industry are leading to an increased availability of eSIM technology in user equipment, particularly in next-generation consumer smartphones. In time, it is expected that some consumer devices would be brought to market devoid of any physical SIM slot entirely, relying exclusively on eSIMs. Such devices may only be serviced by providers that offer over-the-air (OTA) provisioning of subscriber profiles.

Against this background, the Authority had included in its *Consultation Paper*, a Proposed Decision that obliged providers of voice communications services who intended to implement OTA provisioning capabilities based on eSIM technology, to advise the MCA at least six (6) months prior to the intended implementation, specifying also whether this would extend to starting OTA provisioning of voice communications service subscriptions.

It is pertinent to note that within a few days of the publication of the *Consultation Paper* in December 2021, a local provider of voice communications services incidentally launched eSIM-based subscriptions for mobile voice communications services, immediately rendering moot the provision in Proposed Decision 13/2022 for this provider. Subsequently, another local provider also launched eSIM-based subscriptions for mobile voice communications services.

Besides these developments, specific feedback was received from providers on the practicality of this proposal. One provider remarked that it considers that the six (6) month time period is excessive due to commercial sensitivity involved in the implementation of such business decisions. It also mentioned that such notice should in any case be provided under confidential coverage. Another provider commented that an eSIM-based solution would be able to provide all the standard functionalities including but not limited to number portability.

Taking into account the feedback received to the *Consultation Paper*, and the developments related to the local availability of eSIM-based subscriptions for mobile voice communications services, the Authority considers that a prior notice period is no longer practicable.

Moreover, following an internal exercise, the Authority found that the Decisions and underlying arguments relevant to the porting process would remain relevant, regardless of the use of physical (removable) SIMs or eSIMs by the recipient and/or donor operator(s). Additionally, the current *Mobile Number Portability Ordering Process Specification* may readily integrate, with minor changes, the porting of subscriptions where either the recipient operator, the donor operator or both are offering their service via an eSIM.

In this respect, the obligation of prior notification in Proposed Decision 13/2022 was removed while the obligation on providers of voice communications services to support number portability regardless of the type of SIM used is being retained.

Decision 14/2022

All providers of voice communications services who offer subscriptions, utilising numbers subject to number portability as per Decisions 1-3/2022, based on eSIM technology, should also be able to support number portability.

Cognisant of the fact that, at the time of writing, the situation is fluid and eSIM take-up may well result in a more pronounced impact than is currently anticipated on both the experience of number portability and market dynamics, the Authority intends to carry out further evaluations of this development and, following consultation with providers of mobile voice communications services, to implement any necessary updates to the relevant Specifications, in due course. The Authority reminds that, in line with regulation 94(11) of SL 399.48, the Authority is empowered to establish the details of the porting process, including where porting is to be completed through OTA provisioning.

5.2.5. Consumers' right to request a refund of remaining credit

The current regulations include a provision which imposes upon the donor operator the obligation to *"refund, upon the request of a consumer using a pre-paid service, any remaining credit to that consumer"* [regulation 94(13) of SL 399.48]. In this respect, the *Consultation Paper* put forward a proposed framework within which this refund would have to be offered to porting consumers upon their request, namely:

- **Eligibility criteria:** This right should be granted to all pre-paid consumers, both registered and unregistered, and also to consumers on hybrid tariff plans who, similarly to pre-paid consumers, make available monetary credit to their provider in advance of service consumption.
- **Validation checks:** The donor operator may perform similar validation checks to those carried out by the recipient operator when a subscriber requests porting.
- **Means to request refund:** As a minimum, the donor operator should offer consumers the possibility to request the refund for any remaining credit in person (e.g. via its retail outlets); in addition to any other alternatives considered (e.g. online requests).
- **Refund fee:** The processing of the refund may be subject to an administrative fee solely if provided for in the contract (or other similar arrangement) between the donor operator and the consumer, albeit this should be without prejudice to the provisions established in other relevant Decisions published by the Authority such as the MCA's Decision *'Modifications to the terms and conditions of subscriber contracts'* (MCA-D/ms/11-0546). Any refund fee applied should be fixed and not dependent on the amount of monetary credit to be refunded to the consumer. A maximum cap of €5 shall apply for the refund fee.
- **Credit to be refunded:** This should match the monetary amount which would have been indicated to the consumer should he/she have performed a credit check immediately prior to deactivation by the donor operator. Where the consumer can distinguish between *topped up/purchased* credit and any credit provided through bonuses or promotions via the credit check facility, the credit to be refunded by the donor operator may be exclusive of any bonus or promotional credit accordingly. For consumers on hybrid tariffs, the credit refund should exclude any monthly access fees deducted from the consumer's monetary credit prior to porting. In cases where the value calculated for the credit refund would be lower than the refund fee due, the donor operator should inform the consumer accordingly without further processing the request. In these circumstances, the consumer should not incur the refund fee.

- **Refund mechanism:** As a minimum, the donor operator should offer consumers the possibility to receive the refund for any remaining credit via cash or cheque. Nevertheless, the donor operator could in addition also consider offering alternative refund mechanisms such as bank transfer or waiving credit refund due off the bill for other services which the consumer intends to retain with the donor operator. However, the use of a refund mechanism other than cash or cheque should be subject to a voluntary agreement by the consumer to avail of the refund through the selected mechanism. Furthermore, the MCA recognises that the costs incurred by the donor operator may vary depending on the refund mechanism to be adopted and, to this effect, a donor operator may set a different fixed fee (up to the maximum cap) for each credit refund mechanism offered.
- **Timeframes:** Consumers should request a credit refund within a period stipulated by the donor operator which should be at least two (2) weeks following a successful porting. The donor operator shall refund any remaining monetary credit within one (1) month of receipt of the refund request, subject that any validation checks for the donor operator to confirm the consumer's eligibility are carried out successfully.

Furthermore, it was proposed that upon successful porting, recipient operators are to inform subscribers, through a durable medium (e.g. email, SMS, letter), of the right granted to eligible consumers to request the donor operator to issue a refund for any remaining monetary credit following a successful porting. Subscribers should also be informed in this communication that the request must reach the donor operator within a period of two (2) weeks from successful porting. However, subscribers should be directed to the donor operator for any further detailed information on credit refunds since these could vary from one donor operator to the other. The donor operator is to acknowledge the receipt of the consumer's credit refund request through a durable medium (e.g. email, SMS, letter). Furthermore, depending on the refund mechanism adopted (e.g. cash refunds), it could also be good practice for the donor operator to obtain a declaration from the consumer that the refund was received in full.

Significant feedback was received from providers on the Proposed Decision 14/2022 and the respective rationale identified above. A summary of all the feedback received, together with the MCA's response, is presented hereunder, grouped in relation to the specific aspect from the above framework targeted in the submission.

5.2.5.1. Eligibility criteria

One provider noted that given the anonymity of unregistered pre-paid consumers, refunding them could lead to an increase in fraud or money laundering practices. In this regard, this provider suggested that refunds are to be in principle available only to registered pre-paid consumers and unregistered subscribers would be required to register their personal details with the donor operator in order to be entitled to request a credit refund, drawing a parallel to Option (v) as proposed by the MCA in the *Consultation Paper*, in respect to the right to request porting following contract termination. This provider also recommended that providers be allowed to take a "*best endeavours approach*", allowing them the discretion to refuse transactions that could be fraudulent in accordance with their current fraud prevention processes.

The MCA is sensitive to the possibility that refund requests *may* be abused by consumers with fraudulent intentions. Nevertheless, the Authority is maintaining its position that the mere status of consumers as *unregistered*, does not, by itself, make such consumers ineligible to request the refund and for the donor operator to refuse such refund requests. Indeed, in contrast to the situation as described in sub-section 5.2.4.3 (c) above, the donor operator would have the means to confirm through a CLI Check that the consumer requesting credit refund after a successful porting is in possession of an active SIM that is associated with the ported number.

Furthermore, the Authority would like to restate its position that, as explained in sub-sections 5.2.4.3 (a) and 5.2.4.5, whenever providers are in possession of evidence suggesting money laundering, misuse of numbers and/or fraudulent use of numbers, then they must raise these issues with the competent authorities in line with established procedures. If in such circumstances a request for credit refund is received following porting, the donor operator is required to handle the request *as directed by the competent authorities on a case-by-case basis*.

5.2.5.2. Refund fee

On the proposed maximum cap for the refund fee, one provider observed that for certain bank transfers, in particular those to overseas banks, the proposed maximum amount of €5 might not cover the bank charges, and thus suggested that if a maximum fee is to be set to the proposed maximum amount, then all bank transfers should be limited to Single Euro Payments Area (SEPA) accounts. Otherwise, the maximum amount should be revised to reflect and cover all administrative fees. On the other hand, another provider suggested that the refund fee should be fixed and applicable irrespective of the mechanism of refund chosen by the subscriber, as such requests require manual intervention, time and effort to be processed.

In this respect, whilst taking into account the feedback submitted, the Authority decided that if a fee in excess of €5 were to be allowed, this would likely result in several consumers being unable to avail of this right on grounds that the fee would either outweigh the remaining credit to be refunded, or render it negligible. Thus, the maximum cap of €5 is being retained. Nevertheless, the Authority decided that, with the exception of the mandated refund mechanisms as per sub-section 5.2.5.4), providers are free to offer any alternative refund mechanisms (e.g. bank transfers to non-SEPA accounts) to the extent that these are commercially viable to them. Thus, there is no obligation on providers to offer refunds via alternative mechanisms that would incur the provider a higher cost than the maximum cap for the refund fee. Furthermore, the Authority is also not imposing any further conditions tied to the maximum refund fee of €5, therefore providers are free to apply the fee regardless of the mechanism availed of by the subscriber, provided that the fee to be charged for each mechanism offered is pre-established by the donor operator and not dependent on the amount of the refund due.

One provider drew the Authority's attention that, given that the fee could only be levied if showing on the respective contract or terms and conditions (T&Cs), the Decision should clarify that providers should be allowed to implement such necessary changes to T&Cs to reflect the new refund fee to be implemented and render it applicable for both new and current consumers of fixed and mobile subscriptions without being considered as a change to T&Cs.

The Authority disagrees with this provider's assessment and contends that the introduction of this fee would indeed amount to a change in the T&Cs of existing contracts (or other similar arrangements). Providers may nevertheless request the Authority for an exemption from the requirement to grant their subscribers the right to terminate the contract (or other similar arrangement) as a result of this change, if such providers consider that the change made would fall under any of the circumstances contemplated in regulation 92(1) of SL 399.48. Each case would be decided on its own merits and providers are required to comply with the processes as established in regulation 92 of SL 399.48 and other relevant Decisions published by the Authority.

5.2.5.3. Credit to be refunded

One provider expressed reservations on the text, in Proposed Decision 14/2022, which notes that the refund must match the amount indicated to the customer on a credit check prior to deactivation and port-out. This provider suggested that, in order to minimise room for subjectivity and consumer complaints, the Decision should clarify that the credit refund should be *“the amount of topped up credit shown on the donor operator’s systems exactly before port-out, when usage in its network has ceased”*. This would avoid scenarios where the customer would have done a credit check and then used the service again before the number is ported out. The same provider also mentioned that given this right would be exercised after the termination of the subscription with the donor operator, this would require technical and reporting development to reconcile a particular number with the subscriber and his/her remaining topped up credit to process the refund.

The Authority took note of this provider’s feedback and wishes to clarify that the reference to the amount indicated in the credit check *immediately before deactivation*, as referred to in Proposed Decision 14/2022, was intended to imply that no further use would be made out of the remaining monetary credit, by virtue of being the last action carried out. Nevertheless, the provider’s concern is noted and some additional text was introduced in Decision 15/2022 hereunder to further emphasise that usage in the donor operator’s network would cease after such credit check.

This same provider also referred to its hybrid tariff plans which separate the credit into two components, one which includes credit topped up by customers and another which includes a portion or all of the monthly fee paid by the customer. It stated that it would be pertinent to clarify that while a portion or all of the monthly fee the customer pays may be allocated as a credit component, this should not be deemed as top-up credit, irrespective if this is communicated to the customer in the credit check as hybrid/bonus credit. This provider also expressed its agreement that in case of *“hybrid tariffs, the credit refund should exclude any monthly access fees”* since it would otherwise have a financial impact on the business operations of the service provider in terms of accounts and revenue. It thus supported the MCA’s position that any amounts reimbursed should be the amounts topped up by the customer himself.

In respect of this feedback, the Authority considers it important to clarify that unless *“the consumer can distinguish between topped up/purchased credit and any credit provided through bonuses or promotions via the credit check facility”* (our emphasis), the donor operator is not allowed to only reimburse topped up/purchased credit less any applicable fee. Donor operators may only adopt the practice of excluding bonus/promotional credit from the credit refund if subscribers can make a clear distinction through the credit check facility⁷ between their topped up/purchased credit and bonus/promotional credit which may be extended to them from time to time. If only one aggregate monetary amount is indicated to the subscriber when availing of the credit check facility (i.e. the amount is inclusive of the topped up/purchased credit and any additional bonus/promotional credit), such subscriber would understandably expect that the amount eligible for the credit refund as per regulation 94(13) would be such aggregate monetary amount, less any applicable fee in line with Decision 15/2022. This would apply for both pre-paid and hybrid tariff plans.

⁷ The term ‘credit check facility’ refers to any automated facilities which subscribers may avail of to remotely and independently query their remaining monetary credit balance, without the involvement of agents of their respective service provider.

Furthermore, it must be clarified that, in the *Consultation Paper*, the emphasis was principally on the implementation of regulation 94(13), dealing with the donor operator's responsibility to refund the (monetary) credit due to consumers of pre-paid services upon successful porting. In the same *Consultation Paper*, the Authority proposed that this right to request a refund of pre-paid credit would also be extended to consumers on hybrid tariff plans on the strength that such consumers also avail of a monetary credit as part of their arrangement with their provider. Notwithstanding, it should be noted that refunds due to consumers on hybrid tariff plans may also be in relation to other unutilised advance payments such as periodic access fees paid. In this respect, for consumers on hybrid tariff plans, the refund of unutilised advance payments, other than the *pre-paid monetary credit*, falls outside the scope of this Decision, and should instead be handled in line with any applicable regulations and respective MCA Decisions.

The Authority would also like to clarify that Proposed Decision 14/2022 stated that "*For consumers on hybrid tariffs, the credit refund should exclude any monthly access fees deducted from the consumer's monetary credit prior to porting*" (our emphasis). Some changes were introduced to this text to reflect the above rationale. First, a minor change was introduced to refer to 'periodic access fees' instead of 'monthly access fees', to account for potential variety in tariff formulations. Furthermore, some text was introduced to further clarify that the credit refund in scope is in relation to a consumer's request under regulation 94(13), without prejudice to any other refunds due to said consumer for any other unutilised advance payments.

5.2.5.4. Refund mechanism

On the refund mechanisms proposed, all providers raised objections to the minimum facilities proposed, namely the provision of either a cash or a cheque refund. One provider expressed its position against, citing risks of cash misappropriation and difficulties to implement control mechanisms. Another provider raised similar concerns, likewise mentioning the potential for misappropriation and that cash refunds posed a risk to providers. This provider also mentioned that at a time where electronic communications providers are making significant efforts to push consumers to safer and more efficient electronic means of payments, it considers that there should not be new obligations that direct consumers to cash transactions. A third provider also expressed a negative position vis-à-vis cash refunds, noting that such cash refunds are rarely resorted to in this day and age and these may cause reconciliation issues or lead to abuse, particularly by unregistered SIM holders.

On cheques, the three providers pointed out that cheques for amounts under €20 are no longer possible, given directives by the Central Bank of Malta which came into force as from 1 January 2022. It was noted that, for the vast majority of claims for refunds, the amount due would not, indeed, exceed such amount, rendering the facility unsuitable to work with in most cases. One of the providers mentioned that in cases where the remaining credit exceeds €20, it could issue a cheque which will then be mailed to the customer's address. However, cheques cannot be issued from retail outlets due to the same arguments raised for cash refunds.

Furthermore, one of the providers noted that the MCA anticipates the use of alternative refund mechanisms such as bank transfer or waiving credit refund due off the bill for other services which the consumer intends to retain with the donor operator. It also mentioned that the provisions established under the SL 399.48 and the EECC, regulating the credit refund facility, do not stipulate specific refund mechanisms that are to be applied by service providers. It therefore recommended that the Authority removes the provision that mandates the minimum refund mechanism and adopts a stance whereby providers would be allowed to adopt a viable solution of their choice that would be compliant with the regulations and the EECC.

In parallel, the other two providers agreed that a viable alternative would be to opt for bank transfers as the preferable mechanism for issuing refunds. Further elaborating its stance, one of these providers proposed a system whereby the recipient operator would inform the new customer via an SMS of the right to request a refund from the donor operator and where the same SMS informs the customer that, in order to successfully process this request, the customer's International Bank Account Number (IBAN) should be sent via SMS to the donor operator for the refund to be effected. This provider went on to suggest that such processes, systems and the SMS text could be standardised in order to simplify and harmonise the process as much as possible. The same provider also mentioned that its proposal with respect to the refund process via SMS communications would also simplify the validation checks that would need to be introduced for unregistered subscribers given that the SMS will be sent directly to the end-user owning the pending credit and the IBAN will be provided by the same end-user. The other provider explained that with bank transfers, it would be easier to trace abuse and fraud in the event this right is abused of by third parties.

The Authority recognises that cash refunds may bring about some difficulties for providers if adopted as the de facto mechanism for all such refund requests, and wishes to clarify that this was not the intended approach. The offering, as a minimum, of either cash or cheque facilities was intended to be a safeguard for individuals who are unable to avail of bank transfers when requesting a refund, such as unbanked individuals or individuals who do not have a SEPA account. For the majority of requests, bank transfers to SEPA accounts would adequately address the requirements of this consumer right. To this effect, the offering of the refund via a SEPA bank transfer was included in Decision 15/2022, and the text *"Consumers are offered, as a minimum, the facility to avail of the refund via cash or cheque"* in Proposed Decision 14/2022 was removed.

However, for consumers who do not have access to SEPA banking facilities, providers should endeavour to process the request using either cash or cheque, depending on the amount due to the consumer. Whilst, as rightly pointed out, the law does not specify a refund mechanism, it similarly does not rule out the refund to a category of consumers (e.g. the unbanked). Taking the above into consideration, the Proposed Decision 14/2022 was amended to further clarify that *"where consumers are justifiably unable to obtain the refund via a SEPA bank transfer or any other refund mechanism adopted by the donor operator, the donor operator must arrange for the refund to be issued via cash or cheque, depending on the amount of monetary credit due to the consumer. The refund fee applicable in such cases should not exceed the maximum cap of €5"*.

5.2.5.5. Obligation on recipient operator to inform subscriber of this right

One provider argued that while it agrees that each service provider should include information on porting on its website and contact points and that such information includes *"the right granted to eligible consumers to request the donor operator to issue a refund for any remaining monetary credit following a successful porting"*, it would be too onerous to put an additional obligation on the recipient operator to inform each and every subscriber once again of this right via a durable medium. Instead, it was proposed that the obligation could be fulfilled by the provider through FAQs on its website, at contact points, and webpages related to porting, and this would be available whether it is acting in its capacity as recipient operator or donor operator.

The Authority notes that the obligation to inform the consumer of this right was prescriptive on the need to use a *durable medium* and that the need to inform would be triggered *upon successful porting*. In this regard, the examples cited by this provider would not constitute durable media, as each of these options are not *"addressed personally"* to the consumer and may not necessarily meet the conditions related to storage and unchanged reproduction envisaged in regulation 2 of SL 399.48. Moreover, the relevance of this notification to the consumer would be at its highest at the point of successful porting.

In the light of the above, the Authority maintains its position as originally proposed in the *Consultation Paper*. The Authority considers that this measure should be particularly helpful to address the departure from past practices whereby the subscriber's remaining credit with the donor operator would be 'refunded' via a voluntary, (equivalent or similar) credit by the recipient operator.

5.2.5.6. Other aspects

One provider noted that it will no longer voluntarily credit its new subscribers with an amount equivalent to their remaining credit balance with the donor operator, up to a maximum amount. This change would be implemented in order to avoid that the same credit is refunded by both the recipient operator and the donor operator.

The MCA took note of this provider's decision to stop offering such a voluntary credit, and confirms that providers, as recipient operators, are under no obligation to provide such voluntary credit to porting-in subscribers. Nevertheless, the obligation to inform consumers of their right to request a refund from the donor operator should not be jeopardised as a result, and any implementation of changes to internal processes should be accompanied by measures to meet this information obligation, also in line with the rationale presented in sub-section 5.2.5.5 above.

On another note, the same provider observed that it envisages that considerable effort would be required to implement a credit refund mechanism. Thus, it suggested that the MCA should consider introducing the credit refund mechanism after a minimum of six (6) months from the date of the MCA's Decision Notice in order to allow all service providers the time to set up systems internally and to coordinate with each other as necessary in the interest of making this process as customer-friendly and efficient as possible. It was also argued by another provider that the process to submit a refund request should be allowed to also be automated to expedite processing and to minimise manual intervention. It was further claimed that a manual process would involve more manpower and would lengthen the process considerably.

In this respect, the Authority took note of these submissions and understands that certain technical and operational developments may be necessary to upgrade or introduce systems required to effectively implement processing to issue refunds. Consequently, this feedback was taken into consideration when addressing aspects related to implementation and respective timeframes in Chapter 7 of this Decision Notice.

In conclusion, and taking into account all the aspects addressed in Section 5.2.5 and corresponding sub-sections, the MCA decides the following:

Decision 15/2022

Donor operators shall refund, upon the request of a consumer who was subscribed to a pre-paid or hybrid tariff plan with the donor operator prior to successful porting, any remaining monetary credit subject to the following conditions:

- The refund shall be requested by the consumer within a period of at least two (2) weeks following a successful porting.
- Consumers are, as a minimum, provided with the possibility to request the refund in person.
- The credit to be refunded by the donor operator should match the monetary amount which would have been indicated to the consumer should he/she have performed a credit check immediately before the donor operator deactivated the ported number on its network, namely when usage in the donor operator's network has ceased, provided that:

- Where the consumer can distinguish between topped up/purchased credit and any credit provided through bonuses or promotions via the credit check facility, the credit to be refunded by the donor operator may accordingly be exclusive of any bonus or promotional credit;
 - For a consumer on a hybrid tariff plan, the credit refund under regulation 94(13) should exclude any periodic access fees deducted from the consumer's monetary credit prior to porting, without prejudice to any other refunds due to the said consumer for any other unutilised advance payments; and
 - In cases where the value calculated for the credit refund would be lower than the refund fee due, the donor operator should inform the consumer accordingly without further processing the request, and the consumer should not be charged any refund fee in these circumstances.
- Without prejudice to other Decisions published by the MCA, the processing of the refund may be subject to a fee only if provided for in the contract between the donor operator and the consumer or, in the absence of such contracts, on the applicable terms and conditions for the consumer's service/tariff plan, provided that:
 - Consumers are to be offered, as a minimum, the facility to avail of the refund via a SEPA bank transfer;
 - The refund fee imposed may vary depending on the mechanism made available to and voluntarily selected by the consumer;
 - Any refund fee to be imposed shall be pre-established by the donor operator (i.e. not dependent on the amount of credit to be refunded) and shall not exceed the maximum cap of €5; and
 - Where consumers are justifiably unable to obtain the refund via a SEPA bank transfer or any other refund mechanism adopted by the donor operator, the donor operator must arrange for the refund to be issued via cash or cheque, depending on the amount of monetary credit due to the consumer. The refund fee applicable in such cases should not exceed the maximum cap of €5.
- The donor operator shall perform the necessary validation checks to confirm the consumer's eligibility, and shall refund eligible consumers within one (1) month from receipt of the request:
 - Provided that requests for refund by consumers who were unregistered when subscribed to the donor operator prior to porting shall not constitute grounds for the donor operator to refuse refund requests.

Upon successful porting, recipient operators are to inform subscribers, through a durable medium (e.g. email, SMS, letter), of the right granted to eligible consumers to request the donor operator to issue a refund for any remaining monetary credit following a successful porting, and to make the request within a period of two (2) weeks. Subscribers are to be directed to the donor operator for further details on credit refunds. The donor operator is to acknowledge the receipt of the consumer's credit refund request through a durable medium (e.g. email, SMS, letter). Furthermore, depending on the refund mechanism adopted (e.g. cash refunds), it could also be good practice for the donor operator to obtain a declaration from the consumer that the refund was received in full.

5.2.6. Winback

The porting process for an active subscriber unavoidably results in the donor operator being told that the subscriber is planning to terminate his/her account. This gives an opportunity for the donor operator to make offers to the subscriber that might not be available to the generality of subscribers. In the *2005 Decision*, the MCA had ruled that this practice is anti-competitive and had therefore decided to prohibit it. The MCA had subsequently also published a document entitled '*Number Portability - Statement of Decision on Winback during and after the porting process*' in 2006 with the objective to define in more detail the prohibitions on winback.

In 2008, the MCA also published its Decision Notice '*Preventing anti-competitive Winback tactics in Number Portability, Wholesale Line Rental and Carrier Pre-Selection*' and updated Decision 10/2005 accordingly. Based on these decisions, the MCA had also decided that in order to prevent winback, and also to prevent subscribers from hopping from one network to another too frequently, a subscriber should not be able to port the number again until two (2) months had elapsed. The MCA believes that this rationale continues to apply.

Moreover, in the *Consultation Paper*, the Authority acknowledged that a number of new opportunities for contact with the donor operator could arise by virtue of the implementation of new rights emanating from SL 399.48, such as the right for consumers on a pre-paid or hybrid tariff subscription to request a refund of any remaining credit upon successful porting. Moreover, the *Consultation Paper* also explained that a winback opportunity in relation to the right to request porting of a terminated number could also arise if Option (iv)⁸ had to be adopted to cater for the introduction of the right to request porting of a terminated number in the case of applicants who were not registered with the donor operator as detailed in sub-section 5.2.4.3 (c). In this respect, the MCA proposed recasting Decision 10/2005 as Proposed Decision 15/2022, with minor updates to cater for the new opportunities for winback which could arise following the developments brought about by SL 399.48.

Only one provider submitted feedback with respect to Proposed Decision 15/2022, arguing that the Decision should also refer to any applicable termination fees or handset charges in the term 'outstanding unpaid bills'. In this regard, the Authority took this proposal on board and included corresponding changes to Decision 16/2022 accordingly.

This provider also repeated its feedback, first submitted in the context of Proposed Decision 7/2022, that allowance should be made for the donor operator to reach out to the subscriber to make arrangements in relation to the other services in the bundle affected by a porting request, to avoid unnecessary termination and the consequences thereof. In this regard, the Authority reiterates its position that such a practice would be inconsistent with regulation 94(10), and that the measures identified under Decision 6/2022 should go a long way to ensure that diligent subscribers are able to make an informed decision when considering porting out a number that is part of a contract (or other similar arrangement) for a bundled offer.

Lastly, considering the implications of Decision 10/2022 on subscribers with an unregistered pre-paid subscription, it is no longer relevant to allow contact to occur between the donor operator and any applicant to solve problems in the process of porting a terminated number, as had originally been included in Proposed Decision 15/2022. For this reason, text related to such contact no longer appears in Decision 16/2022.

⁸ Option (iv) considered the possibility that, "for a period of one (1) month following termination, the applicant with an unregistered pre-paid SIM is to physically present the donor operator with his/her deactivated SIM for authentication purposes and to confirm that the number in question is linked with the SIM. Once re-activated by the donor, the applicant (now equivalent to a regular subscriber) may then proceed in porting the number using the conventional number portability process through the recipient operator."

Decision 16/2022

The MCA directs that donor operators may not initiate contact with a subscriber/applicant who has requested number portability to discuss the advantages or disadvantages of changing provider nor make offers to such a subscriber/applicant that are not available to the generality of subscribers. Contacts to solve problems that affect the subscriber's service that have arisen during the porting process are allowed.

Furthermore, after successful porting, the donor operator is allowed to initiate contact with subscribers/applicants if this is necessary to address issues related to the processing of refunds (such as in the case of unutilised advance payments received by the donor operator or monetary credit refunds due to consumers on pre-paid or hybrid tariffs), the settlement of any outstanding unpaid bills which become overdue after the porting process, as well as to settle other pending payments due to the donor operator, such as for early termination fees and/or remaining charges, such as on handsets. In any case, donor operators should refrain from any winback attempts whilst in communication with the subscriber/applicant.

Commencing as from the signing of the Number Portability Application Form, recipient operators shall not accept requests from other providers or the subscriber/applicant to cancel the porting request, or port the respective number again, until two (2) months have elapsed from when the porting is functional.

5.2.7. Tariff transparency

In the *Consultation Paper*, the Authority recalled that the *2005 Decision* had considered that where different networks are required to support number portability between them, tariff transparency is reduced when different on-net and off-net retail rates apply because a caller/SMS sender is no longer able to determine which network is serving the number utilised by the receiving party and hence which tariff will apply.

At that time, the MCA considered that tariff transparency is important and that subscribers should not be put in a position where calls/SMS are more expensive than they would expect from a simple analysis of the receiving party's number without making available some tariff transparency measures. However, in its *2005 Decision* the MCA concluded that the form of the tariff warning required further study and the tariff transparency measure to be implemented was established later in the *Number Portability Specification of the Network Functionality*.

Since the introduction of number portability in Malta, there were a number of market developments which could have contributed to more subscribers with tariff plans having the same retail rates for on-net and off-net calls/SMS. In particular, these developments include reductions in the fixed and mobile voice termination rates at a wholesale level, and increased proliferation of bundles of local fixed/mobile voice minutes and/or SMS.

However, since there are still tariff plans in the market where subscribers are charged differently for on-net and off-net calls/SMS, the Authority maintains its position that tariff transparency measures are to be retained. Within this context, the MCA concludes that the tariff transparency service using short code '180' implemented since the introduction of number portability should be maintained via a voice-based service for fixed subscribers and a voice- and/or SMS-based service for mobile subscribers.

On this point, one provider requested a clarification on whether providers ought to provide both a voice-based service for fixed subscribers and a voice-based and/or SMS-based service to mobile subscribers, (as per Proposed Decision 16/2022), or whether the provision to subscribers of either one or the other would suffice, as seemingly implied by the text in the Network Functionality Specification stating: “*All operators shall ensure that their own subscribers may call or interrogate by SMS, the number ‘180’ (...)*”.

The Authority notes that the option to provide either voice-based or an SMS-based service is solely applicable to the situation of mobile subscribers, given that fixed subscribers cannot be expected to avail of SMS facilities from their (fixed) device. Thus, a provider with fixed subscribers would be denying such subscribers the opportunity to reach the service if, in their respect, a voice-based service is not offered. In the context of this rationale, the Authority has decided to maintain the respective Decision as proposed in the *Consultation Paper*, wherein it is clearly stated that fixed subscribers should be able to avail of a voice-based service. In parallel, corresponding editorial changes to the Network Functionality Specification were also implemented to further reflect this rationale.

Decision 17/2022

The MCA directs all providers of voice communications services to ensure that they make available to their subscribers a tariff transparency service on a free of charge basis, via a voice-based service for fixed subscribers and a voice- and/or SMS-based service for mobile subscribers, accessible using short code ‘180’.

Further requirements on the implementation of this service in the network are provided in the *Number Portability Specification of the Network Functionality*.

Alternative arrangements to provide other tariff transparency measures may be implemented with the prior written agreement of the MCA.

5.2.8. Information on the performance of the number portability process

The porting procedure needs to be fast and reliable to achieve the expected benefits. In the *2005 Decision*, the MCA had decided to require regular reports on the effectiveness of the procedures. The number portability process proved to be both effective and efficient since its introduction and the Authority considers that the requirement for all providers of voice communications services to provide such information on a regular basis may no longer be warranted. Nevertheless, the MCA may request copies of inter-operator message logs and/or statistical reports from time to time, and thus the *Consultation Paper* had proposed revisions to Decision 14/2005, to clarify that this data should be provided “*when requested by the Authority*”. No feedback was received on the resulting Proposed Decision 17/2022, and correspondingly only few amendments were introduced when adopting this as Decision 18/2022, in particular to clarify that statistical information may need to distinguish between requests featuring active numbers and those featuring terminated numbers.

Decision 18/2022

The MCA directs all providers of voice communications services who are supporting number portability to provide the MCA with up-to-date information on the performance of the number portability process, such as through inter-operator message logs or statistical reports, when requested by the Authority. The statistical information requested may include, *inter alia*, the following:

- The number of requests received as recipient operator for the porting of individual numbers, with the figures shown separately for account type (e.g. pre-paid, post-paid) and status (active or terminated numbers), (separate figures for each donor operator);
- The number of requests for porting made as the recipient operator that have been rejected by the donor operator, with the figures shown separately for pre-paid and post-paid, (separate figures for each donor operator);
- Two most common reasons for the donor operator to reject requests for portings, (separate figures for each donor operator);
- The number of portings where faults occurred or where responses were not received or actions were not effected within the time limits specified in this notice or within the times agreed between the providers, (separate figures for each donor operator); and/or
- Other number portability related information as may be deemed necessary to ensure the efficiency and effectiveness of the porting process.

The reporting arrangements may be altered with the prior agreement in writing of the MCA.

6. Other considerations

Besides the feedback on the Proposed Decisions and respective MCA rationale, providers also submitted comments relating to the following:

- Implementation timeframes;
- Specification documents: Responses to MCA queries on:
 - References to the *Carelink* service;
 - The use of Finalisation Response Code 63; and
 - Clarifications requested on the *getActivePortedInNumbers* function;
- Specification documents: Other aspects:
 - Subscriber handling (refund to consumers on pre-paid subscriptions);
 - Communicating status of subscription to the donor operator;
 - Procedures;
 - ID-Bill Check; and
 - The porting form;
- Digitalisation of the number portability process.

An analysis of the feedback provided follows, together with an explanation of any further action taken by the Authority.

6.1 Implementation timeframes

One provider noted that, given the extent of changes, full implementation would require that internal administrative, technical and/or operational updates would have to be undertaken. This provider further argued that the proposed timeframes in the *Consultation Paper*, (set at a minimum of three (3) months), would not be achievable. In turn, this provider proposed that providers be allowed to implement changes in the year 2023, provided that, in the interim, providers would implement manual processes to ensure compliance.

Another provider remarked that the Proposed Decision and amendments to the Specifications require significant changes both technically and process-wise. Hence, it requested the Authority to take due consideration of the time and effort required for development and to provide the service providers with sufficient time to implement the required changes once the final Decision is issued.

The Authority acknowledges that the full implementation of the changes may require some time, and had indeed only established a *minimum* of three (3) months by way of a generic proposal for providers to comment upon. Consequently, Chapter 7 of this Decision Notice establishes the applicable implementation plan after taking into account the feedback provided as well as the relative complexity and urgency tied with the implementation of any necessary changes.

6.2 Specification documents: Responses to MCA queries

In the proposed updated Specifications, published alongside the *Consultation Paper*, the Authority had included a number of queries intended to elicit a response from providers. These are addressed hereunder.

6.2.1. References to the Carelink service

A number of queries raised by the Authority related to the continued relevance, or otherwise, of references to the *Carelink* service in both the *Fixed and DDI Number Portability Ordering Process Specification*, and the *Number Portability Inter-Operator Webservice Specification*. For instance, there were three (3) distinct references in the *Fixed and DDI Number Portability Ordering Process Specification* in Chapters 6, 7 and 8 respectively, each dealing with the specific condition of checking whether the number to be ported was associated with such a *Carelink* service. Similarly, a further query sought a response on the continued relevance of Authorisation Response Code 47 *Request rejected because number to be ported associated with a Carelink service* (Annex 2.1 of the *Fixed and DDI Number Portability Ordering Process Specification*, and sub-section 19.2.1 of the *Number Portability Inter-Operator Webservice Specification*).

In this regard, only one provider submitted a response, observing that such references can be removed from both Specification documents concerned, and noting that the Response Code related to the *Carelink* service had not been used in the past five (5) years.

Notwithstanding that the *Carelink* service is listed as a discontinued service on the website of the former provider of this (*Carelink*) service, the Authority took into account the limited feedback received on this aspect, and decided to adopt a cautious approach and avoid mandating changes to functionality that in any case is very rarely used.

6.2.2. The use of Finalisation Response Code 63

The proposed updated Specifications also included a query in relation to Finalisation Response Code 63, which is intended to signal that the Finalisation Request was rejected because the number had already been ported under the same acceptance (i.e. the instruction had been sent more than once in error). References to this Code appear in the *Fixed and DDI Number Portability Ordering Process Specification*, the *Number Portability Specification for Freephone Numbers*, the *Number Portability Specification for Premium Rate Numbers*, and the *Number Portability Inter-Operator Webservice Specification*. The Authority invited providers to comment upon the actual use (if any) of this Finalisation Response Code in practice, especially since, at the time, this rejection scenario did not appear to be relevant during the Finalisation Phase.

Only one provider submitted a reply to this enquiry, noting that Response Code 63 was used in only one instance, in 2016. The limited feedback received, and its very nature, indicated that the Authority should adopt a cautious approach in order to avoid mandating changes to functionality that is, in any case, not being used in the ordinary course of business. Thus, no changes were made with respect to this Finalisation Code in the abovementioned Specification documents.

6.2.3. Clarifications requested on the *getActivePortedInNumbers* function

Providers were also invited to comment on the text, in the *Number Portability Inter-Operator Webservice Specification*, describing the *Output Parameters* associated with the *getActivePortedInNumbers* function. The Authority requested further clarity on how an exclusively 4-digit format, in case of DDI numbers, would be sufficient for the purposes of obtaining the list of ported-in numbers, considering that there are also '5+3' and '6+2' DDI formats. To cater for the possibility of porting such '5+3' and '6+2' DDI numbers, the addition of 5- and 6-digit formats was proposed via updates to the *Output Parameters* for this function. The Authority also explained, in its comment, that different output files could be used if this could facilitate respective processing. An alternative contemplated by the Authority was to amend this section to reflect the same approach adopted for the *getActivePortedOutNumbers* function, whereby the *Output Parameters* comprised "an array of *PortedOutNumber* objects" containing two fields, with one of these referring to 4-, 5- and 6-digit formats for DDI numbers.

No responses were received to this request for clarification by the MCA. In consequence, the Authority implemented some changes to the respective Specification to address this aspect.

6.3 Specification documents: Other aspects

6.3.1. Subscriber handling (refund to consumers on pre-paid subscriptions)

One provider submitted feedback on the proposed amendments to the 'Subscriber Handling' section in two (2) Specification documents, namely the *Fixed and DDI Number Portability Ordering Process Specification* and the *Mobile Number Portability Ordering Process Specification*. This provider reiterated its feedback, previously raised in relation to Proposed Decision 14/2022, and argued that the requirement for the information to be provided to subscribers on a durable medium by recipient operators upon successful porting is excessive and goes beyond the requirements of the EECC and the law which states that *"A transferring provider shall refund, upon the request of a consumer using a pre-paid service, any remaining credit to that consumer"*. The same provider stated that *"the key point here is the refund of unused topped up credit is a right which comes into play upon a request made by the consumer not on the initiative of the operators"*.

The aforesaid provider added that the imposition of a further burden on the recipient operator to provide this information once again and on a durable medium for each and every port-in *"would create further steps in a process which the operators are trying to automate and conclude in the shortest time possible"*. The same provider also remarked that the MCA should seek a balanced approach as all the abovementioned information requirements can be included in FAQs, number portability webpages and also provided by the recipient operator's staff in case the subscriber makes a query.

In respect of this feedback, the Authority's rationale can be found in sub-section 5.2.5, and is particularly elaborated in sub-section 5.2.5.5. Whilst reiterating the Authority's sensitivity to the administrative burden imposed on providers as a result of Decision 15/2022, the Authority is also conscious of the need to strike a balance between minimising such burden, however large or small, and the need to ensure that eligible consumers are both aware of their right and able to avail from it.

Furthermore, whilst the provider's emphasis on the need to expedite processes is noted, the MCA would like to highlight that neither are timeframes being tightened by the Authority, nor is it justified to expedite processes if this comes at the expense of safeguarding end-users' rights.

Lastly, on the statement that the Proposed Decision went beyond the requirements of the EECC, the Authority wishes to clarify that the same EECC, as specifically transposed in regulation 94(11), states that NRAs *"may establish the details of the switching and porting processes"*. In this respect, the Authority considers the establishment of this particular detail in the porting process to be within its mandate, and wishes to reiterate that this is further justified given any consumer expectations that may have developed (and persist to date) as a result of past practices vis-à-vis the remaining monetary credit with the donor operator, whereby such monetary credit was, at times, voluntarily offered in part or in full as a complimentary credit by the recipient operator upon porting in.

6.3.2. Communicating status of subscription to the donor operator

One provider put forward some comments with respect to the proposed updates to the *Mobile Number Portability Ordering Process Specification* and the *Number Portability Inter-Operator Webservice Specification*. In particular, this provider commented that Section 6.2 of the *Mobile Number Portability Ordering Process Specification* states that “Accounts should also be marked as either being active subscriptions or terminated, given that number portability requests may also be received from applicants by virtue of Decision 8/2022. This will be necessary to assist the donor operator when determining the applicant’s eligibility to port the number.” However, in the *Number Portability Inter-Operator Webservice Specification*, there seems to be no mention of how this will be specified in the Authorisation Request, and this also seems to be inconsistent with the addition of the Active/Terminated account option in the sample porting form.

In this respect, the Authority appreciates the provider’s feedback on this specific detail, and reiterates its consideration that it is important for the recipient operator to collect information on whether porting is being requested for an active or a terminated number. Still, the MCA opted not to be prescriptive on the input parameter to be used for the recipient operator to convey this information to the donor operator since it is intended that this implementation detail would be established in due course through communication with all local providers of voice communications services.

6.3.3. Procedures

One provider noted that the Number Portability Specifications were updated to include the possibility that signed forms can be sent via electronic means. Another provider commented that the Specifications hold that signatures do not have to be made in the presence of the recipient operator and signed forms may be sent via online means (e.g. by email), post or fax. This provider thanked the MCA for taking into account that the porting can be initiated by the subscriber via online means. Nevertheless, it expressed its views that automation nowadays enables stakeholders to go further and eliminate the need of paper signed forms even if in the form of scans, also referring to the proposed digitalisation process.

The Authority would like to point out that since the inception of number portability, the process provided the possibility for subscribers requesting porting to send the signed porting forms to the recipient operator through alternative means. Meanwhile, aspects related to the proposed digitalisation process are being addressed in Section 6.4 hereunder.

6.3.4. ID-Bill Check

On the need to carry out an ID-Bill Check⁹, one provider proposed that, in view of the various checks and data provided (*by the subscriber*), the requirement of an ID-Bill Check by the recipient operator is either excluded or made optional, further arguing that the data provided is sufficient for the donor operator to confirm the identity of the applicant. The same provider also mentioned that the *Mobile Number Portability Ordering Process Specification* holds that if “either the ID-Bill check or the CLI check has been passed, the validation shall be passed” and hence both checks are already not required concurrently. Also, this ID-Bill Check is not required in the *Fixed and DDI Number Portability Ordering Process Specification*. Lastly, this provider remarked that matching the details on the ID card with those of the bill statement of the donor operator is also done by the donor operator itself.

⁹ ‘ID-Bill Check’ means a check by the recipient operator that the person applying for number porting has an identification document that matches the information on a bill or statement from the donor operator.

In this regard, the Authority wishes to clarify that the need to carry out an ID-Bill Check is not required for all porting requests, but only when porting is requested for mobile numbers associated with accounts that are post-paid (personal or non-personal) with the donor operator. In any case, where a bill or statement is available, it is important to verify the applicant's identification document (ID) against such bill or statement, as this would be a safeguard to ensure that the person requesting porting is the legitimate account holder or is at least authorised to represent the subscriber in the porting request.

Furthermore, the Authority would like to clarify that the text from the *Mobile Number Portability Ordering Process Specification* quoted by the provider, which indicates that either an ID-Bill Check or a CLI Check would suffice, applies solely for porting requests for mobile numbers associated with personal post-paid single-line accounts with the donor operator. The rationale behind this provision is provided in Section 6.4.2 of the *Mobile Number Portability Ordering Process Specification*, namely that account is to be taken of the fact that subscribers with a personal post-paid account may not be able to produce a bill or statement, as they may have lost or misplaced such bills or statements.

Thus, taking into consideration the feedback received and the emphasis in regulation 94(10), (which transposes article 106(6) of the EECC), on the prohibition of any activity that ports numbers or switches end-users without their explicit consent, no changes are being carried out with respect to the established parameters for carrying out an ID-Bill Check in the *Mobile Number Portability Ordering Process Specification*.

6.3.5. The porting form

Feedback was also provided by one provider in relation to Clause 2 of the sample porting form in the *Mobile Number Portability Ordering Process Specification*, whereby rewording was suggested to clarify that the consumer is eligible for refund of topped up credit only. The proposal was to edit the text as presented in the text box hereunder, whereby the text in strikethrough is text that this provider proposed for deletion, whereas the text in ***bold italics*** represents text proposed to be added on.

In the case of consumers with pre-paid or hybrid connections, the applicant should note that, upon request following successful porting, any unused ~~monetary~~ ***topped up*** credit with the Donor Operator may be refunded by the latter, albeit a fee may apply if this is already provided for in the contract or other similar arrangement between the applicant and the Donor Operator ***and any credit provided through bonuses or promotions or credit allocated from hybrid monthly fees***. Such requests must be made to the Donor Operator within two weeks of a successful porting.

In this regard, the Authority refers to the rationale presented in sub-section 5.2.5.3 above on the credit to be refunded, in particular in terms of what should comprise the amount to be refunded. With a view to reflect such rationale and the updates to Proposed Decision 14/2022 introduced in Decision 15/2022, the respective Clause 2 in the sample porting form in the *Mobile Number Portability Ordering Process Specification* is being amended to read as follows:

In the case of consumers with pre-paid or hybrid connections, the applicant should note that, upon request following successful porting, any unused monetary credit with the Donor Operator may be refunded by the latter, albeit a fee may apply if this is already provided for in the contract or other similar arrangement between the applicant and the Donor Operator. Such requests must be made to the Donor Operator within two weeks of a successful porting.

Applicants should also note that the credit to be refunded by the Donor Operator should match the monetary amount which would have been indicated to the consumer should he/she have performed a credit check immediately before the Donor Operator deactivated the ported number on its network, namely when usage in the Donor Operator's network has ceased. Where the credit check facility can provide the consumer with information which distinguishes between topped up/purchased credit and any other bonus/promotional credit, the Donor Operator is only obliged to refund the topped up/purchased credit.

A corresponding update is also being implemented for the sample porting form in the *Fixed and DDI Number Portability Ordering Process Specification*.

6.4 Digitalisation of the number portability process

In June 2021, three local providers of voice communications services reached out to the MCA stating that, as an industry, they would like to consider automating the porting processes for both fixed and mobile telephony. It was also stated that while this is an initiative that all three providers would like to embark on, this would require financial resources, time and technical development, and hence the Authority's support on this automation would be greatly appreciated.

At the time, the MCA expressed its confidence that since three providers were all supporting the digitalisation of the number portability processes, then all parties in question were in agreement on how the subscriber validation process may be adapted to the satisfaction of all providers of voice communications services whilst safeguarding subscribers' interests, such as ensuring that a number would not be ported without the explicit consent of the subscriber concerned.

In this respect, the Authority requested these providers to submit detailed information on how they envisaged the new authentication processes would replace the current process in place, with a deadline of 26 July 2021. Given that, at the time, the work on the *Consultation Paper* was already ongoing, the Authority had indicated to the providers that it would be amenable to include such a proposal as part of the *Consultation Paper* provided the proposal would be doable and addresses authentication concerns. Following requests received by the providers in question, the deadline was initially extended until the end of August 2021, and subsequently until the end of January 2022.

By 15 February 2022, the closing date of the consultation period on the *Consultation Paper*, one provider had presented a high-level proposal "*following agreement with the other operators on the market*" for digitalisation of the number portability process, specifically for "*personal mobile*" numbers. The high-level proposal is described in the next sub-section (6.4.1).

6.4.1. Feedback on the digitalisation of the number portability process

The high-level proposal put forward invited the Authority to consider "*the increased need to digitalise the porting process*", with a view to expedite procedures and improve efficiency for end-users, whilst enabling service providers to provide all the requested information in electronic format. This high-level proposal was attached to feedback on the *Consultation Paper*.

The submission stated that porting should not only be enabled online by the submission of the porting form by email, but also through facilities set up on the service provider's portal, whereby porting could be requested electronically. The submission pointed the Authority to examples implemented in other countries, such as Ireland and the United Kingdom, where additional porting methods were already available. A high-level flowchart of the proposed digitalised process was also presented, and is being reproduced hereunder.

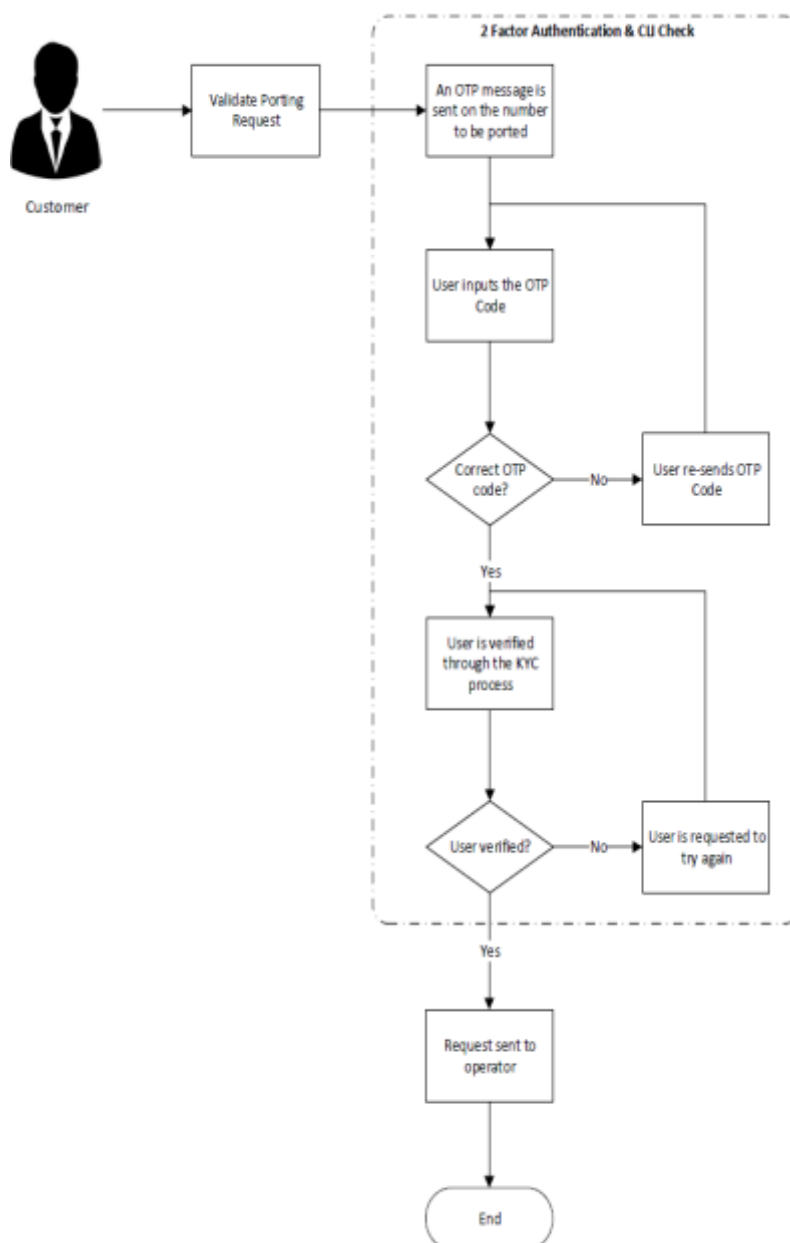


Figure 1. High-level proposal to digitalise “personal mobile” number portability requests

Using this method, authentication of the person requesting porting would take place via a unique username or email address and the use of One-Time-Password (OTP) codes and passwords. The provider presenting this high-level proposal argued that these would serve to authenticate a subscriber in the same manner a signature would, if not offering further protection against possible signature fraud.

The provider also argued that with further automation from digitalisation, the porting process would be easier, more convenient and safer for subscribers. These benefits would in turn “*boost competition on the telephony market*” and make the porting process more “*green*” in nature, through the reduced reliance on paper-based processes. It also had the potential to improve productivity, as further integration with other digital systems would be possible, further expediting the process.

The provider also stated that the readability, storage, accessibility, and traceability of data would improve when compared to the paper-based systems, whilst the reduced dependence on human input would reduce the risk of human error, besides introducing the abovementioned efficiencies.

Lastly, regardless of digitalisation, the provider also provided assurances that staff in retail outlets would be on hand to assist subscribers who are not ‘tech savvy’ and thus unable to opt for a self-service digitalised porting process.

6.4.2. The use of electronic signatures and/or digitally signed porting forms

On a related front, another provider observed in its response to the public consultation that with the introduction of online purchases of services and increased efforts to digitise their processes, local providers have started utilising electronic signature and identification solutions to facilitate the experience for their respective customers and allow them to purchase the services without having to visit retail outlets. This provider stated that it has made significant progress in this respect, especially considering the prevailing circumstances at the time¹⁰, in order to minimise any possible risks that the customers could face if they were to visit the retail outlets. In this context, the same provider proposed that the Number Portability Specifications should allow the possibility for porting forms to be digitally signed through e-signing solutions and remarked that these Specifications would require some minor changes to the validation processes that are currently dependent on the verification of a wet signature. The said provider also mentioned that it would readily make itself available to discuss possible solutions in this regard with both the MCA and all other providers.

6.4.3. MCA’s reaction

Whilst the Authority does not contend the validity of the potential benefits of the proposal to digitalise the number portability process, it is still critical that significantly more detail is made available to fully evaluate the impact and limitations of introducing such a methodology, as proposed. Aspects that merit additional attention include the following:

- **Scope** – The Authority understands the reference to “*personal mobile*”, in the high-level proposal put forward, as implying that the digitalised process would only apply to numbers associated with *personal pre-paid* mobile services and *personal post-paid* mobile services. It is unclear whether subscribers with other types of numbers (e.g. for fixed telephony services or non-personal post-paid mobile services) would also be able to avail of this digitalised process. Moreover, the use of OTP messages in the authentication step implies that the digitalised process would understandably only cater for the porting of numbers associated with active subscriptions.

¹⁰ The importance of the use of electronic signatures became more evident at the time of this submission, given the worldwide COVID-19 pandemic and accompanying restrictions on members of the public, such as social distancing, mandatory quarantine and use of masks in public places.

- **Access to Provider's Portal** – The Authority considers it unclear whether the digitalised process would be available only to existing customers of the recipient operator (e.g. customers with an internet subscription wishing to port-in their fixed number and/or mobile number; subscribers with a fixed number, wishing to port-in their mobile number; etc.), or whether it would also be possible for any person, unknown to the recipient operator, to register and log in to the recipient operator's portal, and then request porting.
- **Identification Documents (IDs) and Other Documents** – Another aspect that requires further clarification is in terms of what IDs, if any, the portal user would be required to present (and/or submit copies of) upon registration to use the portal and/or alongside the porting request. Additional information is also required on how the portal would handle the IDs and other documents (e.g. copy of identity card, copy of last bill or statement, letter of authorisation, etc.) currently required for the different account types, and how the digitalised process would ensure that proper verifications were carried out on these documents (e.g. checks on the authenticity of documents submitted; completeness of the application; etc.).
- **Validating the Porting Request** – With reference to the high-level flowchart provided in sub-section 6.4.1, the Authority requires further clarity on the nature of any 'validations' earmarked to take place in the step 'Validate Porting Request', beyond those checks identified in the subsequent steps in the box with dashed border titled '2 Factor Authentication & CLI Check'.
- **Legitimacy of the Subscriber** – More information is needed to ascertain how the digitalised process will ensure that the logged in user requesting porting is either the subscriber himself/herself, or is *legally authorised* to request porting for that number. In this respect, what would the 'KYC process' entail, to obtain information (from the online user) about the subscriber whose number is to be ported? For instance, would the user be requested to submit documentation at this point to satisfy requirements such as ID-Bill Check (required for some account types), or any relevant letter of authorisation?
- **User Verified?** – To what extent will the outcome of this step (i.e. Yes/Pass or No/Fail) be determined via automated means, or otherwise? In this regard, additional information is needed to explain how any documentation submitted during the Know Your Customer (KYC) stage would be verified and how/by whom.
- **Request sent to operator** – Additional detail is required on whether the 'request' in caption is the Authorisation Request sent through the current Webservice or a request sent through another inter-operator system developed alongside (or as part of) this digitalised process.
 - If in the former case, will the user/subscriber be informed of progress on his/her porting request through the portal, particularly if there is a failure in the porting process? What would happen if the porting is refused at any point in the porting process?
 - If a new system for inter-operator transactions is envisaged, this may require updates to the Number Portability Specifications, in view of the fact that the Authority would need to make sure that such a system is not only accessible to established service providers, but also to new entrants. Thus, prior oversight and authorisation by the Authority to adopt such inter-operator systems as a de facto standard would be necessary.

Lastly, the Authority also appreciates the feedback and proposal, raised by one of the providers, on the use of electronic signatures and/or digitally signed porting forms, and acknowledges that these may indeed result in potential benefits to subscribers. Notwithstanding, the Authority considers that there may also be aspects related to the use of such signatures that could raise some concerns.

6.4.4. Way forward on the proposals

On the basis of the information provided in the respective proposals for the digitalisation of the number portability process, and the use of electronic signatures and/or digitally signed porting forms, the Authority concluded that no material changes were required to any of the proposed Decisions in the *Consultation Paper*.

Notwithstanding, the Authority recognised that the proposals put forward could bring about certain benefits to the number portability process, provided that the various aspects meriting further detail, including those identified in sub-section 6.4.3 above, are fully addressed.

In this regard, the Authority is amenable to support the further development by industry of this concept and to collaborate with all local providers of voice communications services throughout this process. To facilitate proceedings, the Authority will endeavour to bring together an ad hoc steering committee tasked with maximising the potential benefits from the digitalisation of the number portability process and the use of electronic signatures and/or digitally signed forms, whilst ensuring that all safeguards are in place to protect the integrity of the number portability process.

Any agreed outcome from the work of such steering committee would then be captured in the form of updates to any affected Number Portability Specification document.

7. Implementation

The MCA recognises that some of the decisions contained in this *2022 Decision* and the corresponding updates to the Number Portability Specifications require providers to implement a number of internal administrative, technical and/or operational updates.

By way of summary, through the consultation process, the Authority had requested providers' feedback not only on the *Consultation Paper*, but also on a number of proposed updates to six (6) Number Portability Specification documents, namely:

- Mobile Number Portability Ordering Process Specification;
- Fixed and DDI Number Portability Ordering Process Specification;
- Number Portability Specification for Freephone Numbers;
- Number Portability Specification for Premium Rate Numbers;
- Number Portability Inter-Operator Webservice Specification; and
- Charging for Number Portability.

As noted in the preceding Chapters, the Authority is taking into account the feedback submitted by providers, and the degree of complexity and urgency tied with the implementation of any necessary changes to satisfy any new requirements. To this effect, this *2022 Decision* shall become applicable on the 1 June 2023, at which point all the decisions and corresponding Specifications will come into force, with the exception of Decision 14/2022 which is applicable with immediate effect.

Notwithstanding the above, the Authority is specifically allowing some additional adjustment time in relation to changes necessary for the implementation of new Webservice logic to handle applicant's requests for porting numbers within one (1) month from the date of termination of the contract (or other similar arrangement). Thus, the interim solution for handling such porting requests shall apply until 30 November 2023, as detailed in the respective Number Portability Specifications. Thereafter, the interim solution will no longer be permitted, as its dependence on inter-operator communication *outside* of the Webservice may lead to undue delay in the porting process.

In the meantime, until 1 June 2023, the MCA's *2005 Decision* and the Specifications in force at the time of the issuance of the *Consultation Paper* shall remain effective and enforceable along with any other requirements arising from any other applicable legislation and decisions however so described.



MALTA COMMUNICATIONS AUTHORITY

 (+356) 2133 6840
 info@mca.org.mt
 www.mca.org.mt
 Valletta Waterfront, Pinto Wharf,
Floriana FRN1913, Malta