

MCA End-User Half Yearly Report

July – December 2012

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1. Background

One of the main objectives of the Malta Communications Authority ('MCA') is to ensure a high level of protection for end-users of electronic communications ('ECS'), postal and e-Commerce services.

As part of its function to ensure that the interests of consumers are safeguarded, the MCA monitors the sectors it regulates to identify areas of end-user concern and undertakes the necessary regulatory action required to address such issues.

The MCA is also responsible to ensure that service providers comply with their obligations at law and that end-users are provided with up to date information on their rights and obligations when using any communication services.

In addition to the above, we also provide assistance to those end-users who encounter difficulties while using any of the services regulated by MCA. In particular, if the end-user is not satisfied with the remedy provided by his service provider, the end-user may lodge his complaint with the MCA. The extent of the action the MCA can take in relation to a complaint, depends on the particulars of the complaint and the MCA's relevant legal powers. In instances where the MCA cannot formally intervene, the MCA may try to mediate between the complainant and the service provider. Failing that, the MCA will suggest alternative courses of action by referring the complainant to the appropriate forum where he may lodge his complaint.

The MCA also receives a number of enquiries from end-users in relation to the services it regulates. The MCA is committed to provide end-users with the requested information in a timely manner. Alternatively, when such requests do not fall directly within MCA's remit, the MCA assists end-users by directing them to the appropriate body.

2. Scope

This report provides an analysis of the complaints and enquires received by the MCA in the second half of 2012 and also focuses on enforcement actions and related monitoring activities undertaken by the MCA during this period.

The MCA considers that the publication of this information raises awareness on consumer tools and rights in the sectors regulated by the MCA while also highlighting those practices which may be creating difficulties for end-users and which will be closely monitored by the MCA. The MCA also strongly believes that this data may be of interest to intermediaries such as consumer groups and journalists who seek to advise and inform end-users about their rights.

3. Complaints and Enquiries by Sector and Issue

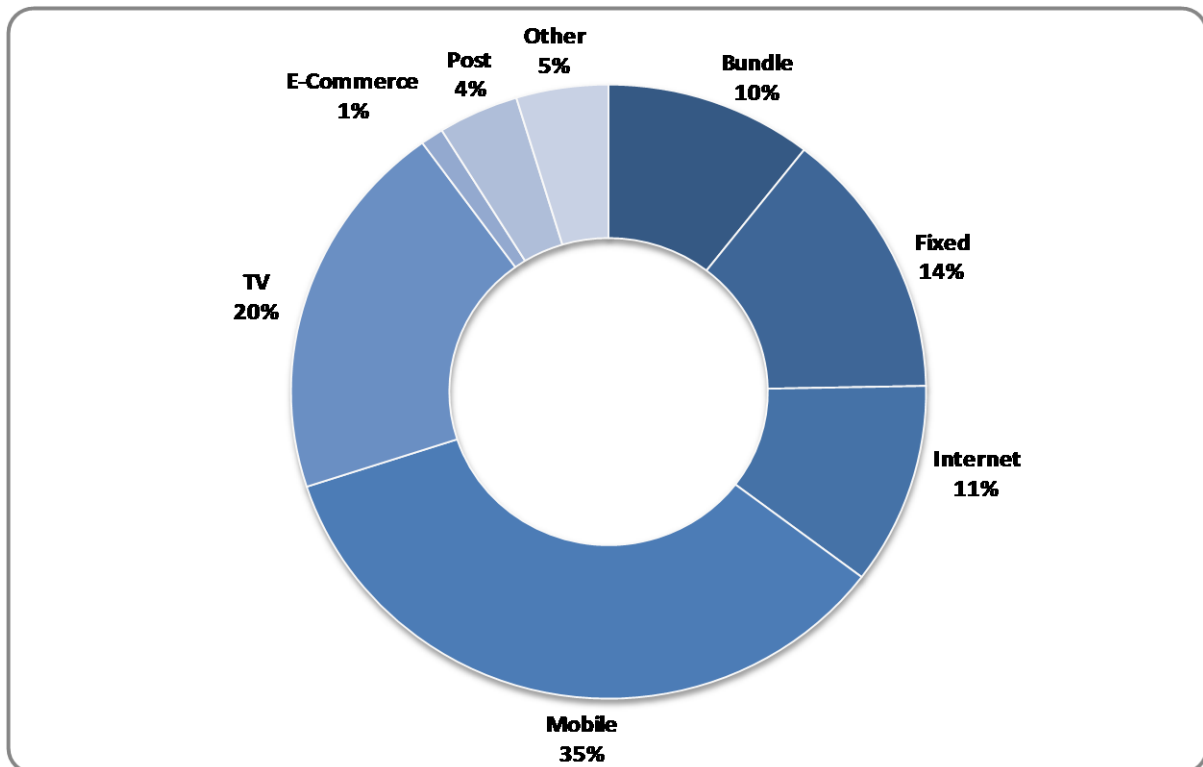
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In the second half of 2012, the MCA received a total of 170 complaints and 192 enquiries. The following provides an overview of the nature of complaints and enquiries received.

A complete breakdown of complaints received by service providers can be accessed in the 'Consumer Section' in MCA's website or by clicking [here](#).

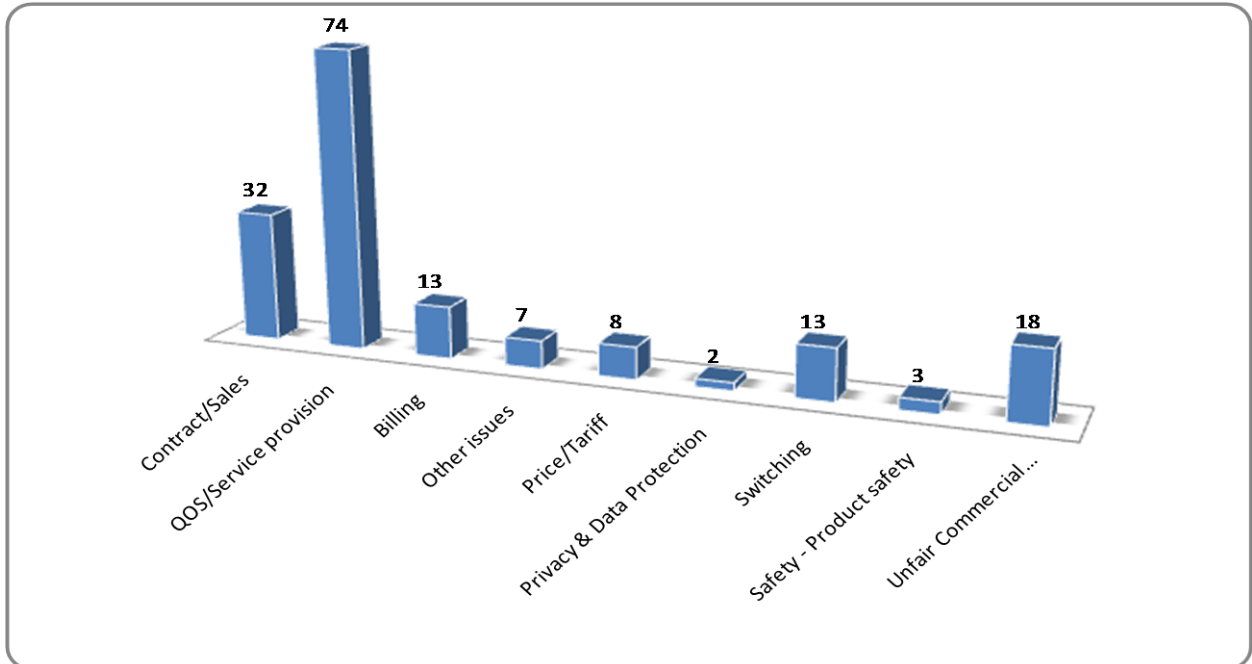
Complaints by Sector

The below diagram provides statistical information on the percentage of complaints segmented by sector dealt with by the Authority.



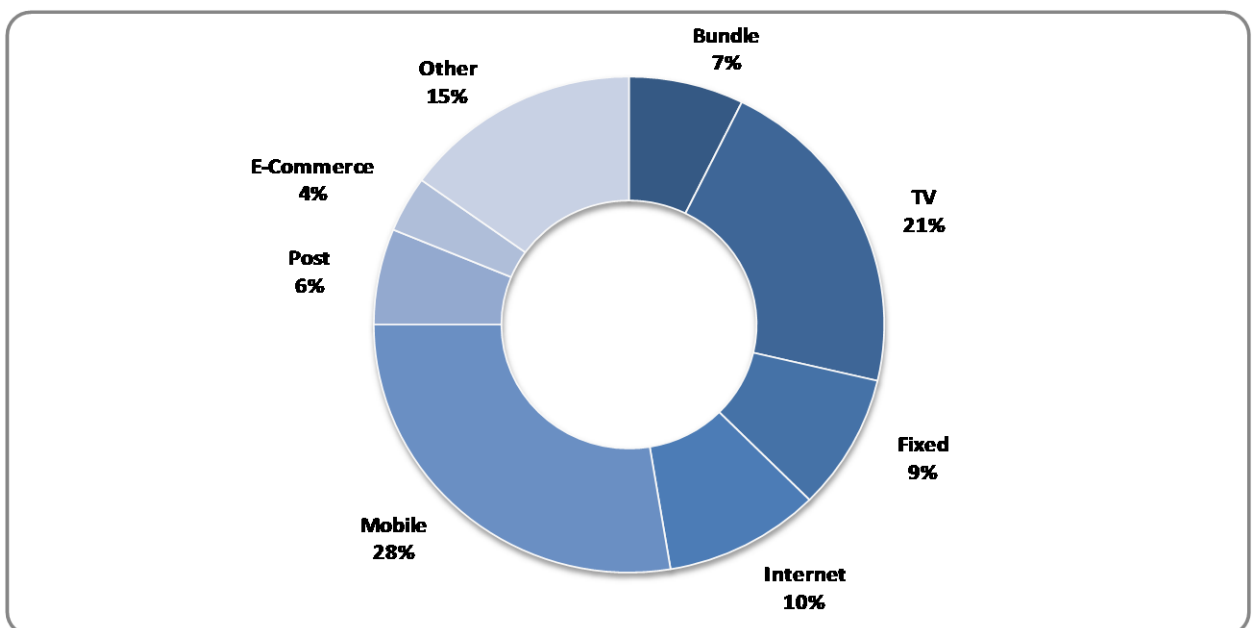
Number of Complaints by Issue

The below diagram provides statistical information on the number of complaints segmented by issue dealt with by the Authority.



Enquiries by Sector

The below diagram provides statistical information on the percentage of enquiries received by the Authority segmented by sector.



4. Electronic Communications Services (Complaints & Enquiries)

The claims¹ raised during the second half of 2012, relate predominantly to complaints regarding the transmission of free to air TV stations, contractual issues, termination and switching.

4.1. Free to air Television channels

In the second half of 2012, the MCA received a number of claims regarding the transmission of **free to air Maltese TV stations**. The Authority assists end-users encountering such difficulties by providing information on the set-up required to view these channels. The set-up consists of a UHF² aerial and a digital set-top box which are connected to a TV set. Modern flat-panel TVs are likely to have a built-in digital tuner, in which case no digital terrestrial set-top box is required. The UHF aerial is required to be pointing towards the closest transmitter. These transmitters are positioned in the following locations - Delimara, Kenuna Tower (Nadur), Mellieha, Mtarfa, Naxxar or Portomaso.

The Authority also received claims regarding the transmission of **foreign free to air TV channels**. Whilst the Authority is aware that a number of Maltese viewers enjoy free to air TV transmissions that reach Malta due to the power and direction of the said transmissions (what is known as 'spill over'), Maltese Authorities have no jurisdiction whatsoever over these transmissions and cannot provide redress to end-users on such matters.

4.2. Contractual, Termination and Switching

Other major issues reported to the MCA relate to termination of services. In line with the requirements emanating from the legislation regulating ECS, service providers' contracts must include the **termination procedure** that subscribers should follow to terminate a service/s. In particular, when subscribing to a service, end-users must look out for the following conditions related to termination:

- Procedure for termination³;

¹ Claims received by the Authority include both complaints and enquiries received.

² Ultra-high frequency.

³ The procedure for termination spells out the steps that a subscriber is required to take to terminate a service, e.g. send a letter, visit an outlet, pay outstanding dues, etc.

- Early termination fees⁴; and
- Advance notice⁵.

In many of the cases reported to the MCA, subscribers requesting termination of a service were not aware of the above conditions. In this respect, the Authority highlights that there is a legal obligation that requires service providers to include this information in subscriber contracts. The MCA stresses that subscribers must carefully read the terms and conditions governing the service/s in question prior to subscribing.

On the other hand, in those few cases where the procedure of termination of services was not adhered to by the service provider the Authority intervened in order to ensure that the service/s was/were successfully terminated.

The Authority also received complaints from subscribers who were being charged an **early termination fee** when terminating a service after their initial contractual agreement had expired. This practice is in breach of the laws administered by MCA. As such, although these cases were settled amicably further to MCA's intervention, the Authority issued a letter of warning to Melita seeking reassurances that Melita will:

1. not require subscribers whose contract has been renewed beyond an initial commitment period to be asked to pay an early termination fee upon termination of their service/s; and
2. refund any early termination fees applied to subscribers whose contract has been terminated during a renewed term following the lapse of their initial contractual period.

Melita failed to furnish in writing the required reassurances. Instead Melita argued that those subscribers who received Melita's offer⁶ and chose to remain subscribed to the service on the new conditions, had automatically consented to a new contract. The Authority disagreed with Melita's reasoning and considered that by means of the letter sent by Melita in December 2011, subscribers were not entering into a new contract but were renewing their contract.

Given the above circumstances, MCA issued a Directive requiring Melita to stop applying early termination fees with respect to contracts that have been renewed after the initial contract period had expired. Further to the publication of the said Directive, the Authority did not receive further complaints on this issue.

⁴ Early termination fees are applicable when contracts are terminated prior to their expiry.

⁵ Advance notice is the subscriber's notification to the service provider of his intention / request to terminate a service/s. The advance notice period cannot exceed 1 month.

⁶ In December 2011, Melita sent a letter to its subscribers proposing a number of changes to their contracts including the extension of their contractual period.

The Authority also received a number of complaints regarding **mobile and fixed telephony porting**⁷. In most of the cases investigated by the MCA it resulted that a number of subscribers were not aware that as a result of their request for porting, their current service would be disconnected and any conditions for the disconnection of the previous service would become applicable. As mentioned earlier in the report, these could possibly include the payment of early termination fees if the subscriber is terminating a service within a contractual period, amongst others. Another common issue reported to the Authority regarding porting complaints related to delays in the porting of a telephone number. In most of these issues, the problems resulted due to inaccurate information provided by the subscriber in the porting form. The Authority assisted complainants and ensured that such cases were solved efficiently. Other important factors that subscribers need to be aware of when porting a telephone number, include the following:

- The porting process cannot be stopped once the porting form is signed; and
- The law requires that a ported number is tied to the new service provider for a minimum period of two months from when the number was effectively ported.

4.3. Service Provision and Quality of Service

The Authority received a number of complaints from subscribers experiencing **faults** in their internet, fixed telephony and TV services. There is a range of factors that could lead to such faults and the timeframes for the full restoration of the service/s depends on the severity of the fault. The practice requires that such faults are directly addressed by the service provider even when faults are caused by third parties or by force majeure. The Authority deals with such cases by monitoring the actions undertaken by the service provider to ensure that such problems are solved at the earliest possible. In those cases investigated by the MCA where it was evident that the fault was not caused by force majeure, subscribers were provided the applicable compensation/refunds.

The Authority has also registered some complaints on **indoor mobile reception**. The MCA's view on this matter is that when subscribers experience significant reception problems from their place of work or from their residence, if the service provider is unable to resolve the problem, subscribers should be provided the possibility to exit their contract and port the mobile number without incurring early termination penalties. The MCA is glad to note that in such circumstances service providers took appropriate action in response to these complaints.

⁷ Mobile and fixed telephony portability is the facility that enables you to switch from one telephony service provider to another and maintain the same number.

4.4. Unfair Practices

In the second half of 2012, the Authority continued to receive complaints regarding **telephony and internet packages marketed as 'unlimited'** (despite having an applicable usage limit and/or threshold). In this respect, very recently, the MCCA issued a **decision** against GO Plc, Mobisle Communications Limited, Melita Plc, Melita Mobile Limited and Vodafone Malta Limited after determining that such packages are in breach of the Consumer Affairs Act⁸. The MCA agrees that such limitations contrast with the use of the term 'unlimited'. In addition to the above, the MCA considers that any applicable usage limits and thresholds have to be clearly specified in subscribers' contracts in line with the applicable laws regulated by MCA.

On a separate issue, in November 2012, GO launched an SMS competition which entitled participants the possibility to win certain prizes. The Authority received claims alleging that the information regarding the competition received by subscribers by means of an SMS was misleading. Given that 'competition' issues do not fall within MCA's remit, the MCA advised complainants to take their case to the Malta Competition and Consumer Affairs Authority ('MCCA') and seek redress under the laws administered by the MCCA.

4.5. Other Claims

The Authority received a number of claims regarding Electromagnetic Frequency (EMF) emissions from base stations. MCA's remit in EMF matters is to ensure that operators of electronic communications networks abide with the conditions of their licence, i.e. that the levels of radiation are within the levels established by International Commission on Non-Ionizing Radiation Protection 'ICNIRP'. In this respect, the MCA notes that to date, all sites audited by MCA were found to be well within ICNIRP's public exposure levels. The Authority has guided end-users filing claims on health related matters to contact the competent Health Authorities.

Towards the end of 2012, the MCA embarked on a campaign to inform end-users on the acquisition and use of wireless equipment and the interference that such devices can cause to other frequency dependent services / devices if they are not in line with certain standards. This campaign triggered a number of enquiries on whether the equipment purchased requires a licence

⁸ CAP .378 of the Laws of Malta

from the MCA. In general, equipment or devices marked as **Class 1**⁹ can be used safely in Malta and do not require any type of licence.

On the other hand, all **Class 2** equipment or devices require a licence from the MCA before being put into use locally. In addition to the CE mark, all Class 2 equipment carry an alert sign “(!)” adjacent to the CE mark as shown in the example below.



Any equipment classified as **Class 1** can be used freely as long as the equipment or devices carry the **CE mark** and is **set to operate on European Standards**.

The Authority also received a few claims on alleged unjustified billing and billing transparency. The Authority intervened in these matters by requiring remedial action in justified cases and provided information with regard to any unclear issues raised by end-users.

5. E-Commerce

The MCA, being the National Supervisory Authority responsible for electronic signatures¹⁰ (in line with the e-Commerce Act), received a number of enquiries on the subject. In this respect, amongst other things, the e-Commerce Act addresses:

- Notification process to provide signature certification services; and
- Responsibilities and obligations of signature certification service providers who issue a certificate as a qualified certificate to the public or who guarantee such certificate.

The Authority addressed enquiries received by providing the requested information on this subject.

During this period, the Authority also received a number of enquiries regarding e-Commerce, specifically from traders asking whether a special licence is required to conduct online trading. Although no special licence is required for online selling, anybody trading online still requires the

⁹ Typical Class 1 equipment include: Access control devices, which may include remote controls for automated doors and gates; Alarms and movement detectors; Closed-circuit television (CCTV); Cordless audio devices, including wireless microphones; Wireless Local Area Network equipment; Medical implants; Remote controls.

¹⁰ "electronic signature" means data in electronic form which are attached to, incorporated in or logically associated with other electronic data and which serve as a method of authentication.

same licence / authorisation that is necessary for a 'brick and mortar' business. Further information for online traders is available on the following link:

[eCommerce Guides for Business](#)

6. Post

The MCA regulates the postal sector and ensures that postal services are available throughout the Maltese Islands at affordable prices. The Authority handles complaints related to postal services and seeks to provide redress when end-users encounter any difficulties.

The main type of complaints received by the Authority in the second half of 2012 related to the delivery of cross-border ordinary mail. As opposed to registered mail, ordinary mail does not provide tracking services and therefore when such mailed items are delayed or lost they are very difficult to trace. Notwithstanding the above, MaltaPost, being the designated Universal Postal operator for cross border ordinary mail, must provide such services in accordance with the following obligations, as established in the MCA's Decision on the Measurement of the Quality of Postal Services:

- *Outbound international mail that is posted before 1900hrs between Monday and Friday and before 1500hrs on Saturday in the Maltese Islands is collected, processed and dispatched to its destination (loaded on aircraft) on the following working day to any EU country, Australia, Canada, USA, Brazil, Israel, Japan, Ukraine, Iceland, Switzerland and New Zealand and following three working` days for all other countries.*
- *Inbound cross-border mail arriving at MaltaPost's office of exchange before 19:00 hrs between Monday to Friday and 15:00 hrs on Saturdays is to be processed on the same day.*

Local mail posted before 1900hrs between Monday and Friday and 1500hrs on Saturdays must be processed on the same day and delivered on the following working day.

The Authority also received claims regarding non-delivery of registered mail by MaltaPost. In such cases, the loss of registered mail is covered by local and international legislation and entitles end-users to claim for compensation. Compensation awarded to customers does not cover the value of the contents in the postal article. It is to be noted, however, that such postal articles may be insured. Please click [here](#) for more information on compensation provided by MaltaPost.

Other claims received related to the delivery of unaddressed postal articles. It is to be noted that unaddressed mail¹¹ is not regulated under the Postal Services Act and therefore does not fall under MCA's remit. End-users were advised to contact the MCCA for guidance on such matters.

For further information on Postal services, you may access MCA's guidelines from the following link:

[Postal Services – A General Guide for Consumers](#)

7. Other Actions and Projects undertaken by the MCA

7.1. Telecosts.com

In December 2012, the MCA launched a portal ([Telecosts.com](#)) to assist end-users in selecting the most suitable tariff plan for their electronic communications needs. [Telecosts.com](#) compares tariff plans for the following services:-

- Mobile telephony;
- Fixed telephony;
- Broadband internet; and
- Bundled services for telephony, internet and TV.

7.2. Subscriber Contracts

In July 2012, the MCA published a decision on the provision of subscriber contracts. This Decision focuses on the manner in which service providers are required to provide subscriber contracts for the provision of an electronic communications service/s and addresses the following points:

1. Agreement and conclusion of a contract;
2. Form of a contract;
3. Means by which the contracts should be made available to consumers; and
4. Provisions that are legally required to be included in contracts related to electronic communications service/s.

¹¹ Unaddressed mail is mail bearing no destination address and can include advertising material, newsletters, and similar material for distribution to a group of recipient.

The decision can be accessed by clicking [here](#).

7.3. Regulatory Action

In the beginning of 2012 Melita sent a notification to its 'MyMelita' subscribers informing them that as from April 2012 it would no longer send traditional paper bills. Instead, subscribers were informed that they would be able to access their bills electronically and that they would receive an email notification informing them when their bills are uploaded on their 'Mymelita' portal. While the MCA encourages such environmental friendly and efficient measures, the MCA considered that Melita acted in breach of the applicable regulatory norms which require that when the Terms and Conditions 'Ts and Cs' of a subscriber contract are changed, subscribers are provided the option to terminate their contract without incurring any penalty fees. In line with its legal powers, the Authority issued a decision against Melita, as it considers Melita's actions to be in breach of the above mentioned provisions. This decision was appealed by Melita. The Tribunal has rejected Melita's appeal.