

SUBSIDIARY LEGISLATION 399.28

**ELECTRONIC COMMUNICATIONS NETWORKS
AND SERVICES (GENERAL) REGULATIONS**

12th July, 2011

LEGAL NOTICE 273 of 2011, as amended by Legal Notices 335 and 485 of 2011, 60 of 2012, 298 of 2014, 140 and 242 of 2016 138 of 2017 and 28 and 154 of 2019 and 151, 181 and 197 of 2020.

PART I

Preliminary

1. The title of these regulations is the Electronic Communications Networks and Services (General) Regulations. Citation.

2. (1) These regulations shall, unless the context otherwise requires, apply to: Application.
Amended by:
L.N. 298 of 2014.

- (a) public communications networks;
- (b) publicly available telephone services;
- (c) television and radio distribution services;
- (d) other publicly available electronic communications services;
- (e) non-public electronic communications services;
- (f) publicly available telephone directories and directory enquiry services;
- (g) alternative roaming provider services; and
- (h) private electronic communications networks and, or private electronic communications services.

(2) Any person providing any of the services or operating any of the networks mentioned in this regulation shall comply with these regulations.

3. (1) Any reference in these regulations to "the Act" is a reference to the Electronic Communications (Regulation) Act, and subject to the provisions of subregulation (2), the provisions of article 2 of the said Act shall apply to these regulations. Definitions.
Amended by:
L.N. 298 of 2014;
L.N. 29 of 2019;
L.N. 151 of 2020.
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(2) In these regulations, unless the context otherwise requires:

"alternative roaming provider services" means roaming services provided by an alternative service provider in accordance with Regulation (EU) No 531/2012 of the European Parliament and Council of 13 June 2012 on roaming on public mobile communications networks within the Union. This also includes regulated data roaming services normally referred to as "local break out services";

"application program interface" means the software interfaces between applications, made available by broadcasters or service

providers, and the resources in the enhanced digital television equipment for digital television and radio services;

"the Authority" means the Malta Communications Authority;

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"category M vehicles" means the same as the meaning assigned to it in article 2 of the Motor Vehicles Registration and Licensing Act;

"enhanced digital television equipment" means set top boxes intended for connection to television sets or integrated digital television sets, able to receive digital interactive television services;

"geographic number" means a number from the national telephone numbering plan where part of its digit structure contains geographic significance used for routing calls to the physical location of the network termination point;

"General Data Protection Regulation" means Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation);

"individual number allocated" means an individual number that has been allocated from a block of numbers irrespective of whether the number has been activated;

"the Minister" means the Minister responsible for communications;

"non-geographic number" means a number from the national telephone numbering plan that is not a geographic number and includes, *inter alia*, mobile, freephone and premium rate numbers;

"non-public electronic communications services" are electronic communications services that are not generally available to the public;

"other publicly available electronic communications services" means those publicly available electronic communications services that are -

- (a) neither a publicly available telephone service,
- (b) nor a television and, or radio distribution service;

"private electronic communications network and, or private electronic communications service" means a network that is operated and, or a service that is provided by a person for his private use, but does not include any such network operated and, or any such service provided within the confines of an area of land owned, leased or otherwise lawfully possessed by that same person;

"publicly available telephone directories and directory enquiry services" means telephone directories and directory enquiry services which are generally available to the public and are based on data obtained directly or indirectly from any undertaking in Malta which assigns telephone numbers to subscribers;

"television and radio distribution services" means the delivery

of television and, or radio broadcasts or other television services to a subscriber through an electronic communications network;

"transnational markets" means markets identified in accordance with Article 15(4) of the Framework Directive covering the European Union or a substantial part thereof located in more than one Member State.

PART II

Competition Rules

4. (1) An undertaking shall refrain from doing anything, by act or omission, which has the effect or the intention of preventing, restricting or distorting competition. Competition rules.

(2) The Authority shall, to the extent that it is empowered under the Act, ensure that the principles of competition law are fully adhered to in the electronic communications sector, in particular with regard to:

- (a) examination of interconnection agreements;
- (b) conditions for market access to undertakings;
- (c) schemes established for funding universal service obligations;
- (d) access to rights of way;
- (e) cross-ownership of different networks and joint provision of networks and, or services; and
- (f) emergence of global and regional partnerships and alliances:

Provided that for the purpose of exercising its duties and functions under the Act, the Authority may seek the advice of the competent authority responsible for competition.

(3) An undertaking providing public electronic communications networks shall not operate its cable television network using the same legal entity as it uses for its other public electronic communications network if such undertaking -

Undertaking cannot operate same entity for other electronic communication networks.

- (a) is controlled by the Government of Malta or benefits from special rights;
- (b) is dominant in a substantial part of the common market in the provision of public electronic communications networks and publicly available telephone services; and
- (c) operates a cable television network which has been established under special or exclusive rights in the same geographical area.

(4) No person shall enjoy any exclusive and, or special rights with regard to the establishment and provision of directory services, including the publication of directories and directory enquiry services in Malta. Directory services.

PART III

Market analysis and the functioning of the Internal Market

Market analysis
procedure.
Amended by:
L.N. 485 of 2011.

5. (1) The Authority shall, after having defined a market in accordance with article 9 of the Act, carry out an analysis of such a market taking into account the markets identified in the recommendations and taking the utmost account of the guidelines issued by the European Commission in accordance with Article 15 of the Framework Directive:

Provided that where the Authority considers it appropriate, it shall carry out such an analysis in collaboration with the competent national authority responsible for competition issues.

(2) Where the Authority is required under subregulations (3) and (4), or regulations 11 or 19 to determine whether to impose, maintain, amend or withdraw obligations on undertakings, it shall determine on the basis of its market analysis referred to in subregulation (1) whether a relevant market is effectively competitive.

(3) Where the Authority determines that a relevant market is effectively competitive, it shall not impose or maintain any of the specific regulatory obligations referred to in subregulation (2) applicable to an undertaking with significant market power:

Provided that in cases where an undertaking had previously been designated as having significant market power and such obligations already exist, the Authority shall, after giving reasonable notice to any parties which the Authority considers to be affected by such withdrawal, withdraw such obligations onerous on the undertaking concerned.

(4) Where the Authority determines that a relevant market is not effectively competitive, it shall designate undertakings which individually or jointly have significant market power in accordance with regulation 6 and it shall impose on such undertakings appropriate specific regulatory obligations referred to in subregulation (2) or maintain or amend such obligations where they already exist.

(5) In the case of transnational markets identified in a decision referred to in Article 15(4) of the Framework Directive, the Authority and any other relevant national regulatory authority concerned shall jointly conduct the market analysis taking the utmost account of any relevant guidelines issued by the European Commission in accordance with Article 15 of the Framework Directive, and in a concerted fashion, shall decide on any imposition, amendment or withdrawal of specific regulatory obligations referred to in subregulation (2).

(6) The Authority shall periodically carry out a further analysis of a relevant market referred to in subregulation (1), and subregulations (2) to (5) shall apply accordingly.

(7) The Authority shall in undertaking any measures under this regulation, except subregulation (5), follow the procedures referred to in regulation 7 hereof and in article 4A of the Malta

Communications Authority Act. The Authority shall carry out an analysis of the relevant market and notify the corresponding draft measure in accordance with regulation 7:

- (a) within three years from the adoption of a previous measure relating to that market:

Provided that this period may be extended for up to three additional years, where the Authority has notified a reasoned proposed extension to the European Commission and the European Commission has not objected to such extension within one month of the notification; or

- (b) within two years from the adoption of a revised recommendation on relevant markets referred to in Article 15 of the Framework Directive, for markets not previously notified to the European Commission.

(8) In cases where the Authority has not completed its analysis of a relevant market identified in the recommendation within the time limit laid down in subregulation (7), and BEREC has, upon request, provided the Authority with assistance in completing the analysis of the specific market and the specific obligations to be imposed, the Authority shall within six months notify the draft measure to the European Commission in accordance with regulation 7.

6. (1) The Authority shall determine whether undertakings have significant market power in accordance with this regulation.

Undertakings with significant market power.

(2) An undertaking shall be deemed to have significant market power if, either individually or jointly with others, it enjoys a position equivalent to dominance, that is to say a position of economic strength affording it the power to behave to an appreciable extent independently of competitors, customers and ultimately consumers.

(3) The Authority shall, when assessing whether an undertaking has significant market power or whether two or more undertakings are in a joint dominant position in a market, act in accordance with European Union law and take utmost account of any relevant guidelines on market analysis and the assessment of significant market power published by the European Commission pursuant to Article 15 of the Framework Directive and, in addition, in the case of an assessment of whether two or more undertakings are in a joint dominant position, the criteria set out in the First Schedule.

(4) Where an undertaking has significant market power on a specific market (the first market), it may also be designated as having significant market power on a closely related market (the second market) where the links between the two markets are such as to allow the market power held in the first market to be leveraged into the second market, thereby strengthening the market power of the undertaking.

(5) Remedies aimed at preventing the leverage referred to subregulation (4) may be applied in the second market pursuant to

regulations 12, 13, 14 and 16, and where such remedies prove to be insufficient, remedies pursuant to regulation 19 may be imposed.

Consolidating the
internal market for
electronic
communications.
Amended by:
L.N. 485 of 2011.
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7. (1) Except where otherwise provided in recommendations or guidelines adopted by the European Commission pursuant to Article 7b of the Framework Directive, upon completion of the consultation referred to in article 4A of the Malta Communications Authority Act, where the Authority intends to take a measure which:

- (a) falls within the scope of article 9 of the Act, or regulations 5, 9, 11 or 19; and
- (b) would affect trade between Member States, the Authority shall make the draft measure accessible to the European Commission, BEREC and the national regulatory authorities in other Member States, at the same time, together with the reasoning on which the measure is based, and inform the European Commission, BEREC and other national regulatory authorities in other Member States thereof.

(2) Before proceeding with a measure referred to in subregulation (1), the Authority shall take into account any comments made by national regulatory authorities in other Member States, the European Commission and, or BEREC, received within one month of having made the draft measure accessible.

(3) Where the European Commission has not indicated to the Authority shall adopt the resulting draft measure within six months of the date of the decision of the European Commission would create a barrier to the single market or that it has serious doubts as to its compatibility with European Union law and, in particular, the objectives referred to in Article 8 of the Framework Directive, the Authority shall adopt the resulting draft measure.

(4) Where a draft measure referred to in subregulation (1) consists of –

- (a) a proposed definition of a relevant market which differs from any relevant market defined in any recommendations and guidelines that the European Commission may, in accordance with Article 15 of the Framework Directive, issue from time to time; or
- (b) a proposed decision whether or not to designate an undertaking as having, either individually or jointly with others, significant market power, and would affect trade between Member States, and the European Commission has indicated to the Authority that it considers that the draft measure would create a barrier to the single market or that it has serious doubts as to its compatibility with European Union law and, in particular, with the objectives referred to in Article 8 of the Framework Directive, the draft measure shall not be adopted for a further two months, which period may not be extended.

(5) Where, within the two month period referred to in subregulation (4), the European Commission has adopted a decision to lift its reservations in relation to a draft measure, the Authority shall adopt the resulting draft measure within six months of the date of the decision of the European Commission.

(6) Where the European Commission has adopted a decision requiring the Authority to withdraw a draft measure, the Authority shall amend or withdraw the draft measure within six months of the date of the decision of the European Commission. When the draft measure is amended, the Authority shall undertake a public consultation in accordance with the procedures referred to in article 4A of the Malta Communications Authority Act, and shall re-notify the amended draft measure to the European Commission in accordance with the provisions of subregulations (2) and (3).

(7) The Authority shall take the utmost account of any comments of other national regulatory authorities in other Member States, BEREC and of the European Commission, received in response to the consultation referred to in subregulation (1) and may, except in cases covered by the provisions of Article 7(4) and (5)(a) of the Framework Directive, adopt the resulting draft measure with or without amendment and where it does so adopt such measure, the Authority shall communicate it to the European Commission.

(5) Where, within the two month period referred to in subregulation (4), the European Commission has adopted a decision to lift its reservations in relation to a draft measure, the Authority shall adopt the resulting draft measure.

(6) Where the European Commission has adopted a decision requiring the Authority to withdraw a draft measure, the Authority shall amend or withdraw the draft measure within six months of the date of the decision of the European Commission. When the draft measure is amended, the Authority shall undertake a public consultation in accordance with the procedures referred to in article 4A of the Malta Communications Authority Act, and shall re-notify the amended draft measure to the European Commission in accordance with the provisions of subregulations (2) and (3).

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(7) The Authority shall take the utmost account of any comments of other national regulatory authorities in other Member States, BEREC and of the European Commission, received in response to the consultation referred to in subregulation (1) and may, except in cases covered by the provisions of Article 7(4) and (5)(a) of the Framework Directive, adopt the resulting draft measure with or without amendment and where it does so adopt such measure, the Authority shall communicate it to the European Commission.

(8) The Authority shall communicate all final measures which fall under subregulation (1) to the European Commission and BEREC.

(9) Where the Authority considers that there are exceptional circumstances justifying an urgent need to act in order to safeguard competition and, or to protect the interests of users, by way of

derogation from the procedures set out in subregulations (1) to (4), the Authority may immediately adopt a proportionate measure on a provisional basis.

(10) Where the Authority acts in accordance with subregulation (9), it shall without delay notify the measure concerned with full reasons for its adoption, to the European Commission, the national regulatory authorities in other Member States, BEREC and the undertaking to which the measure concerned is addressed.

(11) A decision by the Authority to render a measure referred to in subregulation (9) permanent or extend the time for which it is applicable, is subject to subregulations (1) to (4).

Procedure for the consistent application of remedies.

8. (1) Where an intended measure covered by the provisions of regulations 7(1) to (3) aims at imposing, amending or withdrawing an obligation on an operator in cases covered by Article 7a(1) of the Framework Directive, and the European Commission within the period of one month provided for by Article 7(3) of the Framework Directive, notifies the Authority that it considers that the draft measure would create a barrier to the single market or that it has serious doubts as to its compatibility with European Union law, the Authority shall not adopt the draft measure for a further three months following the European Commission's notification:

Provided that in the absence of a notification referred to in this subregulation the Authority may adopt the draft measure, taking utmost account of any comments made by the European Commission, BEREC or any other national regulatory authority.

(2) Within the three month period referred to in subregulation (1), the Authority shall cooperate closely with the European Commission and BEREC to identify the most appropriate and effective measure in the light of the objectives laid down in Article 8 of the Framework Directive. In so doing the Authority shall take due account of the views of market participants and the need to ensure the development of consistent regulatory practice.

(3) Prior to the lapse of the three month period referred to in subregulation (1), the Authority may:

- (a) amend or withdraw its draft measure taking utmost account of the European Commission's notification referred to in subregulation (1) and of the opinion and, or advice of BEREC; or
- (b) maintain its draft measure.

(4) Where, following the lapse of the three month period referred to in subregulation (1), the European Commission has decided to issue a recommendation or to lift its reservations in accordance with Article 7a(5) of the Framework Directive, the Authority shall, within one month, communicate to the European Commission and to BEREC the adopted final measure:

Provided that the Authority may request the European Commission to extend this period to allow it to undertake a public consultation in accordance with article 4A of the Malta

Communications Authority Act.

(5) Where the Authority decides not to amend or withdraw the draft measure on the basis of the recommendation issued by the European Commission under Article 7a(5) of the Framework Directive, it shall provide a reasoned justification.

(6) The Authority may withdraw the proposed draft measure at any stage of the procedure.

PART IV

Access and Interconnection – Rights and Obligations

9. (1) Without prejudice to any measures that may be taken in accordance with regulation 11 regarding undertakings with significant market power, the Authority may impose:

Functions of the Authority with regard to access and interconnection.

- (a) to the extent that is necessary to ensure end-to-end connectivity, obligations on undertakings that control access to end-users including, in justified cases, the obligation to interconnect their networks where this is not already the case;
- (b) in justified cases and to the extent that is necessary, the obligations on undertakings that control access to end-users to make their services interoperable;
- (c) to the extent that is necessary to ensure accessibility for end-users to digital radio and television broadcasting services specified by the Authority, obligations on operators to provide access to the facilities referred to in Part B of the Second Schedule hereto, on fair, reasonable and non-discriminatory terms.

(2) Any obligations and conditions imposed by the Authority in accordance with the Act shall be objective, transparent, proportionate and non-discriminatory, and shall be implemented in accordance with the procedures established under regulation 7 hereof and article 4A of the Malta Communications Authority Act.

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(3) With regard to access and interconnection, the Authority may intervene of its own initiative where justified in order to secure the policy objectives established under article 4 of the Act, in accordance with the procedures referred to in regulation 6 hereof and articles 4A, 43 and 44A of the Malta Communications Authority Act.

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10. (1) In relation to conditional access to digital television and radio services broadcast to viewers and listeners in the European Union, irrespective of the means of transmission, the conditions laid down in Part A of the Second Schedule hereof shall apply.

Conditional access systems and other facilities.

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(2) Where, as a result of a market analysis conducted under regulation 5, the Authority finds that one or more operators of conditional access systems do not have significant market power in the relevant market, it may amend or withdraw the conditions with respect to those operators, in accordance with the procedures referred to in regulation 7 and article 4A of the Malta Communications Authority Act, only to the extent that -

- (a) accessibility for end-users to radio and television broadcasts and broadcasting channels and services specified in accordance with regulation 49 would not be adversely affected by such amendment or withdrawal, and
- (b) the prospects for effective competition in the markets for -
 - (i) retail digital television and radio broadcasting services, and
 - (ii) conditional access systems and other associated facilities, would not be adversely affected by such amendment or withdrawal.

(3) An appropriate period of notice shall be given to parties affected by such amendment or withdrawal of conditions as referred to in subregulation (2).

(4) Conditions applied in accordance with this regulation are without prejudice to any obligations that may be imposed in relation to the presentational aspect of electronic programme guides and similar listing and navigation facilities.

Imposition,
amendment or
withdrawal of
obligations related
to access and, or
interconnection.

11. (1) The Authority shall impose the obligations identified in regulations 12 to 17, as appropriate, on any operator designated as having significant market power in a specific market as a result of a market analysis carried out in accordance with these regulations.

(2) Unless otherwise provided in the Act or these regulations, and without prejudice to the need to comply with international commitments, the Authority shall not impose any of the obligations set out in regulations 12 to 16 on operators who have not been designated in accordance with subregulation (1):

Provided that where, for the purpose of complying with international commitments, the Authority imposes, amends or withdraws obligations on operators which have not been designated as having significant market power in a specific market, it shall give notice to the European Commission in accordance with the procedure set out in regulation 7.

(3) Where in exceptional circumstances the Authority intends to impose on operators with significant market power obligations for access or interconnection other than those set out in regulations 12 to 16, the Authority shall submit to the European Commission a request for permission to impose such other obligations. The Authority shall not impose such other obligations pending the decision of the European Commission to authorise or prevent the

Authority from taking such measures.

(4) Any obligations imposed in accordance with this regulation shall:

- (a) be based on the nature of the problem identified;
- (b) be proportionate and justified in the light of the objectives laid down in article 4 of the Act; and
- (c) only be imposed following consultation in accordance with regulation 7 and article 4A of the Malta Communications Authority Act.

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12. (1) The Authority may, in accordance with the provisions of regulation 11, impose obligations for transparency in relation to interconnection and, or access, requiring operators to make public specified information, such as accounting information, technical specifications, network characteristics, terms and conditions for supply and use, including any conditions limiting access to and, or use of services and applications, and prices where applicable.

Obligation of transparency.

(2) The Authority may, in particular where an operator has obligations of non-discrimination, require that operator to publish a reference offer, which shall be sufficiently unbundled to ensure that undertakings are not required to pay for facilities which are not necessary for the services requested, giving a description of the relevant offerings broken down into components according to market needs, and the associated terms and conditions including prices.

(3) The Authority may specify the precise information to be made available, the level of detail required and the manner of publication.

(4) The Authority shall, furthermore, be able to impose changes to reference offers to give effect to the obligations imposed under these regulations.

(5) Notwithstanding subregulation (3), where an operator has obligations under regulation 15 concerning wholesale network infrastructure access, the Authority shall ensure the publication of a reference offer containing at least the elements set out in the Third Schedule.

13. (1) The Authority may, in accordance with the provisions of regulation 11, impose obligations of nondiscrimination, in relation to interconnection and, or access.

Obligation of non-discrimination.

(2) Obligations of non-discrimination shall ensure, in particular, that the operator -

- (a) applies equivalent conditions in equivalent circumstances to other undertakings providing equivalent services, and
- (b) provides services and information to others under the same conditions and of the same quality as it provides for its own services, or those of its subsidiaries or partners.

Obligation of
accounting
separation.

14. (1) The Authority may, in accordance with regulation 11, impose obligations for accounting separation in relation to specified activities related to interconnection and, or access.

(2) Without prejudice to the generality of subregulation (1), the Authority may require a vertically integrated company to make transparent its wholesale prices and its internal transfer prices, especially to ensure compliance where there is a requirement for non-discrimination under regulation 13 or, where necessary, to prevent unfair cross-subsidy and, where it does so the Authority may specify the format and accounting methodology to be used.

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(3) Without prejudice to the provisions of articles 4(10) to (14) of the Malta Communications Authority Act, in order to facilitate the verification of compliance with obligations of transparency and non-discrimination, the Authority may require that accounting records, including data on revenues received from third parties, are provided on request.

(4) Subject to the protection of the confidentiality of any information which the Authority considers confidential, the Authority may publish any information obtained by it under subregulation (3) to the extent that the Authority considers that such information would contribute to an open and competitive market.

Obligations of
access to, and use
of, specific
network facilities.
Amended by:
L.N. 485 of 2011.

15. (1) The Authority may, in accordance with the provisions of regulation 11, impose obligations on operators to meet reasonable requests for access to, and use of, specific network elements and associated facilities, in particular, in situations where the Authority considers that denial of access or unreasonable terms and conditions having a similar effect would hinder the emergence of a sustainable competitive market at the retail level, or would not be in the interest of the end-user.

(2) Operators may be required *inter alia* -

- (a) to give third parties access to specified network elements and, or facilities, including access to network elements that are not active and, or unbundled access to the local loop, to *inter alia* allow carrier selection and, or preselection and, or subscriber line resale offer;
- (b) to negotiate in good faith with undertakings requesting access;
- (c) not to withdraw access to facilities already granted;
- (d) to provide specified services on a wholesale basis for resale by third parties;
- (e) to grant open access to technical interfaces, protocols or other key technologies that are indispensable for the interoperability of services or virtual network services;
- (f) to provide co-location or other forms of associated facility sharing without prejudice to article 12 of the Act;
- (g) to provide specified services needed to ensure

interoperability of end-to-end services to users, including facilities for intelligent network services or roaming on mobile networks;

- (h) to provide access to operational support systems or similar software systems necessary to ensure fair competition in the provision of services;
- (i) to interconnect networks or network facilities;
- (j) to provide access to associated services such as identity, location and presence service.

(3) The Authority may attach to any obligations imposed under subregulations (1) and (2), conditions covering fairness, reasonableness and timeliness.

(4) When considering the obligations referred to in subregulations (1) and (2), and in particular when assessing how such obligations would be imposed proportionate to the objectives set out in article 4 of the Act, the Authority shall in particular take into account the following factors:

- (a) the technical and economic viability of using or installing competing facilities, in the light of the rate of market development, taking into account the nature and type of interconnection and access involved including the availability of other upstream access products such as access to ducts;
- (b) the feasibility of providing the access proposed, in relation to the capacity available;
- (c) the initial investment by the facility owner, taking account of any public investment made and the risks involved in making the investment;
- (d) the need to safeguard competition in the long term with particular attention to economically efficient infrastructure based competition;
- (e) where appropriate, any relevant intellectual property rights; and
- (f) the provision of pan-European services.

(5) When imposing obligations on an operator to provide access in accordance with the provisions of this regulation, the Authority may lay down technical or operational conditions to be met by the provider and, or beneficiaries of such access where necessary to ensure normal operation of the network. Obligations to follow specific technical standards or specifications shall be in compliance with the standards and specifications laid down in accordance with Article 17 of the Framework Directive.

16. (1) The Authority may, in accordance with the provisions of regulation 11, impose obligations relating to cost recovery and price controls, including obligations for cost orientation of prices and obligations concerning cost accounting systems, for the provision of specific types of interconnection and, or access, in situations where a market analysis indicates that a lack of effective competition means that the operator concerned might sustain

Price control and cost accounting obligations.

prices at an excessively high level, or apply a price squeeze, to the detriment of end-users:

Provided that in order to encourage investments by the operator, including in next generation networks, the Authority shall, when considering the imposition of obligations under this subregulation, take into account the investment made by the operator in electronic communications networks or services or associated facilities which the Authority considers relevant and allow the operator a reasonable rate of return on adequate capital employed, taking into account any risks specific to a particular new investment network project.

(2) The Authority shall ensure that any cost recovery mechanism or pricing methodology that is mandated serves to promote efficiency and sustainable competition and maximize consumer benefits. In this regard the Authority may also take account of prices available in comparable competitive markets.

(3) Where an operator has an obligation regarding the cost orientation of its prices, the burden of proof that charges are derived from costs, including a reasonable rate of return on investment, shall lie with the operator concerned. For the purpose of calculating the cost of efficient provision of services, the Authority may use cost accounting methods independent of those used by the operator:

Provided that the Authority may require an operator to provide full justification for its prices, and may where appropriate require prices to be adjusted.

(4) The Authority shall ensure that, where implementation of a cost accounting system is mandated in order to support price controls, a description of the cost accounting system is made publicly available, showing at least the main categories under which costs are grouped and the rules used for the allocation of costs.

(5) Compliance with the cost accounting system shall, at the choice of the Authority, be verified by the Authority, or by a suitably qualified independent body approved by the Authority.

(6) The Authority shall cause to be published annually a statement concerning compliance with any cost accounting system imposed under this regulation.

Functional
separation.

17. (1) Where the Authority concludes that the appropriate obligations imposed under regulations 12 to 16 have failed to achieve effective competition and that there are important and persistent competition problems and, or market failures identified in relation to the wholesale provision of certain access product markets, it may, as an exceptional measure, in accordance with the provisions of regulation 11(3), impose an obligation on vertically integrated undertakings to place activities related to the wholesale provision of relevant access products in an independently operating business entity. Such business entity shall supply access products and services to all undertakings, including to other business entities within the parent company, on the same timescales, terms and

conditions, including those relating to price and service levels, and by means of the same systems and processes.

(2) When the Authority intends to impose an obligation for functional separation, it shall submit a proposal to the European Commission that includes:

- (a) evidence justifying the conclusions of the Authority as referred to in subregulation (1);
- (b) a reasoned assessment that there is no or little prospect of effective and sustainable infrastructure based competition within a reasonable timeframe;
- (c) an analysis of the expected impact on the Authority, on the undertaking, in particular on the workforce of the separated undertaking and on the electronic communications sector as a whole, and on incentives to invest in the sector as a whole, particularly with regard to the need to ensure social and territorial cohesion, and on other stakeholders including, in particular, the expected impact on competition and any potential effects on consumers;
- (d) an analysis of the reasons justifying that this obligation would be the most efficient means to enforce remedies aimed at addressing the competition problems and, or markets failures identified.

(3) The draft measure shall include the following elements:

- (a) the precise nature and level of separation, specifying in particular the legal status of the separate business entity;
- (b) an identification of the assets of the separate business entity, and the products or services to be supplied by that entity;
- (c) the governance arrangements to ensure the independence of the staff employed by the separate business entity, and the corresponding incentive structure;
- (d) rules for ensuring compliance with the obligations;
- (e) rules for ensuring transparency of operational procedures, in particular towards other stakeholders;
- (f) a monitoring programme to ensure compliance, including the publication of an annual report.

(4) Following the decision of the European Commission on the draft measure taken in accordance with Article 8(3) of the Access Directive, the Authority shall conduct a coordinated analysis of the different markets related to the access network in accordance with the procedure set out in regulation 5. On the basis of its assessment, the Authority shall impose, maintain, amend or withdraw obligations, in accordance with regulation 7 and article 4A of the Malta Communications Authority Act.

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(5) An undertaking on which functional separation has been imposed may be subject to any of the obligations identified in

regulations 12 to 16 in any specific market where it has been designated as having significant market power in accordance with regulation 5, or to any other obligations authorised by the European Commission pursuant to Article 8(3) of the Access Directive.

Voluntary separation by a vertically integrated undertaking.

18. (1) Undertakings which have been designated as having significant market power in one or several relevant markets in accordance with regulation 5 shall notify the Authority in writing, in advance and in a timely manner as may be specified by the Authority, in order to allow it to assess the effect of the intended transaction, when they intend to transfer their local access network assets or a substantial part thereof to a separate legal entity under different ownership, or to establish a separate business entity in order to provide to all retail providers, including its own retail divisions, fully equivalent access products. Undertakings shall also inform the Authority of any change in that intent as well as the final outcome of the process of separation.

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(2) The Authority shall assess the effect of the intended transaction on existing regulatory obligations. For that purpose, the Authority shall conduct a coordinated analysis of the different markets related to the access network in accordance with the procedure set out in regulation 5. On the basis of its assessment, the Authority shall impose, maintain, amend or withdraw obligations, in accordance with regulation 7 and article 4A of the Malta Communications Authority Act.

(3) The legally and, or operationally separate business entity may be subject to any of the obligations identified in regulations 12 to 16 in any specific market where it has been designated as having significant market power in accordance with regulation 5, or to any other obligations authorised by the European Commission pursuant to Article 8(3) of the Access Directive.

Regulatory controls on retail services.

19. (1) Where -

- (a) the Authority determines as a result of a market analysis carried out in accordance with regulation 5, that a given retail market identified in accordance with article 9 of the Act is not effectively competitive, and
- (b) the Authority concludes that obligations imposed under this Part would not result in the achievement of the objectives set out in article 4 of the Act, the Authority shall impose such obligations as it considers appropriate to achieve those objectives on undertakings identified by the Authority as having significant market power in that retail market.

(2) Obligations imposed under subregulation (1) shall be based on the nature of the problem identified and be proportionate and justified in the light of the objectives laid down in article 4 of the Act, and may include requirements to ensure that the undertaking concerned does not -

- (a) charge excessive prices,

- (b) inhibit market entry or restrict competition by setting predatory prices,
 - (c) show undue preference to specific end-users, or
 - (d) unreasonably bundle services.
- (3) The Authority may impose on such undertakings -
- (a) appropriate retail price cap measures, or
 - (b) measures to control individual tariffs, or
 - (c) measures to orient tariffs towards costs or prices on comparable markets, in order to protect end-user interests whilst promoting effective competition.
- (4) An undertaking that is subject to retail tariff regulation or other relevant retail control, shall operate and maintain a cost accounting system including related regulatory accounts, that are -
- (a) based on generally accepted accounting practices,
 - (b) suitable for ensuring compliance with this regulation, and
 - (c) capable of verification by the Authority.
- (5) The Authority may specify the format and accounting methodology to be used by an undertaking to which subregulation (4) applies.
- (6) Compliance by an undertaking with a cost accounting system, including related regulatory accounts, referred to in this regulation shall be verified by a qualified independent body approved by the Authority. For this purpose, the Authority may carry out an audit itself, or it may require an audit to be carried out by a qualified body, independent of the undertaking concerned.
- (7) An undertaking to which subregulation (4) applies shall publish in its annual accounts a statement concerning compliance by it with a cost accounting system referred to in subregulation (4).
- (8) Without prejudice to the provisions of regulations 27(2) and 28, the Authority shall not apply retail control mechanisms under this regulation to geographical or user markets where it is satisfied that there is effective competition.

- 20.** The Authority shall notify the European Commission of -
- (a) the names of undertakings designated as having significant market power;
 - (b) the obligations imposed upon them under these regulations; and
 - (c) as soon as is practicable, any changes affecting these obligations, or the undertakings affected by or under these regulations.

Notification of designated undertakings having significant market power.

PART V

Universal Service Obligations

Availability of
universal service.

21. (1) The Authority shall ensure that the services set out in this Part are made available at the quality specified to all end-users in Malta, independently of geographical location, and, in the light of specific national conditions, at an affordable price.

(2) The Authority shall determine the most efficient and appropriate approach for ensuring the implementation of universal service, whilst respecting the principles of objectivity, transparency, non-discrimination and proportionality.

(3) The Authority shall seek to minimise market distortions, in particular the provision of services at prices, or subject to other terms and conditions that depart from normal commercial conditions, whilst safeguarding the public interest.

Designation of
undertakings.

22. (1) For the purposes of this Part "designated undertaking" means an undertaking designated in accordance with this regulation.

(2) The Authority may designate one or more undertakings for such period as it may specify, to comply with obligations referred to in regulations 23 to 26 and where applicable in regulation 27(2) so that the whole of Malta can be covered.

(3) The Authority may designate different undertakings or sets of undertakings to provide different elements of universal service and, or to cover different parts of Malta.

(4) In designating an undertaking under subregulation (2), the Authority shall adopt an efficient, objective, transparent and non-discriminatory designation mechanism whereby no undertaking is *a priori* excluded from being designated. The designation methods adopted shall ensure that the obligations referred to in subregulation (2) are provided in a cost effective manner and may be used as a means of determining the net cost of the universal service obligation in accordance with regulation 30.

(5) A designated undertaking which intends to dispose of a substantial part or all of its local access network assets to a separate legal entity under different ownership, shall notify the Authority in writing, in advance and in a timely manner as may be specified by the Authority, in order to allow the Authority to assess the effect of the intended transaction on the provision of access at a fixed location and of telephone services pursuant to regulation 23. The Authority may impose, amend or withdraw specific obligations in accordance with Article 6(2) of the Authorisation Directive.

Provision of access
at a fixed location
and provision of
telephone services.

23. (1) A designated undertaking shall satisfy all reasonable requests to provide connection at a fixed location to a public communications network, and such connection shall be capable of supporting -

- (a) voice,
- (b) facsimile, and
- (c) data communications, at data rates that are sufficient to permit functional Internet access, taking into account prevailing technologies used by the majority

of subscribers, and technological feasibility.

(2) A designated undertaking shall satisfy all reasonable requests for the provision of a publicly available telephone service over the network connection referred to in subregulation (1) which allows for originating and receiving of national and international calls.

(3) The Authority may for the purposes of the networks and, or services referred to in this regulation, specify requirements to be complied with by a designated undertaking in relation to, *inter alia* -

- (a) functional Internet access, having regard to prevailing technologies used by the majority of subscribers and to technological feasibility;
- (b) the reasonableness of requests for connection at a fixed location to a public communications network pursuant to subregulation (1);
- (c) the reasonableness of requests for access to a publicly available telephone service pursuant to subregulation (2); and
- (d) the terms and conditions upon which connection and access referred to in subregulation (1) and (2) shall be provided.

(4) In the event that a universal service is met as a result of market conditions, the Authority may decide not to designate an undertaking in accordance with regulation 22.

24. (1) A designated undertaking shall ensure:

- (a) that a comprehensive directory of subscribers to publicly available telephony services is made available to all end-users, in a form approved by the Authority, whether printed or electronic or both as the Authority may determine, and is updated on a regular basis at least once a year; and
- (b) that a comprehensive and up-to-date telephone directory enquiry service is made available to all end-users, including users of public pay telephones;

Directory enquiry services and directories.

(2) A directory or directory enquiry service referred to in subregulation (1) shall comprise, subject to the relevant data protection laws, all subscribers of publicly available telephone services in Malta.

(3) A designated undertaking shall for the purposes of this regulation apply the principle of non-discrimination to the treatment of information that has been provided to it by other undertakings or which it has in its possession or under its control.

25. (1) A designated undertaking shall ensure that public pay telephones or other comparable services are provided to meet the reasonable needs of end-users in terms of the geographical coverage, the number of telephones or other services, the accessibility to disabled end-users and the quality of such services.

Public pay telephones and other comparable services

(2) The Authority may specify terms and conditions applicable to the provision of public pay telephones or other comparable services, for the purpose of ensuring that the requirements specified in subregulation (1) are met.

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(3) Where the Authority determines, after consultation carried out in accordance with article 4A of the Malta Communications Authority Act, that there exists a sufficient number of public pay telephones or comparable services in any geographic area to satisfy the reasonable needs for such services in that area, taking into account the population density in such geographic area and the state of development of the communications market in that area, the Authority may decide not to designate an undertaking under regulation 22 for the purposes of subregulation (1) in relation to that area or to a specified part of that area, as the case may be.

(4) An undertaking providing public pay telephones or comparable services shall ensure that users of such facilities are able to make emergency calls using the single European emergency call number "112" and any national emergency call number that may be specified by the Authority in each case free of charge and without the necessity to use coins or cards or any other means of payment.

(5) An undertaking providing public pay telephones or comparable services shall ensure that users of such facilities have access to a directory enquiry service referred to in regulation 24.

Measures for disabled end-users.

26. (1) Unless requirements have been specified under Part VI which achieve the equivalent effect, the Authority may specify obligations applicable to designated undertakings for the purpose of ensuring that disabled end-users can enjoy access to, and affordability of, the services identified under this Part equivalent to that enjoyed by the majority of end-users. The Authority may assess the general need and the specific requirements, including the extent and concrete form of such specific measures for disabled end-users.

(2) The Authority may take specific measures, in the light of national conditions, for the purpose of ensuring that disabled end-users can take advantage of the choice of undertakings and service providers available to the majority of end-users.

(3) In taking the measures referred to subregulations (1) and (2), the Authority shall encourage compliance with the relevant standards and, or specifications published in accordance with Articles 17 and 18 of the Framework Directive.

Affordability of tariffs.

27. (1) The Authority shall monitor the evolution and level of retail tariffs of the services identified in regulations 23 to 26 in particular in relation to national consumer prices for similar products and average consumer income.

(2) The Authority may, in the light of national conditions, specify requirements to be complied with by a designated undertaking for the purpose of ensuring that such undertaking provides to consumers tariff options or packages which depart

from those provided under normal commercial conditions, in particular to ensure that those on low incomes or on special social needs are not prevented from accessing the network referred to in regulation 23(1) or from using the services identified in regulation 23(2) and regulations 24 to 26 as falling under the universal service obligations and provided by designated undertakings.

(3) The Authority may, in the light of national conditions, require a designated undertaking with obligations under regulations 23 to 26 to apply common tariffs, including geographical averaging throughout Malta, or to comply with price caps or other similar schemes.

(4) The conditions of any scheme to provide special tariff options, common tariffs, including geographical averaging, shall be fully transparent and shall be published and applied in accordance with the principle of non-discrimination. The Authority may take any action it considers necessary to ensure that such schemes comply with this subregulation, and to this effect it may require the modification and, or withdrawal of the said schemes.

28. (1) A designated undertaking shall, where it provides facilities and services additional to those referred to in regulations 23 to 26 and 27(2), establish terms and conditions for the provision of such additional facilities and services in such a way that the subscriber is not obliged to pay for facilities or services which are not necessary or not required for the service requested.

Control of
expenditure.

(2) A designated undertaking shall, for the purpose of ensuring that subscribers can monitor and control expenditure and avoid unwarranted disconnection of service, provide the specific facilities and services set out in Part A of the Fourth Schedule:

Provided that the Authority may waive any requirement imposed under subregulation (2) to all or any part of Malta, if it is satisfied that the relevant facility or service is widely available.

29. (1) A designated undertaking with an obligation under regulations 23 to 26 and 27(2), as applicable, shall publish adequate and up-to-date information concerning its performance in relation to the provision of universal service obligations, based on the quality of service parameters, definitions and measurement methods set out in the Fifth Schedule and shall supply such published information to the Authority.

Quality of service
of designated
undertakings.

(2) The Authority may specify, *inter alia*, additional quality of service standards, where relevant parameters have been developed, to assess the performance of undertakings in the provision of services to disabled end-users. A designated undertaking shall publish and make available to the Authority information concerning its performance in relation to the parameters.

(3) The Authority may, in addition, specify the regularity, content, form and manner of information to be published pursuant to this regulation for the purpose of ensuring that end-users and consumers have access to comprehensive, comparable and user-friendly information.

Cap. 418. (4) The Authority may set performance targets for undertakings with universal service obligations. In so doing the Authority shall have regard to any views expressed by interested parties in particular pursuant to the public consultation as set out in article 4A of the Malta Communications Authority Act.

(5) The Authority may arrange or require an undertaking to which this regulation refers to arrange an independent audit or review paid for by the undertaking concerned, of the performance data supplied by that undertaking to ensure the accuracy and compatibility of that data with universal service obligations.

Costing of universal service obligations.

30. (1) Where an undertaking designated as having an obligation under regulations 21 to 28 seeks to receive funding for the net costs of meeting the obligation concerned, it may submit to the Authority a written request for such funding.

(2) A request under subregulation (1) shall be accompanied by such supporting information as the Authority may consider necessary to enable it to make a determination under subregulation (3).

(3) The Authority shall, on the basis of information provided pursuant to subregulation (2), determine whether an obligation referred to in subregulation (1) may represent an unfair burden on the undertaking concerned.

(4) Where the Authority determines that an obligation referred to in subregulation (1) may represent an unfair burden it shall calculate the net costs of its provision, based on -

(a) the net costs, taking into account any market benefit which accrues to the undertaking, calculated in accordance with Part A of the Sixth Schedule; or

(b) where applicable, the net costs identified by a designation method in accordance with regulation 22(4).

(5) A designated undertaking referred to in subregulation (1) shall provide such information as is reasonably required by the Authority for the purposes of subregulation (4).

(6) Where the Authority determines that an obligation referred to in subregulation (1) may not represent an unfair burden, it shall notify the undertaking concerned of that determination, together with the reasons for the determination.

(7) The accuracy of the accounts and, or other information serving as the basis for the calculation of the net cost of universal service obligations under subregulation (4)(a) shall be audited or verified by the Authority or a body independent of the relevant parties, after such body has been approved by the Authority. The results of the cost calculation and the conclusions of the audit shall be publicly available.

Financing of universal service obligations.

31. (1) Where the Authority, on the basis of the net cost calculation referred to in regulation 30, finds that an undertaking is subject to an unfair burden, the Authority shall -

- (a) introduce a mechanism to compensate that undertaking for the determined net costs under transparent conditions from public funds; and, or
- (b) share the net cost of universal service obligations between providers of electronic communications networks and services:

Provided that a mechanism under paragraph (a) may only be established with the approval of the Minister granted with the concurrence of the Minister responsible for finance.

(2) Where the net cost is shared under subregulation (1)(b), the Authority or a body independent from the beneficiaries and under the supervision of the Authority, shall establish and administer a sharing mechanism.

(3) Only the net cost, as determined in accordance with regulation 30, of the obligations provided for in regulations 21 to 28, may be financed.

(4) A sharing mechanism established in accordance with this regulation shall respect the principles of transparency, least market distortion, non-discrimination and proportionality, in accordance with the principles of Part B of the Sixth Schedule. The Authority may decide not to require contributions from undertakings whose national turnover is less than such amount as may, from time to time, be specified by the Authority.

(5) Any charges related to the sharing of the cost of universal service obligations shall be unbundled and identified separately for each undertaking:

Provided that the Authority shall not impose any such charges on undertakings that are not providing services in Malta.

(6) The Authority shall notify each undertaking required to share the cost of a universal service obligation of its obligation to contribute to such cost, including the amount, manner and timing of payments to be made.

(7) An undertaking which has been notified of its obligation to contribute an amount specified by the Authority, shall pay that amount in the time and manner specified by the Authority.

32. (1) Where a mechanism for sharing the net cost of universal service obligations as referred to in regulation 31 is established, the Authority shall ensure that the principles for cost sharing, and details of the mechanism used, are publicly available. Transparency.

(2) Subject to the relevant European Union and national laws regulating commercial confidentiality, the Authority shall ensure that an annual report is published giving the calculated net cost of universal service obligations, identifying the contributions made by the undertakings involved, and identifying any market benefits that may have accrued to the undertakings designated to provide universal service, where a fund is actually in place and working.

33. The Authority may decide to make additional services, apart from services within the universal service obligations as Additional mandatory services.

defined in this Part, publicly available in Malta but, in such circumstances, no compensation mechanism involving specific undertakings may be imposed.

Notification of designated undertakings.

34. The Authority shall notify to the European Commission at least:

- (a) the names of undertakings designated as having universal service obligations under regulation 22;
- (b) the universal service obligations imposed upon undertakings designated as having universal service obligations; and
- (c) any changes in the names and, or obligations notified pursuant to subregulations (1) and (2).

PART VI

End-user interests and rights

Contracts.
Amended by:
L.N. 485 of 2011;
L.N. 298 of 2014.

35. (1) In accordance with the provisions of article 23 of the Act an undertaking providing connection to a public communications network and, or publicly available electronic communications services shall provide its subscribers with a contract that shall specify in a clear and comprehensive manner at least:

- (a) the identity, address and other relevant contact details of the undertaking;
- (b) details of the services provided, including in particular:
 - (i) whether or not access to emergency services and provision of caller location information is being provided, any limitations on the provision of emergency services under regulation 43 and the means to address such limitations;
 - (ii) information on any other conditions limiting access to and, or use of services and applications, including technical constraints, time and geographical limitations and any other limitations resulting from content rights;
 - (iii) information on instances and conditions requiring or resulting in suspension and, or termination of the service by a unilateral decision of the undertaking, the method of notification of such suspension and, or termination, maximum time period for reconnection and any refund arrangements where applicable;
 - (iv) the service quality levels offered, including, as a minimum unless determined otherwise by the Authority, the:
 - (1) maximum time for the initial connection

- and disconnection;
- (2) maximum repair time for faults or other service faults, except in the event of catastrophic network breakdown or in cases of *force majeure*;
- (3) maximum response time for customer complaints and information requests;
- (4) minimum service availability;
- (5) minimum access speeds in case of Internet service, ensuring that these do not differ significantly from the marketed upper levels; and where appropriate, other quality of service parameters as defined by the Authority.
- (v) information on any procedures put in place by the undertaking to measure and shape traffic so as to avoid filling or overfilling a network link and on how those procedures could impact service quality;
- (vi) the types of maintenance service offered and customer support services provided, as well as their hours of operation and the means of contacting these services;
- (vii) any restrictions imposed by the provider on the use of terminal equipment supplied.
- (c) the option for the subscriber to include his personal data in a directory and have such data made available to providers of directory enquiry services when requested, the data concerned, and how to verify, correct or withdraw such data free of charge in accordance with the applicable data protection laws;
- (d) details of prices, tariffs and other applicable charges, including *inter alia*, access and usage charges, installation, reconnection and maintenance charges, and any penalties for damaged or unreturned terminal equipment supplied, and the means by which further information on all prices and tariffs however so described may be obtained;
- (e) the right of the subscribers to request a basic level of itemised bill free of charge through their preferred medium, in accordance with regulation 38;
- (f) in case of internet service including the provision of e-mail service, the right of the subscriber to request e-mail forwarding upon termination of the service, in accordance with regulation 48;
- (g) details of payment methods offered and any differences in costs due to payment method, as well as any measures that may be taken by the undertaking in the case of non-payment of bills;
- (h) the duration of the contract and the manner and

conditions for renewal and termination of services and of the contract, including:

- (i) any minimum usage required to benefit from promotional terms;
 - (ii) any charges related to portability of numbers and other identifiers;
 - (iii) any minimum period of notice to be given by either party to the contract to terminate the contract; and
 - (iv) any charges due on termination of the contract, including any cost recovery with respect to terminal equipment;
- (i) the right of the subscribers to be notified in writing at least thirty (30) days prior to the implementation of any modifications to the contractual terms and conditions, and their right to withdraw from their contract without penalty if they do not accept the proposed modifications, in accordance with article 23 of the Act;
- (j) appropriate compensation and refund arrangements if contracted service quality levels or terms and conditions are not met;
- (k) any other legal consequences which apply upon breach of contract by either party;
- (l) the method of initiating procedures for settlement of disputes with the undertakings and, where necessary, with the Authority, in accordance with article 44 of the Malta Communications Authority Act;
- (m) the type of action that might be taken by the undertaking in reaction to security or integrity incidents or threats and vulnerabilities, including personal data breaches.

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(2) The Authority may also require that the contract includes any information relevant to the service provided, which may be provided by the relevant public authorities for this purpose, on the use of electronic communication networks and services to engage in unlawful activities or to disseminate harmful content and on the means of protection against risks to personal security, privacy and personal data, referred to in regulation 37(6).

(3) An undertaking providing connection to a public communications network and, or a publicly available electronic communications service to consumers shall ensure that all consumers so requesting may subscribe to such services.

(4) In addition to the above, an undertaking referred to in subregulation (1) shall:

- (a) draw up contracts in accordance with subregulation (1) in relation to every retail service provided;
- (b) make available upon request, the complete version of every contract in all retail outlets and on any related

website operated or controlled by the undertaking;

- (c) provide free of charge a copy of such contract in printed form to all subscribers on conclusion of the contract and to all users so requesting prior to the take-up of service;
- (d) not conclude contracts with consumers, that mandate an initial commitment period that exceeds twenty-four months, or with other users so requesting in accordance with subregulation (3); and
- (e) offer all users the possibility to subscribe to a contract with a maximum duration of twelve months, provided that the tariffs charged for service are reasonable when compared to those offered for the same service under longer contract terms.

36. (1) Notwithstanding any provisions of a contract entered into with an undertaking, subscribers shall have the right at any time, to terminate the said contract through simple means subject to any prior notice not exceeding one month and to any applicable termination charges, which charges shall be reasonable and justified:

Suspension,
termination and
renewal of service
and contract.
Amended by:
L.N. 485 of 2011;
L.N. 298 of 2014.

Provided that the Authority may require an undertaking to modify such means if the Authority considers that these means do not meet the requirements of this sub-regulation.

(2) An undertaking providing connection to a public communications network and, or publicly available electronic communications services shall ensure that any direct charges to subscribers requesting termination of contracts shall be justified and reasonable. Any unutilised advance payment or deposit on terminal equipment shall at no extra charge be promptly refunded to the subscriber upon termination:

Provided that no termination charges shall apply with respect to contracts that have been renewed after an initial contract period has expired.

(3) Without prejudice to any minimum contractual period, the Authority may specify further requirements to be complied with by undertakings referred to in subregulation (2) so as to ensure that conditions and procedures for contract termination, and any effects thereof, do not act as a disincentive against changing service provider.

(4) An undertaking referred to in subregulation (2) shall adopt proportionate and non-discriminatory measures regarding suspension and termination of the service by a unilateral decision of the undertaking as a result of any action or omission purportedly carried by the subscriber.

(5) Any measure taken in accordance with sub-regulation (4) shall ensure that:

- (a) appropriate notice in writing is given to subscribers of any consequent service suspension;
- (b) during the period of suspension, undertakings

providing an electronic communications service for originating national calls to a number or numbers in a national telephone numbering plan shall, subject to any decisions that the Authority may issue, ensure that such measures allow a period of limited service during which only calls that do not incur a charge to the subscriber are permitted, including incoming calls, calls to "112" and other emergency call numbers, and calls to the customer service of the undertaking;

- (c) termination shall take place only after the aforesaid period of suspension has expired and appropriate notice in writing of any consequent termination of service has been given to subscribers;
- (d) these measures are to ensure, as far as is technically feasible, that any suspension or termination of the service is confined to the part of the service or subscription to which the action or omission leading to the suspension or termination relates;
- (e) the notice in writing referred to in paragraphs (c) and (d), shall specify as a minimum:
 - (i) the reasons for suspension and, or termination;
 - (ii) the notice period;
 - (iii) any available course of action which should be taken by the subscriber to avoid termination and to have the service restored; and
 - (iv) any charges due on termination.

(6) In cases of fraud, wilful damage to the network, illegal use of service or persistent late payment or persistent non-payment, the provisions of sub-regulation (5) shall not apply:

Provided that in the case of persistent late payment or of persistent non-payment the undertaking shall, at least three working days before suspending or terminating the service, in writing notify the subscriber that the service shall be suspended or terminated, giving the reasons therefor.

Transparency and
publication of
information.
Amended by:
L.N. 485 of 2011.

37. (1) An undertaking providing connection to a public electronic communications network and, or publicly available electronic communications services shall, as a minimum, publish in a transparent, comparable, adequate and up-to-date manner:

- (a) all the information specified in regulation 35(1);
 - (b) the information specified in accordance with regulation 39(1), if so mandated by the Authority;
 - (c) any information about rights as regards universal service mentioned in the Fourth Schedule, where applicable; and
 - (d) the option of the user to subscribe to a contract with a maximum duration of twelve months, in accordance with regulation 35(4)(e).
- (2) Without prejudice to any decisions that the Authority may

take in this regard, the information referred to in subregulation (1) shall be conveyed in a clear and comprehensive manner to end-users, at least:

- (a) in writing at all retail outlets such that upon request it is readily available for inspection free of charge by the general public during normal business hours; and
- (b) on any website operated or controlled by the undertaking, preferably through the same page where the service is publicised or through a link set for this purpose, in a form and manner allowing the easy identification thereof.

(3) The Authority may specify additional requirements regarding the form and manner in which the information referred to in subregulation (1) is to be published and, or made available in accordance with subregulation (2).

(4) In addition to the obligations under subregulations (1) to (3), the Authority may require undertakings providing public electronic communications networks and, or publicly available electronic communications services *inter alia* to:

- (a) provide applicable tariff information to end-users regarding any number or service subject to particular pricing conditions:
Provided that with respect to individual categories of services, the Authority may require such information to be provided immediately prior to connecting the call;
- (b) inform subscribers of any change to access to emergency services or caller location information in the service to which they have subscribed;
- (c) inform subscribers of any change to conditions limiting access to and, or use of services and applications;
- (d) provide information on any procedures put in place by the provider to measure and shape traffic so as to avoid filling or overfilling a network link, and on how those procedures could impact on service quality;
- (e) inform subscribers of their right to determine whether or not to include their personal data in a directory and of the types of data concerned in accordance with regulation 8 of the Processing of Personal Data (Electronic Communications) Regulations; and
- (f) regularly inform disabled subscribers of details of products and services designed for them:
Provided that if deemed appropriate, the Authority may promote self or co-regulatory measures prior to imposing any obligation.

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(5) The Authority shall encourage the provision of clear, accurate, comparable and up-to-date information to enable end-users, as far as appropriate, to make an independent evaluation of

the cost of alternative usage patterns, by means of, for instance, interactive guides or similar techniques:

Provided that where such facilities are not available on the market free of charge or at a reasonable price, the Authority shall make such guides or techniques available itself or through third party procurement:

Provided further that third parties shall have a right to use, free of charge, the information published by undertakings providing electronic communications networks and, or publicly available electronic communications services, for the purpose of selling or making available such interactive guides or similar techniques.

(6) The Authority may require undertakings providing public electronic communications network and, or publicly available electronic communications services to distribute public interest information free of charge to existing and new subscribers, where appropriate, by the same means as those ordinarily used by them in their communications with subscribers. In such a case, that information shall be provided by the relevant public authorities in a standardised format approved by the Authority, and shall, *inter alia*, cover:

- (a) the most common uses of electronic communications services to engage in unlawful activities or to disseminate harmful content, particularly where it may prejudice respect for the rights and freedoms of others, including infringements of copyright and related rights, and their legal consequences; and
- (b) the means of protection against risks to personal security, privacy and personal data when using electronic communications services.

Bills.
Amended by:
L.N. 485 of 2011.

38. (1) An undertaking providing connection to a public communications network and, or publicly available electronic communications services, shall not issue any bill to a subscriber unless every amount stated in that bill represents and does not exceed the true extent of any such service actually provided to the subscriber in question.

(2) An undertaking shall retain such records as may be necessary, or as may from time to time be specified by the Authority, for the purpose of establishing compliance with subregulation (1).

(3) The Authority may arrange, or require an undertaking to which this regulation refers to arrange an independent audit or review to ensure compliance with sub-regulation (1):

Provided that the Authority shall, before proceeding to arrange or require such audit, notify the undertaking concerned, warning it of the measure that may be taken and the specific reasons therefor, requiring the undertaking to make its submissions within a period not less than fifteen days:

Provided further that the audit shall be paid by the

undertaking concerned only in cases where the results express a negative opinion on the billing system.

(4) Without prejudice to the right of subscribers to receive non-itemised bills, an undertaking referred to in subregulation (1) shall, on request, and free of charge, provide post-paid subscribers with a basic level of itemised billing.

(5) In addition to its powers under regulation 28, the Authority may, subject to the requirements of relevant legislation on the protection of personal data and privacy, issue rules regarding billing to be complied with by undertakings providing connection to a public communications network and, or publicly available electronic communications services in order to ensure that subscribers can:

- (a) easily verify and control any charges incurred; and
- (b) adequately monitor their usage and expenditure and thereby exercise a reasonable degree of control over their bills.

(6) In exercising any function in respect of this regulation the Authority shall have regard to the need to reconcile the rights of subscribers receiving itemised bills with the right of privacy of calling users and called subscribers.

39. (1) The Authority may, after taking account of the views of interested parties, require undertakings that provide connection to a public communications network and, or publicly available electronic communications services, to publish comparable, adequate and up-to-date information for end-users on the quality of their services and on measures taken to ensure equivalence in access for disabled end-users:

Quality of service.

Provided that such information shall, on request, also be supplied to the Authority in advance of its publication.

(2) The Authority may specify, *inter alia*, the quality of service parameters to be measured, and the content, form, timing and manner of information to be published, including possible quality certification mechanisms, in order to ensure that end-users, including disabled end-users, have access to clear, comprehensive, comparable, reliable, up-to-date and user-friendly information:

Provided that where appropriate the parameters, definitions and measurement methods given in the Fifth Schedule may be used.

(3) The Authority may set minimum quality of service requirements on an undertaking or undertakings providing public communications networks in order to, *inter alia*, prevent the degradation of service and the hindering or slowing down of traffic over networks:

Provided that the Authority shall:

- (a) provide the European Commission, in good time before setting any such requirements, with a summary of the grounds for action, the envisaged requirements

and the proposed course of action. This information shall also be made available to BEREC; and

- (b) take the utmost account of the comments or recommendations of the European Commission when deciding on the requirements.

(4) The Authority may request undertakings to prepare a code of practice that includes the minimum standards of service provided to end-users and gives guidance to the employees or representatives however so described of such undertakings in their dealings with end-users.

Compensation and refund arrangements.

40. (1) An undertaking providing connection to a public communications network and, or publicly available electronic communications services shall establish and operate appropriate and reasonable compensation and, or refund schemes to allow for reimbursement of payments and compensation for losses incurred where contracted service quality levels or terms and conditions are not met by the undertaking for reasons that are not attributable to the subscriber:

Provided that such compensation and, or refund arrangements shall not apply in cases of *force majeure*.

(2) If deemed necessary, the Authority may, having regard to the nature of services and complaints, establish minimum criteria for compensation schemes to be complied with by undertakings.

Ensuring equivalence in access and choice for disabled end-users.

41. (1) An undertaking providing publicly available electronic communications services shall take all necessary measures to ensure that disabled end-users have access to electronic communications services equivalent to that enjoyed by the majority of end-users.

(2) The Authority may specify, where appropriate, requirements to be met by undertakings providing publicly available electronic communications services to ensure that:

- (a) the requirements specified in subregulation (1) are met; and
- (b) disabled end-users can benefit from the choice of undertakings and services available to the majority of end-users.

(3) In order to be able to adopt and implement specific arrangements for disabled end-users, the Authority shall encourage the availability and affordability of terminal equipment offering the necessary services and functions.

Telephone directory enquiry services and directories.

42. (1) An undertaking providing a publicly available telephone service shall ensure that subscribers may without charge, and subject to their prior approval:

- (a) have an entry in a directory provided in accordance with regulation 24 and verify, correct and withdraw their data, upon request; and
- (b) have their information made available to providers of

directory enquiry services and, or directories in accordance with subregulation (2).

(2) An undertaking which assigns telephone numbers to subscribers shall meet all reasonable requests to make available, for the purposes of the provision of publicly available directory enquiry services and directories, the relevant information in an agreed format, in accordance with any decisions the Authority may issue in this regard, on terms which are fair, objective, cost oriented and non-discriminatory.

(3) An undertaking providing a publicly available telephone service shall ensure that all end-users can access directory enquiry services.

(4) The Authority may impose obligations and conditions on undertakings that control access to end-users for the provision of directory enquiry services in accordance with the provisions of regulation 9:

Provided that such obligations and conditions shall be objective, equitable, non-discriminatory and transparent.

(5) The Authority shall not maintain any regulatory restriction that prevents an end-user in a Member State from accessing directly the directory enquiry service in Malta by voice call or SMS, and shall take measures to ensure such access in accordance with regulation 45.

(6) This regulation applies subject to the requirements of European Union law and national legislation on the protection of personal data and privacy.

43. (1) An undertaking providing end-users with an electronic communications service for originating national calls to a number or numbers in a national telephone numbering plan, including public pay telephones, shall ensure that, in addition to any other national emergency call number that may be specified by the Authority, all end-users are able to call the emergency services free of charge, without the use of any means of payment, by using the single European emergency call number "112".

Emergency services and the single European emergency call number.

(2) An undertaking shall ensure that access for disabled end-users to emergency services is equivalent to that enjoyed by the majority of end-users:

Provided that measures taken to ensure that disabled end-users are able to access emergency services whilst travelling in Malta shall be based to the greatest extent possible on European standards or specifications published in accordance with the provisions of Article 17 of the Framework Directive:

Provided further that these standards and, or specifications shall not prevent the Authority from adopting additional requirements in order to pursue the objectives set out in this regulation.

(3) An undertaking concerned shall make caller location information available free of charge to the authority handling emergency calls as soon as the call reaches that authority. This

shall apply to all calls to the single European emergency call number "112" and any national emergency call number that may be specified by the Authority.

European telephone access codes.

44. (1) The Authority shall ensure that the "00" code is the standard international access code:

Provided that the Authority may establish special arrangements for making calls between Malta and other Member States:

Provider further that end-users in the locations concerned shall be fully informed of such arrangements.

(2) An undertaking providing publicly available telephone services allowing international calls shall handle all calls to and from the European Telephony Numbering Space (ETNS) at rates similar to those applied for calls to and from other Member States.

(3) The Authority may specify requirements to ensure compliance by undertakings with subregulation (2).

Access to numbers and services.

45. (1) The Authority may specify requirements for compliance by undertakings operating a public telephone network or providing publicly available telephone services for the purpose of ensuring that, where technically and economically feasible, and except where a called subscriber has chosen for commercial reasons to limit access by calling parties located in specific geographical areas, end-users are able to:

- (a) access and use services using non-geographic numbers within the European Union; and
- (b) access all numbers provided in the European Union, regardless of the technology and devices used by the operator, including those in the national telephone numbering plans of Member States, those from the ETNS and Universal International Freephone Numbers (UIFN).

(2) The Authority may require undertakings providing public communications networks and, or publicly available electronic communications services to block, on a case-by case basis, access to numbers or services where this is justified by reasons of fraud or misuse and to require that in such cases providers of electronic communications services withhold relevant interconnection or other service revenues.

Provision of additional facilities.

46. (1) Without prejudice to regulation 28(2) an undertaking providing publicly available telephone services and, or access to public communications networks shall make available to end-users all or part of the additional facilities listed in Part B of the Fourth Schedule, subject to technical feasibility and economic viability, as well as all or part of the additional facilities listed in Part A of the Fourth Schedule.

(2) The Authority may waive the obligations under subregulation (1) in all or part of Malta, if it considers, after taking into account the views of interested parties, that there is sufficient

access to these facilities.

47. (1) An undertaking shall ensure that all subscribers which were assigned numbers from the national telephone numbering plan may, upon request, retain their number or numbers independently of the undertaking providing the service:

Facilitating change of provider.

(a) in the case of geographic numbers at a specific location, and

(b) in the case of non-geographic numbers at any location:

Provided that the provisions of this subregulation shall not apply to the porting of numbers between networks providing services at a fixed location and mobile networks.

(2) The Authority may specify obligations for compliance by an undertaking to which subregulation (1) relates, for the purpose of ensuring that pricing between operators and, or service providers related to the provision of number portability is cost oriented, and that direct charges to subscribers, if any, do not act as a disincentive for subscribers against changing service provider.

(3) Obligations under subregulation (2) may include a requirement that there shall be no direct charges to subscribers for number portability:

Provided that where retail tariffs for porting of numbers are permitted, the Authority shall ensure that such tariffs may not be imposed in a manner that would distort competition and for this purpose may specify obligations to be complied with by an undertaking.

(4) Porting of numbers and their subsequent activation shall be carried out within the shortest possible time:

Provided that in any case, subscribers who have concluded an agreement to port a number to a new undertaking shall have that number activated within one working day.

(5) Without prejudice to subregulation (1), the Authority may establish the global process of porting of numbers, taking into account national provisions on contracts, technical feasibility and the need to maintain continuity of service to the subscriber:

Provided that in any event, loss of service during the process of porting shall not exceed one working day.

(6) The Authority may specify measures for compliance by undertakings for the purpose of ensuring that subscribers are protected throughout the switching process and are, *inter alia*, not switched to another provider against their will.

(7) Undertakings shall establish compensation mechanisms to be approved by the Authority, in accordance with any measures that the Authority may specify in this regard, in case of delay in porting or abuse of porting by them or on their behalf.

48. (1) For the purpose of this regulation:

(a) "original e-mail address" means an e-mail address provided as part of an Internet service being

E-mail forwarding.
Amended by:
L.N. 485 of 2011.

terminated by a subscriber; and

(b) "new e-mail address" means an e-mail address provided by the subscriber to the undertaking providing the original e-mail address.

(2) An undertaking providing Internet service which includes the provision of an e-mail service operated by that undertaking shall, upon request by a subscriber terminating his internet service, offer the following services, free of charge, for a minimum period specified by the Authority:

(a) the forwarding of any electronic mail received on the original e-mail address to the new e-mail address; and

(b) an automated reply to any electronic mail received on the original e-mail address with a message informing the sender of the forwarding service referred to in paragraph (a), and the new e-mail address, where the subscriber so requests.

(3) An undertaking referred to in subregulation (2), shall not allocate the original e-mail address to any other subscriber for a minimum period specified by the Authority, following termination of the internet service by the subscriber.

(4) An undertaking referred to in subregulation (2) shall in all circumstances inform subscribers of their right under this regulation prior to termination of an internet service.

"Must Carry" obligations.

49. (1) The Authority may impose reasonable "must carry" obligations for the transmission of specified radio and television broadcast channels and complementary services, particularly accessibility services to enable appropriate access for disabled end-users, on undertakings providing electronic communications networks used for the distribution of radio or television broadcasts channels to the public where a significant number of end-users of such networks use them as the principal means to receive radio and television broadcasts:

Provided that such obligations shall only be imposed where they are necessary to meet clearly defined general interest objectives and shall be proportionate and transparent.

(2) The Authority may determine, in a proportionate and transparent manner, the appropriate remuneration, if any, in respect of measures taken in accordance with subregulation (1):

Provided that in doing so the Authority shall ensure that in similar circumstances there is no discrimination in the treatment of undertakings providing electronic communications networks.

(3) The Authority shall review "must carry" obligations on a regular basis.

PART VII

Security of networks and services

Interpretation.

50. In this Part "international gateway operator" means an

undertaking providing or authorised to provide a public electronic communications network which includes an international connection.

51. (1) An undertaking providing publicly available electronic communications services over public communications networks, shall take all necessary measures to ensure the fullest possible availability of such service in the event of catastrophic network breakdown or in cases of *force majeure*.

Availability of services in the event of catastrophic network breakdown and, or force majeure.
Amended by:
L.N. 197 of 2020.

(2) An undertaking providing a publicly available telephone service shall take all necessary measures to ensure uninterrupted access to emergency services.

(3) The Authority shall have the power to specify obligations to be complied with by undertakings for the purpose of ensuring compliance with this regulation:

Provided that, in so doing the Authority shall also factor any particular characteristics, such as insularity, where the consequences of catastrophic events or of *force majeure* are likely to cause severe and, or prolonged service deterioration or disruption:

Provided further that, the Authority shall, after considering the nature and extent of the services provided and any attendant relevant circumstances, require undertakings, in line with the principles of reasonableness and proportionality, to adopt such resilient and secure solutions as the Authority shall consider appropriate, in such a manner that connectivity as specified in sub-regulation (1) shall be best ensured.

52. (1) An undertaking providing connection to a public communications network and, or publicly available electronic communications services shall take appropriate technical and organisational measures to appropriately manage the risks posed to, and safeguard, the security of the networks and services. In particular, measures shall be taken to prevent and minimise the impact of security incidents on users and interconnected networks.

Security and integrity of international gateways.
Amended by:
L.N. 485 of 2011.

(2) For the purposes of this regulation, measures shall only be taken to be appropriate if, having regard to -

- (a) the state of technological development, and
- (b) the cost of implementing the measures, they are proportionate to the risks against which they would afford safeguards.

(3) Without prejudice to Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regards to the processing of personal data and on the free movement of such data, the measures referred to in sub-regulations (1) and (2) shall at least:

- (a) ensure that personal data can be accessed only by authorised personnel for legally authorised purposes;
- (b) protect personal data stored or transmitted against accidental or unlawful destruction, accidental loss or alteration, and unauthorised or unlawful storage,

processing, access or disclosure; and

- (c) ensure the implementation of a security policy with respect to the processing of personal data:

Provided that the Authority may, in collaboration with the Information and Data Protection Commissioner, audit the measures taken by the undertakings referred to in subregulations (1) and (2) and issue recommendations about best practices concerning the level of security which such measures should achieve.

(4) An undertaking providing a public communications network shall take all appropriate steps to guarantee the integrity of its network, and thus ensure the continuity of supply of services provided over the network.

Security and integrity of networks and services.

53. (1) Without prejudice to any other obligations under this Part, an international gateway operator shall at all times:

- (a) adopt appropriate measures to safeguard the integrity and resiliency of the network elements utilised to provide international connectivity;
- (b) secure the availability of capacity, or have in place alternative measures, sufficient to ensure an adequate level of uninterrupted international connectivity.

(2) An international gateway operator shall not unreasonably refuse the provision of capacity to another international gateway operator for the purposes of meeting the obligations established by subregulation (1):

Provided that the Authority shall have the discretion to determine whether an international gateway operator acted unreasonably or otherwise by taking into account the specific circumstances relating to the request for the provision of capacity.

Powers of the Authority in relation to security and integrity of networks and services.

54. (1) The Authority may, from time to time, issue guidelines as it may consider necessary for the carrying into effect of this Part.

(2) Without prejudice to the generality of subregulation (1) the Authority may, in pursuance of its powers under this Part, oblige undertakings providing a public communications network and, or public communications services, and international gateway operators to:

- (a) establish the necessary contingency plans for the purpose of complying with the provisions of these regulations;
- (b) to periodically submit such contingency plans to the Authority;
- (c) provide information needed to assess the security and, or integrity of their services and networks, including documented security policies;
- (d) commission an independent audit, payable by the undertaking or international gateway operator in question, in order to assess:
- (i) the level of security, integrity and resiliency of

- any the public communications network and, or service, or of the network elements operated by an international gateway operator, and
- (ii) compliance with any guidelines or conditions that the Authority may establish in accordance with the provisions of this Part;
 - (e) publish information regarding the plans and measures that it has put in place in order to meet the obligations under this Part and to comply with any guidelines and, or conditions issued or specified in accordance with this subregulation.
- (3) The Authority may investigate cases of noncompliance and the effects thereof on the security and integrity of the networks.

55. Where, notwithstanding the taking of the measures required under this Part, there is a significant risk of a breach of the security or integrity of the services or network or of failure or serious degradation of international connectivity or of the services provided, the undertaking providing the network elements or service concerned shall, without undue delay, appropriately notify in writing the Authority and any users concerned, at least of -

Provision of information in cases of risk.

- (a) that risk;
- (b) any remedies appropriate to afford safeguards against that risk which the users themselves might take, where the risk lies outside the scope of the measures to be taken by the undertaking, and the costs involved in relation to such remedies; and
- (c) the contact points where more information can be obtained.

56. (1) In the event of:

- (a) a breach of security or loss of integrity that has had a significant impact on the operation of networks or services; or
- (b) failure or serious degradation of international connectivity,

Provision of information in cases of breach, failure or serious degradation.

the undertaking providing the network elements or service concerned shall, without undue delay, appropriately notify the Authority, unless otherwise specified by the Authority, with at least the nature of the breach of security or loss of integrity or serious degradation or failure, the related consequences, and the measures proposed or taken by the undertaking to remedy such breach, failure or serious degradation.

(2) Where appropriate, the Authority shall inform the national regulatory authorities in other Member States and the European Network and Information Security Agency (ENISA) of any event referred to in subregulation (1).

(3) Where the Authority determines that disclosure of the breach in any event referred to in subregulation (1) is in the public interest, it may then inform the public or require the undertaking

concerned to do so.

(4) The Authority shall, on an annual basis, submit a summary report to the European Commission and ENISA on the notifications received and the action taken in accordance with this regulation.

PART VIII

Protection of Privacy

Interpretation.
Amended by:
L.N.28 of 2019.
Cap. 586 and the
General Data
Protection
Regulation.

57. (1) Unless otherwise stated in this Part, the definitions in the Data Protection Act and in the General Data Protection Regulation.

(2) In this Part unless the context otherwise requires:

"the Commissioner" means the the Information and Data Protection Commissioner;

"communication" means any information exchanged or transmitted between a finite number of parties by means of a publicly available electronic communications service. This does not include any information conveyed as part of a broadcasting service to the public over a public communications network except to the extent that the information can be related to the identifiable subscriber or user receiving the information;

"consent" means consent by a user or subscriber and corresponds to the consent given by a data subject in accordance with article 4 of the General Data Protection Regulation;

"emergency access numbers" means such numbers as are established in accordance with the Act or any regulations made thereunder to ensure the access of all users to emergency services; and "location data" means any data processed in a public communications network or by a public electronic communications service, indicating the geographic position of the terminal equipment of a user of a publicly available electronic communications service.

Obligation to inform.

58. An undertaking which provides publicly available electronic communications services shall inform subscribers and, if possible, users about the existence of any situations allowing the contents of communications to be unintentionally made known to persons who are not party to them.

Presentation and restriction of calling and connected line identification.

59. (1) Where presentation of calling-line identification is offered, the undertaking which provides publicly available electronic communications services shall ensure that:

- (a) the calling user shall have the possibility, using a simple means and free of charge, of preventing the presentation of the calling-line identification on a per call basis. The calling subscriber shall have this possibility on a per line basis;
- (b) the called subscriber shall have the possibility, using a simple means and free of charge for reasonable use of this function, of preventing the presentation of the calling line identification of incoming calls;

- (c) where the calling line identification is presented prior to the call being established, the undertaking which provides publicly available electronic communications services shall ensure that the called subscriber shall have the possibility, using a simple means, of rejecting incoming calls where the presentation of the calling line identification has been prevented by the calling user or subscriber.

(2) Where presentation of connected line identification is offered, the undertaking which provides publicly available electronic communications services shall ensure that the called subscriber shall have the possibility, using a simple means and free of charge, of preventing the presentation of the connected line identification to the calling user.

(3) The provisions of subregulation (1)(a) shall also apply with regard to calls to other countries, whereas the provisions of subregulations (1)(b),(c) and (2) shall apply to incoming calls originating in other countries.

(4) Where the presentation of calling or connected line identification is available, the undertaking which provides publicly available electronic communications services or the undertaking which provides a public communications network shall inform subscribers and users of the existence of such services as well as of the possibilities referred in subregulations (1) and (2).

(5) Subregulations (1) and (3) shall not apply when a law specifically provides for measures to restrict the scope of such rights and obligations where such restrictions constitute a necessary, appropriate and proportionate measure required in the interest of:

- (a) national security;
- (b) defence;
- (c) public security;
- (d) the prevention, investigation, detection and prosecution of criminal or administrative offences, or of breach of ethics for regulated professions;
- (e) an important economic or financial interest including monetary, budgetary and taxation matters;
- (f) a monitoring, inspection or regulatory function connected, even occasionally, with the exercise of official authority referred to in paragraphs (c), (d) and (e); or
- (g) the protection of the subscriber or user or of the rights and freedoms of others.

60. (1) An undertaking which provides a public communications network and, or a publicly available electronic communications service shall override anything done to prevent the presentation of the identity of a calling line where: Exceptions.

- (a) a subscriber has requested the tracing of malicious or

nuisance calls received on his line, and

- (b) such an undertaking is satisfied that such action is necessary and expedient for the purposes of tracing such calls:

Provided that the data containing the identification of the calling subscriber shall be stored and made available by the aforesaid undertaking to the competent authority in accordance with the relevant legislation:

Provided further that the aforesaid undertaking shall abide with any decision that the Authority may from time to time issue where the Authority considers that the aforesaid undertaking has not taken adequate measures in accordance with the requirements of this regulation.

(2) The overriding of the elimination of the presentation of the calling line identification in accordance with subregulation (1) may only be provided for the duration of the period during which the malicious or nuisance calls take place.

(3) A request under this regulation shall be made in writing and shall include such information as may be necessary for the processing of the request. In cases of urgency a verbal request may be made provided a written request is sent within twenty-four hours of the request made verbally.

(4) An undertaking which provides publicly available electronic communications services shall override the elimination of the presentation of calling line identification and the temporary denial or absence of consent of a subscriber or user for the processing of location data, on a per line basis, for calls made to emergency access numbers for the purpose of responding to such calls.

Termination of
unwanted
automatic call
forwarding.

61. (1) An undertaking which provides a public communications network and, or publicly available electronic communications services shall ensure that any subscriber has the possibility, using a simple means and free of charge, of stopping automatic call forwarding by a third party to the terminal of that subscriber's without delay.

(2) For the purpose of this regulation, the undertaking providing publicly available electronic communications services to the third party referred to in subregulation (1) shall comply with any reasonable requests made by the undertaking referred to in subregulation (1).

Application.

62. Regulations 59, 60 and 61 shall apply to subscriber lines connected to digital exchanges, and where technically possible and if it does not require a disproportionate economic effort, to subscriber lines connected to analogue exchanges.

63. (1) A person who suffers any loss or damage because of any contravention of any regulations under this Part by any other person shall be entitled to take action before the competent court or tribunal however so described seeking compensation from that other person for that loss or damage.

Compensation for loss or damages resulting from failure to comply with these regulations.
*Amended by:
L.N.28 of 2019.*

(2) An action under this regulation shall be commenced within a period of one year from the date when the aggrieved person becomes aware or ought to have reasonably become aware, of such a contravention, whichever is the earlier.

Cap. 586.

64. (1) The Authority may request the advice of and where appropriate shall consult with the Commissioner in the exercise of any of its functions under this Part.

Advice and request that the Authority exercises its enforcement functions.

(2) Where it is alleged or proven that any of the provisions under this Part have been contravened, the Commissioner or any aggrieved person may request the Authority to investigate and, or exercise its enforcement functions as it may deem necessary in respect of that contravention:

Provided that nothing in this regulation shall be interpreted as a limitation on the discretionary powers of the Authority.

PART IX

General authorisation for the provision of networks and services

65. (1) In accordance with the provisions of the Act and of these regulations a general authorisation is required for the provision of electronic communications networks and, or services.

Establishment of general authorisations.

(2) General authorisations established under these regulations shall cover the following:

- (a) the establishment and operation of a public communications network;
- (b) publicly available telephone services;
- (c) the provision of television and radio distribution services;
- (d) the provision of other publicly available electronic communications services;
- (e) the provision of non-public electronic communications services;
- (f) publicly available telephone directories and directory enquiry services; and
- (g) private electronic communications networks and, or services.

(3) General authorisations shall cover the provision of electronic communications networks and, or services either nationwide or in respect of any particular geographical area.

Notification of
general
authorisations.

66. (1) In accordance with the Act, any person who intends to provide an electronic communications network and, or an electronic communications service shall, before doing so, notify in writing the Authority of his intention to provide such a network or service.

(2) A notification under subregulation (1) shall be in such form as the Authority may from time to time determine and shall contain the following:

- (a) the name of the person concerned including, in the case of a body corporate, the company registration number,
- (b) the names, addresses and contact details of relevant contact persons, including the commercial, technical and legal contact person,
- (c) the business address of the person concerned and, in the case of a body corporate, where that address differs from the address of its registered office, the address of its registered office,
- (d) a description providing information on the network or service to be provided, specifying also the network and, or service in accordance with regulation 65(2),
- (e) the estimated date of commencement for the relevant activity,
- (f) the geographical area intended to be covered by the network or service in question, and
- (g) a declaration of compliance with the relevant conditions as prescribed by or under these regulations.

(3) Upon receipt by the Authority of a notification pursuant to subregulation (1), the person concerned is deemed to be authorised to provide an electronic communications network or service or, as appropriate both, subject to such conditions as may be specified under regulation 70.

(4) An authorised undertaking shall notify in writing the Authority of any changes to the information supplied under subregulation (2)(a) to (c) within fourteen days of such change and in relation to the matters referred to in subregulation (2) (d) to (f) within fourteen days prior to the commencement of the relevant activity.

(5) The Authority may make a determination specifying an electronic communications network or service of a particular category as being a network or service in relation to which an undertaking is not subject to the requirements of subregulation (1). Any such undertaking is deemed to be authorised under these regulations.

(6) An authorised undertaking shall notify in writing the Authority immediately when it ceases to provide electronic communications networks and, or services under these regulations and shall remain responsible for the fulfilment of any obligations as a provider of such networks and, or services until such notification

is given.

67. (1) The Authority shall, within seven days of the receipt by it of a request from any authorised undertaking, issue to that undertaking, in such form as the Authority may from time to time determine, a standardised declaration -

Declarations to facilitate the exercise of rights to install facilities and rights of interconnection.

- (a) confirming, where applicable, that the undertaking has submitted a notification pursuant to regulation 66; and
- (b) detailing under what circumstances any undertaking has the right to:
 - (i) apply for rights to install facilities,
 - (ii) negotiate interconnection and, or
 - (iii) obtain access or interconnection, in order to facilitate the exercise of those rights.

(2) Where the Authority considers it appropriate to do so, it may issue such declaration as an automatic reply upon receipt of a notification pursuant to regulation 66.

68. (1) The Authority shall establish and maintain a register of those undertakings that have notified the Authority of an intention to provide a network or service pursuant to regulation 66 and such information contained in any such notification as the Authority considers appropriate, other than information which the Authority reasonably considers confidential, shall be entered in the register established and maintained under this subregulation.

Register of authorised undertakings.

(2) The Authority may, as necessary, amend or delete an entry in the register.

(3) Members of the public may inspect the register free of charge at all reasonable times and may, at a reasonable charge to be determined by the Authority, make copies of, or take extracts from, entries in the register.

69. (1) An authorised undertaking shall have the right to -

- (a) provide the electronic communications networks or services as described in a notification made in accordance with regulation 66;
- (b) where applicable have their application for the necessary rights of use of radio frequencies and, or numbers considered in accordance with the Act;
- (c) where applicable have their application for the necessary rights to install facilities considered in accordance with the relevant legislation.

Rights of an undertaking under a general authorisation.

(2) Where an authorised undertaking is providing an electronic communications service and, or network to the public, it has the right:

- (a) under the conditions of and in accordance with Part IV, to negotiate interconnection with and where applicable obtain access to or interconnection from another undertaking deemed to be authorised in Malta or in

another Member State, to provide an electronic communications service and, or network available to the public, and

- (b) to be given an opportunity by the Authority to be designated under regulation 22 to carry out obligations referred to in that regulation.

Conditions attached to general authorisation.

70. (1) The conditions applicable to general authorisations shall be those as stated in the Ninth Schedule:

Provided that the Authority may with the approval of the Minister in accordance with the provisions of article 19 of the Act, amend the Ninth Schedule. In doing so the Authority shall not impose any conditions not listed under Part A of the Seventh Schedule:

Provided further that the Authority may establish that certain conditions may not apply to such categories of undertakings as may be specified by the Authority.

(2) Any conditions attached to a general authorisation, or non-application of conditions to such categories of undertakings as may be specified under subregulation (1), shall be objectively justified in relation to the electronic communications network or service concerned, non-discriminatory, proportionate and transparent.

(3) An authorised undertaking shall comply with the conditions attached to the general authorisation applicable to it.

(4) The Authority shall not attach as a condition to a general authorization, any specific obligations that it may impose on an undertaking nor any conditions which are applicable to undertakings by virtue of any other law.

(5) The Authority shall not duplicate the conditions of a general authorisation where they grant the right of use for radio frequencies or numbers.

(6) Authorised undertakings shall pay to the Authority such administrative charges as are established under Part A of the Eighth Schedule:

Provided that in all cases, any such charges shall be established in accordance with article 18 of the Act.

Non-compliance with conditions of general authorisation.

Cap. 418.

71. If the Authority considers that an undertaking which enjoys a general authorisation is not complying with one or more conditions of a general authorisation, the Authority may in accordance with the appropriate provisions under Part VII of the Malta Communications Authority Act, take such measures as it considers appropriate, including interim measures, to ensure compliance.

Added by:
L.N. 485 of 2011.

PART X

Trading Rules for Radio Spectrum Licences

Interpretation.
Added by:
L.N. 485 of 2011.

71A. In this Part unless indicated otherwise:

"licence" means a licence for the individual rights of use of radio

frequencies;

"licensee" means the undertaking requesting to make a transfer or lease of a licence.

71B. (1) Subject to the provisions of regulation 71D, the transfer by a licensee of the applicable rights and conditions of a licence is authorised, provided that once the transfer is made, such rights and conditions as relate to all or part of the range of radio frequencies being transferred, become the rights and conditions applicable to the transferee to the exclusion of the licensee making the transfer.

Transfer of applicable rights and conditions of a licence.
Added by:
L.N. 485 of 2011.

(2) Sub-regulation (1) shall apply only to those licences in the radio frequency bands identified in the frequency plan as being transferable.

71C. (1) Subject to the provisions of regulation 71D, the lease by a licensee of the applicable rights and conditions of a licence is authorised, provided the requirements in sub-regulation (2) are met, which requirements are applicable for the period during which the applicable rights and conditions are leased.

Lease of applicable rights and conditions of a licence.
Added by:
L.N. 485 of 2011.

(2) Once the lease comes into effect the applicable rights under a licence which relate to all or part of the range of radio frequencies become the rights of the lessee:

Provided that for the part of the range of radio frequencies being leased:

- (a) the applicable conditions 1, 5, 6 and 7 specified in Part B of the Seventh Schedule continue to apply to the licensee;
- (b) the applicable conditions 2, 3 and 8 specified in Part B of the Seventh Schedule apply to both the licensee and lessee;
- (c) the term of the lease cannot exceed beyond the term of the original licence; and
- (d) the rights transferred to the lessee for the duration of the lease automatically revert back to the licensee at the end of the term of the lease.

(3) Sub-regulation (1) shall apply only to those licences in the radio frequency bands which may be leased as identified in the frequency plan.

71D. A transfer or lease of applicable rights and conditions under a licence shall not be authorised, where:

- (a) no written document is available which confirms that the licensee and the transferee have consented to the transfer;
- (b) no written document is available which confirms that the licensee and the lessee have consented to the lease;
- (c) any sum payable in respect of that licence is owing to the Authority because it has not been paid by the time it became due;

Circumstances in which a transfer or lease is not authorised.
Added by:
L.N. 485 of 2011.

- (d) the Authority has served a notice under regulation 74 on the licensee of a proposal to revoke, suspend or vary that licence but that revocation, suspension or variation has not yet been made;
- (e) the licensee has requested the Authority to revoke or vary the licence conditions or has consented to a revocation or variation proposed by the Authority, but that revocation or variation has not yet been made; or
- (f) the Authority has not given its consent under regulation 71G to the requested transfer or lease.

Transfer and lease
procedure.
Added by:
L.N. 485 of 2011.

71E. (1) The licensee who wishes to make a transfer or lease of a licence shall in all cases make a written request to the Authority, providing a description of the type of transfer or lease and any other such information as the Authority may reasonably require in order to enable it to process the request:

Provided that where a transferee or lessee has been identified by a licensee, the licensee shall provide the Authority with the details of the proposed transferee or lessee.

(2) The Authority shall after receipt by it of a request made in accordance with subregulation (1), publish a notice on its website stating the name of the licensee and of the proposed transferee or lessee providing any such information as it may consider relevant about the requested transfer or lease.

(3) Interested persons shall be given thirty running days to express any interest and, or any objections to the requested transfer or lease.

(4) Where interest in the transfer or lease is expressed by two or more persons the licensee shall consider all offers following an open, transparent and non-discriminatory competitive process.

(5) Without prejudice to the provisions of subregulation (1), the licensee who wishes to make a transfer or lease shall provide the Authority with:

- (a) the reference of the licence under which the applicable rights and conditions are to be transferred or leased in whole or in part;
- (b) a description of which range of radio frequencies are to be transferred together with the applicable rights and conditions;
- (c) the name and address of the licensee and of the transferee or of the lessee;
- (d) a description of the type of transfer being requested;
- (e) a document signed by or on behalf of the licensee and by or on behalf of the transferee or lessee, under which each of those persons guarantees to the Authority that they have consented to the requested transfer or lease; and
- (f) any information as the Authority may reasonably require in order to determine whether or not it shall

consent to the transfer or lease.

(6) The Authority shall, after determining whether or not the requirements of subregulation (5) have been met, publish a notice on the website of the Authority stating:

- (a) the name of the licensee and of the proposed transferee or lessee to whom it is being proposed that the range of radio frequencies together with the applicable rights and conditions arising under the licence shall be transferred or leased;
- (b) the date when the Authority determined whether the requirements of subregulation (5) were met;
- (c) the licence under which the applicable rights and conditions are to be transferred or leased; and
- (d) the proposed range of radio frequencies being transferred and, in the case of a lease, the duration of the lease.

(7) After publishing a notice under subregulation (6) the Authority shall, within a maximum period of four months, decide if:

- (a) it consents to the transfer or lease in accordance with regulation 71G; and
- (b) it shall give any directives under regulation 71H.

(8) The Authority shall notify the persons who are party to the requested transfer or lease of any decision made by it in accordance with subregulation (7).

71F. (1) A transfer shall be made by the licensee by his surrendering the licence under which the applicable rights and conditions for the range of frequencies being transferred arise, and by the Authority granting a new licence to the transferee for the range of radio frequencies being transferred together with the applicable rights and corresponding conditions:

Making of a transfer or lease.
Added by:
L.N. 485 of 2011.

Provided that in the case where the licence is transferred in part only, a new licence shall be issued to the licensee for the range of radio frequencies retained by him together with the applicable rights and conditions:

Provided further that in the case of a lease, the lease shall be made following:

- (a) an amendment by the Authority of the licence granted to the licensee of the applicable rights and conditions for the remaining period of the said licence; and
- (b) the granting of a new licence to the lessee of the applicable rights and conditions for the duration of the lease.

(2) The Authority shall publish the information specified in regulation 71E(6) in relation to transfers and leases that have been made pursuant in accordance with this regulation.

Consent by the
Authority.
Added by:
L.N. 485 of 2011.

71G. (1) In determining whether or not to consent to a requested transfer or lease the Authority shall take into account whether -

- (a) the licensee is in breach of the terms of the licence under which the rights and conditions are to be transferred or leased;
- (b) the licensee, where applicable, has satisfied condition 1 specified in Part B of the Seventh Schedule;
- (c) in the case where the licensee retains a part of the range of radio frequencies, the licensee is able to meet the terms, provisions and limitation of the licence which is to be granted as a result of the transfer which may continue to include, where applicable, condition 1 as specified in Part B of the Seventh Schedule;
- (d) the transferee is able to meet the terms, provisions and limitations of the licence to be granted as a result of the transfer which may include, where applicable, condition 1 as specified in Part B of the Seventh Schedule;
- (e) where a lease is being made, the lessee is able to meet the terms, provisions and limitations of the licence to be granted as a result of the lease;
- (f) competition is likely to be distorted as a result of the transfer or lease; and
- (g) it is requisite or expedient to refuse consent to the transfer or lease:
 - (i) in the interests of national security; or
 - (ii) for the purposes of complying with any European Union obligations or with and international agreement or arrangements entered into by the Government of Malta, or by the need to ensure compliance with the Act or any other law, or to ensure efficient frequency planning, or to ensure consistency with established policies.

Directives by the
Authority.
Added by:
L.N. 485 of 2011.

71H. (1) If the Authority consents to a transfer or lease it may also issue a directive to the persons party to the transfer or lease that such transfer or lease shall only be put into effect in accordance with regulation 71F after compliance with any conditions which may relate to any matter provided for under regulation 71G.

(2) A transfer or lease shall not come into force in accordance with regulation 71F until there is compliance with the conditions set out in any directive as may be issued in accordance with this regulation.

Amended by:
L.N. 485 of 2011.

PART XI

Rights of use

Rights of use of
radio frequencies.

72. (1) In pursuance of the provisions of article 37 of the Act, the Authority shall:

- (a) advise the Minister with respect to the need or otherwise to make the use of radio frequencies subject to the grant of an individual right of use in order to:
 - (i) avoid harmful interference;
 - (ii) ensure technical quality of service;
 - (iii) safeguard efficient use of spectrum; or
 - (iv) fulfil other objectives of general interest as defined by Member States in conformity with European Union law.
- (b) advise the Minister as to any frequencies the use of which may be covered by a general authorisation, and any conditions for the use of such radio frequencies to be included under a general authorisation.

(2) The Authority shall establish open, objective, transparent, nondiscriminatory and proportionate procedures for the grant of rights of use of radio frequencies and shall make such procedures publicly available. Such procedures shall be without prejudice to:

- (a) the specific criteria and procedures for the grant of a licence in relation to apparatus for radiocommunications; and
- (b) the specific criteria and procedures adopted for the granting of rights of use of radio frequencies to providers of radio or television broadcast content services with a view to pursuing general interest objectives in conformity with European Union law.

(3) The Authority shall, subject to regulation 73(4), make any decision on the grant of a right of use as soon as possible after receipt by it of a complete application, in such form as it may, from time to time, determine, and in the case of radio frequencies that have been allocated for specific purposes within the national frequency plan, within no longer than six weeks after such receipt:

Provided that the time limit shall be without prejudice to any applicable international agreements relating to the use of radio frequencies or of orbital positions.

(4) The Authority shall communicate a decision referred to in subregulation (3) to an applicant for the grant of a right of use referred to in that subregulation as soon as possible after the decision is made and, subject to any conditions which the Authority considers appropriate in order to protect the confidentiality of any information which the Authority considers confidential, make public such decision as soon as possible thereafter.

(5) The Authority shall not limit the number of rights of use to be granted except where this is necessary to ensure the efficient use of radio frequencies in accordance with regulation 73.

73. (1) Where the Authority is considering whether to limit the number of rights of use to be granted for radio frequencies or whether to extend the duration of existing rights other than in accordance with the terms specified in such rights, it shall:

Procedure to limit the number of rights of use for radio frequencies.

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- (a) give due weight to the need to maximise benefits for users and to facilitate the development of competition;
- (b) give all interested parties, including users and consumers, the opportunity to express their views on any limitation in accordance with its obligations under article 4A of the Malta Communications Authority Act;
- (c) publish any decision to limit the granting of rights of use or the renewal of rights of use, stating the reasons therefor;
- (d) after having determined the procedure, invite applications for rights of use; and
- (e) review the limitation at reasonable intervals or at the reasonable request of affected undertakings.

(2) Where the Authority concludes that further rights of use for radio frequencies can be granted, it shall publish that conclusion and invite applications for such rights.

(3) Where the granting of rights of use for radio frequencies needs to be limited, the Authority shall grant such rights on the basis of selection criteria that are objective, transparent, non-discriminatory and proportionate:

Provided that any such selection criteria shall give due weight to the achievement of the objectives of article 4 of the Act and the requirements of Article 9 of the Framework Directive.

(4) Where competitive or comparative selection procedures are to be used, the Authority may extend the maximum period of six weeks referred to in regulation 72(3) for as long as necessary to ensure that such procedures are fair, reasonable, open and transparent to all interested parties, but in any case by no longer than eight months:

Provided that these time limits shall be without prejudice to any applicable international agreements relating to the use of radio frequencies and satellite coordination.

(5) This procedure shall be without prejudice to the transfer of rights of use for radio frequencies as may be authorised by law.

Revocation,
suspension or
change of right of
use of radio
frequencies.

74. The Authority may revoke, suspend or change the right of use of any radio frequency previously assigned to an undertaking and may also direct such undertaking to use a new radio frequency for the following reasons:

- (a) when such revocation, suspension or change is requested by the undertaking;
- (b) when international harmonisation necessitates such revocation, suspension or change;
- (c) in cases of serious and repeated breaches of the general authorisation conditions and, or of the conditions related to rights of use;
- (d) when necessary as part of a change to the national

radio frequency plan;

- (e) when necessary in order to ensure that competition is not distorted by any transfer or accumulation of rights of use of radio frequencies, in which cases it may also order the sale or the lease of rights to use radio frequencies:

Provided that the Authority shall give an appropriate period of notice to any party affected by such revocation, suspension or change in radio frequency use:

Provided further that prior to the revocation, suspension or change of right of use, or order to sell or lease rights to use radio frequencies, as a measure to ensure that competition is not distorted by any transfer or accumulation of rights of use of radio frequencies, the Authority shall publish for consultation its analysis of the impact on competition of the transfer or accumulation of rights of use, and its proposed measure.

75. (1) In the exercise of their functions under the Act, the Minister and the Authority shall promote the harmonisation of use of radio frequencies across the European Union, consistent with the need to ensure effective and efficient use thereof and in pursuit of other benefits such as economies of scale and interoperability of services. In so doing, they shall act in accordance with European Union law, relevant international agreements, including the ITU Radio Regulations, and shall take public policy considerations into account.

Harmonised
assignment of
radio frequencies.

(2) Where the usage of radio frequencies has been harmonised, access conditions and procedures have been agreed, and undertakings to which the radio frequencies shall be assigned have been selected in accordance with international agreements and European Union rules, the Authority shall grant the right of use for such radio frequencies in accordance therewith:

Provided that where all national conditions attached to the right to use the radio frequencies concerned have been satisfied in the case of a common selection procedure, the Authority shall not impose any further conditions, additional criteria or procedures which would restrict, alter or delay the correct implementation of the common assignment of such radio frequencies.

(3) The Minister and the Authority shall in their respective functions cooperate with other Member States and with the European Commission in the strategic planning, coordination and harmonisation of the use of radio spectrum in the European Union. To this end, they shall take into consideration *inter alia* the economic, safety, health, public interest, freedom of expression, cultural, scientific, social and technical aspects of European Union and national policies as well as the various interests of radio spectrum user communities with the aim of optimising the use of radio spectrum and avoiding harmful interference.

(4) Such cooperation shall promote the coordination of radio spectrum policy approaches in the European Union and, where appropriate, harmonised conditions with regard to the availability

and efficient use of radio spectrum necessary for the establishment and functioning of the internal market in electronic communications.

Conditions attached to the rights of use of radio frequencies.

76. (1) When granting rights of use for radio frequencies or making such use subject to a general authorization, the Authority shall specify conditions to be attached to such rights of use or authorisations of radio frequencies as listed in Part B of the Seventh Schedule.

(2) When granting rights of use for a limited period of time, the duration shall be appropriate for the service concerned taking due account of the need to allow for an appropriate period of investment amortization.

(3) The Authority may specify that certain conditions shall not apply to such categories of undertakings as may be specified by the Authority.

(4) Any conditions attached to rights of use of radio frequencies or non-application of conditions to such categories of undertakings as may be specified by the Authority under subregulations (1) and (2) shall be in accordance with Articles 9 and 9b of the Framework Directive, objectively justified in relation to the network or service concerned, non-discriminatory, proportionate and transparent and shall specify whether the right can be transferred at the initiative of the person enjoying the right of use and, if so, under which conditions.

(5) The Authority shall ensure that where a requirement is specified as a condition of a right of use for radio frequencies, such a requirement shall not be specified as a condition of the general authorisation.

(6) Where individual rights to use radio frequencies are granted for ten (10) years or more and such rights may not be transferred or leased between undertakings pursuant to article 45 of the Act, the Authority shall ensure that the criteria for granting individual rights of use apply and continue to be met for the duration of the licence, in particular upon a justified request of the holder of the right:

Provided that if the criteria are no longer applicable, the individual right of use shall be changed into a general authorisation for the use of radio frequencies, subject to prior notice and after a reasonable period, or shall be made transferable or subject to lease between undertakings in accordance with article 45 of the Act.

(7) Any person authorised to use radio frequencies shall pay to the Authority such fees for rights of use of radio frequencies as may be established under Part B of the Eighth Schedule:

Provided that in all cases, any such fees shall be established in accordance with article 18 of the Act.

Rights of use of numbers.

77. (1) The Authority may, on receipt of an application in such form as it may, from time to time, determine, grant a right of use of numbers to any undertaking or such other person as the

Authority considers appropriate.

(2) The Authority shall establish open, transparent and non-discriminatory procedures for the grant of rights of use of numbers and shall cause any such procedures to be made publicly available.

(3) The Authority shall make any decision on the grant of a right of use of numbers as soon as possible after receipt by it of the complete application and in the case of a number that has been allocated for a specific purpose within the national telephone numbering plan, within three (3) weeks after such receipt:

Provided that, where it has been decided after consultation in accordance with article 4A of the Malta Communications Authority Act that rights of use of numbers of exceptional economic value are to be granted through comparative or competitive selection procedures, the Authority may extend the said time limit by a further period of up to three weeks.

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(4) The Authority shall communicate a decision referred to in subregulation (3) to an applicant for a right of use referred to in that subregulation as soon as is reasonably practicable after the decision is given and, subject to any restrictions which the Authority considers appropriate in order to protect any information which the Authority considers confidential, make public such decision as soon as is reasonably practicable thereafter.

78. (1) The Authority shall specify conditions to be attached to a right of use of numbers as are listed in Part C of the Seventh Schedule. The Authority may decide that certain conditions may not apply to such categories of undertakings as may be determined by the Authority.

Conditions attached to the rights of use of numbers.

(2) Any attachment or non-application of conditions under subregulation (1) to a right of use of numbers shall be objectively justified in relation to the network or service concerned, non-discriminatory, proportionate and transparent.

(3) The Authority shall ensure that where a requirement is specified as a condition of a right of use of numbers such a requirement shall not be specified as a condition of the general authorisation.

(4) Authorised undertakings shall pay to the Authority such fees for rights of use of numbers as are established under Part C of the Eighth Schedule:

Provided that in all cases any such fees shall be established in accordance with article 18 of the Act.

79. The Authority may revoke, suspend or change number use, for the following reasons:

Number allocation.

- (a) when such revocation, suspension or change is requested by the undertaking;
- (b) when international harmonisation necessitates such revocation, suspension or change;
- (c) in cases of serious and repeated breaches of the general authorisation conditions and, or the conditions

related to rights of use;

- (d) when necessary as part of a change to the national telephone numbering plan:

Provided that the Authority shall give an appropriate period of notice to any party affected by such revocation, suspension or change in numbering use.

Amended by:
L.N. 485 of 2011.

PART XII

Publication and provision of information

Publication of
Information related
to general
authorisations and
rights of use.

80. (1) The Authority shall ensure that all relevant information on rights, conditions, procedures, charges, fees and decisions concerning general authorisations, rights of use and rights to install facilities is published and kept up to date in an appropriate manner so as to facilitate access to that information for all interested parties.

(2) Where information referred to in subregulation (1) is held by different public authorities or agencies, the Authority shall make all reasonable efforts, bearing in mind the costs involved, to create a user-friendly overview of all information, including information about other relevant authorities in particular to facilitate applications to install facilities.

Publication of, and
access to,
information related
to access and inter
connection.

81. (1) The Authority shall cause to be published, in any manner it considers appropriate, a notice of the imposition, amendment or revocation of obligations related to access and interconnection under these regulations and such notice shall include information on where copies of a statement of the obligations can be obtained.

(2) The Authority shall, in the notice referred to in subregulation (1), ensure that the specific product, service and geographical markets to which obligations relate are identified.

(3) The Authority shall, ensure that up-to-date information, provided that the information is not confidential and, in particular, does not comprise sensitive commercial information, is made publicly available in a manner that guarantees all interested parties easy access to that information.

(4) The Authority shall send to the European Commission a copy of any information published in accordance with this regulation.

Provision of
information to the
Authority.
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82. (1) Without prejudice to article 4(10) of the Malta Communications Authority Act, the Authority may in particular require:

- (a) undertakings with significant market power on wholesale markets to submit to it accounting data on the retail markets associated with those wholesale markets;
- (b) undertakings providing electronic communications networks or services covered by the general

authorisation or enjoying rights of use of radio frequencies or numbers to provide all information necessary to verify compliance with the conditions of the general authorisation or of rights of use or in relation to any other obligations imposed under the Act or these regulations.

(2) Without prejudice to subregulation (1) and any information and reporting obligations under any other laws, the Authority may only require undertakings to provide information under the general authorisation, for rights of use or in relation to any other obligations imposed under the Act or these regulations that is proportionate and objectively justified for:

- (a) systematic or case-by-case verification of compliance with conditions 1 and 2 of Part A, condition 6 of Part 1 and conditions 2 and 7 of Part C of the Seventh Schedule and of compliance with obligations as referred to in Part 1 of the Ninth Schedule;
- (b) case-by-case verification of compliance with conditions as set out in the general authorisation and, or rights of use where a complaint has been received or where the Authority has other reasons to believe that a condition is not complied with or in case of an investigation by the Authority on its own initiative;
- (c) procedures for and assessment of requests for granting rights of use;
- (d) publication of comparative overviews of quality and price of services for the benefit of consumers;
- (e) clearly defined statistical purposes;
- (f) market analysis made under these regulations;
- (g) safeguarding the efficient use and ensuring the effective management of radio frequencies;
- (h) evaluating future network or service developments that could have an impact on wholesale services made available to competitors:

Provided that the information referred to in paragraphs (a), (b), (d), (e), (f), (g) and (h) may not be required prior to or as a condition for market access.

(3) Where the Authority requires undertakings to provide information as referred to in subregulations (1) and (2), it shall, in accordance with article 4(11) of the Malta Communications Authority Act, inform them of the specific purpose for which this information is to be used.

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83. (1) In accordance with the provisions of the Act, the Authority shall upon receipt of a reasoned request from the European Commission, provide the European Commission with such information as is necessary for the European Commission to carry out its tasks under the Treaties establishing the European Union.

Provision of information to the European Commission.

(2) Where any information requested by the European

Commission refers to information previously provided to the Authority by undertakings, the Authority shall notify in writing the undertaking which provided that information, that the Authority has been requested to provide the information to the European Commission and that the European Commission is entitled to forward such information to national regulatory authorities in other Member States unless the Authority makes an explicit and reasoned request to the contrary:

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Provided that in the case of information expressed to be confidential by the undertaking which provided it, in accordance with article 4(12) of the Malta Communications Authority Act, the Authority shall delay the provision of the information to the European Commission to enable the undertaking which provided the information concerned to make written representations to the Authority within seven days from the date of receipt of the said notification from the Authority.

(3) The Authority may, taking into account any representations submitted to it under subregulation (2) but at its sole discretion, make an explicit and reasoned request to the European Commission not to make any information provided under subregulation (1) available to a national regulatory authority in another Member State.

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(4) The Authority may make information submitted to it pursuant to article 4(10) of the Malta Communications Authority Act available to a national regulatory authority in another Member State after a substantiated request, provided the Authority is satisfied that provision of such information is necessary to allow that national regulatory authority to fulfil its responsibilities under European Union law.

(5) Where the Authority considers that information to be made available under subregulation (4) is confidential, the Authority shall identify such information accordingly.

(6) Where the Authority receives information classified as confidential from the European Commission or from a national regulatory authority of another Member State pursuant to Article 5 of the Framework Directive and the Authority is satisfied that such information is so classified in accordance with rules of commercial confidentiality of the European Union or of the Member State from which the information originated, as the case may be, the Authority shall protect the confidentiality of such information in accordance with Maltese law.

*Amended by:
L.N. 485 of 2011.*

PART XIII

Miscellaneous

Interoperability of
consumer digital
television
equipment.

84. (1) A person who places on the market for sale, or rent, or otherwise makes available, consumer equipment intended for the reception of conventional digital television signals (namely broadcasting via terrestrial, cable or satellite transmission which is primarily intended for fixed reception, such as DVB-T, DVB-C or DVB-S), that is capable of descrambling digital television signals,

shall ensure that such equipment possesses the capability to -

- (a) allow the descrambling of such signals according to the common European scrambling algorithm as administered by recognised European standards organisations, currently ETSI; and
- (b) display signals that have been transmitted in clear mode, provided that, in the event that such equipment is rented, the person renting such equipment is in compliance with the relevant rental agreement.

(2) A person who places on the market for sale, or rent, or otherwise, an analogue television set with an integral viewing screen of visible diagonal greater than 42 centimetres, shall ensure that the set is fitted with at least one open interface socket (as standardised by a recognised European standards organisation) permitting simple connection of peripherals, especially additional decoders and digital receivers.

(3) A person who places on the market for sale or rent a digital television set with an integral screen of visible diagonal greater than 30 centimetres shall ensure that the set is fitted with at least one open interface socket (either standardised by, or conforming to standards adopted by, a recognised European standards organisation, or conforming to an industry-wide specification, for example the DVB common interface connector) permitting simple connection of peripherals, and able to pass all the elements of a digital television signal, including information relating to interactive and conditionally accessed services.

85. (1) The Authority shall, having regard to its objectives under article 4 of the Act and its functions under these regulations, encourage -

Interoperability of digital interactive television services.

- (a) providers of digital interactive television services for distribution to the public in the European Union on digital interactive television platforms, regardless of the transmission mode, to use an open application programme interface;
- (b) providers of all enhanced digital television equipment deployed for the reception of digital interactive television services on interactive digital television platforms to comply with an open application program interface in accordance with the minimum requirement of the relevant standards or specifications;
- (c) providers of digital television services and equipment to cooperate in the provision of interoperable TV services for disabled end-users.

(2) Without prejudice to regulation 9(1)(c), the Authority shall, having regard to its objectives under article 4 of the Act and its functions under these regulations, encourage proprietors of application programme interfaces to make available on fair, reasonable and non-discriminatory terms, and against appropriate remuneration, all such information as is necessary to enable

providers of digital interactive television services to provide all services supported by the application programme interface in a fully functional form.

Interoperability of
car radio receivers.
Added by:
L.N. 151 of 2020.

85A. (1) Any car radio receiver integrated in a new vehicle of category M which is made available on the market for sale or rent in Malta as from 21 December 2020 shall comprise a receiver capable of receiving and reproducing at least radio services provided by digital terrestrial radio broadcasting of type DAB+:

Provided that receivers which are in accordance with harmonised standards the references of which have been published in the Official Journal of the European Union or with parts thereof shall be considered to comply with that requirement covered by those standards or parts thereof.

(2) The Authority shall take such measures as it may consider appropriate in accordance with its powers at law to ensure conformity with the provisions of this regulation.

(3) The Authority may adopt measures to ensure the interoperability of other consumer radio receivers, while limiting the impact on the market for low-value radio broadcast receivers and ensuring that such measures are not applied to products where a radio receiver is purely ancillary, such as smart-phones, and to equipment used by radio amateurs.

Legal interception.

86. (1) The Authority shall define the technical and operational requirements necessary to enable legal interception of electronic communications by the competent authorities in accordance with any law allowing and regulating such legal interception:

Provided that in doing so the Authority shall give reasons for the technical and operational requirements it defines and shall seek to ensure that any expenses that undertakings may have to incur in order to meet any requirements it establishes are reasonable and justified.

(2) An undertaking shall, at its expense, comply with such requirements as may be defined by the Authority under subregulation (1):

Provided that the Authority may introduce a mechanism for the sharing of the cost of interception obligations where the Authority considers this to be appropriate.

(3) A cost sharing mechanism and any associated fund established under subregulation (2) may be administered directly by the Authority or a body independent from the contributors and beneficiaries, under the supervision of the Authority:

Provided that any cost sharing mechanism based on a fund shall respect the principles of transparency, non-discrimination and proportionality.

(4) Undertakings which are required to contribute to any fund established under subregulation (2) shall do so in accordance with

any cost sharing mechanism as may be established by the Authority.

87. (1) The Authority shall encourage the use of the non-compulsory standards and, or specifications referred to in Article 17(1) of the Framework Directive, for the provision of services, technical interfaces and, or network functions, to the extent strictly necessary to ensure interoperability of services and to improve freedom of choice for users.

Standardisation.

(2) In cases where standards and, or specifications have not been published in accordance with Article 17(1) of the Framework Directive, the Authority shall encourage the implementation of standards and, or specifications adopted by the European Standards Organisations.

(3) In the absence of standards and, or specifications adopted by the European Standards Organisations, the Authority shall encourage the implementation of international standards or recommendations adopted by the International Telecommunication Union (ITU), the European Conference of Postal and Telecommunications Administrations (CEPT), the International Organisation for Standardisation (ISO) or the International Electrotechnical Commission (IEC).

88. Any right of use of radio spectrum resulting from any licence issued under the Radiocommunications Act in connection with the operation of any electronic communications network regulated under the Act prior to the coming into force of the Electronic Communications Networks and Services (General) Regulations, 2004 as substituted by these regulations, shall for the purposes of the Act as from the date of the coming into force of the Electronic Communications Networks and Services (General) Regulations, 2004, as substituted by these regulations, be deemed to be a right granted under the Act subject to the same conditions as those under which it was granted under the Radiocommunications Act, and the provisions of the Act shall apply to the application and enforcement of the conditions of the said licence:

Rights of use of
radiospectrum
granted under the
Radiocommuni-
cations Act.
Cap. 49.
L.N. 412 of 2004.

Provided that the fees in respect of any said licence shall, as from the date of coming into force of the Electronic Communications Networks and Services (General) Regulations, 2004 as substituted by these regulations, be those established in the Eighth Schedule of these regulations and shall be enforceable under the Act:

Provided further that where the Eighth Schedule does not establish the fees payable for any licence as above mentioned the fees payable in respect of any such licence shall remain payable and enforceable in the same manner as they were prior to the coming into force of the Electronic Communications Networks and Services (General) Regulations, 2004 as substituted by these regulations.

Interpretation of regulations made under the Telecommunications (Regulation) Act, and still in force.
Act No. VII of 2004.

89. Those regulations made under the Telecommunications (Regulation) Act and which are still in force, shall be interpreted in accordance with the provisions of the Telecommunications (Regulation) Act as in force prior to the coming into force of the Communications Laws (Amendment) Act, 2004.

Compliance.

90. (1) The Authority shall be responsible to ensure compliance with the provisions of these regulations and may, for this purpose and for the carrying into effect of any provisions of these regulations, issue any decisions it may consider to be necessary in this regard.

(2) A person shall in all instances comply with any decision of the Authority issued under these regulations notwithstanding any dispute, appeal or any legal proceedings contemplated or commenced in relation to the said decision.

(3) A person who fails to comply with any decision issued by the Authority under these regulations shall be considered to have acted in breach of these regulations.

Interest in event of late payment of sums due.

91. Without prejudice to any enforcement action that the Authority is entitled to take in accordance with the Act and any other law it is entitled to enforce, if an undertaking fails to pay to the Authority any sum due by or under these regulations, interest at the rate of eight percent per annum shall accrue as from the date when any such sum falls due.

Sanctions.

Cap. 418.

92. Unless otherwise prescribed in these regulations, the Authority may, in accordance with the provisions of Part VII of the Malta Communications Authority Act, impose such sanctions, as it may consider appropriate in accordance with the aforesaid Act, upon any person who acts in breach of any provision of these regulations.

FIRST SCHEDULE

(Regulation 6)

Criteria to be used by the Authority in making an assessment of joint dominance in accordance with Regulation 6

Two or more undertakings can be found to be in a joint dominant position within the meaning of Regulation 6 if, even in the absence of structural or other links between them, they operate in a market which is characterised by a lack of effective competition and in which no single undertaking has significant market power. In accordance with the applicable European Union law and with the case law of the Court of Justice of the European Union on joint dominance, this is likely to be the case where the market is concentrated and exhibits a number of appropriate characteristics, of which the following may be the most relevant in the context of electronic communications:

- low elasticity of demand,
- similar market shares,
- high legal or economic barriers to entry,
- vertical integration with collective refusal to supply,
- lack of countervailing buying power,
- lack of potential competition,
- lack or reduced scope for price competition.

The above is an indicative list and is not exhaustive, nor are the criteria cumulative. Rather, the list is intended to illustrate only the type of evidence that could be used to support assertions concerning the existence of joint dominance.

SECOND SCHEDULE

Conditions for access to digital television and radio services broadcast to viewers and listeners in the European Union.

Regulations 9(1) (c), 10(1)

Part A: Conditions for conditional access systems to be applied in accordance with regulation 10(1)

In relation to conditional access to digital television and radio services broadcast to viewers and listeners in the European Union, irrespective of the means of transmission, the Authority shall, in conjunction with other competent authorities, ensure in accordance with Article 6 of the Access Directive that the following conditions apply:

1. conditional access systems operated on the market in the European Union are to have the necessary technical capability for cost-effective trans-control allowing the possibility for full control by network operators at local or regional level of the services using such conditional access systems;
2. all operators of conditional access services, irrespective of the means of transmission, who provide access services to digital television and radio services and whose access services broadcasters depend on to reach any group of potential viewers or listeners are to:
 - 2.1 offer to all broadcasters, on a fair, reasonable and non-discriminatory basis compatible with European Union competition law, technical services enabling the broadcasters' digitally-transmitted services to be received by viewers or listeners authorised by means of decoders administered by the service operators, and comply with European Union competition law,
 - 2.2 keep separate financial accounts regarding their activity as conditional access providers;
3. when granting licences to manufacturers of consumer equipment, holders of industrial property rights to conditional access products and systems are to ensure that this is done on fair, reasonable and non-discriminatory terms. Taking into account technical and commercial factors, holders of rights are not to subject the granting of licences to conditions prohibiting, deterring or discouraging the inclusion in the same product of:
 - 3.1 a common interface allowing connection with several other access systems, or
 - 3.2 means specific to another access system, provided that the licensee complies with the relevant and reasonable conditions ensuring, as far as he is concerned, the security of transactions of conditional access system operators.

Part B: Other facilities to which conditions may be applied under regulation 9(1)(c)

1. Access to application program interfaces (APIs);
2. Access to electronic programme guides (EPGs).

THIRD SCHEDULE

(Regulation 12)

Minimum list of items to be included in a reference offer for wholesale network infrastructure access, including shared or fully unbundled access to the local loop at a fixed location to be published by notified operators with significant market power.

For the purposes of this Schedule the following definitions apply:

- (a) "local sub-loop" means a partial local loop connecting the network termination point to a concentration point or a specified intermediate access point in the fixed public communications network;
- (b) "unbundled access to the local loop" means full unbundled access to the local loop and shared access to the local loop; it does not entail a change in ownership of the local loop;
- (c) "full unbundled access to the local loop" means the provision to a beneficiary of access to the local loop or local sub-loop of the operator with single market power allowing the use of the full capacity of the network infrastructure;
- (d) "shared access to the local loop" means the provision to a beneficiary of access to the local loop or local sub-loop of the operator with single market power, allowing the use of a specified part of the network infrastructure such as a part of the frequency or an equivalent.

A. Conditions for unbundled access to the local loop

1. Network elements to which access is offered covering in particular the following elements together with associated facilities:

- 1.1. unbundled access to local loops (full and shared);
- 1.2. unbundled access to local sub-loops (full and shared), including, when relevant, access to network elements which are not active for the purpose of roll-out of backhaul networks;
- 1.3. where relevant, duct access enabling the roll out of access networks.

2. Information concerning the locations of physical access sites including cabinets and distribution frames, availability of local loops, sub-loops and backhaul in specific parts of the access network and when relevant, information concerning the location of ducts and the availability within ducts.

3. Technical conditions related to access and use of local loops and sub-loops, including the technical characteristics of the twisted pair and, or optical fibre and, or equivalent, cable distributors, and associated facilities and, when relevant, technical conditions related to access to ducts

4. Ordering and provisioning procedures, usage restrictions.

B. Co-location services

1. Information on the operator with significant market power of relevant sites or equipment locations and the planned update thereof.

2. Co-location options at the sites indicated under point 1 (including physical co-location and, as appropriate, distant co-location and virtual co-location).

3. Equipment characteristics restrictions, if any, on equipment that can be co-located.

4. Security issues: measures put in place by notified operators to ensure the

security of their locations.

5. Access conditions for staff of competitive operators.
6. Safety standards.
7. Rules for the allocation of space where co-location space is limited.
8. Conditions for beneficiaries to inspect the locations at which physical co-location is available, or sites where co-location has been refused on grounds of lack of capacity.

C. Information systems

1. Conditions for access to notified operator's operational support systems, information systems or databases for pre-ordering, provisioning, ordering, maintenance and repair requests and billing.

D. Supply conditions

1. Lead time for responding to requests for supply of services and facilities; service level agreements, fault resolution, procedures to return to a normal level of service and quality of service parameters.
 2. Standard contract terms, including, where appropriate, compensation provided for failure to meet lead times.
 3. Prices or pricing formulae for each feature, function and facility listed above.
-

FOURTH SCHEDULE

(Regulations 28 and 46)

Description of facilities and services referred to in Regulations 28 (Control of Expenditure) and 46 (Additional Facilities).

Part A: Facilities and services referred to in Regulation 28

1. Itemised billing
 - 1.1. The Authority may, subject to the requirements of relevant legislation on the protection of personal data and privacy, lay down the basic level of itemised bills which are to be provided by undertakings to subscribers free of charge in order that they can:
 - 1.1.1. allow verification and control of the charges incurred in using the public telephone network at a fixed location and, or related publicly available telephone services, and
 - 1.1.2. adequately monitor their usage and expenditure and thereby exercise a reasonable degree of control over their bills.
 - 1.2. Where appropriate, additional levels of detail may be offered to subscribers at reasonable tariffs or at no charge as the Authority may approve.
 - 1.3. Calls which are free of charge to the calling subscriber, including calls to helplines, are not to be identified in the calling subscriber's itemised bill.
2. Selective barring for outgoing calls, or premium SMS or MMS, or where technically feasible, other kinds of similar applications, free of charge
 - 2.1. Namely, the facility whereby the subscriber can, on request to the designated undertaking that provides telephone services, bar outgoing calls or premium SMS or MMS or other kinds of similar applications of defined types of numbers free of charge.
3. Pre-payment systems.
 - 3.1. The Authority may require designated undertakings to provide the means for consumers to pay for access to the public communications network and use of publicly available telephone services on pre-paid terms.
4. Phased payment of connection fees
 - 4.1. The Authority may require designated undertakings to allow consumers to pay for connection to the public communications network on the basis of payments phased over time.
5. Non-payment of bills
 - 5.1. The Authority may authorise specified measures, which are proportionate, nondiscriminatory and published, to cover non-payment of telephone bills issued by undertakings in accordance with regulation 36(5). These measures are to ensure that due warning of any consequent service interruption or disconnection is given to the subscriber beforehand. Except in cases of fraud, persistent late payment or non-payment, these measures are to ensure, as far as is technically feasible, that any service interruption is confined to the service concerned. Disconnection for non-payment of bills should take place only after due warning is given to the subscriber. The undertaking shall, subject to

any decisions that the Authority may issue, ensure that such measures allow a period of limited service prior to complete disconnection, during which only calls that do not incur a charge to the subscriber (e.g. "112" calls) are permitted.

6. Tariff advice
 - 6.1. Namely, the facility whereby subscribers may request the undertaking to provide information regarding alternative lower-cost tariffs, if available.
7. Cost control
 - 7.1. Namely, the facility whereby undertakings offer other means, if determined to be appropriate by the Authority, to control the costs of publicly available telephone services, including free-of-charge alerts to consumers in case of abnormal or excessive consumption patterns.

Part B: Facilities referred to in regulation 46

1. Tone dialling or DTMF (dual-tone multi-frequency operation)
 - 1.1. Namely, the public communications network and, or publicly available telephone services supports the use of DTMF tones as defined in ETSI ETR 207 for end-to-end signalling throughout the network both within a Member State and between Member States.
 2. Calling-line identification
 - 2.1. namely, the calling party's number is presented to the called party prior to the call being established;
 - 2.2. this facility should be provided in accordance with relevant legislation on protection of personal data and privacy;
 - 2.3. to the extent technically feasible, operators should provide data and signals to facilitate the offering of calling-line identity and tone dialling across Member State boundaries.
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FIFTH SCHEDULE

(Regulations 29 and 39)

Quality of Service Parameters

Quality of service parameters, definitions and measurements
referred to in regulations 29 and 39

For undertakings providing access to a public communications network

Parameter	Definition	Measurement method
Supply time for initial connection	ETSI EG 202 057	ETSI EG 202 057
Fault rate per access line	ETSI EG 202 057	ETSI EG 202 057
Fault repair time	ETSI EG 202 057	ETSI EG 202 057

For undertakings providing a publicly available telephone service

Unsuccessful call ratio (1)	ETSI EG 202 057	ETSI EG 202 057
Call set up time (1)	ETSI EG 202 057	ETSI EG 202 057
Response time for directory enquiry services	ETSI EG 202 057	ETSI EG 202 057
Proportion of coin and card operated public pay telephones in working order	ETSI EG 202 057	ETSI EG 202 057
Bill correctness complaints	ETSI EG 202 057	ETSI EG 202 057

Version number of ETSI EG 202 057-1 is 1.3.1 (July 2008)

Note 1

The Authority may decide not to require up-to-date information concerning the performance for these two parameters to be kept if evidence is available to show that performance in these two areas is satisfactory.

SIXTH SCHEDULE

(Regulation 30)

Calculating the net cost, if any, of universal service obligations and establishing any recovery or sharing mechanism in accordance with Articles 12 and 13 of the Universal Service Directive

Part A: Calculation of net cost

Universal service obligations refer to those obligations placed upon an undertaking by a Member State which concern the provision of a network and service throughout a specified geographical area, including, where required, averaged prices in that geographical area for the provision of that service or provision of specific tariff options for consumers with low incomes or with special social needs.

The Authority is to consider all means to ensure appropriate incentives for undertakings (designated or not) to provide universal service obligations cost efficiently. In undertaking a calculation exercise, the net cost of universal service obligations is to be calculated as the difference between the net cost for a designated undertaking of operating with the universal service obligations and operating without the universal service obligations. This applies whether the network is fully developed or is still undergoing development and expansion.

Due attention is to be given to correctly assessing the costs that any designated undertaking would have chosen to avoid had there been no universal service obligation. The net cost calculation should assess the benefits, including intangible benefits, to the universal service operator.

The calculation is to be based upon the costs attributable to:

- i. Elements of the identified services which can only be provided at a loss or provided under cost conditions falling outside normal commercial standards. This category may include service elements such as access to emergency telephone services, provision of certain public pay telephones, provision of certain services or equipment for disabled end-users etc;
- ii. Specific end-users or groups of end-users who, taking into account the cost of providing the specified network and service, the revenue generated and any geographical averaging of prices imposed, can only be served at a loss or under cost conditions falling outside normal commercial standards.

This category includes those end-users or groups of end-users which would not be served by a commercial operator which did not have an obligation to provide universal service.

The calculation of the net cost of specific aspects of universal service obligations is to be made separately and so as to avoid the double counting of any direct or indirect benefits and costs. The overall net cost of universal service obligations to any undertaking is to be calculated as the sum of the net costs arising from the specific components of universal service obligations, taking account of any intangible benefits. The responsibility for verifying the net cost lies with the Authority.

Regulation 31(4)

Part B: Recovery of any net costs of universal service obligations

The recovery or financing of any net costs of universal service obligations requires designated undertakings with universal service obligations to be compensated for the services they provide under non-commercial conditions. Because such a compensation involves financial transfers, the Authority shall ensure that these are undertaken in an objective, transparent, non-discriminatory and proportionate manner. This means that the transfers result in the least distortion to competition and to user demand.

In accordance with regulation 31(4), a sharing mechanism based on a fund should use a transparent and neutral means for collecting contributions that avoids the danger of a double imposition of contributions falling on both outputs and inputs of undertakings.

The independent body administering the fund is to be responsible for collecting contributions from undertakings which are assessed as liable to contribute to the net cost of universal service obligations and is to oversee the transfer of sums due and, or administrative payments to the undertakings entitled to receive payments from the fund.

SEVENTH SCHEDULE

(Regulations 70, 76 and 78)

Note: The conditions listed in this Schedule provide the maximum list of conditions which may be attached to general authorisations (Part A), rights of use of radio frequencies (Part B) and rights of use of numbers (Part C) as referred to in regulations 70, 76 and 78 of these regulations.

Part A. Conditions which may be attached to a general authorisation

1. Financial contributions to the funding of universal service in conformity with the Universal Service Directive.
2. Administrative charges in accordance with article 18 of the Act.
3. Interoperability of services and interconnection of networks in conformity with the Access Directive.
4. Accessibility of numbers from the national telephone numbering plan to numbers from the European Telephone Numbering Space, the Universal International Free phone Numbers, and, where technically and economically feasible, from numbering plans of other Member States, including conditions in conformity with the Universal Service Directive.
5. Environmental and town and country planning requirements, as well as requirements and conditions linked to the granting of access to or use of public or private land and conditions linked to co-location and facility sharing in conformity with the Framework Directive and including, where applicable, any financial or technical guarantees necessary to ensure the proper execution of infrastructure works.
6. "Must carry" obligations in conformity with the Universal Service Directive.
7. Personal data and privacy protection specific to the electronic communications sector in conformity with the Directive on Privacy and Electronic Communications.
8. Consumer protection rules specific to the electronic communications sector including conditions in conformity with the Universal Service Directive and conditions on accessibility for users with disabilities in accordance with regulation 26.
9. Restrictions in relation to the transmission of illegal content, in accordance with Directive 2000/31/EC of the European Parliament and of the Council of the 8th June, 2000 on certain legal aspects of information society services, in particular electronic commerce, in the internal market and restrictions in relation to the transmission of harmful content in accordance with Article 2a(2) of Council Directive 89/552/EEC of the 3rd October, 1989 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the pursuit of television broadcasting activities.
10. Information to be provided under a notification procedure in accordance with regulation 66(2), and for other purposes as included in regulation 82.
11. Enabling of legal interception by competent national authorities in conformity with the Directive on Privacy and Electronic

Communications and Directive 95/46/EC of the European Parliament and of the Council of the 24th October, 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data.

12. Terms of use for communications for public authorities to the general public for warning the public of imminent threats and for mitigating the consequences of major catastrophies.
13. Terms of use during major disasters or national emergencies to ensure communications between emergency services and authorities.
14. Measures regarding the limitation of exposure of the general public to electromagnetic fields caused by electronic communications networks in accordance with European Union law.
15. Access obligations other than those provided for in Article 6(2) of the Authorisation Directive applying to undertakings providing electronic communications networks or services, in conformity with the Access Directive.
16. Maintenance of the integrity of public communications networks in accordance with the Access Directive and the Universal Service Directive including conditions to prevent electromagnetic interference between electronic communications networks and, or services in accordance with Council Directive 89/336/EEC of the 3rd May, 1989 on the approximation of the laws of the Member States relating to electromagnetic compatibility.
17. Security of public networks against unauthorised access according to the Directive on Privacy and Electronic Communications.
18. Conditions for the use of radio frequencies, in conformity with Article 7(2) of Directive 1999/5/EC of the European Parliament and of the Council of the 9th March 1999 on radio equipment and telecommunications terminal equipment and the mutual recognition of their conformity, where such use is not made subject to the granting of individual rights of use in accordance with regulation 72.
19. Measures designed to ensure compliance with the standards and, or specifications referred to in Article 17 of the Framework Directive.
20. Transparency obligations on public communications network providers providing electronic communications services available to the public to ensure end-to-end connectivity, in conformity with the objectives and principles set out in article 4 of the Act, disclosure regarding conditions limiting access to and, or use of services and applications where such conditions are allowed by Member States in conformity with European Union law, and, where necessary and proportionate, access by the Authority to such information needed to verify the accuracy of such disclosure.

(Regulation 76)

Part B. Conditions which may be attached to rights of use for radio frequencies

1. Obligation to provide a service or to use a type of technology for which the rights of use for the frequency has been granted, including, where appropriate, coverage and quality requirements.
2. Effective and efficient use of frequencies in conformity with the Framework Directive.

3. Technical and operational conditions necessary for the avoidance of harmful interference and for the limitation of exposure of the general public to electromagnetic fields, where such conditions are different from those included in the general authorisation.
4. Maximum duration in conformity with Article 5 of the Authorisation Directive, subject to any changes in the national frequency plan.
5. Transfer of rights at the initiative of the right holder and conditions for such transfer in conformity with the Framework Directive.
6. Usage fees in accordance with the provisions of article 18(4) and (5) of the Act.
7. Any commitments which the undertaking, obtaining the usage right, has made in the course of a competitive or comparative selection procedure.
8. Obligations under relevant international agreements relating to the use of frequencies.
9. Obligations specific to an experimental use of radio frequencies.

(Regulation 78)

Part C. Conditions which may be attached to rights of use for numbers

1. Designation of service for which the number shall be used, including any requirements linked to the provision of that service including tariff principles and maximum prices that can apply in the specific number range for the purposes of ensuring consumer protection in accordance with article 4(c) of the Act.
2. Effective and efficient use of numbers in conformity with the Framework Directive.
3. Number portability requirements in conformity with the Universal Service Directive.
4. Obligation to provide public directory subscriber information for the purposes of regulations 24 and 42.
5. Maximum duration in conformity with Article 5 of the Authorisation Directive, subject to any changes in the national telephone numbering plan.
6. Transfer of rights at the initiative of the right holder and conditions for such transfer in conformity with the Framework Directive.
7. Usage fees in accordance with article 18(4) and (5) of the Act.
8. Any commitments which the undertaking obtaining the usage right has made in the course of a competitive or comparative selection procedure.
9. Obligations under relevant international agreements relating to the use of numbers.

*Amended by:
L.N. 335 of 2011;
L.N. 60 of 2012;
L.N. 298 of 2014;
L.N. 140 of 2016;
L.N. 242 of 2016;
L.N. 138 of 2017;
L.N. 154 of 2019;
L.N. 181 of 2020.*

**EIGHTH SCHEDULE
(Regulations 70, 76 and 78)**

Part A. Administrative charges to be paid on an annual basis

(a) Public communications networks	€11,645
(b) Publicly available telephone services	€11,645
(c) Television and radio distribution services	€11, 645
(d) Other publicly available electronic communications services	€2,325
(e) Non-public electronic communications services	€2,325
(f) Publicly available telephone directories and directory enquiry services	€2,325
(g) Alternative roaming provider services	€2,325

Provided that an undertaking authorised to provide publicly available telephone services shall be exempt from the payment of administrative charges pertaining to the provision of publicly available telephone directories and directory enquiry services.

Provided further that undertakings providing any of the services under (b), (c), (d), (e) or (g) shall pay to the Authority 1.1% of the total gross revenue.

(Regulation 76)

Part B. Usage fees for radio spectrum to be paid on an annual basis

(a) for each paired 5 MHz channel in the 900 MHz and, or 1800 MHz bands	€224,000
(b) provisional rights of use for:	
(i) the testing of innovative technologies	€100
(ii) the carriage of trials of innovative technologies, on a non-commercial and non-profit basis for a period not exceeding two years:	
(a) for the first year of the licence term	€600
(b) for the second year of the licence term	€800
Provided that the fees under sub-paragraphs (i) and (ii) shall be charged on a <i>pro rata</i> basis subject to a minimum fee of €100;	
(c) broadband wireless access services in the 3400 - 3800 MHz band:	
(i) for the rights of use issued before 1 March 2012 for 24.5 MHz paired spectrum in the 3400 - 3600 MHz band	€46,587.47

(ii)	for the rights of use for each paired 1 MHz channel in the 3400 - 3600 MHz band	€2,000
(iii)	for the rights of use for each unpaired 1 MHz channel in the 3600 - 3800 MHz band:	
(a)	for the first five years from the issue of the rights of use	€500
(b)	for the remaining period of the rights of use	€1,000
(d)	for each 7 MHz channel in the VHF band and, or 8 MHz channel in the UHF band, for the provision of digital terrestrial television services	€5,823.43
(e)	for each 1.536 MHz channel in the band 174 - 230 MHz, for the provision of terrestrial digital audio broadcasting services	€2,329.37
(f)	for the rights of use issued for a term of 15 years, for 5 MHz unpaired channel in the 1900 - 1920 MHz band and for 19.8 MHz paired spectrum in the 1920 - 1980 MHz band paired with 2110 - 2170 MHz bands, either of the following fees apply:	
(i)	one-time upfront fee	€5,823,433.50 or
(ii)	staggered annual payments as defined in the rights of use, which in total amount to	€8,618,681.57
(g)	for each paired 5 MHz channel in the 800 MHz band	€224,000
(h)	for each paired 5 MHz channel in the 2500 MHz band	€24,000
(i)	for each unpaired 5 MHz channel in the 2500 MHz band ..	€5,500
(j)	for each unpaired 5 MHz channel in the 1427 - 1517 MHz band, for wireless broadband supplemental downlink use	€8,000:
	Provided that during the course of an assignment process leading to the grant of right of use for a frequency, the Authority may by a decision published on its website, with the written prior consent of the Minister after consultation with the Minister for Finance, change a fee for any of the usage fees regulated in this Part if the Authority considers that there are valid reasons to justify such a change which change reflects the need to ensure the optimal use of these resources. In doing so, the Authority shall establish the period during which such revised fees shall apply:	
	Provided further that in doing so the Authority shall act in a transparent manner and give its reasons in writing for such a change which reasons shall be published on its website.	
(k)	for each paired 5 MHz channel in the 700 MHz band, within the 703-733 MHz and 758-788 MHz frequency ranges.....	€224,000

(Regulation 78)

Part C. Usage fees for numbers to be paid on an annual basis

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

*Amended by:
L.N. 485 of 2011;
L.N. 298 of 2014.*

NINTH SCHEDULE
(Regulation 70)

General Authorisation for Electronic Communications networks
and, or services

PART 1

Procedures for Imposition, Maintenance, Amendment or Withdrawal of Specific Obligations

Specific obligations that may be imposed on authorised undertakings by the Authority in accordance with these regulations are legally separate from the rights and obligations set out in Part 2 of this general authorisation.

Such specific obligations shall be imposed in accordance with the criteria and procedures established in these regulations, and without prejudice to the generality of the foregoing, in particular:

- (a) with regard to specific obligations regarding access and interconnection, in:
- Article 13 of the Act and regulation 9 on the functions of the Authority with regard to access and interconnection;
 - Regulation 10 on conditional access systems and other facilities;
 - Regulation 11 on the imposition, amendment or withdrawal of

- obligations related to access and, or interconnection; and
- (b) with regard to specific obligations regarding retail services, in:
 - Regulation 19 on controls related to retail markets;
 - (c) with regard to specific obligations regarding universal service:
 - those obligations imposed on undertakings designated under regulation 22.

PART 2

Rights and conditions applicable to authorised undertakings

Section A - Rights of authorised undertakings

1. An authorised undertaking is entitled to:
 - 1.1. provide the electronic communications networks and, or services as described in a notification made in accordance with regulation 66;
 - 1.2. have its application for the necessary rights of use of radio frequencies and, or numbers considered in accordance with regulation 69;
 - 1.3. request the Authority to issue a standardised declaration to facilitate the exercise of rights to install facilities and rights of interconnection in accordance with regulation 67;
 - 1.4. have its application for the necessary rights to install facilities considered in accordance with the relevant legislation in particular the Utilities and Services (Regulation of Certain Works) Act (Cap. 81), in accordance with regulation 69;
 - 1.5. refer a dispute to the Authority in accordance with articles 43 and 44A of the Malta Communications Authority Act (Cap. 418) as the case may be.
2. Additional rights to which an authorised provider of publicly available electronic communications and, or services is entitled.
 - 2.1. An undertaking authorised to provide publicly available electronic communications networks and, or services is, in addition to the rights listed under paragraph 1 above, entitled to:
 - 2.1.1. in accordance with regulation 69, under the conditions of and in accordance with Part II, negotiate interconnection with and where applicable obtain access to or interconnection from another undertaking deemed to be authorised in Malta or in another Member State to provide a publicly available electronic communications network and, or service;
 - 2.1.2. in accordance with regulation 69 be given an opportunity by the Authority to be designated under regulation 22 to carry out universal service obligations referred to in that regulation.

Section B - Conditions applicable to authorised undertakings

1. Scope of authorisation
 - 1.1. An authorised undertaking is entitled to provide the electronic communications network and, or services as described in a notification made in its name in accordance with regulation 66.
2. No special or exclusive rights
 - 2.1. This General Authorisation shall not be construed as granting any

special or exclusive right to any person in relation to the provision of electronic communications networks and, or services.

3. Applicability of laws, decisions of the Authority, etc.
 - 3.1. The Act, all national laws and regulations, and decisions of the Authority, and applicable European Union Law, shall form an integral part of this authorisation except in those cases where the undertaking is specifically exempted by the Authority;
 - 3.2. An authorised undertaking shall comply with the terms and conditions of this authorisation, as well as any applicable obligations or requirements, however described, emanating from the laws and decisions mentioned in paragraph 3.1 above;
 - 3.3. Nothing in this authorisation shall exempt any person from the obligation to diligently obtain at his own expense any permit, licence or other approval or authorisation however so described, that may be necessary to construct, operate and maintain the services or any part thereof, or from the obligation of complying with any condition of any such permit, licence or other approval or authorisation.
4. Amendment of rights and obligations
 - 4.1. The Authority may amend this Authorisation in objectively justified cases and in a proportionate manner, in accordance with the provisions of the Act. The authorised undertaking and all other interested parties, including users and consumers, will be given notice of the Authority's intention to amend the General Authorisation, and shall be afforded the opportunity to make representations on the proposed amendments in accordance with article 19 of the Act.
5. Administrative charges
 - 5.1. The authorised undertaking shall pay to the Authority any charges due in accordance with the Act.
6. Legal interception and Data Retention
 - 6.1. The authorised undertaking shall comply with all requirements related to legal interception and Data Retention as may be established under the Act and, or any other law.
7. Transfer of general authorisation
 - 7.1. Any right, interest or entitlement resulting from this Authorisation is not transferable and may only be exercised by the person identified in a notification made to the Authority in accordance with regulation 66 in so far as they apply to the electronic communications network and, or services described in that notification.
8. Provision of information
 - 8.1. The authorised undertaking shall comply with any request for information that the Authority may from time to time make, in accordance with the Act or the Malta Communications Authority Act (Cap. 418), in the form and at the time specified by the Authority.
9. Dispute resolution
 - 9.1. The authorised undertaking shall follow the procedures established under the Act or by the Authority in order to resolve disputes in a fair, transparent and timely manner and shall comply with all requirements

or decisions in relation to disputes, made by the Authority in accordance with the Act.

10. Annual report

10.1. The authorised undertaking shall submit to the Authority a copy of any existing company annual report for each financial year:

Provided that, this condition shall not apply to undertakings providing:

- Private electronic communications networks and, or private electronic communications services.
- Non-public electronic communications services
- Directory and directory enquiry services

11. Major disasters

11.1. The authorised undertaking shall comply with any decisions issued by the Authority and make arrangements for the provision or rapid restoration of such communication services as are practicable and may reasonably be required by the Authority in the event of, or during a major disaster in order to ensure communications between emergency services and the competent authorities and broadcasts to the general public:

Provided that for the purposes of this condition, "major disaster" includes any major incident having a significant effect on the general public.

12. Standards and specified interfaces

12.1. The authorised undertaking shall comply with any relevant compulsory standards as may be established from time to time for the provision of services, technical interfaces and, or network functions. Where no compulsory standards have been issued, the authorised undertaking shall give due regard to any notices or guidelines that the Authority may issue with respect to standards, as well as any relevant voluntary standards and, or specifications published by the European Commission in accordance with Article 17 (1) of the Framework Directive, and, or those that may be adopted by the European Standards Organisations or internationally recognised standardisation bodies.

13. Integrity of the network, electro-magnetic radiation and harmful interference

13.1. The authorised undertaking shall take all necessary measures to ensure that the network does not cause harmful interference with the lawful use or operation of any electronic communications network and, or services;

13.2. The authorised undertakings shall comply with any radiation emission standards adopted and published by the International Commission for Non-Ionising Radiation Protection (ICNIRP) or by a public authority which at law is responsible for the adoption of any such standards, or with any other appropriate standard as may be specified at law;

13.3. The undertaking shall comply with any decisions issued by the Authority in relation to electromagnetic radiation and harmful interference and ensure that the network and all services at all times comply with the technical and performance standards generally accepted by the industry or as may be prescribed in accordance with

paragraph 13.2. or as may be accepted by the Authority or by the competent public health authorities as being adequate to ensure the limitation of exposure of the general public to electromagnetic fields.

Section C - Conditions applicable to Television and, or Radio Distribution Services

In addition to the general conditions stipulated in Part 2, Section B of this Schedule, authorised undertakings providing television and, or radio distribution services shall also comply with the following conditions:

1. Broadcasting Rules
 - 1.1. An authorised undertaking shall comply with any broadcasting and radio content regulations and authorisation requirements as appropriate.
 2. "Must Carry" Rules
 - 2.1. An authorised undertaking shall distribute those terrestrial television broadcasting services as may be established by the Authority in accordance with its powers at law.
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