CHAPTER 418

MALTA COMMUNICATIONS AUTHORITY ACT

To provide for the establishment of an Authority to be known as the Malta Communications Authority and for the exercise by or on behalf of that Authority of regulatory functions regarding electronic communications, certain aspects of data protection in electronic communication, postal services, electronic commerce and similar areas in the field of communications and to make provision with respect to matters ancillary thereto or connected therewith.

Amended by: VII. 2004.3.

1st August, 2000

ACT XVIII of 2000, as amended by Acts VII of 2004 and XIII of 2005; Legal Notice 426 of 2007; Acts XXX of 2007, XII of 2010 and IX of 2011; Legal Notice 180 of 2012; and Acts VIII of 2014, XVIII of 2016 and Legal Notice 416 of 2018, 39 and 169 of 2019 and 191 of 2022 and Acts XIII of 2019, XXXIII of 2021, LII of 2021, XVII of 2023 and I of 2024 and Legal Notice 66 of 2024 and 224 of 2025.*

PART I
PRELIMINARY

Title.

1. The short title of this Act is the Malta Communications Authority Act.

Interpretation. *Amended by: VII. 2004.4; XIII. 2005.63; XXX. 2007.38; XII. 2010.12; IX. 2011.43; L.N. 180 of 2012; VIII. 2014.19; XXXIII. 2021.3; LII. 2021.53; XVII.2023.36.*

2. In this Act, unless the context otherwise requires -

"this Act" means the Malta Communications Authority Act, and includes any regulations made thereunder unless the context otherwise requires;

"associated facilities" means those associated services, physical infrastructures and other facilities or elements associated with an electronic communications network and, or an electronic communications service which enable and, or support the provision of services through that network and, or service or have the potential to do so, and include *inter alia* buildings or entries to buildings, building wiring, antennae, towers and other supporting constructions, ducts, conduits, masts, manholes, and cabinets;

"authorization" means any authorization including any general authorization, licence, right to use or permit, however so described, that a person may hold or be granted under any law which the Authority is entitled to enforce or administer;

"Authority" means the Malta Communications Authority established by article 3 and any references in this Act or any other law to the Authority shall, unless the context otherwise requires, be construed as including a reference to any person authorised by the Authority to act for or on its behalf;

"BEREC" means the Body of European Regulators for Electronic Communications established by Regulation (EU) 2018/1971 of the European Parliament and of the Council of 11 December 2018 establishing the Body of European Regulators for Electronic Communications (BEREC) and the Agency for Support for BEREC

*See commencement notice LN 296 of 2021.

(BEREC Office);

"Board" unless the context otherwise requires, means the Board of the Authority composed of the Chairman and members appointed in accordance with article 3;

"Chairman" means the Chairman of the Authority and includes, in the circumstances mentioned in article 3(3), the Deputy Chairman or other person appointed to act as Chairman;

S.L. 12.19.

Civil Court" means the Civil Court (Commercial Section) established by article 3 of the Civil Courts (Establishment of Section) Order;

"communications" includes electronic communications, postal services, data protection in electronic communications, electronic commerce and such other matters as the Minister may by Order from time to time prescribe;

"consumer" means any natural person who uses or requests a communications service for purposes which are outside his trade, business, craft or profession;

"contractor" means a person acting in pursuance of an agreement entered into with the Authority or in accordance with article 5(2);

"decision" includes any directive, determination, direction, licence condition, measure, requirement or specification however so described made by the Authority and the word "decision" shall be construed accordingly;

"directive" means a directive issued by the Authority in terms of article 4;

"Electronic Communications Code" means Directive (EU) 2018/1972 of the European Parliament and of the Council of the 11 December 2018 establishing the European Electronic Communications Code;

"employee" means a person employed by the Authority;

"end-user" means any person other than an undertaking who uses or requests a communications service;

Cap. 413.

"end-user with disabilities" means a person with a disability as defined in the Equal Opportunities (Persons with Disability) Act, whose special needs as an end-user are either due to a disability or to ageing;

"European Commission" means the Commission of the European Union;

"financial year" means any period of twelve months ending on the 31st December, so however that the Minister may, after consultation with the Authority, vary such date;

"harmful interference" means interference which endangers the functioning of a radio navigation service or of other safety services or which otherwise seriously degrades, obstructs or repeatedly interrupts a radio communications service operating in accordance with the applicable international, European Union or national regulations;

"member", unless the context otherwise requires, includes the

Chairman of the Authority;

"Member State" means a Member State of the European Union;

"Minister" means the Minister responsible for communications;

"online interface" means any software, including a website, part of a website or an application, that is operated by or on behalf of an undertaking, and which serves to give end-users access to the goods or services provided by that undertaking;

"public officer" in relation to article 11, has the same meaning assigned to it by article 124 of the Constitution but does not include a judge of the Superior Courts or a magistrate of the Inferior Courts;

"qualified entity" means the same as the meaning assigned to it under article 4 of the Representative Actions (Consumers) Act

Act No. XVII of 2023.

"RSPG" means the Radio Spectrum Policy Group established by the European Commission Decision of 11 June 2019 setting up the Radio Spectrum Policy Group;

"Tribunal" means the Administrative Review Tribunal established by article 5 of the Administrative Justice Act;

Cap. 490.

"undertaking" means a person providing or authorised to provide communications networks and, or services and, or associated facilities; and

"user" includes any person who uses or requests any communications service.

PART II
ESTABLISHMENT, FUNCTIONS AND CONDUCT OF AFFAIRS OF THE AUTHORITY

Establishment and composition of the Malta Communications Authority. *Amended by: IX. 2011.44; VIII. 2014.20; LII. 2021.54.*

3. (1) There shall be a body, to be known as the Malta Communications Authority, the affairs and business of which shall be carried out by a board composed of a Chairman and not less than four and not more than six other members, in accordance with the provisions of article 5.

(2) The members of the Board shall be appointed by the Minister from amongst persons of recognised standing and professional experience on the basis of merit, skills, knowledge and relevant experience, for a term of not less than three (3) years but not exceeding six (6) years, which term shall be specified in the instrument of appointment, and the members so appointed may, subject to the requirements of this article, be re-appointed on the expiration of their term of office for another term:

Provided that in appointing the members of the Board, the Minister shall act in an open and transparent manner and shall ensure the continuity of decision-making by the Authority:

Provided further that any such appointments shall be published in the Gazette by the Minister.

(3) The Minister shall designate one of the other members of the Board as Deputy Chairman and the member so designated shall have all the powers and perform all the functions of the Chairman during his absence or inability to act as Chairman, or while the Chairman is on

vacation or during any vacancy in the post of the Chairman.

(4) A person shall not be qualified to hold office as a member of the Board if he -

(*a*) is a Minister, Parliamentary Secretary or a member of the House of Representatives or of a Local Council; or

(*b*) is a judge or magistrate of the courts of justice;

(*c*) has a financial or other interest in any enterprise or activity which is likely to affect the discharge of his functions as a member of the Board:

Provided that the Minister may waive the disqualification of a person under this paragraph if such person declares the interest and the Minister considers that there are valid reasons for such a waiver:

Provided further that if the Minister decides to grant such waiver, the declaration of the person stating his interest, the waiver and reasons therefor shall be published in the Gazette.

(5) Subject to the provisions of this article, the office of a member of the Board shall become vacant -

(*a*) at the expiration of his term of office; or

(*b*) if any circumstances arise that, if he were not a member of the Board, would cause him to be disqualified for appointment as such.

(6) A member of the Board may only be removed from office by the Minister for any one or more of the following reasons:

(*a*) if the member due to infirmity of mind or of body or of any other cause is effectively unable to continue to discharge his duties as a member;

(*b*) if the behaviour or performance of the member brings into question his suitability or ability to continue as a member, in particular for behaviour that affects or may affect his reputation, independence or autonomy, or the reputation, independence or autonomy of the Authority;

(*c*) if the member has been convicted of a criminal offence affecting public trust, or of theft or fraud, or of knowingly receiving property obtained by theft or fraud or of bribery or of money laundering, provided that the Minister may suspend the member if he is being investigated for such a criminal offence; or

(*d*) if the member fails to perform his duties for a prolonged period without any valid justification:

Provided that notwithstanding the above, it shall be a cause for the removal of a member if that member for any reason fails to perform his duties, including attending for Board meetings, for a continuous period exceeding six months.

(7) (7)If the Minister dismisses a member of the Board from office, such dismissal shall be made public at the time of dismissal from office. In doing so the Minister shall provide the member

concerned with a statement of reasons for his dismissal. If the statement of reasons for dismissal is not made public then, the member concerned shall have the right to request that the statement of reasons for his dismissal be made public, in which case the Minister shall publish such statement without any delay:

Provided that the member so dismissed may contest the decision of the Minister to dismiss him on both points of fact and of law by means of an action to be filed before the Civil Court within twenty days of the notification of the aforesaid decision to the said member. The provisions of the Code of Organization and Civil Procedure for the hearing and determination of cases shall apply to any such action.

Cap. 12.

(8) If a member resigns or if the office of a member of the Board is otherwise vacant or if a member is for any reason unable to perform the functions of his office, the Minister may appoint a person who is qualified to be appointed as a member, to be a temporary member of the Board. Any person so appointed shall, subject to the provisions of sub-articles (4), (5) and (6), cease to be such a member when a person has been appointed to fill the vacancy or, as the case may be, when the member who was unable to perform the functions of his office resumes those functions:

Provided that any temporary appointment made under this article shall not at any one time exceed the period of one year.

(9) Any member of the Board who has any direct or indirect interest in any contract made or proposed to be made by the Board, not being an interest which disqualifies such member from remaining a member, shall disclose the nature of his interest at the first meeting of the Board after the relevant facts have come to his knowledge, such disclosure shall then be recorded in the minutes of the Board, and the member having an interest as aforesaid shall withdraw from any meetings at which such contract is discussed. Any such disclosure shall be communicated to the Minister without delay. Where the interest of the member is such as to disqualify him from remaining a member, he shall report the fact immediately to the Minister and tender his resignation.

3A. The Authority shall be legally distinct from, and functionally independent of, any person providing any networks, equipment or services however so described which are regulated by the Authority.

Independence of the Authority – Separation of Regulatory and Operational Functions. *Added by: LII. 2021.55.*

4. (1) It shall be a purpose of the Authority to -

(*a*) ensure freedom of communication and that communications shall not be limited except when this is necessary for any of the following reasons:

(i) the protection of the right to privacy;

(ii) the defence of national security, territorial integrity or public safety;

(iii) the prevention of disorder or crime;

Purpose, functions and powers of the Authority. *Amended by: VII. 2004.6; L.N. 426 of 2007; XXX. 2007.39; IX. 2011.45; VIII. 2014.21; XVIII. 2016.20; XIII.2019.2; XXXIII. 2021.4; LII. 2021.56.*

(iv) the protection of public health and of the environment;

(v) the protection of morals and respect for the dignity of the human person;

(vi) the protection of the rights and freedoms of others;

(vii) the prevention of the disclosure of information received in confidence;

(viii) the maintenance of the authority and impartiality of the judiciary;

(ix) the technical constraints inherent in the means of communication;

(*b*) ensure non-discrimination and equality of treatment in matters related to communications.

(2) It shall in particular be the duty of the Authority to exercise such regulatory functions in the field of communications, as may from time to time be assigned to the Authority by or under an Act of Parliament.

(3) The Authority shall also, in accordance with the laws it is entitled to enforce -

(*a*) regulate, monitor and keep under review all practices, operations and activities relating to any matter regulated by or under this Act or any other law which the Authority is entitled to enforce;

(*b*) grant any licence, permit or other authorisation, for the carrying out of any operation or activity relating to any matter regulated by or under this Act;

(*c*) regulate and secure interconnectivity for the production, transmission and distribution of the services, products, operations or activities relating to any matter regulated by or under this Act;

(*d*) ensure fair competition in all such services, products, operations and activities;

(*e*) establish minimum quality and security standards for any of the said services, products, operations and activities and to regulate such measures as may be necessary to ensure public and private safety;

(*f*) secure and regulate the development and maintenance of efficient communication systems in order to satisfy, as economically as possible, all reasonable demands for the provision of the services, products, operations or activities relating to any matter regulated by or under this Act;

(*g*) carry out studies, research or investigation relating to any matter regulated by or under this Act;

(*h*) provide information and issue guidelines to the public and to commercial entities relating to any matter regulated by or under this Act;

(*i*) regulate the price structure for any activity regulated by

or under this Act and where appropriate to establish the mechanisms whereby the price to be charged for the services, products, operations or activities is determined;

(*j*) establish guidelines for the minimum qualifications to be possessed by any person who is engaged or employed in any activity regulated by or under this Act;

(*k*) establish measures, as necessary, for the protection of the environment in the provision of the services, products, operations or activities relating to any matter regulated by or under this Act;

(*l*) ensure that international obligations entered into by Malta relative to matters regulated by or under this Act are complied with;

(*m*) advise the Minister on the formulation of policy in relation to matters regulated by or under this Act, and in particular in relation to such international obligations;

(*n*) otherwise to advise the Minister on any matter connected with its functions under this or any other Act;

(*o*) formulate and implement the policies and strategies with short-term and long-term objectives in relation to the matters connected with its functions under this or any other Act;

(*p*) encourage the provision of communications services in Malta and enable persons providing communications services in Malta to compete effectively in the provision of such services outside Malta;

(*q*) encourage users of communications services to establish places of business in Malta;

(*r*) advise the Minister on the planning and development of the communications industry as well as on the infrastructure supporting the communications industry;

(*s*) promote and advance Malta as a destination for high value commercial users of communications services and of information communications technologies to establish places of business in Malta;

(*t*) promote the interests and rights of all users in Malta, including end-users with disabilities, elderly end-users, and end-users with special social needs, especially in respect of the prices charged for, and the quality and variety of the said services;

(*u*) monitor and ensure the accessibility of websites and mobile applications in accordance with the provisions of this Act;

(*v*) deal with and, or determine any matter relating to mediation in and, or resolution of any dispute or complaint, however so described, relating to any aspect of communications regulated by the Authority under any law;

(*w*) perform such other functions, including functions aimed

at promoting the information society, as may from time to time be assigned to it by the Minister;

(*x*) manage scarce resources used by space systems for the provision of satellite communications services;

(4) It shall be the duty of the Authority to carry out its functions as established by or under this Act or any other law in an impartial and transparent and timely manner and to ensure compliance therewith, and without prejudice to the generality of the foregoing, to ensure that persons providing any services, products, operations and activities in or from Malta relating to any matter regulated by the Authority, comply with this Act and with any other law which the Authority is entitled to enforce, and with any decisions issued by or under this Act or any such other law.

(5) The Authority shall also have such other functions, responsibilities and powers as are set out by or under this Act or as may be assigned to it by or under any other law including all such powers as are necessary for or incidental to the performance of its functions by or under this Act or any other law. The Authority shall in the carrying out of its functions seek to ensure that the measures taken are proportionate having regard also to the objectives of the Authority.

Issue of directives by the Authority.

(6) The Authority may issue such directives as it may consider to be necessary for the carrying into effect of or compliance with any of the provisions of this Act, or of any other law which the Authority is entitled to enforce, or any decisions that the Authority may make in accordance with its functions under this Act or any other law and it may amend or revoke such directives.

(7) Any directive issued by the Authority in accordance with this article and any amendment or revocation thereof shall be in writing, state the reasons on which it is based and shall be notified to the person concerned. The Authority may also publish any such directive in such manner as it may consider appropriate in the circumstances due account being taken of the importance of the directive and its impact on the market.

Cooperation with other authorities.

(8) The Authority shall, where it considers appropriate, consult with the various competent authorities responsible for competition issues and consumer affairs and for such other areas as may impact on the sectors regulated by the Authority on matters of common interest in connection with the application of this Act and of any other law that the Authority is entitled to enforce.

(9) The Authority on the one hand and the competent authorities responsible for competition issues and consumer affairs, and such other competent authorities responsible for other areas as may impact on the sectors regulated by the Authority on the other, shall consult and cooperate on matters of common interest, and in doing so shall provide each other with the information necessary for the application of the provisions of this Act, of any other law which the Authority is entitled to enforce, and of any other law relating to competition issues and, or consumer affairs or to any of the communications sectors falling within the remit of the Authority, which information shall be provided within an appropriate time-frame taking into consideration

the particular circumstances of the issues involved:

Provided that European Union data protection rules shall apply in respect of the information exchanged, and the receiving authority shall ensure the same level of confidentiality as the originating authority.

Provision of information.

(10) Without prejudice to the enforcement powers that it has at law, the Authority may require any person to provide it with any information, including financial information, that the Authority considers necessary for the purpose of carrying out its functions, or which is necessary for the European Commission, BEREC or any other EU regulatory body in relation to the sectors that fall within the remit of the Authority in order to ensure compliance in accordance with the provisions of, or decisions or directives made in accordance with this Act or any other law which the Authority is entitled to enforce.

(11) Any information required by the Authority under sub-article (10) shall be proportionate to the performance of its functions and obligations under this Act and in requiring any information as aforesaid, the Authority shall state why it requires the information requested.

(12) A person who is notified with a requirement under sub-article (10) shall comply promptly with the requirement within the timescales and according to any level of detail as may be required by the Authority:

Provided that any such person shall, in complying with the provisions of this sub-article, state clearly to the Authority if any information provided by him is to be considered as confidential for commercial reasons. In doing so he shall give his reasons to the Authority. It shall be the Authority which shall decide whether the information indicated to it as being confidential should be so treated:

Provided further that the provisions of this sub-article relating to confidentiality shall apply to any information provided to the Authority for whatever reason whether under this Act or any other law the Authority is entitled to enforce.

Publication of information.

(13) The Authority shall, subject to the protection of any information which it considers confidential, publish from time to time such information as would, in the opinion of the Authority, contribute to an open and competitive market.

Consultation and transparency mechanism. *Added by: XII. 2010.13. Amended by: IX. 2011.46; LII. 2021.57.*

4A. (1) Except in relation to -

(*a*) any dispute or complaint however so described being dealt with in accordance with this Act or any other law which the Authority is entitled to enforce; or

(*b*) the exercise of any enforcement powers of the Authority under this Act, or under any other law which the Authority is entitled to enforce; or

(*c*) cases where the Authority considers that there is an urgent need to act to safeguard competition and protect the interests of users in accordance with European Union law,

where the Authority intends to take a decision in accordance with any law which it is entitled to enforce, which decision has a significant impact in a market for any communications networks or services, it shall make available to interested parties a statement of the proposed decision. The Authority shall give such parties the opportunity to comment on the proposed decision within a period which the Authority considers reasonable, having regard to the complexity of the matter, which period other than in exceptional circumstances, shall not be shorter than thirty days:

Provided that in relation to electronic communications the period of consultation shall not be less than thirty days.

(2) Where the Authority intends to take a decision on issues related to any end-user and, or consumer rights, including equivalent access and choice for end-users with disabilities, in particular where such a decision has a significant impact on a market for any communications networks and, or services, the Authority shall ensure that in carrying out the consultation mechanism referred to in sub-article (1), as far as is appropriate for the purposes of its functions under this Act or any other law the Authority is entitled to enforce, it shall take into account the views of end-users, in particular consumers, and end-users with disabilities, manufacturers and undertakings that provide communications networks and, or services.

(3) The Authority shall publish its consultation procedures and shall establish a single information point through which all current consultations can be assessed.

(4) The result of any consultations under this article shall be made publicly available by the Authority through such means as the Authority considers appropriate in the circumstances, except in the case of confidential information, in accordance with European Union and national rules on commercial confidentiality.

Development of codes of conduct and operating standards. *Added by: LII. 2021.58.*

4B. (1) The Authority may either on its own initiative or in coordination with other competent authorities provide guidance to interested parties when these are developing mechanisms, involving consumers, user groups and service providers, to improve the general quality of service provision by, *inter alia*, developing and monitoring codes of conduct and operating standards.

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

Co-operation in the promotion of lawful content. *Added by: LII. 2021.58.*

4C. Without prejudice to national rules in accordance with European Union law promoting cultural and media policy objectives such as cultural and linguistic diversity and media pluralism, competent authorities in coordination, where relevant, with the Authority, may promote cooperation between undertakings providing electronic communications networks or services, and sectors interested in the promotion of lawful content in electronic communications networks and services:

Provided that such cooperation may also include coordination

of the public-interest information to be provided pursuant to applicable national law and European Union law.

Compliance with data protection rules. *Added by: LII. 2021.58.*

4D. The Authority shall comply with European Union and national data protection rules when processing personal data.

Requirement to obtain other authorisations required at law. *Added by: LII. 2021.58.*

4E. Compliance with any authorisation by or under any law which the Authority is entitled to enforce, enabling a person to operate, install or use any communications service or network or any radiocommunications apparatus, shall not relieve a person from any requirement at law to apply for and obtain any other authorisation, licence or permit however so described, or from any obligation arising from any other law, licence, authorisation or permit however so described.

Conduct of the affairs of the Authority. *Amended by: VII. 2004.5; XXX. 2007.40; IX. 2011.47. Substituted by: VIII. 2014.22. Amended by: XIII.2019.3. Substituted by: XXXIII. 2021.5.*

5. (1) Subject to the other provisions of this Act, the affairs and business of the Authority shall be the responsibility of the Board, but save as aforesaid, the day-to-day administration and organisation of the Authority, and the administrative control of its officers and employees shall be the responsibility of the Chief Executive Officer of the Authority who shall also have such other powers as may from time to time be delegated to him by the Board:

Provided that the Chief Executive Officer shall be appointed by the Board according to set criteria following a call for applications. Any such appointment shall be for a period of three years, which appointment may be extended for further periods of three years each.

(2) Without prejudice to sub-article (1), the Authority shall exercise any one or more of its functions through the Chief Executive Officer or any of its officers or employees or through a public authority or agency, however so described, authorized for that purpose, or through a contractor or other person with whom an agreement for the performance of any one or more of such functions has been entered into:

Provided that nothing in this sub-article shall authorize the Authority to contract out or delegate any of:

(*a*) its regulatory functions; or

(*b*) its authorization functions, unless such functions are expressly delegated to a public authority established by law. The First Schedule to this Act shall state by name the public authority to whom such authorization functions are delegated and the type of authorization in relation to which such authorization functions are delegated. The Authority may, from time to time, after approval in writing by the Minister, by order in the Gazette amend the First Schedule:

Provided further that the Minister, before giving his approval, shall, where appropriate, consult with such other Minister as

may be responsible for the public authority to whom such authorization functions are to be delegated.

(3) The Authority shall have adequate technical, financial and human resources to carry out its functions under this Act and under any other applicable laws which the Authority is entitled to enforce. It shall have the autonomy in the implementation of its budget in accordance with applicable legislation, which budget shall be made public.

(4) The Chief Executive Officer shall attend all the meetings of the Board but shall not vote at such meetings.

(5) The Chief Executive Officer shall be responsible for the implementation of the objectives of the Authority in the exercise of its functions at law, as set out by the Board, and without prejudice to the generality of the foregoing he shall:

(*a*) have full responsibility for the overall administration, supervision and control of the various components, however so described, making up the Authority;

(*b*) develop the necessary strategies for the implementation of the objectives of the Authority and implement such strategies as directed by the Board;

(*c*) advise the Board on any matter it may refer to him or any matter he considers necessary or expedient;

(*d*) perform such other duties as the Board may assign to him from time to time; and

(*e*) at the end of each financial year, present estimates of the income and expenditure of the Authority for the following financial year to the Board for its approval.

(6) The appointment of the Chief Executive Officer shall be on a full-time basis and shall be made in accordance with the applicable provisions of this Act:

Provided that no member of the Board may be appointed as the Chief Executive Officer whilst he is a member of the Board.

Independence of the Authority and its relations with the Minister. *Substituted by: LII. 2021.58.*

6. (1) The Authority shall act independently and objectively in the exercise of its functions at law, including in the development of its internal procedures and organisation of its staff, and shall operate in a transparent and accountable manner in accordance with European Union law. In doing so the Authority shall not seek or take instructions from any other person in relation to the exercise of the tasks assigned to it by law, this without prejudice to any supervision, however so described, that may be undertaken in accordance with the Constitution of Malta.

(2) The Minister may, in relation to matters that appear to him to affect the public interest, from time to time give to the Authority directions in writing of a general character on the policy to be followed in the carrying out of the functions vested in the Authority by or under

this Act, and the Authority shall, as soon as may be, give effect to all such directions. The Minister in giving any such directions shall state in writing the reasons therefor:

Provided that any such directions shall not be inconsistent with the provisions of this Act:

Provided further that the Authority shall afford to the Minister facilities for obtaining information with respect to its property and activities and furnish him with returns, accounts and other information with respect thereto, and afford to him facilities for the verification of information furnished, in such manner and at such times as he may reasonably require.

(3) The provisions of article 77 of the Public Finance Management Act shall not apply to the Authority. Cap. 601.

Suspension or overturning of a decision by the Authority. Added by: *LII. 2021.60.*

6A. Unless otherwise provided for by law, decisions taken by the Authority shall only be suspended or overturned by the competent court or tribunal as prescribed under this Act.

Legal personality and representation of the Authority. *Amended by: VII. 2004.5; VIII. 2014.23; XIII.2019.5; LII. 2021.61.*

7. (1) The Authority shall be a body corporate having a distinct legal personality and shall be capable, subject to the provisions of this Act, of entering into contracts, of acquiring, holding and disposing of any kind of property for the purposes of its functions, or suing and being sued, and of doing all such things and entering into all such transactions as are incidental or conducive to the exercise or performance of its functions under this Act, including the lending or borrowing of money.

(2) The legal representation of the Authority shall vest in the Chairman, in the Chief Executive Officer if any, and such other member of the Board or officer of the Authority as the Board may appoint:

Provided that the Board may appoint one or more members of the Board or one or more officers of the Authority to appear in the name or on behalf of the Authority in any judicial proceedings and in any act, contract, instrument or other document whatsoever.

(3) Any document purporting to be an instrument made or issued by the Authority and signed by the Chairman, or such other member of the Board, the Chief Executive Officer, if any, or officer of the Authority as may by the Board, in accordance with sub-article (2), be vested with the legal representation of the Authority, shall be received in evidence and shall, until the contrary is proved, be deemed to be an instrument made or issued by the Authority.

Provisions with respect to proceedings of the Authority. *Amended by: IX. 2011.49; VIII. 2014.24.*

8. (1) The meetings of the Board shall be called by the Chairman as often as may be necessary but at least once a month either on his own initiative or at the request of any two of the other members of the Board.

(2) Half the number of members for the time being constituting the Board shall form a quorum. Decisions shall be adopted by a simple majority of the votes of the members present and voting. The Chairman, or in his absence the Deputy Chairman or other person

appointed to act as chairman, shall have an initial vote and in the event of an equality of votes, a casting vote. Without prejudice to the other requirements of this Act, no decision shall be valid which is not supported by at least two members of the Board.

(3) Subject to the provisions of this Act the Board may regulate its own procedure.

(4) Subject to the foregoing provisions of this article, no act or proceeding of the Authority shall be invalidated merely by reason of the existence of any vacancy among the members of the Board.

(5) All acts done by any person acting in good faith, as a member of the Board shall be valid as if he were a member notwithstanding that some defect in his appointment or qualification be afterwards discovered. No act or proceeding of the Authority shall be questioned on the ground of the contravention, by a member, of the provisions of article 3(9).

PART III
OFFICERS AND EMPLOYEES OF THE AUTHORITY

Staff appointments. *Amended by: LII. 2021.62.*

9. Without prejudice to the other provisions of this Act, the appointment of officers and other employees of the Authority shall be made by the Authority. The terms and conditions of employment shall be established by the Authority without prejudice to any supervision, however so described, that may be undertaken in accordance with the Constitution of Malta.

Appointment and functions of officer and employees of the Authority. *Amended by: LII. 2021.63.*

10. The Authority shall appoint and employ, at such remuneration and upon such time terms and conditions as it may determine, such officers and employees of the Authority as may from time to time be necessary for the due and efficient discharge of the functions of the Authority.

Detailing of public officers for duty with the Authority. *Amended by: LII. 2021.64.*

11. (1) The Prime Minister may, at the request of the Authority, from time to time direct that any public officer shall be detailed for duty with the Authority in such capacity and with effect from such date as may be specified in the direction of the Prime Minister.

(2) The period during which a direction as aforesaid shall apply to any officer specified therein, shall, unless the officer retires from the public service, or otherwise ceases to hold office at an earlier date, or unless a different date is specified in such direction, cease to have effect after one year from the effective date of such direction unless the direction is revoked earlier by the Prime Minister.

Status of public officers detailed for duty with the Authority.

12. (1) Where any officer is detailed for duty with the Authority under any of the provisions of article 11, such officer shall, during the time in which such direction has effect in relation to him, be under the administrative authority and control of the Authority but he shall for other intents and purposes remain and be considered and treated as a public officer.

(2) Without prejudice to the generality of the foregoing, an officer detailed for duty as aforesaid -

(*a*) shall not during the time in respect of which he is so detailed -

(i) be precluded from applying for a transfer to a department of the Government in accordance with the terms and conditions of service attached to the appointment under the Government held by him at a date on which he is so detailed for duty; or

(ii) be so employed that his remuneration and conditions of service are less favourable than those which are attached to the appointment under the Government held by him at the date aforesaid or which would have become attached to such appointment, during the said period, had such officer not been detailed for duty with the Authority; and

(*b*) shall be entitled to have his service with the authority considered as service with the Government for the purposes of any pension, gratuity, or benefit under the Pensions Ordinance and the Widows and Orphans' Pensions Act and of any other right or privilege to which he would be entitled, and liable to any liability to which he would be liable, but for the fact of his being detailed for duty with the Authority.

Cap. 93.
Cap. 58.

(3) Where an application is made as provided in sub-article (2)(*a*)(i) the same consideration shall be given thereto as if the applicant had not been detailed for service with the Authority.

(4) The Authority shall pay to the Government such contributions as may from time to time be determined by the Minister responsible for finance in respect of the cost of pensions and gratuities earned by an officer detailed for duty with the Authority as aforesaid during the period in which he is so detailed.

Offer of permanent employment with the Authority to public officers detailed for duty with the Authority.

13. (1) The Authority may, with the approval of the Prime Minister, offer to any officer detailed for duty with the Authority under any of the provisions of article 11 permanent employment with the Authority at a remuneration and on terms and conditions not less favourable than those enjoyed by such officer at the date of such offer.

(2) The terms and conditions comprised in any offer made as aforesaid shall not be deemed to be less favourable merely because they are not in all respects identical with or superior to those enjoyed by the officer concerned at the date of such offer, if such terms and conditions, taken as a whole, in the opinion of the Prime Minister offer substantially equivalent or greater benefits.

(3) Every officer who accepts permanent employment with the Authority offered to him, under the provisions of sub-article (1) shall for all purposes other than those of the Pensions Ordinance and of the Widows' and Orphans' Pensions Act, and saving the provisions of sub-article (6), be deemed to have ceased to be in service with the Government and to have entered into service with the Authority on the date of his acceptance, and for the purposes of the said Ordinance and of the said Act, so far as applicable to him, service with the Authority shall be deemed to be service with the Government within the meanings thereof respectively.

Cap. 93.
Cap. 58.

(4) Every such officer as aforesaid who, immediately before accepting permanent employment with the Authority was entitled to benefit under the Widows' and Orphans' Pensions Act, shall continue to be so entitled to benefit thereunder to all intents as if his service with the Authority were service with the Government.

(5) The Authority shall pay to the Government such contributions as may from time to time be determined by the Minister responsible for finance in respect of the cost of pensions and gratuities earned by an officer who has accepted performance of employment with the Authority as aforesaid during the period commencing on the date of such officer's acceptance.

(6) (*a*) For the purposes of this article posts and salary grades with the Authority shall be classified in the most nearly corresponding grades and incremental levels in the service under the Government of Malta by reference to job description, skills, responsibilities and other analogous factors.

(*b*) The classification referred to in paragraph (*a*) shall be carried out by a board composed of a chairman appointed by the Ministry responsible for finance and two other members, one appointed by the Ministry responsible centrally for personnel policies in the public service and one appointed by the Authority. The classification shall be subject to the final approval of the Minister responsible for finance.

(*c*) Such classification shall take place within three months of any adjustment of salaries of employees in Government service and, or, of employees of the Authority.

(*d*) No post shall be classified in a grade higher than that of a Grade 3 in the service of the Government or such other grade that the Minister responsible for finance may from time to time by notice in the Gazette determine.

(*e*) Without prejudice to article 113 of the Constitution, no person may, following a classification as aforesaid, be entitled to rights under the said Pensions Ordinance less favourable than those to which he would have been entitled prior to such classification.

PART IV
FINANCIAL PROVISIONS

Authority to meet expenditure out of revenue.
Amended by: IX. 2011.50; LII. 2021.65.

14. (1) Without prejudice to the following provisions of this article, the Authority shall so conduct its affairs that the expenditure required for the proper performance of its functions shall, as far as practicable, be met out of its revenue.

(2) For such purpose the Authority shall levy all fees, rates and other payments prescribed or deemed to be prescribed by or under this Act or any other law related to the powers and functions of the Authority.

(3) The Authority shall also be paid by Government out of the

Consolidated Fund such sums as Parliament may from time to time authorise to be appropriated to meet the costs of specified works to be continued or otherwise carried out by the Authority:

Provided that any subvention received from Government shall be exempted from any liability for the payment of income tax and duty on documents under any law for the time being.

(4) Any excess of revenue over expenditure shall, subject to such directives as the Minister, after consultation with the Minister responsible for finance, may from time to time give, be applied by the Authority to the formation of reserve funds to be used for the purposes of the Authority; and without prejudice to the generality of the powers given to the Minister by this sub-article, any direction given by the Minister as aforesaid may order the transfer to the Government, or the application in such manner as may be specified in the direction, of any part of the fees, rates and other payments levied in accordance with sub-article (2) or any such excess as aforesaid.

(5) Any funds of the Authority not immediately required to meet expenditure may be invested by the Authority in such manner as may from time to time be approved by the Minister.

Power to borrow or raise capital. *Amended by: L.N. 426 of 2007; LII. 2021.66.*

15. (1) For the purpose of carrying out any of its functions under this Act, the Authority may, with the approval in writing of the Minister given after consultation with the Minister responsible for finance, borrow or raise money in such manner, from such person, body or authority, and under such terms and conditions as the Minister, after consultation as aforesaid, may in writing approve.

(2) The Authority may also, from time to time, borrow, by way of overdraft or otherwise, such sums as it may require for carrying out its functions under this Act:

Provided that for any amount in excess of one hundred and fifty thousand euro (€150,000), there shall be required the approval of the Minister in writing.

Advances from Government.

16. The Minister responsible for finance may, after consultation with the Minister, make advances to the Authority of such sums as he may agree to be required by the Authority for carrying out any of its functions under this Act, and may make such advances on such terms and conditions as he may, after consultation as aforesaid, deem appropriate. Any such advance may be made by the Minister responsible for finance out of the Consolidated Fund, and without further appropriation other than this Act, by warrant under his hand authorising the Accountant General to make such advance.

Borrowing from Government.

17. (1) The Minister responsible for finance may, for any requirements of the Authority of a capital nature, contract or raise loans, or incur liabilities, for such periods and on such terms and conditions as he may deem appropriate; and any sums due in respect of or in connection with any such loan or liability shall be a charge on the Consolidated Fund.

(2) Notice of any loans, liabilities or advances made or incurred under the foregoing provisions of this article shall be given to the House of Representatives as soon as practicable.

(3) Pending the raising of any such loan as is mentioned in sub-article (1), or for the purpose of providing the Authority with working capital, the Minister responsible for finance may, by warrant under his hand, and without further appropriation other than this Act, authorise the Accountant General to make advances to the Authority out of the Treasury Clearance Fund under such terms as may be specified by the Minister upon the making thereof.

(4) The proceeds of any loan raised for the purposes of making advances to the Authority, and any other moneys to be advanced to the Authority under this article, shall be paid into a fund specially established for the purpose and which shall be known as the "Malta Communications Authority Loan Fund".

(5) Sums received by the Accountant General from the Authority in respect of advances made to the Authority under sub-article (3) shall be paid, as respects of amounts received by way of repayment into the Treasury Clearance Fund and, as respects of amount received by way of interest into the Consolidated Fund.

Estimates of the Authority.

18. (1) The Authority shall cause to be prepared in every financial year, and shall not later than six weeks after the end of each such year adopt, estimates of the income and expenditure of the Authority for the next following financial year:

Provided that the estimates for the first financial year of the Authority shall be prepared and adopted within such time as the Minister may by notice in writing to the Authority specify.

(2) In the preparation of such estimates the Authority shall take account of any funds and other monies that may be due to be paid to it out of the Consolidated Fund during the relevant financial year, whether by virtue of this Act or an appropriation Act or of any other law; and the Authority shall so prepare the said estimates as to ensure that the total revenues of the Authority are at least sufficient to meet all sums properly chargeable to its revenue account including, but without prejudice to the generality of that expression, depreciation.

(3) The estimates shall be made out in such form and shall contain such information and such comparison with previous years as the Minister responsible for finance may direct.

(4) A copy of the estimates shall, upon their adoption by the Authority, be sent forthwith by the Authority to the Minister and to the Minister responsible for finance.

(5) The Minister shall, at the earliest opportunity and not later than six weeks after he has received a copy of the estimates from the Authority, approve the same with or without amendment after consultation with the Minister responsible for finance.

Expenditure to be according to approved estimates.

19. (1) No expenditure shall be made or incurred by the Authority unless it has been approved by the Minister as provided in article 18.

(2) Notwithstanding the provisions of sub-article (1) -

(*a*) until the expiration of six months from the beginning of a financial year, or until the approval of the estimates for

that year by the Minister, whichever is the earlier date, the Authority may make or incur expenditure for carrying on its functions under this Act not exceeding in the aggregate one-half of the amount approved by the Minister for the preceding financial year;

(*b*) expenditure approved in respect of a head or sub-head of the estimates may, with the approval of the Minister given after consultation with the Minister responsible for finance, be made or incurred in respect of another head or sub-head of the estimates;

(*c*) in respect of the first financial year, the Authority may make or incur expenditure not exceeding in the aggregate such amounts as the Minister responsible for finance may, after consultation with the Minister, allow;

(*d*) if in respect of any financial year it is found that the amount approved by the Minister is not sufficient or a need has arisen for expenditure for a purpose not provided for in the estimates, the Authority may adopt supplementary estimates for approval by the Minister and in any such case the provisions of this Act applicable to the estimates shall as near as practicable apply to the supplementary estimates.

Publication of approved estimates.

20. The Minister shall, at the earliest opportunity and not later than eight weeks after he has received a copy of the estimates and supplementary estimates of the Authority, or if at any time during that period the House of Representatives is not in session, within eight weeks from the beginning of the next following session, cause such estimates to be laid on the Table of the House of Representatives.

Accounts and audit.

21. (1) The Authority shall cause to be kept proper accounts and other records in respect of its operations, and shall cause to be prepared a statement of accounts in respect of each financial year.

(2) The accounts of the Authority shall be audited by an auditor or auditors to be appointed by the Authority and approved by the Minister:

Provided that the Minister responsible for finance may, after consultation with the Minister, require the books and accounts of the Authority to be audited or examined by the Auditor General who shall for the purpose have the power to carry out such physical checking and other certifications as he may deem necessary.

(3) After the end of each financial year, and not later than the date on which the estimates of the Authority are forwarded to the Minister under article 18, the Authority shall cause a copy of the statement of account duly audited to be transmitted to the Minister and to the Minister responsible for finance together with a copy of any report made by the auditors on that statement or on the accounts of the Authority.

(4) The Minister shall, at the earliest opportunity and not later than eight weeks after he has received a copy of every such statement and report, or if at any time during that period the House of Representatives is not in session, within eight weeks from the

beginning of the next following session, cause every such statement and report to be laid on the Table of the House of Representatives.

Deposit of revenues and payment by the Authority. *Amended by: VIII. 2013.25; LII. 2021.67.*

22. (1) All monies accruing to the Authority shall be paid into a bank or banks appointed as bankers of the Authority by a resolution of the Board. Such monies shall, as far as practicable, be paid into such banks from day to day, except such sum as the Board may authorise to be retained to meet petty disbursements and immediate cash payments.

(2) All payments out of funds of the Authority, other than petty disbursements not exceeding a sum fixed by the Board, shall be made by such officer or officers of the Authority as the Board shall appoint or designate for that purpose.

(3) Cheques against and withdrawals from any bank account of the Authority shall be signed by such officer of the Authority as may be appointed or designated by the Board for that purpose and shall be countersigned by the Chairman or such other member of the Board or officer of the Authority as may be authorised by the Board for that purpose.

(4) The Authority shall also make provision with respect to -

(*a*) the manner in which and the officer or officers by whom payments are to be authorised or approved;

(*b*) the title of any account held with the bank or banks into which the monies of the Authority are to be paid, and the transfer of funds from one account to the other;

(*c*) the method to be adopted in making payments out of funds of the Authority;

and generally with respect to any matter which is relevant to the proper keeping and control of the accounts and books, and the control of the finance, of the Authority.

Contracts of supply of works. *Amended by: L.N. 426 of 2007.*

23. (*Deleted by Act LII.2021.68*).

Annual report. Amended by and other reporting requirements: *Amended by: LII. 2021.69.*

24. (1) The Authority shall, not later than thirteen weeks after the end of each financial year, make and transmit to the Minister and to the Minister responsible for finance a report dealing generally with the activities of the Authority during that financial year and containing such information relating to the proceedings and policy of Authority as either of the said Ministers may from time to time require. The Minister shall, at the earliest opportunity and not later than eight weeks after he has received a copy of every such report, or if at any time during that period the House of Representatives is not in session, within eight weeks from the beginning of the next following session, cause a copy of every such report to be laid on the Table of House of Representatives.

(2) Without prejudice to the requirements under sub-article (1), the Authority shall report annually, amongst other matters, on the state of the markets in relation to the sectors falling under its remit, on the decisions it issues, on its human and financial resources and how those resources are attributed and on its future plans. The Authority shall

ensure that such reports are made public.

PART V
TRANSFER OF CERTAIN ASSETS TO THE AUTHORITY

Transfer of assets to the Authority.

25.(1)(*a*) The property and undertakings owned by the Government and used by it, immediately before the date of the coming into force of this Part of this Act, and used by it for the operation of any of the functions which by this Act are being transferred to or vested in the Authority shall, on the date aforesaid, by virtue of this Act and without further assurance, be transferred to and vested in the Authority under the same title by which they were held by the Government immediately before the said date. The provisions of this paragraph shall not apply to immovable property.

(*b*) The immovable assets from time to time specified in an Order made by the President of Malta and published in the Gazette (hereinafter referred to as "the immovable assets") being immovable assets which immediately before the coming into force of this Part of this Act were owned by the Government and used by it for the operation of any of the functions which by this Act are being transferred to or vested in the Authority, shall, with effect from such day as may be specified in any such order, and by virtue of this Act and without any further assurance be transferred to and vested in the Authority under the same title by which they were held by the Government before such day.

(2) The transfer and vesting aforesaid shall extend to the whole of such property and undertakings and, without prejudice to the generality aforesaid, shall include all plant, equipment, apparata, instruments, vehicles, craft, buildings, structures, installations, land, roads, works, stocks and other property, movable or immovable, assets, powers, rights and privileges and all things necessary or ancillary thereto which are held or enjoyed in connection therewith or appertaining thereto, as well as all obligations affecting or relating to any of the aforesaid property or undertakings or other thing included therein as aforesaid.

Construction of laws, etc.

26. Subject to the provision of this Act, all laws, rules, regulations, orders, judgements, decrees, awards, deeds, bonds, contracts, agreements, instruments, documents, warrants and other arrangements, subsisting immediately before the date of the coming into force of this Part of this Act affecting or relating to any of the properties or undertakings transferred to the Authority by or under this Act shall have full force and effect against or in favour of the Authority, and shall be enforceable freely and effectually, as if instead of the Government or governmental authority the Authority had been named therein or had been a party thereto, and otherwise in substitution of the Government or governmental authority.

Transitory provisions.

27. (1) When anything has been commenced by or under the authority of the Government prior to the date of the coming into force

of this Part of this Act and such thing relates to any of the properties or undertakings or any right or liability transferred to the Authority by or under this Act, such thing may be carried on and completed by or as authorised by the Authority.

(2) Where immediately before the coming into force of this Part of this Act, any legal proceedings are pending to which the Government is or is entitled to be a party, and such proceedings are related to any of the properties or undertakings, or any right or liability transferred by or under this Act, the Authority shall, as from the date aforesaid, be substituted in such proceedings for the Government, or shall be made a part thereto in like manner as the Government could have become, and such proceedings shall not abate by reason of the substitution.

(3) The Minister may by order make such incidental, consequential and supplemental provisions as he may deem necessary or expedient for the purpose of determining, as appropriate, the assets transferred to the Authority by this Act and securing and giving full effect to the transfer of any property or undertaking or any right or liability to the Authority by this Act and make such orders as may be necessary to make any powers and duties exercisable by the Government in relation to any of the transferred property or undertakings exercisable by or on behalf of the Authority.

Appointment and functions of advisory committees.

Re-numbered by: VIII. 2014.26.

28. (*Deleted by Act VIII. 2014.26*).

PART VI
ENFORCEMENT AND SANCTIONS

Enforcement powers of the Authority.
Added by: VII. 2004.8. Amended by: L.N. 426 of 2007; XXX. 2007.41; XII. 2010.14; IX. 2011.43; VIII. 2014.27; XXXIII. 2021.6; LII. 2021.70.

29. (1) For the purposes of the exercise by the Authority of any of its functions under this Act or any other law the Authority is entitled to enforce, the Authority may:

(*a*) enter, at any reasonable time, any premises other than a place of residence, or any other place or any vehicle, vessel or aircraft where any activity regulated by or under this Act or any other law which the Authority is entitled to enforce, takes place, or in the opinion of the Authority takes place, and search and inspect the premises, place, vehicle or vessel and any books, documents or records found therein;

(*b*) enter a place of residence for the purpose of any investigation or inspection in relation to any activity regulated by or under this Act or any other law which the Authority is entitled to enforce during any time between eight o'clock in the morning and six o'clock in the evening:

Provided that in cases of manifest urgency the Authority may carry out such investigation or inspection outside the aforesaid time:

Provided further that the Authority shall, at all times, as is reasonable taking into account the gravity of the specific circumstances, give adequate prior written notice

to the person or persons residing in the said place of residence, of the conduct and the purpose of the investigation or inspection to be undertaken;

(*c*) require any person to produce for inspection and take extracts from any books, documents or records relating to any activities regulated by or under this Act or any other law which the Authority is entitled to enforce, which are under the control of that person and, in the case of information in a non-legible form to reproduce it in a legible form, and to give to the Authority such information as the Authority may reasonably require in relation to any entries in such books, documents or records;

(*d*) remove and retain such books, documents or records for such period as may be reasonable for further examination;

(*e*) require any person to maintain such books, documents or records for such period as may be reasonable as the Authority directs;

(*f*) require any person to give to the Authority any information that may be required with regard to any activities regulated by or under this Act or any other law the Authority is entitled to enforce;

(*g*) make such inspections including site inspections to enable the Authority to carry out its functions at law and in doing so the Authority may also undertake tests and measurements of any machinery, apparatus, appliances and other equipment at any place as the Authority may consider necessary;

(*h*) require any person to switch off, modify, or desist from the use of, any radiocommunications apparatus which does not comply with any radiation emission standards adopted and published by the International Commission on Non-Ionising Radiation Protection (ICNIRP) or any other international standards as may be adopted from time to time, or which may cause harmful interference, or is in breach of any requirement established by or under the Electronic Communications (Regulation) Act or of any radiocommunications authorisation or licence condition; Cap. 399.

(*i*) purchase goods or services as test purchases, where necessary, under a cover identity, in order to detect infringements of any provisions of this Act or of any other law which the Authority is empowered to enforce, or of any decision taken by the Authority, and to obtain evidence, including the power to inspect, observe, study, dissemble or test goods or services;

Provided that where the person concerned fails to abide with any requirements made by the Authority under this paragraph, the Authority may then take any such measures as it may consider appropriate in the

circumstances including the switching off or modification of the use of any such apparatus;

(*j*) arrange or require an undertaking to do an independent audit or operations review of any of the regulated activities of that undertaking. The costs of any such audit or operations review shall be borne by the undertaking:

Provided that the Authority before proceeding to arrange or require any such audit or operations review shall notify in writing the undertaking concerned, warning it of the audit or operations review that may be taken and the reasons therefor, requiring the undertaking to make its written submissions to the Authority within a period of not less than twenty days from the date of the notification of any such warning.

(2) The Authority shall exercise any power of entry as referred to in sub-article (1) only in such a manner as is reasonably required in the interest of public safety, public order, public health or public benefit.

(3) Any officer of the Authority or any other person duly authorised by the Authority to act on its behalf when exercising a power conferred by this Act or by any other law which the Authority is entitled to enforce, shall produce for inspection by any person thereby affected, an identification document issued by the Authority which also states that he is duly authorised to act for and on behalf of the Authority.

(4) In the course of the exercise of any of the powers conferred by this Act or by any other law which the Authority is entitled to enforce the Authority may request the assistance of the Police.

(5) The Directors and managers, by whatever name designated, or any other persons who are or have been in charge of the operations or activities falling under the supervisory or regulatory functions of the Authority shall assist and shall collaborate with the Authority in order to enable it to discharge its functions, and shall collate and transmit without any undue delay such information and documentation as the Authority may reasonably request from time to time.

(6) Any person who -

(*a*) obstructs, impedes or assaults an officer of the Authority or any other person duly authorised by the Authority to act on its behalf in the exercise of any of the powers conferred by this Act or by any other law which the Authority is entitled to enforce;

(*b*) fails or refuses to comply with a requirement under this article;

(*c*) alters, suppresses or destroys any books, documents or records which the person concerned has been required to produce, or may reasonably expect to be required to produce;

(*d*) falsely represents himself to be an officer of the Authority or a person authorised by the Authority to act on its behalf; or

(*e*) furnishes any information to the Authority which it may require in the exercise of its functions under any law it is entitled to enforce, which he knows, or has reasonable cause to believe to be false or misleading,

shall be guilty of an offence against this Act, and shall on conviction be liable to a fine (*multa*) not exceeding twenty-five thousand euro (€25,000) or to imprisonment for a period not exceeding three months, or to both such fine and imprisonment.

Disclosure of confidential information. *Added by: VII. 2004.8. Amended by: L.N. 426 of 2007; VIII. 2014.28; LII. 2021.71.*

30. (1) Except where otherwise provided by law, a person shall not knowingly disclose confidential information obtained by him while performing the duties of a member of the Board, or of an officer or employee of the Authority or of an adviser or consultant to the Authority, unless he is duly authorised by the Authority to do so:

Provided that any such person shall remain bound by the requirements of this article even after his appointment or employment, howsoever described, with the Authority has come to an end.

(2) In this article "confidential information" means any information however so described which is considered by the Authority to be confidential and in relation to which the Authority has notified the persons concerned of their duty of non-disclosure.

(3) A person who contravenes this article shall be guilty of an offence against this Act and shall on conviction be liable to a fine (*multa*) not exceeding twenty-five thousand euro (€25,000).

(4) Nothing in this article shall prevent the disclosure of any information to the Authority or, by or on behalf of the Authority to the Minister or as may be required at law.

Other sanctions that the Authority may impose. *Added by: VII. 2004.8. Substituted by: XXX. 2007.42. Amended by: XII. 2010.15; IX. 2011.51; VIII. 2014.29; XVIII. 2016.20; LII. 2021.72; XVII.2023.37.*

31. (1) Without prejudice to any other provisions under this Act or any other law which the Authority is entitled to enforce, the Authority may take the following measures in respect of any person who infringes any provision of this Act or of any other law which the Authority is entitled to enforce, or who fails to comply with any decision given by the Authority, or with any decision given by the Utilities Networks Dispute Resolution Board where the Authority considers that non-compliance by any person with such a decision may impact negatively on the provision of electronic communications services and, or networks, or with any authorization condition, or with any binding decision issued by the European Commission pursuant to the Electronic Communications Code, namely:

(*a*) the imposition of an administrative penalty in accordance with the provisions of this article and of articles 32 and 33;

(*b*) issue a compliance order requiring the cessation of any act or omission which is in breach;

(*c*) issue a compliance order requiring the delay of a service or bundle of services which, if continued, may result in significant harm to competition, pending compliance with access obligations imposed following a market analysis carried out in accordance with the Electronic Communications (Regulation) Act and with any

Cap. 399.

regulations made thereunder; or

(*d*) issue a compliance order requiring the taking of any such measures as the Authority may, in accordance with its powers at law, consider necessary in protecting the rights of end-users as established by any law or any decision which the Authority is entitled to enforce where the act or omission of any person negatively impacts such rights:

Provided that a reference to a decision given by the Utilities Networks Dispute Resolution Board includes any decision of the aforesaid Board which is appealed from before the Court of Appeal, but has not been suspended by the Court of Appeal, and any decision of the Court of Appeal following an appeal from any decision of the aforesaid Board.

(2) In cases where the Authority considers that a person has seriously and, or repeatedly infringed the provisions of this Act or of any other law which the Authority is entitled to enforce, or of any decision of the Authority or of any authorisation condition, the Authority may withdraw or suspend any related authorisation granted by or under this Act or any other law which the Authority is entitled to enforce, or prevent a person from continuing to provide any communications service or network:

Provided that, without prejudice to the generality of the above, the following instances shall be considered to constitute a serious and, or repeated breach:

(*a*) the unjustified and continued withholding of information requested by the Authority in accordance with its powers at law; and

(*b*) persistent and repeated instances of non-cooperation with the Authority.

(3) In all cases where the Authority imposes an administrative penalty in respect of anything done or is omitted to be done by any person and such act or omission also constitutes a criminal offence, no proceedings may be taken or continued against the said person in respect of such criminal offence.

Application by a qualified entity for the issue of a compliance order by the Authority under article 31. *Added by: XVII.2023.38.*

31A. (1) A qualified entity may apply to the Authority for the issue of a compliance order where it requests any of the measures listed in article 31(1)(b), (c) or (d). In doing so a qualified entity shall submit a written application to the Authority whereby it shall satisfy the Authority that it tried to achieve the cessation of the infringement in consultation with the person against whom the compliance order is being sought or with both such a person and another qualified entity of the Member State in which the compliance order or a similar measure is being sought.

(2) The Authority shall only consider an application made in accordance with sub-article (1) if the qualified entity shows to the satisfaction of the Authority that:

(*a*) the cessation of the infringement was not

achieved within two (2) weeks after the request for consultation was received by the person against whom such compliance order is being sought; and

(*b*) the application relates to an infringement that harms or may harm the collective interests of consumers.

(3) It shall be at the discretion of the Authority to decide whether or not to issue any such compliance order subsequent to a written application by a qualified entity to it:

Provided that if the Authority decides not to issue any such compliance order after an application has been made to it, the Authority shall, within two (2) working days from the date of its decision not to issue any such compliance order, notify in writing the qualified entity concerned and the person against whom the aforesaid measure was sought, with its decision stating the reasons thereof.

(4) The Authority shall decide any application by a qualified entity under sub-article (1) within sixty (60) days of its receipt by the Authority.

(5) In order for a qualified entity to seek the issue of a compliance order by the Authority, it shall not be necessary for the individual consumers to express their wish to be represented by that qualified entity.

(6) A qualified entity in seeking the issue of a compliance order by the Authority shall not be required to prove:

(*a*) actual loss or damage on the part of the individual consumers affected by the infringement of the law enforced by the Authority in relation to which a compliance order is being requested; or

(*b*) intent or negligence on the part of the person against whom the compliance order is being requested.

(7) The Authority shall dismiss any manifestly unfounded applications by a qualified entity made to it under this article. In doing so the Authority shall in all instances give its reasons for doing so.

Procedure when taking a measure under article 31. *Added by: VII. 2004.8. Amended by: L.N. 426 of 2007. Substituted by: XXX. 2007.42. Amended by: IX. 2011.52; L.N. 180 of 2012; XIII.2019.6; XXXIII. 2021.7; LII. 2021.73; I.2024.10.*

32. (1) Unless otherwise provided by or under this Act, the Authority shall before proceeding to take any of the measures under article 31 write to the person concerned, warning him of the measure that may be taken and the specific reason why it may be taken, requiring him to cease or rectify his acts or omissions and, or to make his submissions thereto within such period not being less than fifteen days which period, without prejudice to the provisions of sub-article (4), may be abridged if the Authority considers that the continuance of the infringement impacts negatively the effective exercise by the Authority of its regulatory functions and, or warrants the immediate intervention of the Authority:

Provided that where the measure is an administrative penalty

the person concerned shall also be informed of the amount of the administrative penalty:

Provided further that when issuing a warning under this sub-article, the Authority may impose such conditions as it may consider reasonable in the circumstances.

(2) If the person concerned remedies the infringement within the period established by the Authority in accordance with sub-article (1), and agrees in writing to abide with any condition that the Authority may impose, the Authority may at its discretion desist from proceeding any further, this without prejudice to any regulatory measures that may have already been imposed.

(3) If after the lapse of the period mentioned in sub-article (1), the Authority considers that the person concerned has not given any valid reasons to demonstrate why no measure should be taken against him, the Authority shall notify the person concerned in writing, specifying the nature of the infringement, stating the measure being taken, and if the measure is an administrative penalty, stating the amount of the administrative penalty being imposed.

(4) Notwithstanding the provisions of sub-article (1), where the Authority has *prima facie* evidence that the infringement -

(*a*) represents an immediate and serious threat to public safety, public security or public health; or

(*aa*) represents the risk of serious harm for the purposes of Regulation (EU) 2022/2065 of the European Parliament and of the Council of 19 October 2022 on a Single Market for Digital Services and amending Directive 2000/31/EC, (Digital Services Act); or

(*b*) creates or may create serious economic or operational problems for other providers or users of communications services or networks, or other users of radio spectrum; or

(*c*) would result in significant harm to competition in the electronic communications market, pending compliance with access obligations imposed following a market analysis carried out in accordance with the Electronic Communications (Regulation) Act or any regulations made thereunder,

Cap. 399.

the Authority may take urgent interim measures to remedy the situation in advance of reaching a final decision, including ordering the immediate cessation of the act or omission giving cause to the infringement, requiring the cessation or delay of provision of a service or bundle of services, and the imposition of administrative penalties:

Provided that the person against whom such measures are contemplated, shall, thereafter, be given a reasonable opportunity to state his view and propose any remedies:

Provided further that the interim measures shall be valid for a maximum of three months, subject to extension for a further period of three months, in circumstances where enforcement procedures have not been completed.

(5) The notification as referred to in sub-article (3) shall, upon the expiry of the time limit for appeal therefrom, upon the service of a copy thereof by means of a judicial act on the person indicated in the notice, constitute an executive title for all effects and the purposes of Title VII of Part I of Book Second of the Code of Organization and Civil Procedure: Cap. 12.

Provided that if the person against whom the notice has been issued, files an appeal before the Tribunal within the twenty day period referred to under article 38, and concurrently with or before the filing of his appeal requests the Tribunal to suspend the effects of the notice, then the Authority shall desist from issuing a judicial act as referred to in this sub-article until such time as the request for suspension has been determined, withdrawn or otherwise dealt with:

Provided further that the Tribunal shall determine any requests for suspension referred to in this sub-article expeditiously. Before determining any such request the Tribunal shall give the Authority a reasonable opportunity to reply and make its submissions.

(6) Interest at the rate of eight per cent per annum shall run as from the date set by the Authority for the payment of any administrative penalty imposed by it in terms of this Act. In cases where the Tribunal or the Court of Appeal, as the case may be, after having upheld an application to suspend the administrative penalty pending proceedings, finally decides that the administrative penalty is due, such administrative penalty shall be due together with any interests accrued thereon as from the date originally set by the Authority for payment including the period during which the payment of the said administrative penalty was suspended.

(7) The Authority shall give its reasons for any decision taken under this article.

(8) Notwithstanding the provisions of any law, no precautionary warrant or order shall be issued by any court restraining the Authority from the exercise of any of the powers conferred upon it under this article.

(9) The Authority may at its discretion seek or accept all written commitments from any person responsible for any infringement of any law or decision, however so described, enforced by the Authority. Any such commitment as may be accepted by the Authority shall be binding on the person making that commitment:

Provided that the Authority in accepting any such commitment may impose any such conditions as it may consider appropriate in the circumstances and shall in all instances act in a transparent, non-discriminatory and objective manner.

32A. (1) If notwithstanding the various enforcement powers provided for under this Part, there are no other effective means available to bring about the cessation or the prohibition of the infringement of any law or of any decision which the Authority is entitled to enforce, the Authority may, in order to avoid the risk of serious harm to the collective interests of end-users, apply to the Civil Court for a court order requiring:

Orders to remove content on online interface etc. *Added by: XXXIII. 2021.8. Amended by: I.2024.11.*

(*a*) any person to remove content and to restrict access to an online interface or to order the explicit display of a warning to end-users when they access an online interface;

(*b*) a hosting service provider to remove, disable or restrict access to an online interface; or

(*c*) where appropriate, domain registries or registrars to delete a fully qualified domain name and to allow the competent national entity responsible for the registration of such domain name to register it.

(2) The court, on receipt of an application under sub-article (1), shall order the notification of the application with urgency onto the person against whom the court order is being requested, which person shall be entitled to reply to the application within such period as the court may determine, which period shall not exceed ten (10) days or any lesser period as the court may deem appropriate in the circumstances, which period shall commence as from the date of notification:

Provided that the court shall consider and determine any such application with urgency:

Cap. 12.

Provided further that without prejudice to the above, the provisions of the Code of Organization and Civil Procedure for the hearing and determination of cases and of any appeal therefrom shall apply to any such action:

Provided further that from the decree of the Civil Court there shall be a right of appeal to the Court of Appeal on a point of law.

(3) Any person who fails to comply with an order issued in accordance with sub-article (1) shall be liable to a administrative penalty imposed by the Civil Court of not less than one thousand euro (€1,000) and not more than twenty-five thousand euro (€25,000) and, or to a daily administrative penalty of not less than fifty euro (€50) and not more than five hundred euro (€500) for each day of non-compliance, which administrative penalty or administrative penalties if imposed shall constitute a civil debt payable to the Authority in accordance with article 49.

Quantum of an administrative penalty. *Added by: VII. 2004.8. Amended by: XIII. 2005.64. Substituted by: XXX. 2007.42. Amended by: IX. 2011.53; VIII. 2014.30; LII. 2021.74; I.2024.12.*

33. (1) An administrative penalty imposed shall not, unless provided otherwise by or under this Act or by any other law enforced by the Authority, exceed three hundred and fifty thousand euro (€350,000) for each infringement or failure to comply and, or twelve thousand euro (€12,000) for each day of infringement or non-compliance as the case may be:

Provided that if the act or omission which constitutes an infringement is committed by an undertaking and the Authority considers that such act or omission has especially significant effects on the market to the detriment of competitors and, or consumers, the stated amount that may be imposed as an administrative penalty may

be increased to an amount that is not more than five per cent of the turnover of the undertaking in the calendar year immediately preceding the year when the infringement was committed:

Provided further that any daily administrative penalty imposed may be back dated to the date of the commission or commencement of the infringement.

(2) In determining the amount of an administrative penalty, regard shall be had in particular to the nature and extent of the infringement, its duration and its impact on the market and on consumers.

(3) The Minister may make regulations to establish the administrative penalties that may be imposed by the Authority in relation to any law enforced by the Authority:

Provided that the amount of administrative penalties that may be so prescribed shall not exceed the maximum amounts referred to under sub-article (1).

(4) An administrative penalty may be imposed with retroactive effect in accordance with the provisions of this Act even if the breach in question was subsequently rectified.

Publication of final decisions, commitments or orders. *Added by: XXXIII. 2021.9. Substituted by: XVII.2023.39.*

33A. (1) The Authority may publish any final decision that has been taken by it under this Part, and, or any commitments given by a person in accordance with article 32 on its website and such other means of communication as it may consider appropriate. In doing so the Authority may, where applicable, publish the identity of the person responsible for the infringement in relation to the final decision that has been taken.

(2) Without prejudice to the provisions of sub-article (1), the Authority may require the person against whom a compliance order has been issued to publish at its expense the final decision issued by the Authority pertinent to the issue of the compliance order in full or in part in such form as the Authority considers appropriate.

Administrative infringements by bodies corporate. *Added by: VII. 2004.8.*

34. (*Deleted by Act LII.2021.75*).

Limitation on the provision of services, networks to protect public security etc. *Added by: XXX. 2007.43. Amended by: IX. 2011.43, 54.*

34A. (1) For the purposes of this article:

(*a*) "authorization" means any authorization, however described, that a person may hold or be granted under this Act;

(*b*) "shareholder" means:

(i) in the case of a company that is not listed on the Malta Stock Exchange or on a Stock Exchange of a Member State, a person who holds any amount of shares in a company;

(ii) in the case of a company listed on the Malta Stock Exchange or on the Stock Exchange of a Member State, a person holding more than two percent of shares in a company.

(2) When the Authority is satisfied that -

(*a*) any person holding any authorization; or

(*b*) any person who is a secretary, director or other principal officer of any company, partnership or other body holding any authorization or who otherwise exercises control or significant influence over the said company, partnership or other body; or

(*c*) any person who is a shareholder of any company, partnership or other body holding any authorization,

is not a fit and proper person or are not fit and proper persons to hold any authorization or to act in any capacity mentioned in paragraphs (*b*) or (*c*) and that the holding by such person or persons of an authorization or of any said capacity may reasonably pose a threat to public trust, public security or public order, the Authority may prohibit such person or persons or any company, partnership or other body in which the said person or persons hold any said capacity from holding an authorization.

(3) The Authority may, for the purpose of ascertaining whether any person referred to in sub-article (2) is a fit and proper person to hold an authorization or to act in any capacity mentioned in sub-article (2)(*b*) or (*c*), require, within such time as it may consider reasonable in the circumstances, such information and, or consent to obtain any information as the Authority may deem appropriate from any such person or from any person who intends to provide a communications service and, or network in accordance with this Act.

(4) Without prejudice to the other provisions of this article:

(*a*) any person convicted, whether in Malta or outside Malta, of a crime against public trust shall not be deemed to be a fit and proper person to hold an authorization or to act in any capacity mentioned in sub-article (2)(*b*) or (*c*);

(*b*) any authorization enjoyed by any person convicted of a crime against public trust, or enjoyed by a company, partnership or other body which has a shareholder or a secretary, director or other principal officer who has been convicted, whether in Malta or outside Malta, of a crime against public trust, or over which a person who has been convicted, whether in Malta or outside Malta, of a crime against public trust otherwise exercises control or significant influence, shall be voidable upon a decision of the Authority taken after having considered all the relevant facts.

Prescription for the taking of enforcement measures. *Added by: VII. 2004.8. Amended by: LII. 2021.76.*

35. Unless stated otherwise at law, the prosecution of a criminal offence, the initiation of proceedings to impose an administrative penalty or other sanctions, and the initiation of any other enforcement measures however so described under this Act or under any other law which the Authority is entitled to enforce shall be prescribed by the lapse of two years from the date on which the offence or administrative infringement is alleged to have been committed.

PART VII
ADMINISTRATIVE REVIEW TRIBUNAL

Substituted by: L.N. 180 of 2012. Re-numbered by: VIII. 2014.26.

Administrative Review Tribunal. *Added by: VII. 2004.8. Amended by: XIII. 2005.65; L.N. 426 of 2007. Substituted by: L.N. 180 of 2012. Amended by: LII. 2021.77.* Cap. 490.

36. (1) The Administrative Review Tribunal shall be competent to hear and determine appeals from decisions of the Authority as provided in this Act or in any law or regulations.

(2) The provisions of the Administrative Justice Act, in so far as they apply to the Administrative Review Tribunal, shall apply to any proceedings before the said Tribunal and the words "public administration" in the said enactment shall be construed as a reference to the Authority.

Cap. 490.

(3) (*Deleted by Act LII.2021.77*).

Appeals from decisions other than the imposition of administrative penalties of the Authority. *Added by: VII. 2004.8. Amended by: XXX. 2007.44; IX. 2011.55; L.N. 180 of 2012; LII. 2021.78; XVII.2023.40.* Cap. 399. Cap. 81. Cap. 254. Cap. 426.

37. (1) Unless otherwise provided by law an appeal shall lie to the Tribunal from a decision of the Authority made under this Act, the Electronic Communications (Regulation) Act, the Utilities and Services (Regulation of Certain Works) Act, the Postal Services Act or the Electronic Commerce Act:

Provided that the Prime Minister may by order in the Gazette extend the jurisdiction of the Tribunal to -

(*a*) any other decisions that the Authority may take under any other law which the Authority is entitled to enforce; and

(*b*) any decision taken by or on behalf of Government or by any public authority in relation to or having a substantial bearing on communications.

(2) The right of appeal to the Tribunal shall be competent to any person aggrieved by the decision:

Provided that in any case, a person making an appeal to the Tribunal shall also explain his juridical interest in impugning the decision appealed from.

(3) Without prejudice to the provisions of article 38, an appeal from a decision of the Authority shall be made by application and shall be filed with the Secretary of the Tribunal within twenty days from the date on which the said decision has been notified.

(4) The qualified entity on whose request a compliance order was issued by the Authority in accordance with article 31 shall be notified with any appeal filed by a person against whom such an order was issued, and shall have twenty (20) days in which to reply to the appeal commencing from the date when it is notified with the aforesaid appeal.

Applications by a qualified entity to the Tribunal. *Added by: XVII.2023.41.*

37A. (1) A qualified entity may apply to the Tribunal for the issue of an order by the Tribunal where the Authority is required to take any such measures in accordance with article 31(1) as the Tribunal may determine where:

(*a*) the Authority decides not to uphold its application for

the issue of a compliance order under article 31(1); or

(*b*) the Authority fails to issue a decision within sixty (60) days of its receipt of the application requesting the issue of a compliance order under article 31(1):

Provided that any such application shall be filed within twenty (20) days in case of paragraph (a) commencing from the date of the decision of the Authority, and in case of paragraph (b) commencing from the date of the lapse of sixty (60) days period:

Provided further that the qualified entity shall notify the person against whom the compliance order was requested and the Authority with its application.

(2) The person against whom the compliance order is requested and the Authority shall be parties to any such proceedings before the Tribunal and shall have the right to reply to the application by the qualified entity within twenty (20) days from the notification of the aforesaid application.

Appeals against an administrative penalty imposed by the Authority. *Added by: VII. 2004.8. Amended by: XXX. 2007.45; L.N. 180 of 2012; XIII.2019.7; I.2024.15.*

38. (1) Without prejudice to the provisions of this Part, the procedure to be followed in relation to appeals against administrative penalties imposed by the Authority shall be regulated by the provisions of this article.

(2) A person who is notified with a notice in writing given under article 32(3) may, within twenty days from the date of such notification, lodge an appeal before the Tribunal objecting to the administrative penalty so fixed.

(3) The Tribunal shall not annul an administrative penalty as aforesaid unless it results to it that such administrative penalty could not at law be imposed in the circumstances of the case, or could not at law be fixed in the amount established by the Authority due account being given to the principle of proportionality.

(4) The Tribunal shall, without delay, set down the appeal for hearing at an early date, which date shall in no case be later than forty days from the date of the service of the appeal on the Authority.

(5) The appeal, and the notification of the date fixed for hearing, shall be notified to the Authority without delay, and the Authority shall file its reply thereto within twenty days from the date of the notification of the appeal.

(6) The decision of the Tribunal upon an appeal referred to in sub-article (2), confirming the imposition of an administrative penalty established by the Authority or reducing any such administrative penalty, shall upon becoming *res judicata* be deemed to be a decision of the Tribunal.

Administrative Review Tribunal *Added by: VII. 2004.8. Amended by: L.N. 180 of 2012; XXXIII. 2021.10.*

39. (1) In determining an appeal the Tribunal shall take into account the merits of the appeal, and may in whole or in part, confirm or annul the decision appealed from, giving in writing the reasons for its decision and shall cause such decision to be made public and communicated to the parties to the appeal.

(2) Where the Tribunal considers that, having regard to its determination of the appeal and all other relevant matters, there are sufficient reasons rendering it equitable to do so, it may, either of its own motion or on application by a consumer being a party to the appeal, order that the whole or part of the costs of any such party appearing before the Tribunal relating to the engagement of a lawyer and, or of a technical adviser shall be paid to the consumer concerned by any other party to the appeal named in the order.

Procedure of the Tribunal. *Added by: VII. 2004.8. Amended by: L.N. 180 of 2012.*

40. (1) The Tribunal shall endeavour to determine an appeal within one hundred and twenty days from the lapse of the period by when the Authority may file its reply to the aforesaid appeal and in any case shall deliver its final decision not later than sixty days from when the parties declare that they have concluded with their evidence and made their final submissions.

(2) The Tribunal in order to assist it in the exercise of its functions may appoint independent and impartial experts to advise it on any issue that may be relevant to any appeal lodged before it. In such cases the Tribunal shall be entitled to make both provisional and final orders in respect of the payment of the costs and fees of such experts by any of the parties to the appeal.

(3) The Minister may subject to the provisions of this Act, by regulations prescribe the procedure to be followed before the Tribunal, and subject thereto and to any other provisions of this Act, the Tribunal may regulate its own procedure.

(4) The Minister may by regulation amend any of the periods stated in sub-article (1).

Appeals pending for decision before the Telecommunications Appeals Board and, or the Communications Appeals Board . *Added by: VIII. 2014.31.* Cap. 490.

40A. (*Deleted by XXXIII. 2021.11).*

Appeal to the Court of Appeal. *Added by: XIII.2019.8. Amended by: LII. 2021.80.* Cap. 490.

41. Any party to an appeal to the Tribunal, who feels aggrieved by a decision of the Tribunal, may on a point of law and, or of fact appeal to the Court of Appeal in terms of the Administrative Justice Act.

Status of decision or directive pending an appeal before the Tribunal or the Court of Appeal. *Added by: VII. 2004.8. Amended by: IX. 2011.56; L.N. 180 of 2012; VIII. 2014.32; XXXIII. 2021.12.*

42. (1) The decision of the Authority pending an appeal whether before the Tribunal or the Court of Appeal, shall stand and shall be adhered to by all the parties to whom the decision applies.

(2) The Tribunal or the Court of Appeal, as the case may be, where it considers it to be appropriate, may, on the application of a party to the appeal, suspend in whole or in part the decision which is the subject of the appeal pending the final determination of the appeal. The Tribunal or the Court of Appeal in deciding whether or not to suspend the decision shall state its reasons and shall take into account all the relevant circumstances, including -

(*a*) the urgency of the matter,

(*b*) the effect on the party making the request if the application for suspension is not upheld, and

(*c*) the effect on competition and, or on end-users if the application is upheld:

Provided that a party, in making an application under this article, shall state the factual and legal grounds establishing a *prima facie* case for the suspension of the decision. The Tribunal or the Court of Appeal, as the case may be, shall on receipt of any such application order the notification thereof to the other party or parties to the appeal affording them reasonable opportunity to make their response thereto:

Provided further that the Tribunal or the Court of Appeal, as the case may be, in determining any such application may include such conditions as it considers necessary in the circumstances.

Collection of information regarding appeals. *Added by: IX. 2011.57. Amended by: LII. 2021.81.*

42A. The Authority shall collect information on the general subject matter of appeals, the number of requests for appeal, the duration of the appeal proceedings and the number of decisions to grant interim measures. The Authority shall provide such information, as well as the decisions or judgments given, to the European Commission and, to BEREC after a reasoned request from either body.

Added by: XXX. 2007.46. Re-numbered by: VIII. 2014.26.

PART VIII
DISPUTE RESOLUTION

Disputes between persons holding an authorization. *Added by: XXX. 2007.46. Amended by: IX. 2011.58; LII. 2021.82; I.2024.16.*

43. (1) Unless otherwise provided in any other law, in the event of a dispute occurring between:

(*a*) undertakings in Malta within the same communications sector; or

(*b*) undertakings providing electronic communications networks and, or services in Malta on the one hand, and other such undertakings providing electronic communications networks and, or services in other Member States benefiting from obligations of access or interconnection on the other hand; or

(*c*) undertakings providing electronic communications networks and, or services in Malta on the one hand, and undertakings providing associated facilities in Malta on the other hand,

with regard to any obligations arising under any law, decision or authorisation condition which the Authority is entitled to enforce, the Authority shall, at the request of any party to the dispute, investigate the matter and shall issue a binding decision to resolve the dispute in the shortest possible time frame, and in any case within four (4) months from the date on which the dispute was notified to it:

Provided that such period of four (4) months may be extended in circumstances which the Authority considers exceptional:

Provided further that if all the parties to a dispute agree that they shall not pursue further with the dispute with a view to achieving an amicable settlement on all the issues in dispute, and three (3) months elapse from when all parties do so agree to discuss to reach an amicable settlement, then the dispute shall be considered to be terminated at the lapse of the aforesaid period of three (3) months if during that period none of the parties in writing requests the continuation of the determination of the dispute by the Authority. A party in making such a request shall also state its reasons therefore.

(2) The Authority may of its own initiative, investigate any suspected breach of any obligations arising under any law, decision or authorisation condition which it is entitled to enforce.

(2A) The Authority may decide not to initiate an investigation referred to in sub-article (1) and, or in sub-article (2) where it is satisfied that other means of resolving the dispute in a timely manner are available to the parties or if legal proceedings in relation to the dispute have been initiated by any party to the dispute:

Provided that where the Authority decides not to initiate an investigation it shall inform the parties of such a decision as soon as possible thereafter.

(3) Where the Authority decides not to initiate an investigation under sub-article (2), it shall inform the parties of such a decision as soon as possible thereafter.

(4) If after four months from the date of a decision referred to in sub-article (3) the dispute is not resolved and the party seeking redress has not initiated legal proceedings before the ordinary courts or any other competent adjudicative forum, however so described, the Authority shall, at the request of any of the parties to the dispute, initiate an investigation and give a decision in accordance with the provisions of this article.

(5) In giving a decision under this article the Authority shall in relation to disputes between persons providing electronic communications services and, or networks, have regard to the objectives under article 4 of the Electronic Communications (Regulation) Act. Cap. 399.

(6) Without prejudice to the provisions of article 31, a person to whom a decision under this article applies shall, saving the provisions of article 42, forthwith comply with that decision. If such person fails to do so, he shall be deemed to have committed an infringement of this article. The period of non-compliance shall be deemed to have commenced from the date of notification of the decision of the Authority or from any such other date as may be communicated in the decision which date shall in any case be on or subsequent to the date of notification of the decision:

Provided that if it results to the Authority that a breach of this Act, any other law, decision or authorisation condition which the Authority is entitled to enforce has been committed by a party to a dispute, the Authority may notwithstanding the provisions of this article apply the provisions of articles 31 to 33.

(7) In issuing a decision under this article the Authority shall state

the reasons on which the decision is based, and shall, subject to such requirements of commercial confidentiality as it may deem appropriate, notify the parties to the dispute with a copy of the decision.

(8) The Authority shall publish notice of a decision given under this article and shall indicate where copies of, or information regarding the decision may be obtained.

(9) The procedure referred to in this article shall not preclude any party to the dispute from bringing an action before the courts or any other competent adjudicative forum.

(10) The Minister may, in accordance with EU legislation, by regulation vary the periods stated in sub-articles (1) and (4).

(11) Nothing in this article shall preclude the Authority if it considers appropriate in any circumstances that may arise in accordance with this article, either of its own initiative or at the request of a party to a dispute, from undertaking any mediation in relation to the said dispute.

Disputes involving end-users. *Added by: XXX. 2007.46. Amended by: XII. 2010.17; IX. 2011.59; VIII. 2014.33; LII. 2021.83.*

44. (1) An end-user may refer a dispute with an undertaking to the Authority if such dispute relates to an allegation of non-compliance by that undertaking with any law, decision, directive or authorisation condition which the Authority is entitled to enforce:

Provided that in referring a dispute to the Authority in accordance with this article, the end-user shall show *prima facie* that he has suffered prejudice as a direct result of the alleged non-compliant act or omission of the undertaking.

(2) Upon receipt of any reference as aforesaid, or upon otherwise becoming aware of any such dispute that the Authority believes should be investigated, the Authority shall notify all the parties to the dispute that the matter is being investigated. In doing so the Authority shall regulate its own procedure, which procedure shall, as far as is reasonably possible, be transparent, non-discriminatory, simple, inexpensive and conducive to a prompt and fair settlement of the dispute, and it shall afford all parties to the dispute reasonable opportunity to make their submissions and to produce any relevant information:

Provided that the Authority may decide not to initiate an investigation in accordance with this article where it is satisfied that other means of resolving the dispute in a timely manner are available to the parties or if legal proceedings in relation to the dispute have been initiated by any party to the dispute.

(3) The Authority, in resolving any disputes referred to it under this article, may issue directives to the person against whom the complaint has been lodged, requiring that person to comply with any measure that the Authority may specify in accordance with its powers at law for the resolution of the dispute:

Provided that where, in a dispute lodged by an end-user, the end-user is requesting the payment of compensation and, or other civil redress and the amount involved does not exceed the competence of the Consumer Claims Tribunal or the Small Claims Tribunal, the

Authority may refer such dispute for determination by the Consumer Claims Tribunal or the Small Claims Tribunal as appropriate.

(4) The Authority shall make publicly available any rules of procedure which it may from time to time establish in relation to the handling of any disputes referred to it under this article.

(5) The provisions of this article shall be without prejudice to the right of an end-user to have recourse to any other body in resolving any such disputes.

(6) In issuing a decision under this article the Authority shall state the reasons on which it is based, and shall, subject to such requirements of commercial confidentiality as it may deem appropriate, notify the parties to the dispute with a copy of the decision.

(7) The Authority shall publish notice of a decision given under this article and shall indicate where copies of, or information regarding the decision may be obtained.

Resolution of cross-border disputes. *Added by: IX. 2011.60. Amended by: LII. 2021.84.*

44A. (1) In the event of a dispute arising under any law or decision which the Authority is entitled to enforce, involving undertakings in more than one Member State, a person may request the Authority to co-ordinate its efforts with any relevant regulatory authority in another Member State with a view to bringing about a resolution of the dispute.

Cap. 399.

(2) In addition to sub-article (1), a dispute arising under the Electronic Communications (Regulation) Act or the Electronic Communications Code between undertakings in different Member States, where the dispute lies within the competence of the Authority and national regulatory authorities from other Member States, that dispute shall be subject to the following:

(*a*) any person may refer such a dispute to the Authority, and where the dispute affects trade between Malta and other Member States, the Authority shall notify the dispute to BEREC in order to bring about a consistent resolution of the dispute in accordance with the objectives set out in article 4 of the Electronic Communications (Regulation) Act. In doing so the Authority shall await the opinion of BEREC subsequent to the notification before taking any action to resolve the dispute:

Cap. 399.

Provided that in exceptional circumstances where there is an urgent need to act, in order to safeguard competition or protect the interests of end-users, the Authority may, either at the request of any person to the dispute or of its own initiative, adopt interim measures:

(*b*) where the Authority makes a determination for the purposes of resolving a dispute under this article, the provisions of article 43 shall, where applicable, apply:

Provided further that the Authority when imposing any obligations on an undertaking in resolving a dispute shall abide with the provisions of the Electronic Communications Code, and shall take the utmost account of the opinion adopted by BEREC taken in accordance

with paragraph 3 of Article 27 of the Electronic Communications Code, which opinion shall be adopted within thirty days.

(3) The procedure referred to in this article does not preclude a person to the dispute from bringing an action before the courts or any other competent adjudicative forum.

(4) The provisions of this article shall not apply to disputes relating to radio spectrum coordination covered by Part V of the Electronic Communications (Regulation) Act.

Cap. 399.

Amended by: XXX. 2007.46. Re-numbered by: VIII. 2014.26. Amended by: XXXIII. 2021.13.

PART IX
MISCELLANEOUS

Persons deemed public officers. *Amended by: VII. 2004.8; XXX. 2007.46; VIII. 2014.34; XXXIII. 2021.13.* Cap. 9.

45. The members of the Board and all officers and employees of the Authority shall be deemed to be public officers within the meaning of the Criminal Code.

Power to make regulations. *Amended by: VII. 2004.7, 8; XXX. 2007.46; XVIII. 2016.20; XIII.2019.9; LII. 2021.85; I.2024.17.*

46. (1) The Minister may, after consultation with the Authority, make regulations in respect of any of the functions assigned to the Authority including such functions as may be assigned in compliance with any international obligations of Malta and in respect of alternative dispute resolution, or any other dispute or complaint handling procedures, however so described, relating to any of the communications sectors regulated by the Authority, which regulations may also provide for any such fees and, or charges however so described that may be payable to the Authority in relation to the exercise of any such functions:

Provided that the Minister may establish the procedure to be followed by the Authority in the investigation of any infringements and the enforcement of any sanctions that the Authority may be empowered by law to impose.

(2) The Minister may, after consultation with the Authority, by order in the Gazette list in the Second Schedule, any European Union legislation however so described or part thereof which is directly applicable to Malta, which legislation, once so listed, shall be considered to be a law enforced by the Authority in accordance with its powers under Part VI:

Provided that the Minister may, after consultation with the Authority, by order in the Gazette amend such list.

Exemption from liability. *Added by: VII. 2004.9. Amended by: XXX. 2007.46; VIII. 2014.35.*

47. The members of the Board, officers and employees of the Authority in the performance of their functions under this Act or any other law administered by the Authority, shall not be liable for any loss or damage suffered by any person by reason of anything done or omitted to be done in good faith in the course of the administration of this Act or any other law.

Service of notice. *Added by: VII. 2004.9. Amended by: XXX. 2007.46; L.N. 180 of 2012.*

48. Where a notice however so described is required to be given by the Authority to any person whether under this Act or under any other law administered by the Authority, the notice shall be addressed to that person and shall be given to the person in any of the following ways:

(*a*) by delivering it to the person;

(*b*) by leaving it at the address at which the person ordinarily resides or carries on business;

(*c*) by sending it by registered post to the person at the address at which the person ordinarily resides or carries on business;

(*d*) if an address for the service of notices has been provided by the person, by leaving it at, or sending it by registered post addressed to the person to that address;

(*e*) in any case where the Authority considers that the immediate giving of the notice is required, by sending it, by means of a facsimile machine or by electronic mail, to a device or facility for the reception of facsimiles or electronic mail located at the address at which the person ordinarily resides or carries on business or, if an address for the service of notices has been furnished by the person, that address, provided that the facsimile machine of the sender generates a message confirming successful transmission of the total number of pages of the notice or the facility of the sender for the reception of electronic mail generates a message confirming receipt of the electronic mail:

Provided that the provisions of paragraph (*e*) shall not apply to the notification of documents filed before the Tribunal or any Court.

Proceedings for debts due to the Authority. *Added by: VII. 2004.9. Amended by: XXX. 2007.46, 48; VIII. 2014.36; XXXIII. 2021.14.*

49. (1) Where the Authority desires to sue for the recovery of a debt due to the Authority under any law which it is entitled to enforce for any licence or authorisation fee or other similar fee or charge however so described that may be due, the Chairman, the Chief Executive Officer or an officer of the Authority duly authorised by the Authority to act on its behalf may make a declaration on oath before the registrar, a judge or a magistrate wherein he states the nature of the debt and the name of the debtor and confirm that it is due.

(2) The declaration referred to in sub-article (1) shall be served upon the debtor by means of a judicial act and it shall have the same effect as a final judgement of the competent court unless the debtor shall, within a period of twenty days from service upon him of the said declaration, oppose the claim by filing an application demanding that the court declare the claim unfounded.

(3) The application filed in terms of sub-article (2) shall be served upon the Authority, which shall be entitled to file a reply within a period of twenty days. The court shall appoint the application for hearing on a date after the lapse of that period.

(4) Any debts due to the Authority in accordance with this article shall be prescribed by the lapse of the period of five years from the date on which the debt was due.

Name of the Authority not to be used in any advertisement.
Added by: VIII. 2014.37.
Amended by: LII. 2021.86.

50. (1) An undertaking shall not, without the written prior consent of the Authority, make or cause to be made any representation in any visual or aural form, either specifically or by implication, to the effect that:

(*a*) any goods or services supplied by any undertaking have the approval of the Authority; or

(*b*) any activity carried out by any undertaking has the approval, or is conducted with the co-operation or assistance of the Authority.

(2) Where the name, trade name, trademark or the designation of any goods or service provided or supplied by an undertaking appears in relation to a representation referred to in sub-article (1), that undertaking shall be deemed for the purposes of this article to have caused the representation to be made unless it proves that the representation was made without its knowledge or connivance.

(3) An undertaking convicted under this article shall be liable to a fine (*multa*) of not less than one thousand euro (€1,000) and not more than ten thousand euro (€10,000).

Substituted by: VIII. 2014.38.
Amended by: XVIII. 2016.20; LII. 2021.87; I.2024.18.

FIRST SCHEDULE

(Article 5(2))

In accordance with the provisions of paragraph (b) of the first proviso to sub-article (2) of article 5, the following public authority has been delegated to issue the following type of authorization:

Name of public authority	Type of authorization
Authority for Transport in Malta	Ship station licences (individual authorisations)

Added by: XVIII. 2016.20.
Amended by: L.N. 416 of 2018; L.N. 39 of 2019; L.N. 169 of 2019; L.N. 191 of 2022; L.N. 66 of 2024; L.N. 224 of 2025.

SECOND SCHEDULE

(Article 46(2))

The following legislation is being listed in accordance with the provisions of article 46(2):

(i) Regulation (EU) 2022/612 of the European Parliament and of the Council of 6 April 2022 on roaming on public mobile communications networks within the Union (recast);

(ii) Regulation (EU) 2015/2120 of the European Parliament and of the Council of the 25 November 2015 laying down measures concerning open internet access and amending Directive 2002/22/EC on universal service and users' rights relating to electronic communications networks and services and Regulation (EU) No 531/2012 on roaming on public mobile communications networks within the Union.

(iii) Regulation (EU) 2018/644 of the European Parliament and of the Council of 18 April 2018 on cross-border parcel delivery services;

(iv) Regulation (EU) 2018/302 of the European Parliament and of the Council of 28 February 2018 on addressing unjustified geo-blocking and other forms of discrimination based on customers' nationality, place of residence or place of establishment within the internal market and amending Regulations (EC) No 2006/2004 and (EU) 2017/2394 and Directive 2009/22/EC;

(v) Regulation (EU) 2017/1128 of the European Parliament and of the Council of 14 June 2017 on cross border portability of online content services in the internal market.

(vi) Regulation (EU) 2022/2065 of the European Parliament and of the Council of 19 October 2022 on a Single Market for Digital Services and amending Directive 2000/31/EC (Digital Services Act).

(vii) Articles 23, 24, 25, 26, 27, 28, 29, 30, 31, 34 and 35 of Regulation (EU) 2023/2854 of the European Parliament and of the Council of 13 December 2023 on harmonised rules on fair access to and use of data amending Regulation (EU) 2017/2394 and Directive (EU) 2020/1818 (Data Act).