

MALTA COMMUNICATIONS AUTHORITY ACT, 2000

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I assent.

(L.S.)

GUIDO DE MARCO
President

18th July, 2000

ACT No. XVIII of 2000

AN 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 telecommunications, data protection, electronic commerce and similar areas in the field of communications and to make provision with respect to matters ancillary thereto or connected therewith.

BE IT ENACTED by the President, by and with the advice of the House of Representatives, in this present Parliament assembled, and by the authority of the same as follows:—

Part I - Preliminary

1. The title of this Act is the Malta Communications Authority Act, 2000 and shall come into force on such date or dates as the Minister may by notice in the Gazette appoint, and different dates may be so appointed for different purposes and different provisions of this Act.

Short title and
commencement.

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

Interpretation.

“advisory committee” or “committee” means an advisory committee established in accordance with article 28 of this Act;

“Authority” means the Malta Communications Authority established by article 3 of this Act;

“Chairman” means Chairman of the Authority and includes, in the circumstances mentioned in subarticle (3) of article 3 of this

Act, the Deputy Chairman or other person appointed to act as Chairman:

Provided that, in relation to article 28 of this Act, “Chairman” means the Chairman of an advisory committee;

“Chief Executive” means the Chief Executive appointed under article 5 of this Act;

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

“contractor” means a person acting in pursuance of an agreement entered into with the Authority or in accordance with subarticle (5) of article 5 of this Act;

“Directorates” means such directorates as are or may be established under article 5 of this Act;

“employee” means a person employed by the Authority;

“financial year” means any period of twelve months ending on the 30th September:

Provided that the first financial year of the Authority shall begin on the coming into force of this Act and shall end on the 30th September of the next following year;

“Minister” means the Minister responsible for communications;

“public officer” in relation to article 11 of this Act, 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.

Part II - Establishment, Functions and Conduct of Affairs of the Authority

Establishment and
composition of the
Malta
Communications
Authority.

3. (1) There shall be a body, to be known as the Malta Communications Authority, which shall consist of a Chairman and not less than four and not more than six other members.

(2) The members of the Authority shall be appointed by the Minister for a term of one year or for such longer period as may be

specified in the instrument of appointment subject to a maximum of three years but the members so appointed may be re-appointed on the expiration of their term of office.

(3) The Minister may designate one of the other members of the Authority 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 office of chairman, and the Minister may also, in any of the circumstances aforesaid, appoint another person to act as chairman and in such case the foregoing provisions shall apply in respect of such person.

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

(a) is a Minister, Parliamentary Secretary or a member of the House of Representatives, 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 Authority:

Provided that the Minister may waive the disqualification of a person under this paragraph if such person declares the interest and such declaration and waiver are published in the Gazette.

(5) Subject to the provisions of this article, the office of a member of the Authority 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 Authority, would cause him to be disqualified for appointment as such.

(6) A member of the Authority may be removed from office by the Minister if, in the opinion of the Minister, such member is unfit to continue in office or has become incapable of properly performing his duties as a member.

(7) If a member resigns or if the office of a member of the Authority 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 to be a member to be a temporary member of the Authority; and any person so appointed shall, subject to the provisions of subarticle (5) and (6) of this article, 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.

(8) Any member of the Authority who has any direct or indirect interest in any contract made or proposed to be made by the Authority, 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 Authority after the relevant facts have come to his knowledge, such disclosure shall then be recorded in the minutes of the Authority, 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.

Scope and functions
of the Authority.

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;
- (iv) the protection of public health;
- (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—

(a) regulate, monitor and keep under review all practices, operations and activities relating to any matter regulated by or under this Act;

(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 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 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) perform such other functions as may from time to time be assigned to it by the Minister.

Conduct of the
affairs of the
Authority.

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

(2) There shall be established the Directorates as listed in the First Schedule to this Act, which shall have the responsibilities as described therein. The Minister may, after consulting the Authority, by Order in the Gazette, abolish any one or more of the said Directorates vary their responsibilities and establish such other Directorate as he may from time to time deem appropriate.

(3) The Authority shall exercise its functions through the Directorates so established and for such purpose it shall vest in each of the Directorates so established and subject to the overall supervision and control of the Chief Executive, such of its functions as relate or are ancillary to the matters for which it is responsible so as to enable the said Directorate to give effect to the policies of the Authority and to otherwise discharge effectively and efficiently the functions of the Authority in its respective area of operation.

(4) Each of the Directorates so established shall be headed by a person who shall either be a public officer detailed for duty with the Authority or an employee of the Authority or a person detailed to work for the Authority in accordance with an agreement made between the Authority and a public or private undertaking, in either case having adequate experience or knowledge in his respective area of operation.

(5) The Authority and each of the Directorates may exercise any one or more of their functions either directly or through any of their officers or employees or through an agency authorised for the 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 subarticle shall authorise the Authority to contract out any of its regulatory or licensing functions.

(6) Where in this Act anything is to be done by or against or with respect to the Authority, or any notice is to be or may be given to the Authority, any such thing or notice may also be done by or against or with respect to or be given to the Directorate under whose jurisdiction the matter falls by reason of a delegation of function to such Directorate; and for the purposes aforesaid any reference in this Act to the Authority includes a reference to the appropriate Directorate.

(7) The Chief Executive and the heads of the Directorates shall be appointed by the Authority after consultation with the Minister for a period of three years which may be extended for further periods of three years each:

Provided that the first Chief Executive and the first head of each Directorate shall be appointed by the Minister.

(8) The Chief Executive shall attend all the meetings of the Board but shall not vote at such meetings:

Provided that the Authority may if it so deems fit require the Chief Executive not to attend any of the meetings or any part of a meeting.

(9) The Chief Executive shall be responsible for the implementation of the objectives of the Authority in the exercise of its functions and without prejudice to the generality of the foregoing he shall—

(a) assume full responsibility for the overall supervision and control of the Directorates;

(b) assign to each Directorate such duties which are by, or in accordance with, the provisions of this Act vested in such Directorate;

(c) co-ordinate the workings of the Directorates;

(d) develop the necessary strategies for the implementation of the objectives of the Authority;

(e) advise the Authority on any matter it may refer to him or on any matter which he considers necessary or expedient; and

(f) perform such other duties as the Authority may assign to him from time to time.

Relations between
the Minister and the
Authority.

6. (1) 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, not inconsistent with the provisions of this Act, 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.

(2) 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) If the Authority fails to comply with any directions issued under this article, the Prime Minister may make an order transferring to the Minister in whole or in part any of the functions of the Authority

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.

Legal personality
and representation
of the Authority.

(2) The legal representation of the Authority shall jointly vest in the Chairman and the Chief Executive:

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

Provided further that in respect of any matter falling within the functions vested in a Directorate, the legal and judicial representation of the Authority shall also vest in the head of the Directorate or in such other member, officer or employee of the Authority, as the Authority may appoint or authorise for the purpose.

(3) Any document purporting to be an instrument made or issued by the Authority and signed by the Chairman or by the Chief Executive or by a head of a Directorate in relation to any matter vested in the relative Directorate by 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.

8. (1) The meetings of the Authority 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.

Provisions with
respect to
proceedings of the
Authority.

(2) Half the number of members for the time being constituting the Authority 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 Authority.

(3) Subject to the provisions of this Act the Authority 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.

(5) All acts done by any person acting in good faith, as a member of the Authority 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 subarticle (8) of article 3 of this Act.

Part III - Officers and Employees of the Authority

Staff appointments.

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 with the concurrence of the Minister.

Appointment and functions of officer and employees of the Authority.

10. The Authority shall appoint and employ, at such remuneration and upon such time terms and conditions as it may, in accordance with article 9 of this Act, 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.

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 Prime Minister's direction.

(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 of this Act, 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 subparagraph (i) of paragraph (a) of subarticle (2) of this article 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.

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

(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 subarticle (1) of this article shall for all purposes other than those of the Pensions Ordinance and of the Widows' and Orphans' Pensions Act, and saving the provisions of subarticle (6) of this article, 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.

(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) of this subarticle 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

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.

Authority to meet expenditure out of 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, being works of infrastructure or a similar capital nature.

(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 subarticle, 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 subarticle (2) of this article or any such excess as aforesaid.

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

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,

Power to borrow or raise capital.

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 fifty thousand liri, 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 subarticle (1) of this article, 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 subarticle

(3) of this article 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.

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: Estimates of the Authority.

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.

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 of this Act. Expenditure to be according to approved estimates.

(2) Notwithstanding the provisions of subarticle (1) of this article—

(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 of this Act, 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.

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 Authority. Such monies shall, as far as practicable, be paid into any such banks from day to day, except such sum as the Authority may authorise to be retained to meet petty disbursements and immediate cash payments.

Deposit of revenues
and payment by the
Authority.

(2) All payments out of the funds of the Authority, other than petty disbursements not exceeding a sum fixed by the Authority, shall be made by such officer or officers of the authority as the Authority 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 Authority for that purpose and shall be countersigned by the Chairman, or such other member or officer of the Authority as may be authorised by the Authority 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.

23. Without prejudice to any directions communicated by the Minister under subarticle (1) of article 6 of this Act, the Authority shall not, except with the approval of the Minister granted for special reasons and after consultation with the Minister responsible for finance, award or enter into any contract for the supply of goods or materials or for the execution of works, or for the rendering of services, to or for the benefit of the Authority, which is estimated by the Authority to exceed three thousand liri in value, or such other amount as the Minister responsible for finance may by regulations prescribe, except after notice of the intention of the Authority to enter into the contract has been published and competitive tenders have been issued.

Annual Report.

24. The Authority shall, not later than six 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.

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, apparatus, 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.

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.

Construction of laws, etc.

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.

Transitory provisions.

(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.

Part VI - Advisory Committees

Appointment and
functions of
advisory
committees.

28. (1) With effect from such day or days as the Minister may by order determine, there shall be appointed in respect of such sector as the Minister may in any such order specify, an advisory committee.

(2) An advisory committee shall, for the better carrying out of the provisions of this Act, advise the Authority on such matters and perform such other functions as the Minister may specify in the Order.

(3) The members of the committee shall be appointed by the Minister and shall hold office for such period and on such terms and conditions as the Minister may deem appropriate.

(4) Each committee shall consist of one member representing the Authority as Chairman and such other members as the Minister may deem fit to appoint.

(5) The provisions of paragraph (a) of subarticle (4), and subarticles (5) and (8) of article 3 of this Act shall *mutatis mutandis* apply to the members of the advisory committees.

(6) Each advisory committee shall keep minutes of all its meetings and shall forward copies of such minutes to the Authority. The provisions of article 8 of this Act shall *mutatis mutandis* apply to the committee and its acts or proceedings.

Part VII - Miscellaneous

Persons deemed
public officers.

29. (1) The members of the Authority, the members of the advisory committees and all officers and employees of the Authority shall be deemed to be public officers within the meaning of the Criminal Code.

(2) The Minister and the members of the Authority and its officers shall not for a period of one year following the termination of their appointment or office engage in any activity which in accordance with the provisions of paragraph (c) of subarticle (4) of article 3 of this Act would disqualify a person from holding office as a member of the Authority.

30. The Minister may, after consultation with the Authority, make regulations in respect of any of the functions of the Authority.

Power to make
regulations.
Cap. 9.

31. (1) With effect from the coming into force of this article the enactments shown in the First Column of the Second Schedule to this Act shall have effect subject to the amendments shown in the Second column of the said Schedule.

Revocation and
savings.

(2) Any subsidiary legislation prescribed under any of the provisions of the Act being amended shall, until other provision is made under or by virtue of this or any other Act, continue in force and have effect.

FIRST SCHEDULE

(Section 5(2))

Directorates

Subject to the Minister's powers under subsection (2) of section 5 of this Act, there shall be the following Directorates -

1. Directorate for Telecommunications with responsibility for the regulation of all matters relating to telecommunications as may from time to time be assigned to the Authority by or under an Act of Parliament.
2. Directorate for Data Protection with responsibility for the regulation of all matters relating to data protection as may from time to time be assigned to the Authority by or under an Act of Parliament.
3. Directorate for Information and Other Systems with responsibility for the regulation of all matters relating to electronic commerce as well as information and other systems as may from time to time be assigned to the Authority by or under an Act of Parliament.

SECOND SCHEDULE

(Article 31)

First Column
Enactment

Telecommunications
(Regulation) Act,
Cap. 399.

Second Column
Extent of Amendments

1. (1) The word "Authority" shall substitute the word "Regulator" as follows: in the definition of "universal service obligation" in section 2, in the marginal note to section 3, in the marginal note to section 4, in subsections (1), (2) and (3) of section 6, in subsections (1), (3) and (4) of section 7, in subsections (1), (2), (3) and (4) of section 8, in subsections (1), (2) and (3) of section 9, in subsection (2) of section 10, in the sixth line and paragraph (b) of section 13, in paragraphs (d) and (f) of section 14, in subsections (1), (2), (3), (4) and (5), the first and second provisos to subsection (5), and subsections (6) and (8) of section 15, in paragraph (d) of section 16, in the first paragraph of subsection (1), the proviso to paragraph (b) of subsection (1), paragraph (d) of subsection (1) of section 17, in subsections (1) and (2) of section 19, in subsections (1), (2) and (3) of section 21, in the marginal note and subsections (1), (2) and (3) of section 22, in the marginal note and subsections (1), (2), (3) and (5) of section 23, in subsection (2) of section 24, in title number 5 of Part II, in subsection (3) of section 26, in subsections (1) and (2) of section 28, in paragraphs (d) and (e) of subsection (1) of section 30, in section 32, in subsection (1), paragraphs (a) and (d) of subsection (2), subsections (3), (4) and (5) of section 33, in subsection (2) of section 34, in subsection (1) of section 35, and in paragraphs (a) and (b) of subsection (2) of section 37.

(2) The word "system" shall substitute the word "infrastructure" as follows: in the definitions of "authorisation", "authorised provider", "private telecommunications infrastructure", "private telecommunications service", and "telecommunications service" in section 2, in title number 2 of Part II, in subsection (1) of section 5, in subsection (2) of section 7, in subsection (1) of section 9, in the marginal note, the second line, paragraphs (a), (b) and (c) of section 13, in subsections (1) and (2) of section 14A, in subsection (1) of section 22 and in subsection (1) of section 27 and in paragraphs (a) and (d) of subsection (1) of section 34.

(3) The word "it" shall replace the word "he" as follows: in subsections (3) and (4) of section 7, in subsection

(3) of section 8, in subsection (1) of section 9, in paragraph (f) of section 14, in subsections (3), (4) and (5) of section 15, in subsection (2) of section 19, and in the fifth line of subsection (3) of section 21, in subsections (2) and (3) of section 22, in subsection (5) of section 23, in subsection (3) of section 26 and in subsection (5) of section 33.

2. (1) In section 2, after the words "this Act," there shall be added the words "and in regulations made thereunder,".

(2) The following definitions shall be deleted: "authorisation", "designated company", "operative date", "other service", "public telecommunications infrastructure", "public telecommunications service", "Regulator", "relevant business", "telecommunications", "telecommunication infrastructure", and "telephony".

(3) In section 2, there shall be added the following new definitions:

(a) After the definition of "apparatus":

" "authorisation" includes any licence or permit issued under this Act to install or operate a telecommunications system or to provide a telecommunications service and includes general authorisations and individual licences as defined in section 6 of this Act;".

(b) After the definition of "Board":

" "commercial activities connected with telecommunications" means the provision of telecommunications services or the supply or export of telecommunications apparatus or the production or acquisition of such apparatus for supply or export;

"competent authority" or "Authority" means the person or body designated as the competent authority in section 3 of this Act and to the extent of the authority given includes any person authorised by it for any purpose;

"convey" includes transmit and transport and "conveyance" shall be construed accordingly; ”.

(c) After the definition of "electro-magnetic system":

" "exclusive privilege" means the privilege whether referred to as a right or authority or otherwise granted to one or more persons through any legal, contractual, regulatory or administrative instrument reserving to such person or persons the privilege to provide a service, to operate a system or to undertake an activity to the exclusion of others; "

(d) After the definition of "granted":

" "interconnection" means the physical and logical linking of telecommunications systems used by the same or a different organisation in order to allow users of one organisation to communicate with users of the same or another organisation or to access services provided by another organisation. Such services may be provided by the parties involved or by other parties who have access to the system; "

(e) After the definition of "Minister":

" "network termination point" means all physical connections and their technical access specifications which form part of the public telecommunications system and are necessary for access to and efficient communication through that public system;

"number portability" means a facility whereby subscribers who so request can retain their number on a telephony system independent of the organisation providing the service at the network termination point of the subscriber;

"open network provisions" means the harmonised conditions which concern the open and efficient access to public telecommunications systems and public telecommunications services and the efficient use of those systems and services. Without prejudice to their application on a case by case basis, open network provisions may include conditions with regard to –

(i) technical interfaces including the definition and implementation of network termination points;

(ii) usage conditions including access to frequencies;

(iii) tariff principles;"

(f) After the definition of "public land":

" "public telecommunications system" means a public telecommunications infrastructure which permits the conveyance of signals between defined network termination points by wire, by microwave, by optical means or by other electromagnetic means;

"public telecommunications service" means a service the supply of which has been entrusted to one or more telecommunications organisations;

"publicly available telecommunications service" means a telecommunications service available to the public;

"publicly available voice telephony services" means a fixed telephony service whether operated by wireless or otherwise or a mobile telephony service, or both, available to the public;

"a dominant market position" shall have the same meaning as may be prescribed by regulations made under this Act;

"subscriber" means a person who is a party to a contract with a provider of publicly available telecommunications services for the supply of such services;

"systemless service provider" means a person who provides publicly available telecommunications services but who does not operate the telecommunications system by means of which such services are provided;

"telecommunications" means the emission, transmission, routing or reception through electric, magnetic, electromagnetic, electro-chemical or electro-mechanical energy of:

- (i) speech, music and other sounds,
- (ii) visual images;
- (iii) signals serving for the impartation (whether as between persons and persons, things and things, or persons and things) of any matter otherwise than in the form of sounds or visual images; or
- (iv) signals serving for the actuation or control of machinery or apparatus;

"telecommunications apparatus" or "apparatus" means apparatus construed or adapted for use in transmitting or receiving anything which is to be or has been conveyed over a telecommunications system; "

(g) After the definition of "telecommunications service":

" telecommunications system" means a system for the conveyance through the agency of electric, magnetic, electromagnetic, electro-chemical or electro-mechanical energy, of

- (i) speech, music and other sounds;
- (ii) visual images;
- (iii) signals serving for the impartation (whether as between persons and persons, things and things or persons and things) of any matter otherwise than in the form of sounds or visual images; or
- (iv) signals serving for the actuation or control of machinery or apparatus;

"telecommunications transport provider" means a person who provides a service consisting in the conveyance by means of a telecommunications system of publicly available telecommunications services; ".

(h) After the definition of "telegraphy":

" "telephony" means the commercial provision for the public of direct transport of real-time speech through the public switches network or networks such that any user can use equipment connected to a network termination point to communicate with another user of equipment connected to another termination point;

"transport" includes conveyance and transmission;".

(i) After the definition of "universal service obligation":

" "user" means persons using or requesting publicly available telecommunications services. " .

(4) In section 2, in the definition of "Board" for the words "section 29" there shall be substituted the words "section 34".

(5) In section 2, the definition of "telecommunications service" shall be amended as follows:

(a) In paragraph (a) for the words "transmission, by means of a telecommunications infrastructure" there shall be substituted the words "conveyance by means of a telecommunications system";

(b) In paragraph (b) for the words "any means whatsoever" there shall be substituted the words "means of a telecommunications system";

(c) At the end of paragraph (c) there shall be inserted the following "including cable television, video on demand and interactive services, but excluding broadcasting as defined in the Broadcasting Act (Cap. 350);".

(6) In section 2, in the definition of "universal service obligation" for the words "charge." There shall be substituted the word "charge;".

3. (1) Title number 1 of Part II shall be substituted by the following "Competent Authority to regulate Telecommunications".

(2) Other than the marginal note thereof, section 3 shall be substituted by the following:

"3. (1) The Minister shall by order in the Gazette nominate a person or body to be the competent authority for the purposes of this Act to carry out the functions of the competent authority under this Act and to perform such other functions as the Minister may consider appropriate in relation to the operation of this Act. Such person or body shall be nominated for such period as the Minister may determine and the Minister shall have the power at any time to prolong, renew or terminate such nomination by order in the Gazette.

(2) The power of the Minister to prolong, renew or terminate a nomination made in pursuance of subsection (1) of this section shall cease to exist from such time as may be specified by the Minister in an order in the Gazette wherein the Malta Communications Authority is nominated to act as the competent authority under this Act on a permanent basis."

(3) Other than the marginal note thereof, section 4 shall substituted by the following:

"4. (1) It shall be the duty of the Authority to exercise the functions assigned to it under this Act in a manner which it considers to be conducive –

(a) to the regulation of the telecommunications sector on the basis of the fundamental principles of this Act including the separation of regulatory and operational functions, fair competition, transparency, non-discrimination, open networks, consumer protection, universal service, public service values and respect for fundamental human rights;

(b) to secure that there are provided in Malta, save in so far as the provision thereof is impracticable, such telecommunications services as satisfy all reasonable demands for them including in particular emergency services, public call services, directory information services, and maritime services; and

(c) without prejudice to the generality of paragraph (a) above, to secure that any person by whom any such services are to be provided is able to finance the provision of those services.

(2) Subject to subsection (1) above, the Authority shall have a duty to exercise the functions assigned or transferred to it under this Act in a manner which it considers to be best conducive –

(a) to promote the interests of consumers, purchasers and other users in Malta (including in particular those who are disabled or of pensionable age) in respect of the prices charged for, and the quality and variety of, telecommunications services provided and telecommunications apparatus supplied;

(b) to promote open networks and effective competition between persons engaged in commercial activities connected with telecommunications in Malta;

(c) to promote efficiency and economy on the part of such persons;

(d) to promote research into and the development and use of new techniques by such persons;

(e) to encourage major users of telecommunications services whose places of business are outside Malta to establish places of business in Malta;

(f) to promote the provision of international transit services by persons providing telecommunications services in Malta;

(g) to enable persons providing telecommunications services in Malta to compete effectively in the provision of such services outside Malta;

(h) to encourage persons producing telecommunications apparatus to set up production facilities in Malta and to enable such persons to compete effectively in the supply of such apparatus both inside and outside Malta.

(3) It shall be the duty of the Authority to carry out the functions prescribed in this Act and to ensure compliance with the provisions of this Act, and, without prejudice to the generality of the foregoing, to ensure that persons operating telecommunications systems or providing telecommunications services in Malta comply with this Act, with regulations and directives issued under this Act and with the conditions of their licences.

(4) The Authority may make directives as may be required for the carrying into effect of any of the provisions of this Act and it may also amend or revoke such directives.

(5) Directives issued by the Authority in pursuance of this section and any amendment or revocation thereof shall be communicated by the Authority to persons operating telecommunications systems or providing telecommunications services in Malta and shall also be made public by publication in the Government Gazette.

(6) The Authority shall also have such other functions, responsibilities and powers as are set out in this Act or as the Minister responsible for telecommunications may by order prescribe or as may be assigned to it by or under any other law."

(4) Section 5 shall amended as follows:

(a) In the proviso to subsection (2) thereof for the words "shall be deemed to include" there shall be substituted the word "may include".

(b) After the proviso to subsection (2) there shall be added the following new subsection:

"(3) The provisions of this section shall not be contravened by the running of any telecommunications system listed as being exempt from the said provisions in regulations which the Minister may from time to time prescribe."

4. (1) Section 6 shall be renumbered as section 12.

(2) After section 5 there shall be added the following:

"6 (1) A licence to operate a telecommunications system or to provide a telecommunications service may be granted –

(i) by the Authority; or

(ii) in accordance with a general authorisation issued by the Authority and subject to verification by the Authority that the conditions of the general authorisation have been satisfied,

for the operation of any telecommunications system as is specified in the licence or is of a description so specified.

(2) A licence granted under this section shall be in writing and, unless previously revoked in accordance with any term therein contained, shall continue in force for such period as may be specified in or determined by or under the licence.

(3) A licence granted under this Act may be granted either in the form of a general authorisation to all persons or to persons of a class or in the form of an individual licence to a particular person.

(4) A licence granted under this section may authorise –

(a) the connection to any telecommunications system to which the licence relates of –

(i) any other telecommunications system specified in the licence or of a description so specified; and

(ii) any apparatus so specified or of a description so specified; and

(b) the provision by means of any telecommunications system to which the licence relates of any telecommunications services specified in the licence or of a description so specified.

(5) A licence granted under this Act may include

(a) such conditions (whether relating to the telecommunications system to which the licence relates or otherwise) as appear to the Authority to be requisite or expedient having regard to the duties of the Authority and to the international obligations of Malta;

(b) conditions requiring the payment to the Authority of a fee on the grant of the licence or of payments during the currency of the licence or both, which fee or payments shall be of such amount or amounts (which may also be determined by reference to the licensee's income, sales or turnover) as may be determined in the licence;

(c) in the case of a licence granted to all persons or to persons of a class, conditions requiring any person or any person who falls within the class of persons to which the licence relates, to notify the Authority of his intention to run a telecommunications system under that licence;

(d) conditions requiring the licensee to comply with any directions given by the Authority as to matters stated in the licence;

(e) conditions requiring the licensee to do or not to do such things as are specified in the licence;

(f) conditions obliging the licensee to refer for determination by the Authority such questions arising under the licence as are specified in the licence;

(g) such other conditions as may be prescribed.

7. (1) Where the Authority receives an application for a licence to operate a telecommunications system which cannot be operated under the terms of a current licence which has been granted to persons of a class it shall, subject to any time limits specified for the grant of licences under section 14 –

(a) either grant a temporary licence containing such conditions as the Authority considers appropriate to enable the applicant to commence operating such a system; or

(b) reject the application.

(2) Where the Authority grants a temporary licence under subsection (1) of this section it shall as soon as possible either replace such a licence with another licence granted under this section containing such conditions as it considers appropriate or revoke it.

8. (1) A person who complies with the applicable conditions under a general authorisation may operate the telecommunications systems and provide the telecommunications services covered by the general authorisation.

(2) Before providing the telecommunications service or operating the telecommunications system covered by a general authorisation a person enjoying a general authorisation shall notify the Authority of his intention to do so and shall communicate to the Authority the prescribed information relating to the system or service concerned which is necessary for the purpose of ensuring compliance with the conditions of the general authorisation.

(3) The Authority may require a person as referred to in subsection (1) of this section to wait up to four weeks after formal receipt by the Authority of all the prescribed information required before starting to provide the services or to operate the systems covered by the general authorisation.

(4) Fees imposed on persons as part of the authorisation procedures under a general authorisation shall only seek to cover the administrative costs incurred in the issue, management, control and enforcement of the applicable general authorisation scheme:

Provided that nothing in this subsection shall be deemed to exonerate any person availing himself of a general authorisation from making financial contributions to the provision of universal services in accordance with any funding mechanism for universal services as may be prescribed.

9. (1) Individual licences may be issued for the following purposes only:

(a) to allow the licensee access to radio frequencies and numbers;

(b) to give the licensee particular rights with regard to public or private land;

(c) to impose obligations and requirements on the licensee relating to the mandatory provision of publicly available telecommunications services or public telecommunications systems, including obligations which require the licensee to provide universal services and other obligations resulting from open network provisions prescribed in any law or regulation;

(d) To impose specific obligations in accordance with competition rules or international obligations where the licensee has a dominant market position in relation to the provision of telecommunications systems or publicly available telecommunications services.

(2) Notwithstanding the provisions of subsection (1) above the provision of publicly available voice telephony services, the establishment and provision of public telecommunications systems as well as other systems involving the use of radio frequencies may be made subject to individual licences as may be prescribed.

(3) The Minister may by regulations made after consultation with the Authority limit the number of individual licences for any category of telecommunications services or systems to the extent that he may deem necessary to ensure the efficient use of radio frequencies or for the time that he may deem necessary to make available sufficient numbers.

10. (1) Where a person enjoying a general authorisation does not comply with a condition attached to a general authorisation the Authority may inform that person that he is not entitled to avail himself of the general authorisation and it may impose on that person in a proportionate manner specific measures aimed at ensuring compliance by him with the conditions of the general authorisation.

(2) The Authority shall at the same time give such person as referred to in subsection (1) of this section a reasonable opportunity to state his views on the application of the conditions and to remedy any breaches within one month starting from the intervention of the Authority.

(3) If the person as referred to in subsection (1) above remedies the breaches, the Authority shall, within two months of its initial intervention, revoke or modify its decision as it may consider appropriate and it shall give the reasons for its decision.

(4) If the person as referred to in subsection (1) above does not remedy the breaches the Authority shall, within two months of its initial intervention, confirm its decision and give the reasons for its decision. The decision of the Authority shall be communicated within one week of its adoption to the person concerned.

(5) Decisions of the Authority taken in pursuance of subsections (3) or (4) of this section shall be appealable to the Telecommunications Appeals Board.

11. (1) Where the beneficiary of an individual licence does not comply with a condition attached to the licence, the Authority may withdraw, amend or suspend the individual licence or impose in a proportionate manner, specific measures aimed at ensuring compliance.

(2) The Authority shall at the same time give the beneficiary concerned a reasonable opportunity to state his views on the application of the condition and, except in the case of repeated breaches by the said beneficiary (in which case the Authority can immediately take the appropriate measures), to remedy any breaches within one month commencing from the date of the intervention of the Authority.

(3) If the beneficiary concerned remedies the breaches the Authority shall within two months from its initial intervention revoke or modify its decision as it deems appropriate and it shall give its reasons for its decision.

(4) If the beneficiary concerned does not remedy the breaches the Authority shall, within two months from its initial intervention, confirm its decision and give the reasons for its decision. The decision shall be communicated within one week from its adoption to the beneficiary concerned.

(5) In the event of harmful interference between a telecommunications system using radio frequencies and other technical systems the Authority may take immediate action, including but not limited to the giving of directives, to remedy the problem. In such a case the licensee concerned shall thereafter be given a reasonable opportunity to state its views and to propose remedies to the harmful interference.

(6) Decisions of the Authority taken in pursuance of subsections (3) or (4) of this section shall be appealable to the Telecommunications Appeals Board.” .

(3) The marginal notes to the new sections 6 to and including 11 shall be as follows:

(a) Section 6: “Licences and General Authorisations”;

(b) Section 7: “Temporary Licences”;

(c) Section 8: “Procedures for General Authorisations”;

(d) Section 9: “Individual Licences”;

(e) Section 10: “Non-compliance with Conditions of General Authorisations”;

(f) Section 11: "Non-compliance with Conditions of Individual Licences".

(4) Section 12 as renumbered shall be amended as follows:

(a) In subsection (1) thereof after the words "or other authorisation" there shall be added the words "whether it is an individual licence or an entitlement to act under a general authorisation";

(b) In subsection (2) thereof for the word "his" there shall be substituted the word "its".

5. (1) Sections 7, 8, 9 and 10, shall be renumbered as sections 13, 14, 15 and 16 respectively.

(2) Section 13 as renumbered shall be amended as follows:

(a) In subsection (1) for the words "a licence or permit" there shall be substituted the words "an individual authorisation";

(b) In subsection (2) after the words "the application is made" there shall be added the words "and shall include such information as may be prescribed or, in the absence of such prescription, such information as is sufficient to demonstrate that the applicant fulfils the conditions for the grant of the authorisation".

(3) Section 14 as renumbered shall be amended as follows:

(a) In subsection (1) for the words "his investigations within a reasonable time" there shall be substituted the words "his investigations within a reasonable time or within such time as may be prescribed";

(b) In subsection (3) and (4) for the words "section 9" there shall be substituted the words "section 15";

(c) In subsection (4) the words "but the Minister shall make public the reasons for his decision" shall be deleted;

(d) After subsection (4) there shall be added the following:

“(5) Decisions of the Authority and of the Minister made in pursuance of this section shall include reasons for the decision and shall be published in the Government Gazette.

(6) The Authority shall inform the applicant of its decision to grant or refuse an authorisation within six weeks from the date when it receives the application in a complete state and drawn up in a manner that complies with the provisions of this Act:

Provided that such period may be extended to up to four months in the following cases:

(i) where there is disagreement between the decision of the Authority and that of the Minister as to whether an authorisation should be issued; or

(ii) where an application requires consultation between the Authority and any Government department or other authority relating to the use of frequencies or to the possibility of interference with other telecommunications services.

(7) Where the grant of the authorisation is subject to a comparative bidding procedure the four month period referred to in subsection (6) above shall also apply:

Provided that in such cases the said four month period may be extended by a further four months.

(8) The time limits provided for in this section shall be without prejudice to any applicable international agreements relating to international frequency and satellite coordination.”.

(4) In subsection (1) of section 15 as renumbered after paragraph (c) there shall be added the following:

“(d) authorise an applicant applying for an individual licence, when he does not demonstrate to the Authority that he fulfils the conditions for the grant of such a licence.”.

(5) The new section 16 shall be amended as follows:

(a) In subsection (1) words “section 29” shall be substituted by the words “section 34”;

(b) In subsection (2) the words “section 7” shall be substituted by the words “section 13”;

(c) After subsection (2) there shall be added the following:

“(3) The decision to include a condition in a licence shall also be subject to appeal to the Board.”.

(6) Sections 11 and 12 shall be deleted.

6. (1) Sections 13, 14 and 15 shall be renumbered as sections 17, 18 and 19 respectively.

(2) Section 14A shall be renumbered as section 42.

(3) In line 1 of the first paragraph of the new sections 17 and 18 as renumbered for the words “section 8” there shall be substituted the words “section 6”.

(4) Section 17 as renumbered shall be amended as follows:

(a) In paragraph (c) the words “extension thereof.” shall be substituted by the words “extension thereof;”.

(b) After paragraph (c) there shall be added the following:

“(d) ensuring the implementation of open network provisions.”.

(5) After subsection (3) of section 42 as renumbered there shall be added the following:

“(4) The provisions of this section shall cease to have effect in whole or in part or in respect of any specified type of call-back service as from such day as the Minister may establish by order in the Gazette.”.

(6) Section 19 as renumbered shall be amended as follows:

(a) the marginal note thereof shall be substituted by the words “Tariff controls and rate mechanisms”;

(b) subsections (1) to (9) thereof shall be renumbered as subsections (2) to (10) respectively;

(c) the following shall be inserted as the new subsection (1):

“(1) Tariffs in respect of telecommunications services shall be regulated as follows:

(i) in markets or market segments which are, in the opinion of the Authority, subject to effective competition, tariffs shall be established by the operation of the market;

(ii) in markets or market segments which, in the opinion of the Authority, lack effective competition, tariffs shall be subject to such proportionate controls and regulations, which may also grant power to the Authority to issue such proportionate and non-discriminatory directives as it may deem appropriate, as may be prescribed;

(iii) where no regulations have been issued or are in force in terms of sub-paragraph (ii) and no order has been published in the Government Gazette by the Authority stating that tariffs in a particular market or market segment are to be regulated in accordance with sub-paragraph (i) above or when no such order is in force, tariffs shall be regulated in accordance with rate mechanisms in terms of subsections (2) to (7) of this section;

(iv) where an order has been published by the Authority in terms of sub-paragraphs (i) and (iii) above or where regulations are prescribed in terms of sub-paragraph (ii) above any rate mechanism in force at the time of the publication of the said order or of the said regulations shall cease to have effect, without prejudice to its validity in respect of any preceding period, with regard to the market or market segment to which the order or the regulations refer.”;

(d) in subsection (2) as renumbered the words “There shall be” shall be substituted by the words “Subject to subsection (1) there shall be”;

(e) in subsection (3) as renumbered for the word “his” there shall be substituted the word “its”;

(f) in subsection (5) as renumbered for the words “section 29” there shall be substituted the words “section 34”;

(g) in the second proviso to subsection (6) as renumbered the words “subject to appeal” shall be substituted by the words “subject to appeal.” and the rest of the proviso shall be deleted.

(7) After section 19 as renumbered there shall be added the following:

“Modifications of licences.

20. (1) The conditions attached to an authorisation granted under this Act may be modified by the competent authority as follows:

(a) where the competent authority wishes to make a modification in the conditions of a general authorisation, it shall publish a notice in the Gazette indicating the modifications being proposed and granting a reasonable time to interested parties to make an objection to the proposed changes;

(b) where objection is made to any modifications pursuant to paragraph (a) above the competent authority shall decide whether to make the proposed modifications after it has duly considered the said objections and it shall give reasons for its decision;

(c) where the competent authority wishes to make modification in the conditions of an individual licence it shall:

(i) either give notice to the holder of the individual licence stating the modifications which it proposes to make, setting out their effect, stating the reasons why it proposes to make such modifications and specifying the time, not being less than 28 days from the date of publication of the notice within which representations or objections may be made by the holder of the licence, and seeking the consent of the holder of the licence; and/or

(ii) make a reference to the Office for Fair Competition requiring it to investigate and report on whether or not any matters specified in the reference operate or may be expected to operate against the public interest and, if so, whether the effects adverse to the public interest could be prevented by the modification of the conditions of the licence;

(d) where the holder of the individual licence does not give his consent requested in terms of subparagraph (i) of paragraph (c) above it shall not be permissible for the authority to effect a modification in the individual licence other than after a reference to the Office for Fair Competition in terms of subparagraph (ii) of paragraph (c) above;

(e) when the Office for Fair Competition reports on any matter referred to it under subparagraph (ii) of paragraph (c) of this subsection, its conclusions shall be definitive and binding and when the Office decides that a modification to an individual licence shall be carried out, that modification shall be implemented from such date as may be established by the Authority.

(2) The Minister shall be informed of any modifications proposed to be made in pursuance of this section and he may, if it appears requisite or expedient for him to do so in the interests of national security or of the foreign affairs of Malta, direct that the modifications not be made.” .

(8) Sections 16 and 17 shall be renumbered as sections 21 and 22 respectively.

(9) Section 22 as renumbered shall be amended as follows:

(a) In paragraph (a) of subsection (1) the words “incomplete or incorrect” shall be substituted by the words “incomplete, misleading or incorrect”;

(b) In paragraph (b) of subsection (1) the words “authorisation for” shall be substituted by the words “authorisation by failing to provide an authorised telecommunications service for”;

(c) In paragraph (c) subsection (1) the words “which in the opinion of the Regulator” shall be substituted by the words “which in the opinion of the Authority which shall be stated in writing, which shall include reasons and which shall respect the principle of proportionality”;

(d) In paragraph (d) of subsection (1) after the words “with the authorisation” there shall be added the words “or with any regulations made under this Act”;

(e) Subsection (2) shall be deleted and subsection (3) shall be renumbered as subsection (2).

7. (1) Sections 18, 19, 20, 21 and 22 shall be renumbered as sections 23, 24, 25, 26 and 27 respectively.

(2) Section 24 as renumbered shall be amended as follows:

(a) In subsection (1) the words “and allocate numbers to authorised providers accordingly.” shall be substituted by the words “and allocate numbers and numbering ranges to authorised providers according to

procedures that are transparent, equitable, non-discriminatory and timely.”;

(b) In the proviso to subsection (2) the words “that no undue prejudice” shall be substituted by the words “that the Authority shall ensure that as much as possible no undue prejudice”;

(c) Subsection (3) shall be renumbered as subsection (4) and the following new subsection (3) shall be added:

“(3) The main elements of the national numbering plan and of all subsequent amendments shall, subject only to limitations on grounds of national security, be published by the Authority.”.

(3) Section 25 as renumbered, other than the marginal note thereto, shall be substituted by the following:

“25 (1) The competent authority shall encourage and secure adequate interconnection in the interests of all users and shall exercise its responsibility in a way that provides maximum economic efficiency and gives maximum benefit to users. In particular, the competent authority shall take into account—

(i) the need to ensure satisfactory end-to-end communication for users;

(ii) the need to stimulate a competitive market;

(iii) the need to promote co-operation with counterparts in other States;

(iv) the principles of non-discrimination (including equal access) and proportionality;

(v) the need to maintain and develop universal service.

For this purpose the competent authority shall issue regulations which shall provide for:

(a) the circumstances in which the right to interconnection may be exercised and the objective,

transparent and non-discriminatory conditions and limitations upon the exercise of such right;

(b) the technical and financial conditions of interconnection and the legal nature of interconnection agreements;

(c) the obligation to notify interconnection agreements to the authority and the conditions under which such notification is to be made, including any matter related to the publicity or confidentiality of such agreements or of parts thereof;

(d) the exercise of power by the authority to modify interconnection agreements in the public interest;

(e) the principles upon which charges for interconnection should be based and the method of accounting to be used;

(f) the obligation of authorised providers or of particular classes thereof to publish an interconnection offer and the principles upon which the conditions of such offer shall be based;

(g) the way in which disputes related to interconnection shall be resolved.”.

(4) Section 26 as renumbered shall be amended as follows:

(a) After the words “required by the Authority,” in subsection (1) there shall be added the words “and as may be”;

(b) In subsection (3) after the words “to be treated as confidential by the Authority,” there shall be added the words “on the grounds that it contains information revealing the commercial strategy of the authorised provider or other information the disclosure of which would unduly interfere with the right to privacy of third parties,”;

(c) In subsection (3) after the words “in the light of the requirements” there shall be added the words “and the fundamental principles”.

(5) In subsection (3) of section 27 as renumbered the word "his" shall be substituted by the word "its".

8. (1) Sections 23, 24 and 25 shall be renumbered as sections 28, 29 and 30 respectively.

(2) In title number 4 of Part II the words "Subscribers' Interests" shall be substituted by the words "Interests of Users and Subscribers".

(3) Section 28 as renumbered shall be amended as follows: .

(a) In subsection (1) after the word "subscribers" there shall be added the words "and users of" and the words "to a" shall be replaced by the word "a";

(b) In subsection (2) after the words "or wishes to subscribe to" there shall be added the words "or is a user of,";

(c) In subsection (2) after the words "the quality of the service" there shall be added the words "provided by the authorised provider" and the words "to which he subscribes or wishes to subscribe" shall be deleted;

(d) In subsection (2) after the words "apparatus provided" there shall be added the words "or made available";

(e) In subsection (5) the words "within his" shall be substituted by the words "within its".

(4) In subsection (2) of section 29 as renumbered for the words "and approved by the Authority." there shall be substituted the words "and approved by the Authority and the right of an authorised provider to discontinue a service shall in all cases be exercised in a proportionate manner."

(5) In section 30 as renumbered after the word "subscriber" there shall be added the words "or user".

9. (1) Sections 26, 27 and 28 shall be renumbered as sections 31, 32 and 33 respectively.

(2) Section 31 as renumbered shall be amended as follows:

(a) In subsection (1) the words “specifications as may be prescribed” shall be substituted by the words “specifications as may be prescribed.” and the rest of the subsection shall be deleted;

(b) Subsection (2) shall be deleted and subsection (3) shall be renumbered as subsection (2).

(3) In paragraph (b) of subsection (1) of section 33 as renumbered the words “efficiency and standards” shall be substituted by the words “efficiency, standards and market competition” and in paragraph (d) of subsection (1) of the said section 33, as renumbered, after the words “in the field of telecommunications” there shall be added the words “ and in respect of training in telecommunications”.

10. (1) Sections 29, 30, 31, 32, 33, 34 and 35 shall be renumbered as sections 34, 35, 36, 37, 38, 39 and 40 respectively.

(2) In subsection (5) of section 34 as renumbered the words “public officer” shall be substituted by the word “person” and after the words “the Board” there shall be added the words “and such person serve in such capacity in accordance with ethical standards which form part of public service values”.

(3) Subsection (1) of section 35 as renumbered shall be amended as follows:

(a) The words “section 10” there shall be substituted by the words “section 16” in paragraph (a), the words “section 17” shall be substituted by the words “section 22” in paragraph (c), the words “section 20” shall be substituted by the words “section 25” in paragraph (d), and the words “section 23” shall be substituted by the words “section 28” in paragraph (e);

(b) Paragraph (b) shall be substituted by the following:

“(b) against any rejection or refusal of an application for an authorisation;” .

(4) In subsection (2) of section 35 as renumbered for the words “section 10” there shall be substituted the words “section 16”.

(5) Subsection (3) of section 35 as renumbered shall be renumbered as subsection (4) and the following new subsection (3) shall be added:

“(3) An appeal to the Board may be filed on any of the following grounds –

- (a) that a material error as to the facts has been made;
- (b) that there was a material procedural error;
- (c) that an error of law has been made;
- (d) that there was some material illegality, including unreasonableness or lack of proportionality.”.

(6) After subsection (4) of section 35 as renumbered there shall be added the following:

“(5) In determining an appeal under this section the Board may:

- (i) dismiss the appeal;
- (ii) annul the decision,

and where the Board annuls the decision it may refer the matter to the Authority or the Minister (as the case may be) with a direction to reconsider it and reach a decision in accordance with the findings of the Board.

(6) The effect of a decision to which an appeal relates shall not except where the Board or the Court of Appeal, as the case may be, so orders, be suspended in consequence of the bringing of the appeal.” .

(7) Section 36 as renumbered shall be amended as follows:

(a) In subsection (1) the words “section 32” shall be substituted by the words “section 37”;

(b) In subsection (2) the word “advice” shall be substituted by the word “advise”.

(8) In section 37 as renumbered immediately after the words "Court of Appeal" there shall be inserted the words "as constituted in accordance with subsection (1) of section 41 of the Code of Organization and Procedure" (Cap. 12.).

(9) Section 38 as renumbered shall be amended as follows:

(a) In subsection (1) after the words "on his own initiative" there shall be added the words "or after consultation with the Authority, or if the Authority is not constituted, on his own initiative" and after the words "to the generality of the above" there shall be added the words "to the principles of fair competition and to open network provision and";

(b) In paragraph (c) of subsection (1) the words "International Telecommunications Union (ITU)" shall be substituted by the words "European standardization bodies including the European Telecommunications Standards Institute (ETSI) and the European Committee for Standardization (CEN / Cenelec) and with international standards and recommendations adopted by the International Telecommunication Union (ITU), the International Organisation for Standardization (ISO) or the International Electrotechnical Committee (IEC)";

(c) In paragraph (e) of subsection (1) after the words "by an authorised provider" there shall be added the words "and quality of service targets";

(d) In paragraph (f) of subsection (1) after the word "subscribers" there shall be added the words "and users";

(e) Paragraphs (h) and (i) of subsection (1) shall be substituted by the following:

"(h) any matter related to the interconnection of telecommunications systems, or to collocation of facilities between

and facility or equipment sharing between authorised providers, to carrier pre-selection, to access to networks by users, subscribers or by operators of other networks, to leased lines, to access to international data networks, and to rights of way and any matter related to compensation payable in respect thereof;

(i) any matter concerning or related to number portability, numbering plans, allocation of numbers, competition rules in the field of telecommunications, billing procedures and billing accuracy, emergency services, directory services, tariff controls, use of frequency spectrum, ownership of authorised providers, universal service obligations, licence fees payable to the competent authority, transfer, renewal and termination of licences, the conditions under which licences shall be issued, and returns and reports to be made to the competent authority;

(j) the regulation of telecommunications systems for the transmission or reception of satellite signals;

(k) the obligations of an authorised provider having a dominant market position;

(l) the obligations of systemless service providers;

(m) the regulation of cable television and cable services including the introduction of must carry rules, the obligation to make available channel capacity for public, Governmental or educational use, the setting of rates for leased access to cable networks, rate regulation, cross-ownership of cable networks and of other networks or services and the implementation of effective competition in the field of cable services;

(n) any matters that may be required for the purpose of complying with any international obligation of Malta;

(o) any matter related to the resolution of disputes arising in connection with the operation of telecommunications systems or the provision of telecommunications services, including appeals from any decision.

(f) In paragraph (a) of subsection (2) the words "providers to keep" shall be substituted by the words "providers to adopt cost accounting systems as may be prescribed and to keep" and the words "of his functions" shall be substituted by the words "of its functions" and immediately after the words "and other information" there shall be added the words "including information about the company in which an authorised provider has a controlling interest";

(g) In paragraph (b) of subsection (2) the words "any telecommunications service" shall be substituted by the words "any telecommunications service" and shall be added the words "including data protection measures and matters related to the use of information obtainable in the telecommunications sector for the purpose of direct marketing";

(h) In paragraph (c) of subsection (2) the words "commitment taken by the" shall be substituted by the words "commitment taken or intended to be taken, by the";

(i) In paragraph (d) of subsection (2) the words "Act, including registration under section 12 of this Act as well as" shall be substituted by the words "Act and" and the word "him" shall be substituted by the word "it";

(j) After paragraph (f) of subsection (2) the following new paragraph shall be added:

"(g) authorise the Authority to impose administrative fines or sanctions upon any authorised provider acting in contravention of any provisions of this Act or of any regulations made thereunder;

Provided that any administrative fines provided for by regulations made under this

section shall not exceed the sum of ten thousand liri (Lm10,000) for each offence and one thousand liri (Lm1,000) for each day during which failure to observe the provisions of this Act or of any regulations made thereunder or of any authorisation persists:

Provided further that the administrative fines stipulated in this paragraph may be increased by regulation up to a maximum of fifty thousand liri (Lm50,000) and five thousand liri (Lm5,000) for each day during which any contravention persists, respectively.”;

(k) In subsection (5) the words “section, he shall” shall be substituted by the words “section, it may at its discretion” and the word “contributories” shall be substituted by the word “contributors”;

(l) After subsection (5) there shall be added the following new subsection:

“(6) (a) Regulations made under this section may also delegate to the Authority the power to issue directives as it deems fit for the purpose of the implementation of any matter provided for in the said regulations.

(b) Any directive issued by the Authority under any delegation made to it as described in paragraph (a) of this subsection shall be published in the Government Gazette.”.

(10) In subsection (2) of section 39 as renumbered:

(i) immediately after the words “information to the Authority” there shall be added the words “or to the Minister”;

(ii) the words “to be false or impedes or obstructs the” shall be substituted by the words “to be false or misleading, or impedes or obstructs the”;

(iii) immediately after the words "obstructs the Authority" there shall be added the words "or the Minister".

(11) In subsection (1) of section 40 as renumbered the words "or at his request" shall be substituted by the words "or at its request".

11. (1) Sections 36 and 37 shall be renumbered sections 41 and 43 respectively.

(2) Section 43 as renumbered shall be amended as follows:

(a) In subsection (1) the words "operative date" shall be substituted by the words "2 January 1998";

(b) In the first sentence of subsection (2) the words "operative date" shall be substituted by the words "2 January 1998";

(c) In paragraph (b) of subsection (2) the words "operative date" shall be substituted by the words "2 January 1998" and the words "on account of the Government" shall be deleted;

(d) After subsection (2) of section 43 as renumbered there shall be added the following subsection:

"(3) Any licence or authorisation lawfully issued, granted or kept in force between the 2 January 1998 and the 30 June 2000 under this Act shall after the 30 June 2000 continue to have effect as is provided by or under this Act subject to the provisions of this Act as amended from time to time and with such modifications, adaptations, and limitations as may be necessary or appropriate for the purpose."

12. (1) Sections 38, 39, 40, 41 and 42 shall be deleted.

(2) After section 43 as renumbered there shall be added the following:

“44. (1) An authorisation to install or operate a telecommunications system or to provide a telecommunications service may, only until the 31st December, 2002 and subject to the following provisions of this section, be granted with exclusive privilege.

(2) No exclusive privilege may be granted or shall have effect beyond the 31st December of the year 2002.

(3) As from the day when the Minister may by order appoint the exclusive privilege of operating any telecommunications system or of providing any telecommunications services as may have been granted in or under any law, licence, authorisation, contract or other instrument whether before or after the coming into force of this section shall cease to exist and different dates may be appointed in respect of different categories of telecommunications services or systems.

(4) The provisions of this section shall have effect notwithstanding the provisions of any law, licence, authorisation, contract, agreement or other instrument and in the case of conflict between the provisions of this section and any other law or anything done thereunder the provisions of this section shall prevail.

(5) The coming into effect of the provisions of subsection (3) of this section or of anything done in pursuance thereof under this section and the variation of any licence or contract in pursuance of section 38 of this Act –

(i) shall not be construed as constituting the taking or deprivation of property or of possessions or an interference with the peaceful enjoyment of possessions for the purposes of any law passed prior to this Act;

(ii) shall not be construed as constituting the termination of a licence;

(iii) shall not be interpreted as constituting a tort, a breach of contract or as giving rise to any action for damages or other payment to the person who ceases to hold an exclusive privilege:

Provided that nothing in this subsection shall be construed as implying that had it not been for the provisions of this subsection any person would have had a right of action based on the taking or deprivation of property or possessions or on an interference with the peaceful enjoyment of possessions, or on tort or breach of contract or would have had a right of action for any payment in respect of the termination of any exclusive privilege or that such termination would have amounted to the termination of a licence.

(6) In any event, any person who loses any exclusive privilege in pursuance of this section shall be deemed, even for the purposes of the proviso to subsection (1) of section 37 of the Constitution if the said section 37 were applicable, to have been adequately compensated for any such loss by the acquisition of the opportunity to provide telecommunications services and operate telecommunications systems under the conditions as are provided for in this Act and as described in the First Schedule to this Act and that Parliament has deemed this to be a special case where it is appropriate in the national interest to determine the above criteria in the determination of the compensation, if any, that is payable were the said section 37 of the Constitution applicable to the case.

45. (1) Notwithstanding the provisions of any other law, it shall be the duty of the competent authority to make in a proportionate manner and, after consulting the authorised provider or providers concerned such variations of each licence to an authorised provider issued before the 1st March, 2000 and to each contract between it and an authorised provider or between authorised providers entered into before the 1st March, 2000 as appears to the competent authority to be necessary and

appropriate for the purpose of implementing the principles of competition and open network provisions in telecommunications and for the purpose of ensuring compliance with the purposes of this Act and any regulations made thereunder.

(2) When the competent authority makes variations to a contract or licence in pursuance of subsection (1) of this section it may also make such other variations to that contract or licence of a supplemental, incidental, consequential or transitional nature as it considers appropriate.

(3) Any variation to a licence or contract made in pursuance of subsection (1) of this section may be made with retrospective effect as from the date of the coming into force of this section.

(4) Any variation to a licence or contract made under this section shall be made by means of notice served on the authorised provider or providers concerned and shall be published in such a manner as the competent authority may deem appropriate.

(5) The decision of the competent authority to make a variation to a licence or contract in pursuance of this section shall state the reasons upon which the decision is based.

46. (1) Notwithstanding any other provision of this Act, upon the coming into force of this section and for a period of six months thereafter, the Minister may issue to a designated company an authorization under Part II of this Act including terms and conditions conforming to the provisions of this Act, modify any authorization, contract or other instrument in respect of the operation of a telecommunications system or the provision of a telecommunications service, whether between Government or any public authority and a designated company or between designated companies, in force on the date of the coming into force of this section, for the purpose of implementing the provisions of this Act, and provide for all such matters as he may deem appropriate for the purpose of providing for the implementation of the provisions of this Act; and

any instrument containing such authorization, modification and other matters referred to above shall have full force, effect and validity.

(2) In this subsection “designated company” means one or more companies holding an authorization to provide a telecommunications service or to operate a telecommunications system designated as such by the Minister for the purposes of this section by notice published in the Gazette.

(3) Nothing in this section shall be construed as preventing the Authority from exercising the powers and functions granted to it by this Act during the period when the same powers and functions may also be exercised by the Minister.

(4) Any authorization, modification or other instrument made by the Minister in pursuance of subsection (1) above shall, as soon as possible, be laid on the Table of the House.

47. The repeal of sections 39, 40, 41 and 42 shall be without prejudice to the validity and enforcement of any transfer of any rights, duties, obligations, assets, property of any description as well as any ancillary right, including hypothecs, privileges, pledges, suretyships and other rights securing any other right or obligation that have been transferred or acquired before the coming into force of this section.”.

(3) The marginal notes to the new sections 44 to and including 46 shall be as follows:

(a) Section 44: “Exclusive privilege not to remain permissible”;

(b) Section 45: “Duty of competent authority to make variations to licences and contracts”;

(c) Section 46: “Temporary power of the Minister to exercise functions of the Authority”;

(d) Section 47: “Transitory provisions”.

13. Immediately after section 47 the following new section 48 shall be inserted:

“Exemption from the provisions of this Act

48. (1) Telecommunications systems and installations of the State established to satisfy the exigencies of defence or public security are exempt from the provisions of this Act.

(2) The Prime Minister may by order published in the Gazette exempt from the provisions of this Act any installation or telecommunications system belonging to a Government Department or to a body established by law and used for its own purposes and in issuing such an exemption the Prime Minister may also impose conditions thereto as he deems fit.”.

14. Immediately at the end of the Act there shall be added the following First Schedule:

FIRST SCHEDULE

(Section 44)

National Plan for the Reform of the Telecommunications Sector

I. Background

In the first part of the year 2000 Government held discussions and had exchanges of correspondence with the three main operators in the telecommunications sector on the liberalisation of the telecommunications market in Malta.

Government intends to take the necessary measures to ensure that existing monopolies are removed within a realistic timeframe. It is aware of the fact that in certain instances monopolies were used to create hurdles for investors who wanted to develop new services. It considers that this was greatly detrimental to Malta's economy and has dampened the rate of development in this area which in other countries has experienced exponential growth in recent years.

In other instances monopolies resulted in an unfair treatment of the user not only through the limiting of services and the provision of lower quality services, but also through a pricing regime which generated very high profits to the detriment of the consumer and of the development of the economy in general.

Such profits and the absence of competition in the telecommunications market increase the costs of production in Malta, cause loss of opportunity and decrease competitiveness in the international market.

Government intends to create an environment which not only redresses the above but which will also be conducive to investment. The Administration feels that this is required to build the communications structure which is today a vital element for economic growth.

After due consideration, Government has therefore decided to proceed with legislative measures intended to reform the telecommunications market in a manner based on a balance between liberalisation, efficiency and service to the public.

Government considers that the reform package is advantageous both to the public and to the three current operators who will enjoy many opportunities to enter new markets as a result of liberalisation.

II. The Reform Package

Government is intent to enact a legislative framework to make the proposed reform possible and to put in place an effective regulatory regime that would have the capability and clout to ensure the maintenance of a healthy and competitive environment in the telecommunications market.

Government has given due consideration to all proposals communicated to it by the three operators of networks and services in the sector and it is now in a position to determine the following liberalisation time frame:

1. All telecommunications services, other than fixed telephony, mobile telephony, international gateway and cable television, will be liberalised from the date when this Schedule comes into force.

2. The present monopoly in mobile telephony will end immediately when Maltacom will be licensed to enter the mobile telephony market. No additional mobile licences will be issued during the period ending 31 December 2002. The government will consider the issue of a third operator in 2003 and a third licensee would therefore not be expected to be in place before 1 January 2005.

3. The cable television market is to be liberalised on 1 June 2001.

4. International gateway services, including those for data services, will be liberalised on 1 January 2003.

5. Fixed telephony services will be liberalised on 1 January 2003.

III. Measures concerning Maltacom p.l.c.

As envisaged when the Competition Act was enacted some years ago, Government intends to lift the temporary transitional measures by which Maltacom was exempted from the provisions of the Competition Act.

Between the date when this Schedule comes into force and 31 December 2002, and subject to the liberalisation time scale provided for above, Maltacom or any of its subsidiaries will be licensed to provide, on a non-exclusive basis, all telecommunications services which Maltacom currently provides and which are covered by Maltacom's existing licence, provided these are not limited by any other current licence or agreement.

Maltacom or its subsidiaries will immediately be guaranteed a licence to provide the following telecommunications service:

- Public fixed telecommunications systems and services;
- Fixed wireless telecommunications systems and services;
- Public mobile telecommunications systems and services;

– Radio paging systems and services.

Because of the change in the public mobile operating scenario, Maltacom will be required to dispose of its shares in Vodafone Malta Limited within six months from the date when its subsidiary first provides mobile telephony services.

Given that in this competitive scenario, Maltacom will need to operate in the most efficient manner, Government will enter into discussions with Maltacom with a view to providing for and assisting it in the carrying, retraining, redeployment or early retirement of any staff complement surplus beyond that envisaged in the IPO document of the 8 June 1998.

Government considers that although some aspects of the introduction of a liberalised telecommunications scenario will not benefit Maltacom, in other areas the company will be a clear beneficiary whilst the situation will not change significantly in some other areas. The Government is convinced that Maltacom will be a net beneficiary from liberalisation.

The areas in which the Government considers that Maltacom will lose are the following:

- a. The monopoly on fixed telephony services which at present runs until 2010 will be replaced by one lasting until the 31 December, 2002;
- b. International gateway services, where again a monopoly until 2010 will be substituted by one lasting until the 31 December 2002;
- c. The introduction of the possibility of having more than the present three companies providing data services.

In this regard one should also bear in mind that had Malta continued with the present scenario, Government would have had to ensure that monopolistic positions will not be used to retain price levels for any services that are not internationally comparable.

Government considers that Maltacom stands to gain from the new regime in the following ways:

a. The immediate acquisition of an effective mobile telephony licence in replacement of the non-effective one enjoyed at present, thus launching the company into this telecommunications sector, that provides far greater opportunities for growth, well before the termination of the existing Vodafone monopoly in 2009;

b. The possibility to provide cable television services before the termination of the existing Melita Cable monopoly in 2006;

c. An expanded market as a liberalised regime generates new services and new users;

d. The substitution of an unclear regulatory regime with a strengthened regulatory framework.

It is considered that of the above, the immediate entry into the mobile telephony market and the possibility of entry into the cable television market in the very near future are huge advantages which will be beneficial both in the short and in the long term and which will enable Maltacom to become a total telecommunications company instead of being restricted to the fixed telephony technology whose growth is expected to be limited.

In any case one should also not overlook the fact that changes in the telecommunications licensing regime in Malta were envisaged in the Initial Public Offering (IPO) document issued to launch the partial privatisation of Maltacom in 1998. In particular, it was stated in that document that:

“The Regulator and Maltacom have entered into a licence agreement on the 2nd January 1998 (the “Licence”) which grants Maltacom the exclusive right to provide, inter alia, fixed line national and international voice telephony until 31st December 2010” (p 49 para 1, IPO).

“Under the Licence, Maltacom has the exclusive right until 31st December, 2010 to provide national and international voice telephony and related value added

services; national and international non-voice services; resale of telecommunications services; public and private phone card services; ISDN; broadband telecommunications services over a public network; and services rendered through all types of public cordless terminal mobility technology and wireless local loop technology including DECT. Such services can be provided over fixed lines or by any other non-mobile means" (p 51 para 4, IPO)

"World Trade Organisation

On the 15th February 1997, 69 WTO member countries (the "signatories") agreed to open their markets to competition in basic telecommunications services from dates specified with respect to each signatory. Since then the total number of signatories has increased to a present total of 72. The agreement which the signatories were required to ratify by the 30th November 1997 and which has come into effect on 5th February 1998 requires that the signatories allow foreign telecommunications service providers to offer their services in the signatories' countries, as well as to purchase shares in telecommunications companies operating in that country, in accordance with specific commitments to be implemented within the agreed timetable. Although Malta is not a signatory to this agreement, as a WTO member it has the right to participate in future rounds of negotiations regarding trade liberalisation in this sector, which negotiations are stipulated in the WTO Agreement to start by 1st January 2000" (p 52 para 7, IPO)

"European Union

On the 1st January 1998 the European telecommunications market was largely opened to competition as a result of the successive adoption by the European Union ("EU") of legal measures requiring the 15 European member countries progressively to open up their national telecommunications markets to competition. Competition covers all telecommunications market sectors, with specific measures being adopted for value-added services, satellite services, mobile services and cable television services, culminating with the requirement on the European member countries to remove any exclusive rights granted for voice telephony

services by 1st January 1998. In addition, regulatory rules on areas such as interconnection, licensing and customer related issues such as contracts and billing have also been adopted. Certain countries were permitted to apply to the European Commission for a derogation for specified time for certain of the market-opening requirements.

Accession to the EU would require applicant countries to adopt all EU rules, including those on telecommunications, prior to or within a specified time from legal accession to the EU. In addition, closer relations can be sought which do not constitute accession. Malta may choose to negotiate an accession or other bilateral agreement with the EU under which it may be required to adopt certain EU rules such as those in relation to telecommunications. In either case the maintenance of Maltacom's exclusivity may be called into question. See Business-Competition" (p 53 paras 2 and 3, IPO)

"In addition, any requirement imposed on Malta to lift the exclusivity period granted to the Company as a result of the adoption by Malta of specific provisions of European Union law on telecommunications in accordance with any accession or other bilateral agreement prior to 2010 may adversely affect the Company's competitive position. See "Regulation - International Regulation -European Union" and Annex A - "The Republic of Malta". Although the Company believes that any such shortening of its exclusivity period will require Government compensation the effect of any such action could adversely affect the Company's results of operations and further prospects" (p33 para 5, IPO)

IV. Measures concerning Melita Cable p.l.c.

Melita or one of its subsidiaries will immediately be guaranteed a licence to provide the following telecommunications services:

- Cable television services;
- Telecommunications transport in respect of data services;
- Leased line data services;
- Data services over a cable television system;

Furthermore Melita or one of its subsidiaries will also be immediately authorised to provide public fixed

telecommunications systems and services (including international gateway services) as from 1 January 2003.

The Internet and Other Data Networks (Service Providers) Regulations, 1999 will be modified in order to provide that the open access obligations will only apply to companies having a dominant market position in the provision of telecommunications transport related to Internet access services.

Government considers that although Melita Cable p.l.c. will lose the privilege of exclusivity in cable television services on the 1 June 2001 it will be a beneficiary from liberalisation for the following reasons:

a. Melita's present licence expires on the 2 July 2006 whilst under the new regulatory framework Melita will be guaranteed a renewable 10 year licence;

b. The company's licence at present specifically prohibits the use of the cable system for the provision of telephony services. Under the new scenario the company will be given a licence to provide public fixed telecommunications services over its infrastructure as from the 1 January 2003;

c. The company's right to provide data services, as distinct from the transmission of data signals, over its network is currently being contested. Under the new scenario this issue will be resolved;

d. The company's right to use ducts passing under public ways is also subject to judicial determination. Under a new liberalised regime this issue will also be resolved;

e. Under the transitional arrangements for the introduction of the new legal regime the company will be allowed to retain its monopoly in the cable television field until the 1 June 2001;

f. Melita may not at present operate an international gateway. Melita will however be given a licence to provide these services as from 1 January 2003;

g. The present monopolistic scenario in the telecommunications sector restricts the commercial freedom of market players to choose their fields of operation. The liberalised regime opens opportunities to provide new telecommunications services;

h. Under current licences new services may not be introduced unless they are specifically provided for in the licence whilst the proposed licences will be sufficiently technology neutral to enable licensees to implement services compatible with next generation standards;

i. The current unclear regulatory regime will be replaced by a strengthened regulatory structure which will have adequate resources to ensure fair competition on a level playing field between all market players;

j. Under the current regulations on Internet access all Internet Service Providers are granted a right of open access to Melita's network. The new market regulation will provide that open access rights will become operative only when a company achieves significant market power in the field of telecommunications transport related to Internet access;

k. Maltacom is at present exempt from the Competition Act. This exemption will cease on the coming into force of this Schedule and all market players will be made subject to the rules of competition law;

1. Under the current regulatory regime licences tend to be viewed as sensitive commercial documents to which others may not have access. The proposed model would introduce regulatory transparency and make all licences public in the interests of regulatory certainty and non-discrimination.

V. Measures concerning Vodafone (Malta) Limited

Vodafone or one of its subsidiaries will be immediately guaranteed a licence to provide the following telecommunications services:

- Public mobile telecommunications systems and services;
- Data services over a mobile telephony network.

Vodafone or one of its subsidiaries will also be immediately authorised to provide international gateway services from 1 January 2003.

Because of the change in the public mobile operating scenario, Maltacom will be required to dispose of its shares in Vodafone Malta Limited within six months from the date its subsidiary first provides mobile telephony services.

Government considers that the introduction of a liberalised telecommunications scenario will result in Vodafone (Malta) Limited losing the monopoly which it enjoys in the provision of TACS and ETACS mobile services. The monopoly in other fields of cellular telephony services is currently being contested by Maltacom before the Telecommunications Appeals Board and although the Telecommunications Regulator has held that Vodafone's licence grants it the right to exclude others from the cellular mobile telephony market this question is ultimately for the Appeals Board to decide.

Government also considers that Vodafone (Malta) Limited stands to gain from the new regulatory regime in the following ways:

- a. Maltacom will be required to sell its Vodafone shares within six months from the date its subsidiary first provides mobile telephony services. This will bring to an end the very important right which Maltacom enjoys at present to acquire the majority shareholding of the company. It will also terminate the extensive rights which Maltacom as a minority shareholder has with regard to Vodafone's pricing policies and with regard to the running of key aspects of the company's business;
- b. Whilst Vodafone's present licence expires on the 10 August 2009 and the company cannot provide services beyond that date, under the new framework the company will be granted a new 10 year licence which will be renewable for other 10 year periods;
- c. At present Vodafone is obliged to use the Maltacom infrastructure for international gateway services. The company will be licensed to provide international gateway services as from 1 January 2003;
- d. Vodafone Malta Limited will still benefit from a duopoly situation in the mobile telephony market until the 31 December 2002 with a possibility of an extension of this situation beyond that date;

e. Vodafone Malta Limited's present licence only authorises the use of TACS, ETACS and GSM standards whilst the new licence will apply to any European standard. This will grant Vodafone permission to implement services compatible with next generation standards, including UMTS;

f. The present monopolistic scenario in the telecommunications sector restricts the commercial freedom of market players to choose their fields of operation. The liberalised regime opens opportunities to provide new telecommunications services;

g. The current unclear regulatory regime will be replaced by a strengthened regulatory structure which will have adequate resources to ensure fair competition on a level playing field between all market players;

h. Maltacom is at present exempt from the Competition Act. This exemption will cease on the coming into force of this Schedule and all market players will be made subject to the rules of competition law;

i. Under the current regulatory regime licences tend to be viewed as sensitive commercial documents to which others may not have access. The proposed model would introduce regulatory transparency and make all licences public in the interests of regulatory certainty and non-discrimination.

VI. The way forward

Government trusts that all operators would view the programme of change outlined above as positive. It is certain that in this new scenario all operators will recognise new opportunities to expand their operations and to continue as major players in this economic sector.”.

Passed by the House of Representatives at Sitting No. 346 of 12th July, 2000.

ANTON TABONE
Speaker

RICHARD J. CAUCHI
Clerk to the House of Representatives