L.N. 45 of 2003

TELECOMMUNICATIONS (REGULATION) ACT (CAP. 399)

Telecommunications (Unbundled Access to the Local Loop) Regulations, 2003

IN exercise of the powers conferred upon him by article 38 of the Telecommunications (Regulation) Act, the Minister for Transport and Communications, after consultation with the Malta Communications Authority, has made the following regulations:

Citation.

1. (1) The title of these regulations is the Telecommunications (Unbundled Access to the Local Loop) Regulations, 2003.

(2) These Regulations shall come into force as the Minister may by Order determine and different dates may be appointed in respect of different provisions and purposes of these regulations.

Interpretation. Cap. 399.

2. (1) Any reference in these regulations to the "Act" is a reference to the Telecommunications (Regulation) Act, and subject to the provisions of paragraph (2) of this regulation, the provisions of article 2 of the said Act shall apply to these regulations.

(2) In these regulations, unless the context otherwise requires:

"Authority" means the Malta Communications Authority;

"beneficiary" means a third party which is an authorised provider in accordance with the Act and which is eligible for unbundled access to a local loop;

"collocation" means the provision of physical space and technical facilities necessary to reasonably accommodate and connect the relevant equipment of a beneficiary as mentioned in Part B of the Schedule to these regulations;

"full unbundled access to the local loop" means the provision to a beneficiary of access to the local loop or local sub loop of the notified operator authorising the use of the full frequency spectrum of the twisted metallic pair;

"local loop" means the physical twisted metallic pair circuit connecting the network termination point at the premises of the subscriber to the main distribution frame or equivalent facility in the fixed public telephony system;

"local sub-loop" means a partial local loop connecting the network termination point at the premises of the subscriber to a concentration point or a specified intermediate access point in the fixed public telephony system;

"notified operator" means an operator of a public fixed telephony system that is presumed or is designated or otherwise considered as having dominant market power in the public fixed telephony market in accordance with the Telecommunications Services (General) Regulations, 2000;

"related facilities" means the facilities associated with the provision of unbundled access to the local loop, notably collocation, cable connections and relevant information technology systems, access to which is necessary for a beneficiary to provide services on a competitive and fair basis;

"shared access to the local loop" means the provision to a beneficiary of access to the local loop or local sub loop of the notified operator, authorising the use of the non-voice band frequency spectrum of the twisted metallic pair, whilst the local loop continues to be used by the notified operator to provide the telephone service to the public; and

"unbundled access to the local loop" means full unbundled access to the local loop and shared access to the local loop and does not entail a change in ownership of the local loop.

Applicability of Regulations.

3. These regulations shall apply to unbundled access to the local loops and related facilities of notified operators, and this without prejudice to the obligation of notified operators to comply with the principle of non-discrimination, when using the public fixed telephony system in order to provide high speed access and transmission services to third parties in the same manner as they provide for their own services or to their subsidiaries or affiliated businesses in accordance with Maltese law.

Notified operators to publish and update reference offer.

4. (1) Notified operators shall from such date as the Authority may establish in the Gazette, publish and keep updated, a reference offer for unbundled access to their local loops and related facilities,

which shall include at least the items listed in the Schedule to these Regulations.

(2) The reference offer shall be sufficiently unbundled so that the beneficiary does not have to pay for system elements or facilities which are not necessary for the supply of its services, and shall contain a description of the components of the reference offer and associated terms and conditions including charges.

Notified operators to accede to reasonable requests.

5. (1) Notified operators shall from such date as the Authority may establish in the Gazette meet reasonable requests from beneficiaries for unbundled access to their local loops and related facilities, under transparent, fair and non-discriminatory conditions.

(2) Requests made under paragraph (1) of this regulation shall only be refused on the basis of objective criteria relating to technical feasibility or to the need to maintain system integrity.

(3) Where access is refused, the aggrieved party may submit the case for dispute resolution in accordance with the procedure established under article 27 of the Act.

(4) Subject to paragraphs (1) and (2) of this regulation, notified operators shall provide beneficiaries with facilities equivalent to those provided for their own services or their subsidiaries or affiliated businesses, and with the same conditions and timescales.

Charging of prices by notified operators.

6. Without prejudice to paragraph (4) of regulation 7 of these regulations, notified operators shall charge prices for unbundled access to the local loop and related facilities set on the basis of cost orientation.

Supervision by the Authority.

7. (1) The Authority shall ensure that charging for unbundled access to the local loop fosters fair and sustainable competition and may for this purpose issue such directives as it may consider necessary.

(2) The Authority shall have the power to:

(a) impose changes on the reference offer for unbundled access to the local loop and related facilities, including prices, where the Authority considers such changes to be justified; and

(b) require notified operators to supply it with information relevant for the implementation of these regulations.

(3) The Authority may, where justified, intervene of its own initiative in order to ensure non-discrimination, fair competition, economic efficiency and maximum benefit for users and subscribers.

(4) When the Authority determines that the local access market is sufficiently competitive, it shall relieve the notified operators of the obligation laid down in regulation 6 of these regulations for prices to be set on the basis of cost-orientation.

(5) Disputes concerning the application of these regulations shall be subject to the dispute resolution procedures established under article 27 of the Act and shall be handled promptly, fairly and transparently.

SCHEDULE

Minimum list of items to be included in a reference offer for unbundled access to the local loop to be published by notified operators

Part A – Conditions for unbundled access to the local loop

1. Network elements to which access is offered covering in particular the following elements:

(i) access to local loops;

(ii) access to non-voice band frequency spectrum of a local loop in the case of shared access to the local loop;

2. Information concerning the locations of physical access sites which information may be restricted to interested parties if the Authority retains that there are public security concerns, and availability of local loops in specific parts of the access network;

3. Technical conditions related to access and use of local loops, including the technical characteristics of the twisted metallic pair in the local loop;

4. Ordering and provisioning procedures, and usage restrictions.

Part B – Collocation services

1. Information on the relevant sites of the notified operator which information may be restricted to interested parties if the Authority retains that there are public security concerns;

2. Collocation options at the sites indicated under paragraph 1 above of Part B, including physical collocation and, as appropriate, distant collocation and virtual collocation;

3. Equipment characteristics: restrictions, if any, on equipment that can be collocated;

4. Security issues: measures put in place by notified operators to ensure the security of their locations;

5. Access conditions for staff of competing operators;

6. Safety standards;

7. Rules for the allocation of space where collocation space is limited;

8. Conditions for beneficiaries to inspect the locations at which physical collocation is available, or sites where collocation has been refused on grounds of lack of capacity.

Part C – Information systems

Conditions for access to the operational support systems, information systems or databases for pre-ordering, provisioning, ordering, maintenance and repair requests and billing of a notified operator.

Part D – Supply conditions

1. Lead time for responding to requests for supply of services and facilities, and service level agreements, fault resolution, procedures to return to a normal level of service and quality of service parameters;

2. Standard contract terms, including, where appropriate, compensation provided for failure to meet lead times;

3. Prices or pricing formulae for each feature, function and facility listed above.

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