

L.N. 223 of 2000

**TELECOMMUNICATIONS (REGULATION) ACT
(CAP. 399)**

**Internet and Other Data Networks (Service Providers)
(Amendment) Regulations, 2000**

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

1. The title of these regulations is the Internet and Other Data Networks (Service Providers) (Amendment) Regulations, 2000 and shall be read and construed as one with the Internet and other Data Networks (Service Providers) Regulations, 1999, hereinafter referred to as “the principal regulations”. Citation .
L.N. 170 of 1999.

2. In regulation 2 of the principal regulations, the words “regulation 6” and “Regulation 6” shall be substituted by the words “regulation 7” and “Regulation 7” respectively. Amends regulation
2 of the principal
regulations.

3. In regulation 3 of the principal regulations:

(a) before the definition of “Act” there shall be added the following new definition:

“ “access” means the making available of facilities and services to an Internet Service Provider under defined conditions and shall include, *inter alia*, access to network elements and associated facilities and services which may involve the connection of equipment, by wire or wireless means, access to physical infrastructure including buildings, ducts and masts, and access to software systems including operational support systems;”;

(b) after the definition of “Act” there shall be added the following new definition:

“ “dominant market position” has the meaning assigned to it in regulation 5 of these regulations;”;

(c) after the definition of “Government” there shall be added the following new definition:

Amends regulation
3 of the principal
regulations.

“ “interconnection” means a particular type of access and has the same meaning assigned to it in article 2 of the Act;”;

(d) in the definition of “Regulator” the words “Telecommunications Regulator” shall be substituted by the words “competent authority” and the word “him” shall be substituted by the word “it”; and

(e) the definition of “subscriber” shall be substituted by the following:

“ “subscriber” means a person who is a party to a contract with an Internet Service Provider for the supply of services;”.

Amends regulation 4 of the principal regulations.

4. In regulation 4 of the principal regulations, in subregulation (2) thereof, the words “authorised providers of the Telecommunications Transport Services” shall be substituted by the words “Telecommunications Transport Providers”.

Renumbering of regulations 5 to 25 of the principal regulations.

5. Regulations 5 to 25 of the principal regulations shall be re-numbered as regulations 6 to 26 thereof respectively.

Adds new regulation 5 to the principal regulations.

6. After regulation 4 of the principal regulations there shall be added the following new regulation:

“Dominant market position.

5. (1) A Telecommunications Transport Provider shall be presumed to have a dominant market position in the following cases:—

(a) where the Telecommunications Transport Provider provides services which also include services over the Telecommunications Transport Provider’s own network, through a subsidiary company and the said company has more than twenty five per cent of the market for the services in the geographical area in which it is authorised to operate; or

(b) when the Telecommunications Transport Provider has more than twenty five per cent of the telecommunications transport market in respect of the services in the geographical area in which it is authorised to operate; or

(c) when a Telecommunications Transport Provider is also licensed to offer voice telephony services

under a licence issued in terms of the Telecommunications Services (General) Regulations, 2000 as an operator and a provider of public fixed telecommunications systems and services or of public mobile telecommunications systems and services referred to in paragraphs (a) and (b) of regulation 2(1) of the said regulations: L.N. 151 of 2000.

Provided that the percentage referred to in paragraph (a) and (b) of this subregulation shall be based on the percentage of the gross revenues in the particular market.

(2) In exceptional circumstances which shall be publicly explained by the Regulator, the Regulator may by notice in the Gazette designate a Telecommunications Transport Provider as having a dominant market position even if it does not qualify to be presumed to have a dominant market position under subregulation (1) above. The determination of the Regulator shall take into account the Telecommunications Transport Provider's ability to influence market conditions, its turnover relative to the size of the market, its control of the means of access to end use, its access to financial resources, its experience in providing products and services in the market, and any oligopolistic market position.

(3) The Regulator shall keep a register of Telecommunications Transport Providers having a dominant market position and such register shall be revised at least once a year. The criteria for determining whether a Telecommunications Transport Provider has a dominant market position shall also be kept under review by the Regulator particularly with a view to further defining the relationship between the regulation of competition under the Competition Act and the regulation of competition that is specific to the telecommunications sector.”. Cap. 379.

7. For subregulation (1) of regulation 8 as renumbered of the principal regulations there shall be substituted the following:— Amends regulation 8 as renumbered of the principal regulations.

“(1) A Telecommunications Transport Provider which has a dominant market position shall allow an Internet Service Provider to interconnect with and access its infrastructure.”.

8. For regulation 9 as renumbered of the principal regulations there shall be substituted the following:— Amends regulation 9 as renumbered of the principal regulations.

"Intercon-
nection and
access.

9. (1) A Telecommunications Transport Provider with a dominant market position in the market for the services shall, when requested by an Internet Service Provider, negotiate interconnection and access agreements with a view to allowing the requesting Internet Service Provider to interconnect or to access the Telecommunications Transport Provider's system.

(2) A Telecommunications Transport Provider referred to in subregulation (1) above shall use all reasonable effort, to ensure that interconnection and access are accomplished promptly, efficiently and at charges which are based on principles of transparency and cost-orientation and shall provide facilities and services of equivalent quality to those provided to any other Internet Service Provider.

(3) Any party having a complaint against a Telecommunications Transport Provider over interconnection or access may refer the complaint to the Regulator who shall take steps to resolve the dispute within two months of such request.

(4) The dispute referred to in subregulation (3) of this regulation will be resolved in such a manner as to represent a fair balance between the legitimate interests of both parties and the decision shall be made public and given to the parties concerned with a statement of the reasons upon which it is based. In arriving at his decision the Regulator shall consider:

- (a) the user's interest;
- (b) the regulatory obligations or constraints incumbent on any of the parties;
- (c) the desirability of stimulating innovative market offerings and of providing users with a wide range of services;
- (d) the availability of technically and commercially viable alternatives to the interconnection or access requested;
- (e) the desirability of ensuring equal access arrangements;

(f) the need to maintain the integrity of public telecommunications systems and the interoperability of services;

(g) the nature of the request for interconnection or access and its relation to the resources available to meet the request;

(h) the relative market positions of the parties;

(i) the public interest considerations, such as the protection of the environment, involved;

(j) the promotion of competition;

(k) the need to make the services widely available.

(5) Interconnection and access effected pursuant to the provisions of regulation 8 by an Internet Service Provider shall be subject to the payment of the relevant tariffs as may be determined in accordance with the Act and with these regulations.

(6) Tariff structures shall be transparent and non-discriminatory.

(7) Interconnection tariffs shall be established on a most favoured customer basis.”.

9. In regulation 12 as renumbered of the principal regulations the words “The Internet Service Provider” shall be substituted by the words “Every Internet Service Provider”.

Amends regulation 12 as renumbered of the principal regulations.

10. In regulation 13 as renumbered of the principal regulations the words “Where the” shall be substituted by the words “Where an”.

Amends regulation 13 as renumbered of the principal regulations.

11. Regulation 14 as renumbered of the principal regulations shall be amended as follows:-

Amends regulation 14 as renumbered of the principal regulations.

(a) in subregulation (1) thereof:

(i) the words “The Internet Service Provider” shall be substituted by the words “Every Internet Service Provider”;

(ii) in paragraph (i) thereof the word “customer” shall be replaced by the word “subscriber” and the word “customer’s” shall be substituted by the word “subscriber’s”;

(iii) in paragraph (ii) thereof the word “customers” shall be substituted by the word “subscribers”; and

(iv) paragraph (iv) thereof shall be substituted by the following:

“(iv) which gives information about methods available to subscribers to protect themselves and persons under their care against any harmful content on the Internet and about the technical means available to restrict access to certain Internet sites.”; and

(b) in subregulations (2), (3), (4) and (5) thereof the words “The Internet Service Provider” shall be substituted by the words “Every Internet Service Provider”.

Amends regulation 15 as renumbered of the principal regulations.

12. Subregulation (1) of regulation 15 as renumbered of the principal regulations shall be amended as follows:

(a) the words “The Internet Service Provider” shall be substituted by the words “Internet Service Providers”; and

(b) the words “the Telecommunications Transport Provider” shall be substituted by the words “Telecommunications Transport Providers”.

Amends regulation 16 as renumbered of the principal regulations.

13. In regulation 16 as renumbered of the principal regulations the words “the Internet Service Provider and the Telecommunications Transport Provider” shall be substituted by the words “Internet Service Providers and Telecommunications Transport Providers”.

Amends regulation 17 as renumbered of the principal regulations.

14. In subsection (3) of regulation 17 as renumbered of the principal regulations, for the words “regulation 15” there shall be substituted the words “regulation 16”.

Amends regulation 18 as renumbered of the principal regulations.

15. Regulation 18 as renumbered of the principal regulations shall be amended as follows:-

(a) in subregulations (1), (2) and (3) thereof the words “The Internet Service Provider” shall be substituted by the words “Every Internet Service Provider”;

(b) in subregulation (4) thereof the words “to interconnect to” shall be substituted by the words “to interconnect with or to access”; and

(c) in subregulation (5) thereof the words “exercises its rights to interconnect as described in paragraph (4) of this regulation” shall be substituted by the words “interconnects with or accesses the infrastructure of a Telecommunications Transport Provider”.

16. In subregulation (1) of regulation 20 as renumbered of the principal regulations, for the words “regulation 18” there shall be substituted the words “regulation 19.”

Amends regulation 20 as renumbered of the principal regulations.

17. In regulation 21 as renumbered of the principal regulations the words “the Internet Service Provider” shall be substituted by the words “an Internet Service Provider” wherever these occur.

Amends regulation 21 as renumbered of the principal regulations.

18. Regulation 23 as renumbered of the principal regulations shall be amended by the addition of the following subregulations immediately after subregulation (2) thereof:—

Amends regulation 23 as renumbered of the principal regulations.

“(3) As from the 1st January, 2001, the licence fee due by the Internet Service Provider to the Regulator for every year shall be of one thousand liri (Lm1,000) and one per cent (1%) of the annual gross revenues of the Internet Service Provider.

(4) If any amount due to the Regulator under these regulations is for any cause not paid within fifteen days from the date when the payment of such amount is due, there shall run interest on such amount at the rate of eight per cent (8%) *per annum* for every day which passes after the said fifteen days up to the date when payment is affected.”.

19. Immediately after regulation 26 as renumbered of the principal regulations, there shall be added the following new regulation:—

Adds new regulation 27 to the principal regulations.

“Exemption. **27.** Nothing in these regulations shall effect the operation of the Malta Government Network known as ‘MAGNET’ whether the said network is operated directly by the Government of Malta or by its mandataries, employees or contractors. The said network shall moreover not be taken into account for any purposes of these regulations.”.

20. In the First Schedule to the principal regulations for the words “(Regulation 9)” there shall be substituted the words “(Regulation 10)”,

Amends the First Schedule to the principal regulations.

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and for the words “Act, 1997” wherever these occur there shall be substituted the words “Act, Cap. 399”.

Amends the Second
Schedule to the
principal
regulations.

21. In the Second Schedule to the principal regulations after paragraph (b) thereof, there shall be added the following:

“(c) “Vodafone (Malta) Limited

(d) Mobisle Communications Limited”.