

I assent.

(L.S.)

GEORGE ABELA
President

14th June, 2011

ACT No. IX of 2011

AN ACT to amend various laws relating to 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 and consent of the House of Representatives, in this present Parliament assembled, and by the authority of the same, as follows:

1. (1) The short title of this Act is the Communications Laws (Amendment) Act, 2011.

Short title and
commencement

(2) This Act shall come into force on such date as the Minister responsible for communications may by notice in the Gazette appoint, and different dates may be so appointed for different provisions and different purposes of this Act.

Part I

AMENDMENT OF THE ELECTRONIC COMMUNICATIONS (REGULATION) ACT

2. (1) This Part amends the Electronic Communications (Regulation) Act, and it shall be read and construed as one with the Electronic Communications (Regulation) Act, hereinafter in this Part referred to as “the principal Act”.

Amendment of the
Electronic
Communications
(Regulation) Act.
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(2) This Part shall come into force on such date as

the Minister responsible for communications may by notice in the Gazette appoint and different dates may be so appointed for different provisions and different purposes thereof.

Amendment of article
2 of the principal Act.

3. Subarticle (2) of article 2 of the principal Act shall be amended as follows:

(a) for the definition “access”, there shall be substituted the following definition:

“ “access” means the making available of facilities and, or services, to another undertaking, under defined conditions, on either an exclusive or non-exclusive basis, for the purpose of providing electronic communications services including when they are used for the delivery of information society services or broadcast content services. It covers *inter alia* access to network elements and associated facilities, which may involve the connection of equipment, by fixed or non-fixed means (in particular this includes access to the local loop and to facilities and services necessary to provide services over the local loop); access to physical infrastructure including buildings, ducts and masts; access to relevant software systems including operational support systems; access to information systems or databases for pre-ordering, provisioning, ordering, maintaining and repair requests, and billing; access to number translation or systems offering equivalent functionality; access to fixed and mobile networks, in particular for roaming; access to conditional access systems for digital television services and access to virtual network services;”;

(b) immediately before the definition “the Act”, there shall be inserted the following new definition:

“ “Access Directive” means Directive Number 2002/19/EC of the European Parliament and of the Council of the 7th March, 2002 on access to, and interconnection of, electronic communications networks and associated facilities, as may be amended from time to time;”;

(c) for the definition “the Act”, there shall be substituted the following new definition:

“ “this Act” means the Electronic Communications (Regulation) Act, and includes any regulations made thereunder unless the context otherwise requires;”,

and for the words “the Act” wherever they occur in the principal Act there shall be substituted the words “this Act”;

(d) in the definition “apparatus”, for the word “includes” there shall be substituted the word “means”;

(e) for the definition “associated facilities”, there shall be substituted the following definition:

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

(f) immediately after the definition “associated facilities”, there shall be inserted the following new definition:

“ “associated services” means those services associated with an electronic communications network and, or an electronic communications service which enable and, or support the provision of services through that network and, or service or have the potential to do so and include *inter alia* number translation or systems offering equivalent functionality, conditional access systems and electronic programme guides, as well as other services such as identity, location and presence service;”;

(g) immediately after the new definition “associated services”, there shall be inserted the following new definition:

“ “Authorisation Directive” means Directive Number 2002/20/EC of the European Parliament and of the Council of the 7th March, 2002 on the authorisation of electronic communications networks and services, as may be amended from time to time;”;

(h) immediately after the new definition “Authorisation Directive”, there shall be inserted the following new definition:

“ “authorised undertaking” means an undertaking deemed to be authorised in accordance with this Act;”;

(i) in the definition “ “the Authority and “the competent authority” ”, the words “ “and “the competent authority” ” shall be deleted;

(j) immediately before the definition “cable television networks”, there shall be inserted the following new definition:

“ “BEREC” means the Body of European Regulators for Electronic Communications;”;

(k) immediately after the definition “cable television networks”, there shall be inserted the following new definition:

“ “call” means a connection established by means of a publicly available electronic communications service allowing two-way voice communication;”;

(l) the definition “Community” shall be deleted;

(m) for the definition “consumer”, there shall be substituted the following:

“ “consumer” means any natural person who uses or requests a publicly available electronic communications service, for purposes which are outside his trade, business or profession;”;

(n) the definition “cross-border” shall be deleted;

(o) in the definition “decision”, for the words “includes any determination, measure, order, requirement or specification” there shall be substituted the words “includes any determination, directive, measure, requirement or specification”;

(p) the definition “directive” shall be deleted;

(q) immediately before the definition “electronic communications network”, there shall be inserted the following new definition:

“ “Directive on Privacy and Electronic Communications” means Directive Number 2002/58/EC of the European Parliament and of the Council of the 12th July, 2002 concerning the processing of personal data and the protection of privacy in the electronic communications sector, as may be amended from time to time;”;

(r) immediately after the new definition “Directive on Privacy and Electronic Communications”, there shall be inserted the following new definition:

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

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(s) in the definition “electronic communications network”, for the words “means transmission systems and, where applicable, switching or routing equipment and other resources which permit the conveyance of signals by wire” there shall be substituted the words “means transmission systems and, where applicable, switching or routing equipment and other resources, including network elements which are not active, which permit the conveyance of signals by wire”;

(t) the definition “European Commission” shall be deleted;

(u) immediately before the definition “exclusive rights”, there shall be inserted the following new definition:

“ “European Electronic Communications Directives” means Directive 2002/21/EC of the European Parliament and of the Council of 7 March 2002 on a common regulatory framework for electronic communications networks and services (Framework Directive); Directive 2002/20/EC on the authorisation of electronic communications networks and services (Authorisation Directive), Directive 2002/19/EC on access to, and interconnection of, electronic communications networks and associated facilities (Access Directive), Directive 2002/22/EC on universal service and user’s rights relating to electronic communications networks and services (Universal Service Directive) and Directive 2002/58/EC of the European Parliament and of the Council of 12 July 2002 concerning the processing of personal data and the protection of privacy in the electronic communications sector (ePrivacy Directive) as may be amended from time to time;”;

(v) immediately after the definition “exclusive rights”, there shall be inserted the following new definition:

“ “Framework Directive” means Directive Number 2002/21/EC of the European Parliament and of the Council of the 7th March, 2002 on a common regulatory framework for electronic communications networks and services, as may be amended from time to time;”;

(w) immediately after the definition “general authorisation”, there shall be inserted the following new definition:

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

(x) in the definition “internal market”, for the words “of the Community” there shall be substituted the words “of the European Union”;

(y) immediately after the definition “internal market”, there shall be inserted the following new definition:

“ “ITU Radio Regulations” means the Radio Regulations annexed to, or regarded as being annexed to the most recent International Telecommunications Convention of the International Telecommunications Union (ITU) which is in force at that time;”;

(z) for the definition “local loop”, there shall be substituted the following definition:

“ “local loop” means the physical circuit connecting the network termination point to a distribution frame or equivalent facility in the fixed electronic communications network;”;

(aa) in the definition “Member State”, for the words “the Community” there shall be substituted the words “the European Union”;

(bb) in the definition “national regulatory authority”, for the words “of Community law” there shall be substituted the words “of European Union law”;

(cc) the definition “person” shall be deleted;

(dd) for the definition “public communications network”, there shall be substituted the following definition:

“ “public communications network” means an electronic communications network used wholly or mainly for the provision of electronic communications services available to the public which support the transfer of information between network termination points;”;

(ee) the definition “public telephone network” shall be deleted;

(ff) for the definition “publicly available telephone service”, there shall be substituted the following definition:

“ “publicly available telephone service” means a service made available to the public for originating and receiving, directly and indirectly, national or national and international calls through a number or numbers in a national or international telephone numbering plan;”;

(gg) immediately before the definition “subscriber”, there shall be inserted the following:

“ “spectrum allocation” means the designation of a given frequency band for use by one or more types of radio communications services, where appropriate, under specified conditions;”;

(hh) in the definition “universal services”, for the words “as may be defined under regulations made under this Act” there shall be substituted the words “as may be defined by or under this Act”; and

(ii) immediately after the definition “universal services”, there shall be inserted the following new definition:

“ “Universal Service Directive” means Directive Number 2002/22/ EC of the European Parliament and of the Council of the 7th March, 2002 on universal service and users’ rights relating to electronic communications networks and services as may be amended from time to time;”.

Amendment of article
3 of the principal Act.

4. Article 3 of the principal Act shall be amended as follows:

(a) the whole article shall be renumbered as subarticle (1) thereof;

(b) immediately after subarticle (1) thereof, there shall be added the following new subarticles:

“(2) The Authority shall be afforded adequate financial and human resources to carry out its functions under this Act and under any other applicable laws

relating to electronic communications which the Authority is entitled to enforce, including any functions related to international cooperation.

(3) In fulfilling its functions and duties under this Act and under any other laws relating to electronic communications which the Authority is entitled to enforce, the Authority shall actively support the goals of the BEREC of promoting greater coordination and coherence in the application of the European Electronic Communications Directives, and shall also take the utmost account of the opinions and common positions adopted by BEREC.

(4) In the exercise of its functions and duties under this Act and under any other laws relating to electronic communications which the Authority is entitled to enforce, the Authority shall take utmost account of the relevant European Commission recommendations. With reference to recommendations issued in accordance with Article 19 of the Framework Directive, the Authority shall, if it chooses not to follow a recommendation, inform the European Commission, giving the reasons for its position.

(5) The Authority shall work with the European Commission and BEREC to identify the types of instruments and remedies best suited to address particular types of situations in the marketplace.”.

5. Article 4 of the principal Act shall be amended as follows: Amendment of article 4 of the principal Act.

(a) the whole article shall be renumbered as subarticle (1) thereof;

(b) for paragraph (a) of subarticle (1) thereof as renumbered, there shall be substituted the following:

“(a) to promote competition in accordance with this Act by –

(i) ensuring that users, including disabled end-users, elderly end-users, and end-users with special social needs, derive maximum benefit in terms of choice, price and quality;

(ii) ensuring that there is no distortion or restriction of competition in the electronic communications sector including the transmission of content; and

(iii) encouraging efficient use and ensuring the effective management of radio frequencies and numbering resources;”;

(c) for paragraph (b) of subarticle (1) thereof as renumbered, there shall be substituted the following:

“(b) to contribute to the development of the internal market by -

(i) removing remaining obstacles to the provision of electronic communication networks, associated facilities and services and electronic communications services at European Union level;

(ii) encouraging the establishment and development of trans-European networks and the interoperability of transnational services and end-to-end connectivity; and

(iii) working with electronic communications national regulatory authorities in Member States, BEREC and with the European Commission in a transparent manner so as to ensure the development of consistent regulatory practice and the consistent application of European Union law in this field.”;

(d) for paragraph (c) of subarticle (1) thereof as renumbered, there shall be substituted the following:

“(c) to promote the interests and rights of users within the European Union by -

(i) ensuring that all users have access to a universal service;

(ii) ensuring a high level of protection for users in their dealings with undertakings, in

particular by ensuring the availability of simple and inexpensive dispute resolution procedures carried out by a body that is independent of the parties involved;

(iii) contributing towards ensuring a high level protection of personal data and privacy;

(iv) promoting the provision of clear, comprehensive and up-to-date information, in particular requiring transparency of tariffs and conditions for using publicly available electronic communications services;

(v) addressing the needs of specific social groups, in particular disabled end-users, elderly end-users and end-users with special social needs;

(vi) ensuring that the integrity and security of public communications networks are maintained; and

(vii) promoting the ability of end-users to access and distribute information or run applications and services of their choice.”; and

(e) immediately after subarticle (1) thereof as renumbered, there shall be added the following new subarticle:

“(2) The Authority shall, in pursuit of the policy objectives referred to in this article, apply objective, transparent, non-discriminatory and proportionate regulatory principles by, *inter alia*:

(a) promoting regulatory predictability by ensuring a consistent regulatory approach over appropriate review periods;

(b) ensuring that, in similar circumstances, there is no discrimination in the treatment of undertakings providing electronic communications networks and services;

(c) safeguarding competition to the benefit of users and promoting, where appropriate, infrastructure-based competition;

(d) promoting efficient investment and innovation in new and enhanced infrastructures, including by ensuring that any access obligation takes appropriate account of the risk incurred by the investing undertakings and by permitting various cooperative arrangements between investors and parties seeking access to diversify the risk of investment, whilst ensuring that competition in the market and the principle of non-discrimination are preserved;

(e) taking due account of the variety of conditions relating to competition and users that may exist in Malta;

(f) imposing ex-ante regulatory obligations only where there is no effective and sustainable competition and relaxing or lifting such obligations as soon as that condition is fulfilled; and

(g) taking the utmost account of the desirability of making regulations technologically neutral, in particular with regards to those designed to ensure effective competition.”.

Amendment of article 5 of the principal Act.

6. In sub-article (1) of article 5 of the principal Act, for the words “various communications markets” there shall be substituted the words “various electronic communications markets”.

Amendment of article 7 of the principal Act.

7. Article 7 of the principal Act shall be amended as follows:

(a) in paragraph (b) thereof, for the words “specify; and” there shall be substituted words “specify;”;

(b) in paragraph (c) thereof, for the words “any extension thereof.” there shall be substituted the words “any extension thereof; and”; and

(c) immediately after paragraph (c) thereof, there shall be added the following new paragraph:

“(d) that no person shall carry out any works or perform any other act, or be entrusted to carry out such works or perform such act, for the construction, repair, maintenance, alteration or control of any electronic communications networks and, or equipment unless he is duly qualified and possesses such qualifications to carry out such works or perform such act as may be prescribed in accordance with the provisions of article 47.”.

8. Paragraph (d) of article 8 of the principal Act shall be deleted. Amendment of article 8 of the principal Act.

9. For article 9 of the principal Act, there shall be substituted the following new article: Substitution of article 9 of the principal Act.

“Market definition and analysis. **9.** The Authority shall, subject to any procedures as may be prescribed under this Act and in accordance with the principles of competition law, define relevant markets appropriate to national circumstances, in particular relevant geographic markets and it shall carry out an analysis of such relevant markets:

Provided that in so doing the Authority:

(a) shall take the utmost account of any relevant recommendations and guidelines that the European Commission may issue from time to time in accordance with Article 15 of the Framework Directive; and

(b) shall follow the procedures referred to in Article 4A of the Malta Communications Authority Act before defining markets that differ from those defined in any relevant recommendation that the European Commission may publish.”. Cap. 418.

10. Articles 11 and 12 of the principal Act shall be renumbered as articles 10 and 11 thereof respectively. Renumbering of articles 11 and 12 of the principal Act.

11. Article 10 as renumbered of the principal Act shall be amended as follows: Amendment of article 10 as renumbered of the principal Act.

(a) in subarticle (1) thereof, for the words “the national numbering plan for electronic communications services, and shall control the assignment of all national numbering resources”, there shall be substituted the words “the national telephone numbering plan for electronic communication services, and shall control the allocation and assignment of all national numbering resources”;

(b) in subarticle (2) thereof, for the words “the proper management of the national numbering plan” there shall be substituted the words “the proper management of the national telephone numbering plan”;

(c) in subarticle (3) thereof, for the words “the main elements of the national numbering plan” there shall be substituted the words “the main elements of the national telephone numbering plan”;

(d) for subarticle (4) thereof, there shall be substituted the following:

“(4) The Authority shall, in so far as is practicable, having regard to its objectives and functions as stated under this Act, support the harmonisation of specific numbers or numbering ranges within the European Union where such harmonisation promotes both the functioning of the internal market and the development of pan-European services.”;

(e) in subarticle (6) thereof, for the words “numbers that have not specifically been allocated” there shall be substituted the words “right of use of numbers that have not specifically been allocated”; and

(f) in subarticle (7) thereof, for the words “An undertaking allocated a range of numbers shall not discriminate against any other providers” there shall be substituted the words “An undertaking to which the right of use of a range of numbers has been granted shall not discriminate against any other providers”.

Substitution of article
11 as renumbered of
the principal Act.

12. For article 11 as renumbered of the principal Act there shall be substituted the following new article:

“Prohibition of restrictions.

11. (1) Without prejudice to the European Electronic Communications Directives, no restrictions shall be imposed or maintained on the provision of electronic communications services over electronic communications networks established by an undertaking providing electronic communications services, over infrastructures provided by third parties, or by means of sharing networks, other facilities or sites.

(2) No exclusive or special rights for the establishment and, or the provision of electronic communications networks, or for the provision of publicly available electronic communications services shall be granted or maintained in force.”.

13. Immediately after article 11 as renumbered of the principal Act, there shall be inserted the following new article:

Addition of new article 12 to the principal Act.

“Co-location, sharing of network elements and associated facilities.

12. (1) Where an undertaking providing electronic communications networks has the right at law to install facilities on, over or under public or private property, or may take advantage of a procedure for the expropriation or use of property, the Authority shall, taking full account of the principle of proportionality, be able to impose the sharing of such facilities or property, including buildings, entries to buildings, building wiring, masts, antennae, towers and other supporting constructions however so described, ducts, conduits, manholes and cabinets.

(2) The Authority shall, as necessary, impose obligations in relation to the sharing of wiring inside buildings or up to the first concentration or distribution point where this is located outside the building, on an undertaking providing electronic communications networks which has the right to install facilities on, over or under public or private property and, or on the owner of such wiring, where this is justified on the grounds that duplication of such infrastructure would be economically inefficient or physically impracticable. Such sharing or coordination arrangements shall include rules for apportioning the costs of facility or property sharing adjusted for risk where appropriate.

(3) The Authority may require undertakings to provide the necessary information, as requested by it, to be able to establish a detailed inventory of the nature, availability and geographical location of the facilities referred to in subarticle (1) and to make it available to interested parties.

(4) Measures taken by the Authority in accordance with this article shall be objective, transparent, non-discriminatory, and proportionate, and where relevant, these measures shall be carried out in coordination with other public authorities.”.

Amendment of article
13 of the principal
Act.

14. Article 13 of the principal Act shall be amended as follows:

(a) for the words “its objectives as stated in the Malta Communications Authority Act” there shall be substituted the words “its objectives as stated in this Act and in the Malta Communications Authority Act”; and

(b) in paragraph (b) thereof, for the words “competition; and” there shall be substituted the words “competition;”; and

(c) paragraph (c) thereof shall be renumbered as paragraph (d), and immediately before paragraph (d) thereof as renumbered there shall be inserted the following new paragraph:

“(c) promote efficient investment and innovation; and”.

Amendment of article
14 of the principal
Act.

15. Article 14 of the principal Act shall be amended as follows:

(a) in paragraph (b) of subarticle (1) thereof, for the words “in Member States” there shall be substituted the words “in other Member States”;

(b) in subarticle (1) thereof, for the words “Community law” there shall be substituted the words “European Union law”;

(c) in paragraph (b) of subarticle (3) thereof, for the words “to provide public communications networks” there shall be substituted the words “to provide public communications networks in accordance with this Act”;

(d) in subarticle (3) thereof, for the words “throughout the Community.” there shall be substituted the words “throughout the European Union.”;

(e) in subarticle (4) thereof, for the words “consistent with obligations relating to access and interconnection imposed by the Authority” there shall be substituted the words “consistent with obligations imposed by the Authority”;

(f) in subarticle (5) thereof, for the words “Without prejudice to information that an undertaking under or by this Act is required to provide under a general authorisation for rights of use or for specific obligations”, there shall be substituted the words “Without prejudice to information that an undertaking is required to provide under or by this Act”; and

(g) for subarticle (6) thereof, there shall be substituted the following:

“(6) An undertaking shall not make any information acquired as referred to in subarticle (5) available to any other party, including other subsidiaries or partners of the same undertaking, howsoever described, in particular where such information could provide a competitive advantage.”.

16. In the English text of article 15 of the principal Act, for the words “twenty fifty million euro” there shall be substituted the words “fifty million euro”. Amendment of article 15 of the principal Act.

17. In article 16 of the principal Act, for the words “Community law” there shall be substituted the words “European Union law”. Amendment of article 16 of the principal Act.

18. In Part II of the principal Act, immediately before article 17 thereof, for the sub-heading “5. Authorisations” there shall be substituted the words “5. Authorisations and Rights of Use”. Substitution of sub-heading 5 in Part II of the principal Act.

Amendment of article
17 of the principal
Act.

19. Article 17 of the principal Act shall be amended as follows:

(a) for subarticle (1) thereof, there shall be substituted the following:

“(1) An undertaking shall be entitled to provide electronic communications services or to establish, extend or provide electronic communications networks in accordance with this Act.”; and

(b) subarticle (2) thereof shall be deleted and subarticles (3) and (4) thereof shall be renumbered as subarticles (2) and (3) respectively.

Amendment of
article 18 of the
principal Act.

20. In paragraph (a) of subarticle (1) of article 18 of the principal Act, for the words “of any directives and, or decisions” there shall be substituted the words “of any decisions”.

Amendment of article
19 of the principal
Act.

21. Article 19 of the principal Act shall be amended as follows:

(a) in subarticle (2) thereof, for the words “shall be in such form as the Authority may from time to time determine” there shall be substituted the words “shall be in such form and shall contain such information as the Authority may from time to time determine”;

(b) subarticle (5) shall be renumbered as subarticle (6) thereof; and

(c) immediately after subarticle (4) thereof, there shall be added the following new subarticle:

“(5) Undertakings providing cross-border electronic communications services to undertakings located in several Member States shall not be required to submit more than one notification per Member State concerned.”.

Renumbering of
articles 20 to 27 of the
principal Act.

22. Articles 20 to 23 of the principal Act shall be renumbered as articles 21 to 24 thereof respectively, the sub-heading “8. Dispute resolution” shall be deleted and article 27 shall be renumbered as article 25.

23. Immediately after article 19 of the principal Act there shall be added the following new article:

Addition of new article 20 to the principal Act.

“Amendments of general authorisation and of rights of use.

20. The Authority may, with the approval of the Minister, by order in the Gazette, amend the rights, conditions and procedures concerning general authorisations and rights of use of numbers, provided that any such amendments may only be made in objectively justified cases and in a proportionate manner taking into consideration, where appropriate, the specific conditions applicable to transferable rights of use for radio frequencies:

Provided that before making any such amendment, the Authority shall, with the exception of cases where the proposed amendments are minor and have been agreed with the holder of the rights or general authorisation, give notice in such manner as it considers appropriate of its intention, inviting interested parties, including users and consumers, to make representations on the proposed amendments within a period of not less than thirty days, as may be specified in the notice. The Authority may in circumstances which it considers to be exceptional, shorten such period.”.

24 In article 21 as renumbered of the principal Act, for the words “from any requirement at law to apply for any other authorisation, licence or permit however so described, or from any obligation arising from any other law”, there shall be substituted the words “from any requirement at law to apply for and obtain any other authorisation, licence or permit however so described or from any obligation arising from any other law, licence, authorisation or permit however so described.”.

Amendment of article 21 as renumbered of the principal Act.

25. For article 23 as renumbered of the principal Act, there shall be substituted the following new article:

Substitution of article 23 as renumbered of the principal Act.

“End-user rights and the information to be included.

23. (1) An undertaking shall provide all subscribers to a public communications network and, or to publicly available electronic communications services, with a contract, and shall provide such services in accordance with such a contract.

(2) The contract referred to in subarticle (1) shall expressly include such information as may by regulation be specified by the Minister after consultation with the Authority, in order to protect the interests of subscribers and users.

(3) An undertaking referred to in subarticle (1) shall, not less than thirty days prior to the taking of effect of any proposed modification to the contractual terms and conditions of the service, notify in writing all subscribers to that service with at least:

(a) the proposed modification to the contractual terms and conditions of the service;

(b) the right to withdraw without penalty from such contract if they do not accept the modifications; and

(c) any refunds applicable upon withdrawal from the contract due to such modifications, including the means by which the subscriber shall, at no extra cost to him, be refunded any unutilized advanced payment made.

(4) An undertaking referred to in subarticle (3) shall notify the Authority in writing, prior to notification to subscribers, in a timely manner as may be specified by the Authority, of any proposed modifications to the contractual terms and conditions of service.

(5) The Authority may, following a written request to an undertaking, made in accordance with any requirements that may be laid down by the Authority, in cases where the proposed modification to the contractual terms and conditions of the service is manifestly of benefit to all subscribers to that service, exempt the undertaking from applying the right referred to in paragraph (b) of subarticle (3).”.

Substitution of article
24 as renumbered of
the principal Act.

26. For article 24 as renumbered of the principal Act, there shall be substituted the following new article:

“Nullity of the contract and of certain terms and conditions. 24. A contract, term or condition for the provision of an electronic communications service, even if agreed to by the subscriber or user, shall be null and without effect to the extent that it is inconsistent with any provisions made by or under this Act or the terms and conditions of the authorisation under which the service is provided.”.

27. Articles 28 to 41 of the principal Act shall be renumbered as articles 26 to 39 thereof respectively. Renumbering of articles 28 to 41 of the principal Act.

28. In article 33 as renumbered of the principal Act and in the marginal note thereto, for the words “of article 32” wherever they occur there shall be substituted the words “of article 30”. Amendment of article 33 as renumbered of the principal Act.

29. For article 36 as renumbered of the principal Act, there shall be substituted the following new article: Substitution of article 36 as renumbered of the principal Act.

“Interpretation. 36. (1) In this Part, unless the context otherwise requires:

“frequency plan” means the “national radio frequency plan” as adopted by the Minister and published in accordance with the provisions of this Part; and

“general authorisation” means a framework established by or under this Part laying down the rights and obligations for the use of radio spectrum, when the use of the radio spectrum is not subject to an individual licence.

(2) This Part regulates all radio spectrum, with the exception of any radio spectrum expressly regulated under any other law, and identified as such in the radio frequency plan.”.

30. For article 37 as renumbered of the principal Act, there shall be substituted the following: Substitution of article 37 as renumbered of the principal Act.

“Use of radio frequencies. 37. Radio frequencies shall only be used in accordance with a general authorisation issued under this Act or following explicit authorisation by the Authority in accordance with this Act, or following explicit authorisation in accordance with any other law:

Provided that the Minister may in writing authorise any body established by law duly empowered at law to assign frequencies under the frequency plan, to depart from the frequency plan. In doing so the Minister shall give his reasons and notice of such authorisation shall be made public.”.

Substitution of article 38 as renumbered of the principal Act.

31. For article 38 as renumbered of the principal Act, there shall be substituted the following:

“Manage-
ment of radio
frequencies.

38. (1) The Authority shall, in accordance with its objectives under this Act, be responsible for the effective management of the radio frequencies assigned to it under the said national radio frequency plan.

(2) Without prejudice to specific criteria and procedures adopted to grant rights of use of radio frequencies to providers of radio or television broadcast content services with a view to pursuing general interest objectives in conformity with European Union law:

(a) no exclusive or special rights of use of radio frequencies shall be granted for the provision of electronic communications services; and

(b) the Authority and the Minister shall in the exercise of their respective functions with regard to the allocation of radio spectrum used for electronic communications services and the issue of general authorisations or individual rights of use of such radio frequencies, act in accordance with objective, transparent, non-discriminatory and proportionate criteria:

Provided that any related procedures used for the purposes of this paragraph shall be transparent.

(3) In applying the provisions of this article, the Minister and the Authority shall respect relevant international agreements, including the ITU Radio Regulations, and may take public policy considerations into account.

(4) The Authority shall publish at least once a year, and make available on request, the assignment of radio frequencies, assigned to it under the frequency plan.”.

32. Article 39 as renumbered of the principal Act shall be amended as follows:

Amendment of article 39 as renumbered of the principal Act.

(a) in the marginal note thereto, for the words “of a plan” there shall be substituted the words “of a frequency plan”;

(b) in subarticle (1) thereof, for the word “plan” wherever it occurs there shall be substituted the words “frequency plan”;

(c) in subarticle (2) thereof, for the words “The Minister shall in drawing up the plan establish the frequencies” there shall be substituted the words “The Minister shall in drawing up the frequency plan establish which frequencies are”; and

(d) subarticle (3) thereof shall be deleted.

33. Article 42 of the principal Act shall be deleted.

Deletion of article 42 of the principal Act.

34. Articles 43 to 49 of the principal Act shall be renumbered as articles 46 to 52 thereof.

Renumbering of articles 43 to 49 of the principal Act.

35. Immediately after article 39 as renumbered of the principal Act, there shall be added the following new articles:

Addition of new articles 40 to 45 to the principal Act.

“Techno-
logy neutral-
ity.

40. (1) Unless otherwise provided in subarticle (2), all types of technology used for electronic communications services may be used in the radio frequency bands, declared available for electronic communications services in the frequency plan in accordance with European Union law.

(2) The Minister, or the Authority with the approval of the Minister, may, however, provide for proportionate and non-discriminatory restrictions to the types of radio network or wireless access technology used for electronic communications services where this is necessary to:

- (a) avoid harmful interference;
- (b) protect public health against electromagnetic fields;
- (c) ensure technical quality of service;
- (d) ensure maximisation of radio frequency sharing;
- (e) safeguard efficient use of spectrum, or
- (f) ensure the fulfilment of a general interest objective in accordance with article 41.

Service
neutrality.

41. (1) Unless otherwise provided in subarticles (2) and (3), all types of electronic communications services may be provided in the radio frequency bands, declared available for electronic communications services in the frequency plan in accordance with European Union law.

(2) The Minister, or the Authority with the approval of the Minister, may provide for proportionate and non-discriminatory restrictions to the types of electronic communications services to be provided, including, where necessary, to fulfill a requirement under the ITU Radio Regulations.

(3) Measures that require an electronic communications service to be provided in a specific band available for electronic communications services shall be justified in order to ensure the fulfilment of a general interest objective as defined by the Minister in conformity with European Union law, such as, and not limited to:

- (a) safety of life,
- (b) the promotion of social, regional or territorial cohesion,
- (c) the avoidance of inefficient use of radio frequencies, or

(d) the promotion of cultural and linguistic diversity and media pluralism, for example by the provision of radio and television broadcasting services.

(4) A measure which prohibits the provision of any other electronic communications service in a specific band, may only be provided for where justified by the need to protect safety of life services:

Provided that the Minister or the Authority as the case may be, may exceptionally also extend such a measure in order to fulfill other general interest objectives as defined by the Minister in accordance with European Union law.

Application
of technology
and service
neutrality.

42. (1) The Minister or the Authority as the case may be, shall regularly review the necessity of the restrictions referred to in articles 40 and 41, and shall make the results of these reviews public.

(2) Articles 40 and 41 shall apply to spectrum allocated to be used for electronic communications services, general authorisations issued and individual rights of use of radio frequencies granted after the 25th May 2011.

(3) Spectrum allocations, general authorisations and individual rights of use which existed before the 25th May 2011 shall be subject to article 43.

Review of
restrictions
on existing
rights.

43. (1) For a period of five years starting from the 25th May 2011, holders of rights to use radio frequencies which were granted before this date and which will remain valid at least until the 25th May 2016, may submit an application to the Authority for a reassessment of the restrictions on their rights in accordance with articles 40 and 41.

(2) Before adopting its decision, the Authority shall notify the rights holder of its reassessment of the restrictions, indicating the extent of the right after reassessment.

(3) The Authority shall allow a reasonable time limit for the rights holder to withdraw the application, if desired. If the rights holder withdraws the application, the rights shall remain unchanged until its expiry or until the 25th May 2016, whichever is the earlier date.

(4) After the 25th May 2016 the Authority shall take all appropriate measures to ensure that articles 40 and 41 apply to all remaining general authorisations, individual rights of use, and spectrum allocations used for electronic communications services which existed on the 25th May 2011.

(5) In applying this article, the Authority shall take appropriate measures to promote fair competition.

(6) Measures adopted in applying this article do not constitute the granting of new rights of use and therefore are not subject to the relevant provisions of Article 5 (2) of the Authorisation Directive.

Rules
preventing
spectrum
hoarding.

44. Without prejudice to the provisions of this Act and taking into account the relevant national circumstances, the Authority may lay down rules in order to prevent spectrum hoarding, in particular by setting out strict deadlines for the effective exploitation of the rights of use by the holder of the rights. These rules shall be established and applied in a proportionate, non-discriminatory and transparent manner.

Spectrum
Trading.

45. (1) An undertaking may transfer or lease the individual rights to use radio frequencies in the bands identified in the frequency plan that may be transferred or leased to other undertakings in accordance with the conditions attached to such rights of use of radio frequencies and in accordance with any applicable legislation:

Provided that conditions attached to individual rights to use radio frequencies shall continue to apply after the transfer or lease, unless otherwise specified by the Authority.

(2) Without prejudice to any applicable legislation, or any procedures that the Authority may specify, an undertaking shall notify its intention to transfer rights to use radio frequencies, as well as the effective transfer thereof to the Authority and shall make such intention public.

(3) Where radio frequency use has been harmonised through the application of the Decision No 676/2002/EC (Radio Spectrum Decision) or other European Union measures, any such transfer shall comply with such harmonised use.”.

36. Article 47 as renumbered of the principal Act shall be amended as follows:

Amendment of article 47 as renumbered of the principal Act.

(a) in subarticle (1) thereof -

(i) for paragraph (a) thereof, there shall be substituted the following:

“(a) regulate electronic communications services and, or networks including interconnection of networks, collocation of facilities, carrier pre-selection, access to networks, rights of way, the transmission or reception of satellite signals, the maintenance of and publication, and access to any information however so described, stipulate universal service obligations, any matter concerning numbers including portability, plans and allocation, any matter concerning e-mail forwarding or other similar services to ensure fair competition or for end-user protection purposes, the obligations of an undertaking having significant market power, competition and end-user protection rules including but not limited to rules relating to the suspension, termination and renewal of electronic communications services to end-users, compensation and refund arrangements, billing procedures and billing accuracy, emergency services, harmonised services for social value, and directory services;”;

(ii) in paragraph (j), for the word “consumers” there shall be substituted the word “end-users”;

(iii) in paragraph (l), for the word “Community” there shall be substituted the words “European Union”;

(iv) in paragraph (n), for the word “Community” there shall be substituted the words “European Union”;

(v) for paragraphs (o) and (p), there shall be substituted the following:

“(o) regulate the allocation, assignment and use of radio frequencies for electronic communications networks and, or services, including the transfer or lease of rights to use radio frequencies to other undertakings and the procedure to be followed;

(p) regulate any matter relating to the regulation, administration, management and authorisation of radio spectrum, including any aspect concerning the issue of authorisations, spectrum trading, the manner in which radio frequencies and, or apparatus as may be designated, may be used without the need of an authorisation, and the fees and conditions that may be imposed in relation thereto;”;

(vi) paragraph (s) shall be renumbered as paragraph (u) and immediately after paragraph (r) there shall be added the following new paragraphs:

“(s) provide for any matter relating to the qualifications that a person may require in order to carry out any works or perform any other act relating to construction, repair, maintenance, alteration or control of any electronic communications service and, or network, including the tests to be employed for ascertaining whether a person possesses these qualifications;

(t) prescribe penalties for criminal offences against any regulations made under this Act, including different fines (*multa*) for different

offences and, or fines (*multa*) calculated in accordance with the duration of the commission of the offence:

Provided that any such regulations as may be made shall not provide for a fine (*multa*) of more than twenty five thousand euro (25,000) or five hundred euro (500) for each day during which the offence persists;” and

(b) in subarticle (2) thereof, the words “empower any other public authority established by law” shall be substituted with the words “empower any body or bodies established by law”.

37. In subarticle (1) of article 51 as renumbered of the principal Act, for the words “article 35(1)(d) or under article 35A” there shall be substituted the words “article 48(1)(d) or under article 49”.

Amendment of article 51 as renumbered of the principal Act.

38. Articles 50 and 51 of the principal Act shall be deleted.

Deletion of articles 50 and 51 of the principal Act.

39. Articles 52 to 54 of the principal Act shall be renumbered as articles 53 to 55 thereof respectively.

Renumbering of articles 52 to 54 of the principal Act.

40. For article 53 as renumbered of the principal Act, there shall be substituted the following:

Substitution of article 53 as renumbered of the principal Act.

“Existing
authorisa-
tions.

53. (1) Without prejudice to article 43, the Authority shall bring general authorisations and individual rights of use already in existence on 31 December 2009 into conformity with any provisions of, or made under this Act relating to authorisations by 19 December 2011 at the latest.

(2) Notwithstanding subarticle (1) where the Authority considers that the application of the said subarticle would result in a reduction of rights or extension of obligations on a person holding such an authorisation or right of use already in existence, the Authority may extend the validity of those authorisations or rights of use until 30 September 2012, provided that it considers that the rights of other persons are not adversely affected thereby. The Authority shall notify such extension to the European Commission and state the reasons therefor.”.

Amendment of article 55 as renumbered of the principal Act.

41. In subarticle (2) of article 55 as renumbered of the principal Act, the words “and from the provisions of any regulations made thereunder” shall be deleted.”.

Part II

AMENDMENT OF THE MALTA COMMUNICATIONS AUTHORITY ACT

Amendment
of the Malta
Communications
Authority Act.
Cap.418.

42. (1) This Part amends the Malta Communications Authority Act, and it shall be read and construed as one with the Malta Communications Authority Act, hereinafter in this Part referred to as “the principal Act”.

(2) This Part shall come into force on such date as the Minister responsible for communications may by notice in the Gazette appoint and different dates may be so appointed for different provisions and different purposes thereof.

Amendment of article 2 of the principal Act.

43. Article 2 of the principal Act shall be amended as follows:

(a) for the definition “the Act”, there shall be substituted the following new definition:

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

and for the words “the Act” wherever they occur in the principal Act there shall be substituted the words “this Act”;

(b) immediately after the definition “Authority”, there shall be inserted the following new definition:

“ “BEREC” means the Body of European Regulators for Electronic Communications;”,

(c) the definition “Community” shall be deleted;

(d) in the definition “decision”, the words “includes any determination,” shall be substituted with the words “includes any directive, determination,”;

(e) immediately after the definition “end-user”, there shall be added the following new definition:

“ “European Electronic Communications Directives” means Directive 2002/21/EC of the European Parliament and of the Council of 7 March 2002 on a common regulatory framework for electronic communications networks and services (Framework Directive); Directive 2002/20/EC on the authorisation of electronic communications networks and services (Authorisation Directive), Directive 2002/19/EC on access to, and interconnection of, electronic communications networks and associated facilities (Access Directive), Directive 2002/22/EC on universal service and user’s rights relating to electronic communications networks and services (Universal Service Directive) and Directive 2002/58/EC of the European Parliament and of the Council of 12 July 2002 concerning the processing of personal data and the protection of privacy in the electronic communications sector (ePrivacy Directive) as may be amended from time to time;”;

(f) immediately after the definition “financial year” there shall be added the following new definition:

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

(g) immediately after the new definition “harmful interference” there shall be inserted the following new definition:

“ “Member State” means a Member State of the European Union;”;

(h) the definition “person” shall be deleted.

44. For subarticle (6) of article 3 of the principal Act, there shall be substituted the following:

Amendment of article 3 of the principal Act.

“(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:

Provided that in the event that the Minister removes the Chairman from office, such removal shall be made public by no later than the effective date of removal from office. At the same time, the Minister shall provide the Chairman with a statement of reasons for his removal:

Provided further that a Chairman who is removed from office shall have the right to request the publication of the statement of reasons for his removal, in which case the Minister shall publish the statement.”.

Amendment of article
4 of the principal Act.

45. Article 4 of the principal Act shall be amended as follows:

(a) in subarticle (3) thereof -

(i) for the words “The Authority shall also –” there shall be substituted the words “ The Authority shall also, in accordance with the laws it is entitled to enforce –”;

(ii) for paragraph (r) there shall be substituted the following:

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

(iii) for paragraph (s) there shall be substituted the following:

“(s) perform such other functions, including functions aimed at promoting the information society, as may from time to time be assigned to it by the Minister.”; and

(b) for subarticle (4) thereof, there shall be substituted the following:

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

46. Article 4A of the principal Act shall be amended as follows: Amendment of article 4A of the principal Act.

(a) in subarticle (1) thereof -

(i) in paragraph (c), for the words “Community law” there shall be substituted the words “European Union law”; and

(ii) for the words “in a market for communications networks or services,” there shall be substituted the words “in a market for any communications networks or services,”;

(b) subarticles (2) and (3) thereof shall be renumbered as subarticle (3) and (4) thereof respectively; and

(c) immediately before subarticle (3) as renumbered, there shall be inserted the following new subarticle:

“(2) Where the Authority intends to take a decision on issues related to end-user and, or consumer rights, in particular where such decision has a significant impact on the market for any communications networks and, or services, the Authority shall ensure that in carrying out the consultation mechanism referred to in subarticle (1), as far as is appropriate for the purposes of its functions under this Act or any other legislation the Authority is entitled to enforce, it shall take into account

the views of end-users and of consumers in particular disabled end-users, manufacturers and undertakings that provide communications networks and, or services.”.

Amendment of article 5 of the principal Act.

47. In subarticle (10) of article 5 of the principal Act, for the words “of any decision or directive made by the Authority” there shall be substituted the words “of any decision made by the Authority”.

Amendment of article 6 of the principal Act.

48. For subarticle (1) of article 6 of the principal Act, there shall be substituted the following:

“(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:

Provided that the Authority shall act independently and shall not seek or take instructions from any other body on matters related to ex-ante market regulation and the resolution of disputes between undertakings in accordance with articles 43 and 44A.”.

Amendment of article 8 of the principal Act.

49. In the English text of article 8 of the principal Act shall be amended as follows:

(a) in subarticle (4) thereof, for the words “be reason of the existence” shall be substituted with words “by reason of the existence”; and

(b) in subarticle (5) thereof, for the words “the provisions of subarticle of article 3(8)” there shall be substituted the words “the provisions of article 3(8)”.

Amendment of article 14 of the principal Act.

50. For subarticle (3) of article 14 of the principal Act there shall be substituted the following:

“(3) The Authority shall also be paid by Government out of the Consolidated Fund such sums as Parliament may from time to time authorise to be appropriated to meet the costs of specified works to be continued or otherwise carried out by the Authority:

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

51. Article 31 of the principal Act shall be amended as follows:

Amendment of article 31 of the principal Act.

(a) for subarticle (1) thereof, there shall be substituted the following:

“(1) Without prejudice to any other provisions under this Act or any other law which the Authority is entitled to enforce, the Authority may take the following measures in respect of any person who infringes any provision of this Act or of any other law which the Authority is entitled to enforce, or who fails to comply with any decision given by the Authority or with any authorisation condition:

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

(b) order the cessation of any act or omission which is in breach;

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

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(b) subarticle (2) shall be renumbered as subarticle (3) thereof; and

(c) immediately after subarticle (1) thereof, there shall be added the following new subarticle:

“(2) In cases where the Authority considers that a person has seriously and repeatedly infringed the provisions of this Act or of any other law which the Authority is entitled to enforce, or of any decision of the Authority or of any authorisation condition,

the Authority may withdraw or suspend any related authorisation granted by or under this Act or any other law which the Authority is entitled to enforce.”.

Amendment of article
32 of the principal
Act.

52. Article 32 of the principal Act shall be amended as follows:

(a) for subarticles (1) to (4) thereof, there shall be substituted the following subarticles:

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

Provided that where the measure is an administrative fine the person concerned shall also be informed of the amount of the fine:

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

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

(3) If after the lapse of the period mentioned in subarticle (1), the Authority considers that the person concerned has not given any valid reasons to demonstrate why no measure should be taken against him, the Authority shall notify the person concerned

in writing, specifying the nature of the infringement, stating the measure being taken, and if the measure is an administrative fine, stating the amount of the fine being imposed.

(4) Notwithstanding the provisions of subarticle (1), where the Authority has *prima facie* evidence that the infringement –

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

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

(c) would result in significant harm to competition in the electronic communications market, pending compliance with access obligations imposed following a market analysis carried out in accordance with the Electronic Communications (Regulation) Act or any regulations made thereunder, Cap. 399.

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

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

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

(d) in subarticle (5) thereof, for the words “The notice” there shall be substituted the words “The notification”.

Amendment of article 33 of the principal Act.

53. In subarticle (1) of article 33 of the principal Act, immediately after the first proviso thereto there shall be added the following new proviso:

“Provided further that any daily fine imposed may be back dated to the date of the commission or commencement of the infringement.”.

Amendment of article 34A of the principal Act.

54. In paragraph (b) of subarticle (1) of article 34A of the principal Act, for the words “a Member State of the European Union” wherever they occur there shall be substituted the words “a Member State”.

Amendment of article 37 of the principal Act.

55. Article 37 of the principal Act shall be amended as follows:

(a) in subarticle (1) thereof, for the words “from a decision or a directive” there shall be substituted the words “from a decision”;

(b) in the proviso to subarticle (2) thereof, for the words “the decision or directive” there shall be substituted the words “the decision”; and

(c) in paragraph (a) in subarticle (3) thereof, for the words “from a decision or directive” there shall be substituted the words “from a decision”.

Amendment of article 42 of the principal Act.

56. In article 42 of the principal Act, the words “or the directive” wherever they occur shall be deleted.

Addition of new article 42A to the principal Act.

57. Immediately after article 42 of the principal Act there shall be added the following new article:

Collection of information regarding appeals.

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

58. Article 43 of the principal Act shall be amended as follows:

Amendment of article 43 of the principal Act.

(a) for subarticle (1) thereof, there shall be substituted the following:

“(1) Unless otherwise provided in any other law, in the event of a dispute occurring between undertakings within the same communications sector in connection with any obligations arising under any law, decision or authorisation condition which the Authority is entitled to enforce, the Authority shall, at the request of any party to the dispute, investigate the matter and shall issue a binding decision to resolve the dispute in the shortest possible timeframe, and in any case within four months from the date on which the dispute was notified to it:

Provided that such period of four months may be extended in circumstances which the Authority considers exceptional.”;

(b) subarticle (2) shall be renumbered as subarticle (2A) thereof;

(c) immediately before subarticle (2A) thereof as renumbered there shall be inserted the following new subarticle:

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

(d) for subarticle (2A) thereof as renumbered, there shall be substituted the following:

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

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

(e) in the proviso to subarticle (6) thereof, for the words “a breach of this Act or any other law which the Authority is entitled to enforce” there shall be substituted the words “a breach of this Act, any other law, decision or authorisation condition which the Authority is entitled to enforce”.

Amendment of article 44 of the principal Act.

59. Article 44 of the principal Act shall be amended as follows:

(a) in subarticle (2) thereof, for the words “be transparent, simple, inexpensive and conducive to a prompt and fair settlement of the dispute,” there shall be substituted with the words “be transparent, non-discriminatory, simple, inexpensive and conducive to a prompt and fair settlement of the dispute,”; and

(b) subarticle (8) thereof shall be deleted.

Addition of new article 44A to the principal Act.

60. Immediately after article 44 of the principal Act, there shall be added the following new article:

“Resolution of cross-border disputes.

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

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

(a) any party may refer such a dispute to the Authority or to the other national regulatory authorities concerned. The Authority shall coordinate with the other national regulatory authorities, and may consult with BEREC in order to bring about a consistent resolution of this dispute in accordance with the objectives set out in Article 4 of the Electronic Communications (Regulations) Act:

Provided that where the Authority makes a determination for the purposes of resolving a dispute under this article, the provisions of article 43 shall apply. In doing so the Authority may request BEREC to give an opinion as to the action to be taken in accordance with the provisions of the European Electronic Communications Directives to resolve the dispute. Where such a request has been made to BEREC, the Authority shall wait for the opinion of BEREC before taking action to resolve the dispute. This shall not preclude the Authority from taking urgent measures as necessary:

Provided further that any obligations imposed on an undertaking by the Authority in resolving a dispute shall respect the provisions of the European Electronic Communications Directives and shall take the utmost account of the opinion adopted by BEREC.

(b) the Authority may enter into arrangements with other national regulatory authorities whereby they may jointly decline to resolve a dispute where other mechanisms, including mediation, exist and would better contribute to resolution of the dispute in a timely manner in accordance with the provisions of Article 8 of the Framework Directive. Such arrangements shall include provision for the Authority or the other national regulatory authorities to inform the parties without delay where they agree to jointly decline to resolve the dispute:

Provided that if after four months the dispute is not resolved, where the dispute has not been

brought before the courts by the party seeking redress, and if either party requests it, the Authority shall coordinate with the other national regulatory authorities in order to bring about a resolution of the dispute in accordance with Article 8 of the Framework Directive, and taking the utmost account of any opinion adopted by BEREC in relation to the dispute in question.

(3) The procedure referred to in paragraph (a) of subarticle (2) does not preclude a party from bringing an action before the courts.”.

PART III

AMENDMENT OF THE UTILITIES AND SERVICES (REGULATION OF CERTAIN WORKS) ACT

Amendment of the
Utilities and Services
(Regulation of Certain
Works) Act
Cap. 81.

61. (1) This Part amends the Utilities and Services (Regulation of Certain Works) Act, and it shall be read and construed as one with the Utilities and Services (Regulation of Certain Works) Act, hereinafter in this Part referred to as “the principal Act”.

(2) This Part shall come into force on such date as the Minister responsible for communications may by notice in the Gazette appoint and different dates may be so appointed for different provisions and different purposes thereof.

Amendment of article
4 of the principal Act.

62. For paragraph (a) of subarticle (10) of article 4 of the principal Act there shall be substituted the following:

“(a) act on the basis of simple, efficient, transparent and publicly available procedures, applied without discrimination and without delay, and shall in any case make a decision within six months from the application date;”.

PART IV

AMENDMENT OF THE CONSUMER AFFAIRS ACT

Amendment of the
Consumer Affairs Act
Cap. 378.

63. (1) This Part amends the Consumer Affairs, and it shall be read and construed as one with the Consumer Affairs Act, hereinafter in this Part referred to as “the principal Act”.

(2) This Part shall come into force on such date as the Minister responsible for Consumer Affairs may by notice in the Gazette appoint and different dates may be so appointed for different provisions and different purposes thereof.

64. Article 23 of the principal Act shall be amended as follows:

Amendment of article
23 of the principal
Act.

(a) subarticles (5) and (6) thereof shall be renumbered as subarticles (6) and (7); and

(b) immediately after subarticle (4) thereof there shall be added the following new subarticle:

“(5) Where the Director General is in receipt of a claim referred to him by the Malta Communications Authority where such a claim was submitted to that Authority by an aggrieved end-user in relation to a communications service however so described falling within the remit of the Authority, then the Director General shall act on the basis of the claim forwarded to him by the Authority without the need of requiring the end-user concerned to submit the claim again to the Director General:

Provided that for the purposes of this subarticle, “communications service” means any communications service as is regulated in accordance with the provisions of the Malta Communications Authority Act.”.

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Passed by the House of Representatives at Sitting No. 360 of 8th June, 2011.

MICHAEL FRENDU
Speaker

PAULINE ABELA
Clerk to the House of Representatives

