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L.N. 485 of 2011

**ELECTRONIC COMMUNICATIONS
(REGULATION) ACT
(CAP. 399)**

**Electronic Communications Networks and Services (General)
(Amendment) (No, 2) Regulations, 2011**

IN exercise of the powers conferred by article 47 of the Electronic Communications (Regulation) Act, the Minister for Infrastructure, Transport and Communications, after consultation with the Malta Communications Authority, has made the following regulations:

Citation and
commencement.

L.N. 273 of 2011.

1. The title of these regulations is the Electronic Communications Networks and Services (General) (Amendment) (No. 2) Regulations, 2011 and they shall be read and construed as one with the Electronic Communications Networks and Services (General) Regulations, 2011, hereinafter referred to as “the principal regulations”.

Amends regulation
5 of the principal
regulations.

2. In sub-regulation (1) of regulation 5 of the principal regulations, for the words “the recommendation and the guidelines” there shall be substituted the words “the recommendations and taking the utmost account of the guidelines”.

Amends regulation
7 of the principal
regulations.

3. Regulation 7 of the principal regulations shall be amended as follows:

(a) in sub-regulation (3) thereof, for the words “the Authority shall adopt the resulting draft measure” there shall be substituted the words “the Authority shall adopt the resulting draft measure within six months of the date of the decision of the European Commission”; and

(b) in sub-regulation (5) thereof, the words “the Authority shall adopt the resulting draft measure” there shall be substituted the words “the Authority shall adopt the resulting draft measure within six months of the date of the decision of the European Commission”.

Amends regulation
15 of the principal
regulations.

4. For paragraph (f) of sub-regulation (2) of regulation 15 of the principal regulations there shall be substituted the following:

“(f) to provide co-location or other forms of associated facility sharing without prejudice to article 12 of the Act;”.

5. Regulation 35 of the principal regulations shall be amended as follows:

Amends regulation 35 of the principal regulations.

(a) in sub-regulation 35(1) thereof –

(i) in paragraph (b) sub-paragraph (iv) thereof, for the words: -

“(iv) the service quality levels offered, including, as a minimum, the:

(1) maximum time for the initial connection and disconnection;

(2) maximum repair time for faults or other service faults;”

there shall be substituted with the words -

“(iv) the service quality levels offered, including, as a minimum unless determined otherwise by the Authority, the:

(1) maximum time for the initial connection and disconnection;

(2) maximum repair time for faults or other service faults, except in the event of catastrophic network breakdown or in cases of force majeure;” and

(ii) for paragraph (l) thereof shall be substituted the following:

(l) the method of initiating procedures for settlement of disputes with the undertakings and, where necessary, with the Authority, in accordance with article 44 of the Malta Communications Authority Act;”

“Cap. 418.

(b) in sub-regulation (4) thereof -

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

“(a) draw up contracts in accordance with subregulation (1) in relation to every retail service provided;” and

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

“(b) make available upon request, the complete version of every contract in all retail outlets and on any related website operated or controlled by the undertaking;”.

Amends regulation 36 of the principal regulations.

6. Regulation 36 of the principal regulations shall be amended as follows:

(a) for sub-regulation (1) there shall be substituted the following:

“(1) Notwithstanding any provisions of a contract entered into with an undertaking, subscribers shall have the right at any time, to terminate the said contract through simple means, acceptable to the Authority, subject to any prior notice not exceeding one month and to any applicable termination charges:

Provided that such charges shall be reasonable and justified.”; and

(b) in sub-regulation (5) for the words “Except in cases of fraud, persistent late payment or non-payment, any measures taken in accordance with subregulation (4)” there shall be substituted the words: “Except in cases of fraud, persistent late payment or non-payment, wilful damage to the network and illegal use of service, any measures taken in accordance with subregulation (4)”.

Amends regulation 37 of the principal regulations.

7. Regulation 37 of the principal regulations shall be amended as follows:

(a) for sub-regulation (2) thereof, there shall be substituted the following:

“(2) Without prejudice to any decisions that the Authority may take in this regard, the information referred to in subregulation (1) shall be conveyed in a clear and comprehensive manner to end-users, at least:

(a) in writing at all retail outlets such that upon request it is readily available for inspection free of charge by the general public during normal business hours; and

(b) on any website operated or controlled by the undertaking, preferably through the same page where the service is publicised or through a link set for this purpose, in a form and manner allowing the easy identification thereof.”; and

(b) sub-regulation (4) thereof shall be amended as follows:

(i) in paragraph (d) thereof, for the words “and on how those procedures could impact on service quality; and” there shall be substituted the words “and on how those procedures could impact on service quality;”;

(ii) paragraph (e) thereof shall be renumbered as paragraph (f); and

(iii) immediately after paragraph (d) thereof there shall be added the following new paragraph:

(e) inform subscribers of their right to determine whether or not to include their personal data in a directory and of the types of data concerned in accordance with regulation 8 of the Processing of Personal Data (Electronic Communications) Regulations, 2003; and”.

“L.N. 16 of 2003.

8. For sub-regulation (3) of regulation 38 of the principal regulations there shall be substituted the following:

Amends regulation 38 of the principal regulations.

“(3) The Authority may arrange, or require an undertaking to which this regulation refers to arrange an independent audit or review to ensure compliance with sub-regulation (1):

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Provided that the Authority shall, before proceeding to arrange or require such audit, notify the undertaking concerned, warning it of the measure that may be taken and the specific reasons therefor, requiring the undertaking to make its submissions within a period not less than fifteen days:

Provided further that the audit shall be paid by the undertaking concerned only in cases where the results express a negative opinion on the billing system.”.

Amends regulation 48 of the principal regulations.

9. Regulation 48 of the principal regulations shall be amended as follows:

(a) in sub-regulation (2) thereof, for the words “for a minimum period of twelve (12) months, or any other period as may be specified by the Authority” there shall be substituted the words “for a minimum period specified by the Authority”; and

(b) in regulation (3) for the words “for a minimum period of five years, or any other period as may be specified by the Authority” there shall be substituted the words “for a minimum period specified by the Authority”.

Amends regulation 52 of the principal regulations.

10. In regulation 52 of the principal regulations, sub-regulation (3) shall be renumbered as sub-regulation (4) thereof and immediately after sub-regulation (2) thereof there shall be added the following new sub-regulation:

“(3) Without prejudice to Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regards to the processing of personal data and on the free movement of such data, the measures referred to in sub-regulations (1) and (2) shall at least:

(a) ensure that personal data can be accessed only by authorised personnel for legally authorised purposes;

(b) protect personal data stored or transmitted against accidental or unlawful destruction, accidental loss or alteration, and unauthorised or unlawful storage, processing, access or disclosure; and

(c) ensure the implementation of a security policy with respect to the processing of personal data:

Provided that the Authority may, in collaboration with the Information and Data Protection Commissioner, audit the measures taken by the undertakings referred to in subregulations (1) and (2) and issue recommendations about best practices concerning the level of security which such measures should achieve.”.

11. (1) Parts X, XI and XII of the principal regulations shall be renumbered as Parts XI, XII and XIII respectively.

Renumbers Parts X, XI and XII and adds new Part X to the principal regulations.

(2) Immediately after regulation 71 of the principal regulations there shall be added the following new Part:

**“PART X
Trading Rules for Radio Spectrum Licences**

71A. In this Part unless indicated otherwise:

Interpretation.

“licence” means a licence for the individual rights of use of radio frequencies;

“licensee” means the undertaking requesting to make a transfer or lease of a licence.

71B. (1) Subject to the provisions of regulation 71D, the transfer by a licensee of the applicable rights and conditions of a licence is authorised, provided that once the transfer is made, such rights and conditions as relate to all or part of the range of radio frequencies being transferred, become the rights and conditions applicable to the transferee to the exclusion of the licensee making the transfer.

Transfer of applicable rights and conditions of a licence.

(2) Sub-regulation (1) shall apply only to those licences in the radio frequency bands identified in the frequency plan as being transferable.

71C. (1) Subject to the provisions of regulation 71D, the lease by a licensee of the applicable rights and conditions of a licence is authorised, provided the requirements in sub-regulation (2) are met, which requirements are applicable for the period during which the applicable rights and conditions are leased.

Lease of applicable rights and conditions of a licence.

(2) Once the lease comes into effect the applicable rights under a licence which relate to all or part of the range of radio frequencies become the rights of the lessee:

Provided that for the part of the range of radio frequencies being leased:

(a) the applicable conditions 1, 5, 6 and 7 specified in Part B of the Seventh Schedule continue to apply to the licensee;

(b) the applicable conditions 2, 3 and 8 specified in Part B of the Seventh Schedule apply to both the licensee and lessee;

(c) the term of the lease cannot exceed beyond the term of the original licence; and

(d) the rights transferred to the lessee for the duration of the lease automatically revert back to the licensee at the end of the term of the lease.

(3) Sub-regulation (1) shall apply only to those licences in the radio frequency bands which may be leased as identified in the frequency plan.

Circumstances in which a transfer or lease is not authorised.

71D. A transfer or lease of applicable rights and conditions under a licence shall not be authorised, where:

(a) no written document is available which confirms that the licensee and the transferee have consented to the transfer;

(b) no written document is available which confirms that the licensee and the lessee have consented to the lease;

(c) any sum payable in respect of that licence is owing to the Authority because it has not been paid by the time it became due;

(d) the Authority has served a notice under regulation 74 on the licensee of a proposal to revoke, suspend or vary that licence but that revocation, suspension or variation has not yet been made;

(e) the licensee has requested the Authority to revoke or vary the licence conditions or has consented to a revocation or variation proposed by the Authority, but that revocation or variation has not yet been made; or

(f) the Authority has not given its consent under regulation 71G to the requested transfer or lease.

71E. (1) The licensee who wishes to make a transfer or lease of a licence shall in all cases make a written request to the Authority, providing a description of the type of transfer or lease and any other such information as the Authority may reasonably require in order to enable it to process the request:

Transfer and lease procedure.

Provided that where a transferee or lessee has been identified by a licensee, the licensee shall provide the Authority with the details of the proposed transferee or lessee.

(2) The Authority shall after receipt by it of a request made in accordance with subregulation (1), publish a notice on its website stating the name of the licensee and of the proposed transferee or lessee providing any such information as it may consider relevant about the requested transfer or lease.

(3) Interested persons shall be given thirty running days to express any interest and, or any objections to the requested transfer or lease.

(4) Where interest in the transfer or lease is expressed by two or more persons the licensee shall consider all offers following an open, transparent and non-discriminatory competitive process.

(5) Without prejudice to the provisions of subregulation (1), the licensee who wishes to make a transfer or lease shall provide the Authority with:

(a) the reference of the licence under which the applicable rights and conditions are to be transferred or leased in whole or in part;

(b) a description of which range of radio frequencies are to be transferred together with the applicable rights and conditions;

(c) the name and address of the licensee and of the transferee or of the lessee;

(d) a description of the type of transfer being requested;

(e) a document signed by or on behalf of the licensee and by or on behalf of the transferee or lessee, under which each of those persons guarantees to the Authority that they have consented to the requested transfer or lease; and

(f) any information as the Authority may reasonably require in order to determine whether or not it shall consent to the transfer or lease.

(6) The Authority shall, after determining whether or not the requirements of subregulation (5) have been met, publish a notice on the website of the Authority stating:

(a) the name of the licensee and of the proposed transferee or lessee to whom it is being proposed that the range of radio frequencies together with the applicable rights and conditions arising under the licence shall be transferred or leased;

(b) the date when the Authority determined whether the requirements of sub-regulation (5) were met;

(c) the licence under which the applicable rights and conditions are to be transferred or leased; and

(d) the proposed range of radio frequencies being transferred and, in the case of a lease, the duration of the lease.

(7) After publishing a notice under subregulation (6) the Authority shall, within a maximum period of four months, decide if:

(a) it consents to the transfer or lease in accordance with regulation 71G; and

(b) it shall give any directives under regulation 71H.

(8) The Authority shall notify the persons who are party to the requested transfer or lease of any decision made by it in accordance with subregulation (7).

71F. (1) A transfer shall be made by the licensee by his surrendering the licence under which the applicable rights and conditions for the range of frequencies being transferred arise, and by the Authority granting a new licence to the transferee for the range of radio frequencies being transferred together with the applicable rights and corresponding conditions:

Making of a transfer or lease.

Provided that in the case where the licence is transferred in part only, a new licence shall be issued to the licensee for the range of radio frequencies retained by him together with the applicable rights and conditions:

Provided further that in the case of a lease, the lease shall be made following:

(a) an amendment by the Authority of the licence granted to the licensee of the applicable rights and conditions for the remaining period of the said licence; and

(b) the granting of a new licence to the lessee of the applicable rights and conditions for the duration of the lease.

(2) The Authority shall publish the information specified in subregulation (6) of regulation 71E in relation to transfers and leases that have been made pursuant in accordance with this regulation.

71G. (1) In determining whether or not to consent to a requested transfer or lease the Authority shall take into account whether –

Consent by the Authority.

(a) the licensee is in breach of the terms of the licence under which the rights and conditions are to be transferred or leased;

(b) the licensee, where applicable, has satisfied condition 1 specified in Part B of the Seventh Schedule;

(c) in the case where the licensee retains a part of the range of radio frequencies, the licensee is able to meet the terms, provisions and limitation of the licence which is to be granted as a result of the transfer which may continue to include, where applicable, condition 1 as specified in Part B of the Seventh Schedule;

(d) the transferee is able to meet the terms, provisions and limitations of the licence to be granted as a result of the transfer which may include, where applicable, condition 1 as specified in Part B of the Seventh Schedule;

(e) where a lease is being made, the lessee is able to meet the terms, provisions and limitations of the licence to be granted as a result of the lease;

(f) competition is likely to be distorted as a result of the transfer or lease; and

(g) it is requisite or expedient to refuse consent to the transfer or lease:

(i) in the interests of national security; or

(ii) for the purposes of complying with any European Union obligations or with and international agreement or arrangements entered into by the Government of Malta, or by the need to ensure compliance with the Act or any other law, or to ensure efficient frequency planning, or to ensure consistency with established policies.

Directives by the
Authority.

71H. (1) If the Authority consents to a transfer or lease it may also issue a directive to the persons party to the transfer or lease that such transfer or lease shall only be put into effect in accordance with regulation 71F after compliance with any conditions which may relate to any matter provided for under regulation 71G.

(2) A transfer or lease shall not come into force in accordance with regulation 71F until there is compliance

with the conditions set out in any directive as may be issued in accordance with this regulation.”.

12. Paragraph 13 of Section B of Part 2 of the Ninth Schedule to the principal regulations shall be amended as follows:

Amends the Ninth Schedule to the principal regulations.

(a) for paragraph 13.2. thereof, there shall be substituted the following:

“13.2. The authorised undertakings shall comply with any radiation emission standards adopted and published by the International Commission for Non-Ionising Radiation Protection (ICNIRP) or any other appropriate standards as may be specified by law or by the competent public health authorities:

Provided that in the case of any standards specified by a competent public health authority, then such a competent authority shall ensure that:

(a) before specifying such standards seek the views of other public authorities including those of the Authority, and

(b) such standards are communicated in writing to the Authority:

Provided further that any such standards shall be made public on the website of the Authority;”;
and

(b) in paragraph 13.3. thereof, for the words “or as may be prescribed by the Authority or accepted by the Authority as being adequate to ensure the limitation of exposure of the general public to electromagnetic fields” there shall be substituted the words “or as may be prescribed in accordance with paragraph 13.2. or as may be accepted by the Authority or by the competent public health authorities as being adequate to ensure the limitation of exposure of the general public to electromagnetic fields.”.

