VERŻJONI ELETTRONIKA

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I assent.

(L.S.) **MARIE LOUISE COLEIRO PRECA**
President

12th April, 2016

ACT No. XVIII of 2016

AN ACT to amend the Utilities and Services (Regulation of Certain Works) Act, to implement measures to reduce the cost of deployment of high-speed electronic communications networks, to make provision with respect to matters ancillary thereto or connected therewith and to provide for certain measures relating to electronic communications.

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:-

Short title and commencement. Cap. 81.

1. (1) The short title of this Act is the Utilities and Services (Regulation of Certain Works) (Amendment) Act, 2016, and this Act shall be read and construed as one with the Utilities and Services (Regulation of Certain Works) Act, hereinafter referred to as "the principal Act".

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

Purpose.

2. The purpose of this Act is to amend the Utilities and Services (Regulation of Certain Works) Act, to implement Directive 2014/61/EU of the European Parliament and of the Council of 15 May 2014 on measures to reduce the cost of deploying high-speed electronic communications networks, the regulation of certain works in connection with utilities and other services, and to amend other

existing laws that relate to such measures and to the provision of electronic communications services.

3. Immediately before article 1 of the principal Act there shall be added the following new heading: Addition of heading immediately before article 1 of the principal Act.

"**PART I**
Preliminary".

4. Article 2 of the principal Act shall be substituted by the following: Substitution of article 2 of the principal Act.

"Interpretation. 2. (1) In this Act unless the context otherwise requires:

"access point" means a physical point, located inside or outside the building, accessible to undertakings providing or authorized to provide public communications networks, where connection to the high-speed-ready in-building physical infrastructure is made available;

"bodies governed by public law" means bodies that have all of the following characteristics:

(a) they are established for the specific purpose of meeting needs in the general interest, not having an industrial or commercial character;

(b) they have legal personality; and

(c) they are financed, in full or for the most part, by the State, or regional or local authorities, or by other bodies governed by public law; or are subject to management supervision by those authorities or bodies; or have an administrative, managerial or supervisory board, more than half of whose members are appointed by the State, regional or local authorities or by other bodies governed by public law;

"civil works" means every outcome of building or civil engineering works taken as a whole which is sufficient of itself to fulfil an economic or technical function and entails one or more elements of a physical infrastructure;

"competent authority for permit granting" or "competent authorities for permit granting" means such public sector body or bodies responsible for the granting of civil works permits;

"competent infrastructure regulator" or "competent infrastructure regulators" means such public sector body or bodies responsible for the infrastructure regulation as may be listed in the First Schedule, which Schedule may from time to time be amended by the Minister responsible for infrastructure by means of a notice in the Gazette;

"competent utility regulator" or "competent utility regulators" means any such public sector body or bodies responsible at law for the regulation of those utility services listed in accordance with the Second Schedule, which list shall state the authority responsible for the regulation of each of the different utility services and, where applicable the networks therein listed:

Provided that this Schedule may from time to time be amended by the Prime Minister by notice in the Gazette;

"Dispute Resolution Board" or "Board" means the Utilities Networks Dispute Resolution Board established under Part IV;

"electronic communications network" and "electronic communications service" shall respectively have the same meaning as under the Electronic Communications (Regulation) Act;

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"energy" includes electrical energy, fuel, heat when transmitted as a commercial activity, and energy derived from renewable sources;

"high-speed electronic communications network" means an electronic communications network which is capable of delivering broadband access services at speeds of at least thirty Mbps:

Provided that the Minister responsible for electronic communications may by notice in the Gazette vary such speeds;

"high-speed-ready in-building physical infrastructure" means in-building physical infrastructure intended to host elements or enable delivery of high-speed electronic communications networks;

"in-building physical infrastructure" means physical infrastructure or installations at the end-user's location, including elements under joint ownership, intended to host wired and, or wireless access networks, where such access networks are capable of delivering electronic communications services and connecting the building access point with the network termination point;

"major renovation works" means building or civil engineering works at the end-user's location encompassing structural modifications of the entire in-building physical infrastructure or a significant part thereof, including the common parts, and requiring a building permit;

"network" means any physical infrastructure utilised by a network operator;

"network operator" means an undertaking providing or authorized to provide public communications networks as well as an undertaking providing a physical infrastructure intended to provide:

(a) a service of production, transport or distribution of:

(i) gas;

(ii) electricity, including public lighting;

(iii) heating;

(iv) water, including disposal or treatment of waste and sewage, and drainage services;

(b) transport services, including railways, roads, ports and airports;

"owner" includes occupier and user;

"permit" means an explicit or implicit decision of a competent authority for permit granting following any procedure under which an undertaking is required to take steps in order to legally carry out building or civil engineering works;

"physical infrastructure" means any element of a network which is intended to host other elements of a network without becoming itself an active element of the network, including but not limited to, pipes, masts, ducts, inspection chambers, manholes, cabinets, buildings or entries to buildings, antenna buildings, towers and poles:

Provided that cables, including dark fibre, as well as elements of networks used for the provision of water intended for human consumption as defined in regulation 3 of the Water Intended for Human Consumption Regulations are not physical infrastructure within the meaning of this Act;

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"public sector body" means a state, regional or local authority, a body governed by public law or an association formed by one or several such authorities or one or several such bodies governed by public law;

"Single Information Point" means the public entity appointed under article 19 to perform the functions of a single point of contact;

"tenement" means any tenement whether private or public and includes any road, path, building or construction however so described, or water;

"Tribunal" means the Administrative Review Tribunal established by article 5 of the Administrative Justice Act;

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"undertaking" means, unless stated otherwise in this Act, an undertaking providing or authorized to provide public communications networks;

"utilities" includes electronic communications services, gas, electricity including public lighting, heating, water including disposal or treatment of waste and sewage, and drainage systems, transport services including roads, ports and airports, and such other services as the Minister responsible for infrastructure may by notice in the Gazette designate as "utilities" for the purposes of this Act; and

"Utilities Committee" means the Utilities Services Advisory Committee established under article 22.

(2) For the words "the Authority for Transport in Malta", wherever they occur in the principal Act, there shall be substituted the words "the competent infrastructure regulator".

Deletion of article 3 of the principal Act.

5. Article 3 of the principal Act shall be deleted.

Addition of heading to the principal Act.

6. Immediately before article 4 of the principal Act there shall be added the following new heading:

"**PART II**
Regulation of Utilities' Infrastructure Access"

Substitution of article 4 of the principal Act.

7. Article 4 of the principal Act shall be substituted by the following:

"Power to order placing of cable, etc.

4. For the purposes of this Act, it shall be lawful for the competent infrastructure regulator to order that cables and wires be placed or other works be carried out either below, above, by the side of or in any building, entry to or common parts of any building or tenement and that trenches, pits, poles, stays, brackets and all other accessories essential to the proper working of the networks be cut, placed, erected in or affixed to or within any building, entry to or common area of any building or any tenement; and any such order shall be notified to the owner of the said tenement at least ten days prior to the carrying out of any of the works aforesaid.".

Addition of new articles to the principal Act.

8. Immediately after article 4 of the principal Act there shall

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be added the following new articles:

"Power to order collocation, etc.

4A. (1) The competent infrastructure regulator may order the collocation, use or sharing of the same facilities on, over or under public or private property in relation to any cables, wires, physical infrastructure or other accessories, however so described, used or to be used for the provision of any utilities by a provider of any such utilities in any buildings, common areas, entries to buildings, trenches, pits, ducts, conduits, manholes, cabinets or on any poles, masts, antennae, towers or other supporting constructions, stays or brackets, cut, placed, erected or affixed by another provider of any such utilities:

Provided that the competent infrastructure regulator may order the taking of such measures as it may consider necessary to facilitate the coordination of public works in order to protect the environment, public health, public security or to meet town planning and country objectives. In doing so the competent infrastructure regulator may also provide for rules of apportioning the costs of facility or property sharing.

(2) An order under sub-article (1) may be issued by the competent infrastructure regulator acting of its own initiative or following the written request of a competent utility regulator who considers the issue of such an order necessary for the provision of a utility service:

Provided that before deciding whether to issue an order, the competent infrastructure regulator shall where appropriate in writing consult with the competent utility regulator or regulators as the case may be:

Provided further that no such order shall be issued if it relates to a dispute lodged before the Dispute Resolution Board under this Act, or to an appeal before the competent appellate forum contesting a final decision issued by that Board on any such dispute lodged before it.

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(3) The competent infrastructure regulator shall notify any order made under sub-article (1) to the provider of the utility service impacted by the order of collocation, and to any other persons as it may consider appropriate in the circumstances where it considers that such persons may have an interest in knowing about the issue of the order, at least ten days prior to the carrying out of any of the works aforesaid:

Provided that the competent infrastructure regulator shall before issuing any such order afford such reasonable opportunity as it may consider appropriate in the circumstances to all interested persons to express their views in writing.

(4) Any measures taken by the competent infrastructure regulator in accordance with this article shall be objective, transparent, non-discriminatory, and proportionate, and where appropriate, these measures shall be carried out in coordination with the competent utility regulator or regulators and any other relevant public sector body.

Coming into effect of orders, etc.

4B. An order issued in accordance with article 4 or article 4A shall have effect immediately on the lapse of the tenth day following its notification; and the recipient of the order shall thereupon fully, immediately and properly, implement the same or allow the full, immediate and proper implementation thereof, and shall refrain from causing or continuing to cause any impediment or hindrance to the said implementation:

Provided that the implementation of any such order shall not be impeded, restricted or delayed by reason of any claim for charges made by the recipient of the order.

Charging for collocation and dispute related thereto.

4C. (1) The recipient of an order made under article 4A shall be allowed to charge for the collocation or the use of the facilities affixed or erected by it at rates based on reasonable relevant costs. Charges for collocation or use of the same facilities shall be cost-oriented and shall not include charges for overheads such as marketing, personnel or maintenance costs, other than those directly incurred on the facilities used.

(2) The recipient of an order made under article 4A shall submit its charges to the provider collocating or making use of the facilities affixed or erected by the said recipient within thirty days of commencement of collocation or use as aforesaid:

Provided that if the provider collocating or making such use disagrees with such charges it may, within twenty days of receipt of the same, make a dispute before the Dispute Resolution Board which Board shall resolve any such dispute within the shortest time frame and in any case within two months from the date of receipt of the dispute except in exceptional circumstances in accordance with the provisions of article 32.

(3) The competent infrastructure regulator may, following consultation in writing with the competent utility regulator or regulators, upon application by the recipient of an order made under article 4A, order the person allowed to collocate or to make use of the facilities affixed or erected by the said recipient to provide security for the payment of charges due hereunder in respect of such collocation or use in an amount and in such form as may be determined by the competent infrastructure regulator.

Exercise of functions by the competent infrastructure regulator.

4D. The competent infrastructure regulator in the exercise of its functions under this Act shall:

(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 four months from the application date;

(b) follow the principles of transparency and non-discrimination in attaching conditions to any rights it may grant to a utility service provider; and

(c) give reasons for its decisions:

Provided that the competent infrastructure regulator shall, in relation to any fees it may be authorized to impose by or under this Act relating to such works, ensure that fees are objectively justified, transparent, non-discriminatory and proportionate in relation to their intended purpose:

Provided further that the competent infrastructure regulator shall, in relation to amendments that it may consider making to any rights, conditions and procedures relating to such works, ensure that any amendment is only made in objectively justified cases and in a proportionate manner. Before making any such amendment, the competent infrastructure regulator shall 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 competent infrastructure regulator may in those circumstances which it considers to be exceptional, shorten such period:

Provided further that the competent infrastructure regulator shall in writing consult with the competent utility regulator or regulators in relation to amendments that it may consider making to collocation orders which were previously issued.

Contestation of a regulatory decision.

4E. A person or a competent utility regulator aggrieved by any regulatory decision however so described taken under this Part may appeal to the Tribunal:

Provided that any such person in appealing shall explain his juridical interest in impugning the decision appealed from:

Provided further that where applicable the competent utility regulator which has an interest in the matter, shall also be notified with any appeal filed under this article and shall be entitled to intervene in such proceedings and make submissions thereon.".

Amendment of article 5 of the principal Act.

9. In article 5 of the principal Act, for the words "in the last preceding article" there shall be substituted the words "in articles 4 and 4A"; and for the words "to the Court of Appeal" there shall be substituted the words "to the First Hall of the Civil Court".

Amendment of article 6 of the principal Act.

10. Article 6 of the principal Act shall be amended as follows:

(a) in sub-article (1) thereof, for the words "to the regulator concerned" there shall be substituted the words "to the competent infrastructure regulator";

(b) in paragraph (c) of sub-article (2) thereof, for the words "to the regulator concerned" there shall be substituted the words "to the provider of the utility service concerned";

(c) sub-article (3) thereof shall be substituted by the following:

"(3) Before taking a decision further to any request under this article the competent infrastructure regulator in dealing with such a request, shall -

(a) where necessary, consult in writing with the competent utility regulator or regulators; or, and

(b) consult in writing with any persons who the competent infrastructure regulator considers may be effected in a negative manner, giving such persons a reasonable opportunity to make their submissions in writing.".

Addition of a new article to the principal Act.

11. Immediately after article 6 of the principal Act there shall be added the following new article:

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"Applicability of article 471 of the Civil Code.

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6A. For the purpose of inspecting, testing or maintaining in good state of repair any work carried out under this Act, the provisions of article 471 of the Civil Code shall apply.".

Substitution of article 7 of the principal Act.

12. Article 7 of the principal Act shall be substituted by the following:

"Where the owner of the tenement may ask for removal of a cable, etc.

7. (1) Where the owner of a tenement in, over or upon which there is any cable, wire, pole, stay, bracket or other essential accessory, intends to make alterations in the tenement and such alterations cannot be effected unless -

(a) the cable, wire, pole, stay, bracket or other essential accessory is temporarily or permanently removed; or

(b) the position of such cable, wire, pole, stay or bracket or other essential accessory cannot be changed,

then the owner may request that such work be temporarily or permanently removed, or else that the position of such work be changed, this notwithstanding that the owner had given his consent for the execution of the work or had received compensation in terms of this Part.

(2) A request under sub-article (1) shall be made by application before the First Hall of the Civil Court whereby the owner shall state under oath why in accordance with the provisions of sub-article (1) the request is being made:

Provided that the owner in filing such a request shall:

(a) notify the competent infrastructure regulator, any competent utility regulator or regulators where applicable, and any network operator who may be effected in a negative manner; and

(b) give three months notice of his intention to affect the alterations aforesaid.

(3) A network operator may, within twenty days from notification of a request made under this article, contest such request only if it can prove that the owner has other reasonable means of making the alterations and that it shall be affected in a negative manner if the request is upheld.

(4) If the request under this article is not contested, the owner may without any further notice proceed with the alterations on the lapse of the three month notice period referred to in sub-article (2)(b):

Provided that the owner shall, where his request has not been contested or, if contested, the contestation thereof has been rejected, refund any compensation which he may have received.".

Amendment of article 8 of the principal Act.

13. In article 8 of the principal Act, for the words "and telegraphic communications systems" there shall be substituted the words "and electronic communications networks".

Amendment of article 9 of the principal Act.

14. In article 9 of the principal Act, for the words "to a fine (*multa*) not exceeding two hundred and thirty-two euro and ninety-four cents (232.94) or imprisonment for a term not exceeding one month or to both such fine and imprisonment" there shall be substituted the words "to a fine (*multa*) not exceeding five thousand euro (€5,000)".

Amendment of article 10 of the principal Act.

15. In article 10 of the principal Act, for the words "telegraphic communications systems" there shall be substituted the words "electronic communications networks"; and for the words "to a fine (*multa*) not exceeding two hundred and thirty-two euro and ninety-four cents (232.94) or imprisonment for a term not exceeding three months or to both such fine and imprisonment" there shall be substituted the words "to a fine (*multa*) not exceeding five thousand euro (€5,000)".

Deletion of articles 11 and 12 of the principal Act.

16. Articles 11 and 12 of the principal Act shall be deleted.

Amendment of article 13 of the principal Act.

17. In article 13 of the principal Act, for the words "with article 11" there shall be substituted the words "with article 37".

Addition of new Parts and new articles to the principal Act.

18. Immediately after article 13 of the principal Act, as amended, there shall be added the following new Parts and articles:

"**PART III**

Facilitating High-Speed Electronic Communications Networks

Access to existing physical infrastructure.

14. (1) A network operator shall meet all reasonable requests made in writing by an undertaking requesting access to its physical infrastructure under fair and reasonable terms and conditions, including price, with a view to deploying elements of high-speed electronic communications networks:

Provided that the undertaking concerned shall in its request specify the elements of the project for which the access is requested, including a specific time frame:

Provided further that nothing in this Part shall be construed as prohibiting network operators from offering access to their physical infrastructure.

(2) Any refusal of access following a request made in accordance with sub-article (1) shall be based on objective, transparent, and proportionate criteria including but not limited to:

(a) the technical suitability of the physical infrastructure to which access has been requested to host any of the elements of high-speed electronic communications networks referred to in sub-article (1);

(b) availability of space to host the elements of the high-speed electronic communications networks referred to in sub-article (1), including that the future needs for space of the network operator are sufficiently demonstrated;

(c) safety and public health concerns;

(d) integrity and security of any network, in particular of critical national infrastructure;

(e) the risk of serious interferences of the planned electronic communications services with the provision of other services over the same physical infrastructure;

(f) the availability of viable alternative means of wholesale physical network infrastructure access provided by the network operator and suitable for the provision of high-speed electronic communications networks, provided that such access is offered under fair and reasonable terms and conditions.

(3) The network operator when giving its refusal shall in writing state its reasons for refusing the request, which reasons must be given within two months from the date of receipt of the complete request for access:

Provided that in doing so the network operator shall, where applicable, provide the undertaking making the request with any relevant documentation in support of its refusal.

(4) Where access is refused or an agreement on specific terms and conditions, including price, has not been reached within two months from the date of receipt of the complete request for access, then either party may file a dispute with the Dispute Resolution Board on the lapse of the two months period referred to in this sub-article.

(5) The Dispute Resolution Board shall, in determining any dispute, referred to it in accordance with this article, taking into account the principle of proportionality, issue a binding decision to resolve the dispute, including the setting of fair and reasonable terms and conditions, including price where appropriate:

Provided that where the dispute relates to access to the infrastructure of an electronic communications network provider, the Board shall, where appropriate, take into account the objectives set out in article 4 of the Electronic Communications (Regulation) Act:

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Provided further that any price set by the Board shall ensure that the access provider has a fair opportunity to recover its costs and shall take into account the impact of the requested access on the business plan of the access provider, including the investments made by the network operator to whom access is requested, in particular in the physical infrastructures used for the provision of high-speed electronic communications services.

(6) The Dispute Resolution Board shall resolve any dispute referred to it in accordance with this article within the shortest possible time frame and in any case within four months from the date of the receipt of the complete request, except in exceptional circumstances in accordance with the provisions of article 32.

(7) The provisions of this article shall be without prejudice to the right to property of the owner of the physical infrastructure in cases where the network operator is not the owner, and to the right to property of any other third parties, such as landowners and private property owners.

Transparency concerning physical infrastructure.

15. (1) An undertaking in the course of requesting access to physical infrastructure in accordance with article 14(1), has the right to access, upon request, the following minimum information concerning the existing physical infrastructure of any network operator:

(a) location, and route;

(b) type and current use of infrastructure; and

(c) a contact point:

Provided that, in doing so, the undertaking shall specify the area in which it envisages deploying elements of the high-speed electronic communications networks:

Provided further that the provision of any such information to the undertaking may be subject to any limitations consequential to the security of the networks and their integrity, national security, public health or safety, confidentiality or operating and business secrets as may be determined by the competent infrastructure regulator.

(2) A public sector body holding in electronic format, by reason of its tasks, elements of the minimum information referred to in sub-article (1) concerning the physical infrastructure of a network operator, shall make such information available:

(a) through the Single Information Point by electronic means; and, or

(b) to an undertaking upon the request in writing of that undertaking, this without prejudice to the limitations stated in sub-article (1):

Provided that any update to that information or any new element of minimum information referred to in sub-article (1) received by the public sector body shall be made available to the Single Information Point within two months from the date of its receipt, which period of such two months may be extended by a further period not extending one month, where this is required to guarantee the reliability of the information provided:

Provided further that any information provided to the Single Information Point shall be updated forthwith by the entity responsible for the provision of such information which entity shall inform the Single Information Point accordingly.

(3) Minimum information made available to the Single Information Point in accordance with sub-article (2) shall be accessible promptly, through the Single Information Point, in electronic format and under proportionate, non-discriminatory and transparent terms. Such access shall be made available through the Single Information Point by not later than the 1 January 2017.

(4) Where the minimum information referred to in sub-article (1) is not available through the Single Information Point, then network operators shall provide access to such information upon the specific written request by an undertaking. In making such a request the undertaking shall specify the area envisaged for the deployment of elements of high-speed electronic communications networks:

Provided that access to information shall be granted within two months from the date of receipt of the written request under proportionate, non-discriminatory and transparent terms without prejudice to the limitations under sub-article (1).

(5) Upon the specific written request of an undertaking, a network operator shall meet reasonable requests for on-site surveys of specific elements of its physical infrastructures. In making such a request the undertaking shall specify the elements of the network concerned with a view to deploying elements of high-speed electronic communications networks:

Provided that on-site surveys of the specified network elements shall be granted under proportionate, non-discriminatory and transparent terms within one month from the date of receipt of the written request, without prejudice to the limitations in sub-article (1).

(6) In the event of a dispute arising in connection with the rights and obligations provided for in this article, either party may refer the dispute to the Dispute Resolution Board which shall, after taking full account of the principle of proportionality, issue a binding decision to resolve the dispute within the shortest possible time frame and in any case within two months, except in exceptional cases in accordance with article 32.

(7) The Single Information Point following consultation with any competent utility regulator or regulators as the case may be, and such other public sector body or bodies as it may consider necessary, may provide for exemptions from the obligations in sub-articles (1) to (5) in the case of existing physical infrastructures considered not technically suitable for the deployment of electronic communications networks or in the case of critical infrastructure. In doing so it shall give its reasons in writing and shall before taking a final decision, give any interested parties the opportunity to make any written submissions within such reasonable time as it may establish.

(8) An undertaking which obtains any information pursuant to the provisions of this article shall, where appropriate, ensure that the information so acquired is treated with due consideration to confidentiality, and operating and business secrets.

Coordination of civil works.

16. (1) A network operator has the right to negotiate agreements concerning the coordination of civil works with undertakings with a view to deploying elements of high-speed electronic communications networks.

(2) A network operator performing directly or indirectly civil works, either fully or partially financed by public means, shall comply with any reasonable written request to coordinate civil works on transparent and non-discriminatory terms, made by an undertaking, with a view to deploying elements of high-speed electronic communications networks, provided that:

(a) such request does not entail any additional costs, including because of additional delays, for the initially envisaged civil works;

(b) such request does not impede control over the coordination of the works; and

(c) the request to coordinate is filed as soon as possible and in any case at least one month before the submission of the final project to the competent authorities for permit granting:

Provided that the Minister responsible for infrastructure may make such regulations as he may consider necessary on apportioning the costs associated with the coordination of civil works. In doing so the Minister shall consult with the competent utility regulator or regulators as the case may be and with any public sector body or bodies as he may consider necessary in the circumstances.

(3) If an agreement on the coordination of civil works in accordance with sub-article (2) is not achieved within one month from the date of receipt of the formal written request to negotiate, then any aggrieved party may refer the dispute to the Dispute Resolution Board.

(4) The Dispute Resolution Board shall, in determining any dispute referred to it in accordance with this article, taking full account of the principle of proportionality, issue a binding decision to resolve the dispute raised, including the setting of fair and non-discriminatory terms and conditions, and charges where appropriate:

Provided that the Board shall resolve any dispute referred to it in accordance with this article within the shortest possible time frame and in any case within two months from the date of the receipt of the dispute except in exceptional circumstances in accordance with article 32.

(5) The competent authority for permit granting may, following consultation in writing with the competent utility regulator or regulators as the case may be and with such other public sector body or bodies as it may consider necessary, provide for exemptions from the obligations in this article for civil works of insignificant importance, such as in terms of value, size or duration, or in the case of critical national infrastructure:

Provided that in so doing, the competent authority for permit granting shall give its reasons in writing and shall before taking a final decision, give any interested parties the opportunity to make any written submissions on the draft exemptions within such reasonable time as it may establish.

Transparency concerning civil works.

17. (1) In order to negotiate agreements on the coordination of civil works referred to in article 16, a network operator shall make available upon the specific written request of an undertaking, the following minimum information concerning on-going or planned civil works related to its physical infrastructure for which a permit has been granted, a permit granting procedure is pending or a first submission to the competent authority for permit granting is envisaged in the following six months:

(a) the location and the type of works;

(b) the network elements involved;

(c) the estimated date for starting the works and their duration; and

(d) a contact point:

Provided that the provision of any such information to the undertaking shall be subject to any limitations consequential to the security of the networks and their integrity, national security, public health or safety, confidentiality or operating and business secrets.

(2) The undertaking shall in making its request, specify the area in which it envisages deploying elements of high-speed electronic communications networks:

Provided that within fourteen days from the date of receipt of the written request, network operators shall provide the requested information under proportionate, non-discriminatory and transparent terms.

(3) The network operator may refuse the request made under sub-article (1) if:

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(a) it had made the requested information publicly available in electronic format; or

(b) access to such information is ensured through the Single Information Point.

(4) The network operator shall make the requested minimum information referred to in sub-article (1) available through the Single Information Point.

(5) If on the lapse of the fourteen days period referred to in sub-article (2), the information requested in accordance with the provisions of this article is not provided, then an aggrieved party may on the lapse of the aforesaid fourteen days, refer a dispute it may have in connection with the rights and obligations under this article, to the Dispute Resolution Board which shall in determining any dispute referred to it in accordance with this article, taking full account of the principle of proportionality, issue a binding decision to resolve the dispute raised, including the setting of fair and non-discriminatory terms and conditions and charges where appropriate:

Provided that the Board shall resolve any dispute referred to it in accordance with this article within the shortest possible time frame and in any case within two months from the date of the receipt of the complete request except in exceptional circumstances in accordance with article 32, without prejudice to the possibility of any party to refer the case to court.

(6) The competent authority for permit granting following consultation in writing with the competent utility regulator or regulators as the case may be and with any public sector body or bodies as it may consider necessary, provide for exemptions from the obligations in this article for civil works of insignificant value or in the case of critical national infrastructure. In doing so it shall give its reasons in writing and shall before taking a final decision, give any interested parties the opportunity to make any written submissions on the draft exemptions within such reasonable time as it may establish.

Permit-granting procedure.

18. (1) All relevant information concerning the conditions and procedures applicable for granting permits for civil works needed with a view to deploying elements of high-speed electronic communications networks, including any information concerning exemptions applicable to such elements as regards some or all permits required under national law, shall be available through the Single Information Point.

(2) An undertaking may by electronic means through the Single Information Point, submit applications for permits required for civil works which are needed with a view to deploying elements of high-speed electronic communications networks.

(3) The competent authority for permit granting shall grant or refuse a permit within four months from the date of the receipt of a complete permit request, without prejudice to other specific deadlines or obligations laid down for the proper conduct of the procedure which are applicable to the permit granting procedure in accordance with national or European Union law or of dispute resolution or litigation proceedings however so described:

Provided that any refusal shall be duly justified on the basis of objective, transparent, non-discriminatory and proportionate criteria:

Provided further that exceptionally in duly justified cases, the deadline may be extended, which extension shall be the shortest possible in order to grant or refuse the permit.

(4) An undertaking which has suffered damages as a result of non-compliance with deadlines under this article has the right to seek compensation in accordance with the applicable national legislation.

Single Information Point.

19. (1) The functions of the Single Information Point under this Act shall be performed by the competent infrastructure regulator.

(2) Any person who, in accordance with this Act, is required to provide any information however so described, shall ensure that such information is provided to the Single Information Point in a timely manner and in accordance with any time frames established in accordance with this Act, or in the absence of such time frames within such time frames as the Single Information Point may reasonably establish.

(3) Any person who acts in breach of any requirement under this Part in so far as it relates to the provision of any information to the Single Information Point shall be liable to an administrative fine not exceeding ten thousand euro (€10,000) and, or to a daily administrative fine not exceeding five hundred euro (€500).

Notification of Commission when granting exemptions.

20. (1) Where applicable any person or body who grants an exemption in accordance with the provisions of this Part, shall forthwith in writing inform the Utilities Committee of the granting of such an exemption and where applicable any public sector body.

(2) The Utilities Committee shall notify the European Commission of any exemptions granted in accordance with the provisions of this Act.

Provisions of the Electronic Communi-cations (Regulation) Act, etc., to prevail. Cap. 399.

21. In the event of conflict the provisions of the Electronic Communications (Regulation) Act and of any regulations listed under the Third Schedule shall prevail over any of the provisions of this Part:

Provided that the Minister responsible for electronic communications may, from time to time by notice in the Gazette, amend the list of regulations stated in the aforesaid Schedule.

Establishment and role of the Utilities Services Advisory Committee.

22. (1) There shall be a body to be known as the Utilities Services Advisory Committee, which body shall be appointed by the Minister responsible for infrastructure for a term, which may be renewed, of not less than one year and not more than three years, which body shall be composed of:

(a) a chairman chosen by the Minister responsible for infrastructure from among persons with expertise of infrastructure utility sharing;

(b) a representative of each utility regulator appointed by the respective utility regulator as may from time to time be listed in the Second Schedule;

(c) a representative from any other government body that the Minister responsible for infrastructure may consider as being relevant;

(d) at least one person with proven expertise in utility infrastructure sharing.

(2) The Utilities Committee shall perform any function that it may be required to undertake in accordance with this Act, including:

(a) the making of guidelines on any aspect regulated by this Act in so far as such guidelines relate to utility infrastructure access and, or the determination of any disputes related thereto including but not limited to guidelines:

(i) on the criteria for refusal of access to physical infrastructure;

(ii) on the format of information requirements for requests to access a utility infrastructure;

(iii) on the format of the provision of information on the physical infrastructure of a network operator to the Single Information Point;

(iv) on the minimum information, if any, to be provided because of the security of the networks or their integrity, or because of national security, public health or safety, confidentiality or commercially sensitive information;

(v) to assist any adjudicative or regulatory body in determining any disputes however so described as may be referred to that body for determination under this Act;

(b) advising on the making of rules on the apportioning of the costs related to the coordination of civil works;

(c) advising on the making of rules with regard to infrastructure access charges and, or technical aspects in relation to such infrastructure access;

(d) where applicable dealing with requests for exemptions made under this Act; and

(e) such other tasks as the Minister for infrastructure in line with the purposes of this Act may assign to it.

(3) Nothing in this article shall be construed as precluding any public sector body from the making of any guidelines or rules however so described with respect to any matters referred to in sub-article (2) in so far as such guidelines or rules relate to the networks or services regulated by the public sector body concerned:

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Provided that such guidelines or rules shall, once issued, be communicated to any such other public sector bodies which the issuing public sector body considers has an interest in knowing about the issue of such guidelines or rules in that these may impact the regulatory work of such other public sector bodies.

PART IV

Utilities Networks Dispute Resolution Board

Appointment of the Utilities Networks Dispute Resolution Board.

23. There shall be a dispute resolution board to be known as the Utilities Networks Dispute Resolution Board which Board shall exercise and perform the functions assigned to it by this Act and by any other law.

Composition of the Utilities Networks Dispute Resolution Board.

24. (1) The Dispute Resolution Board shall be composed of a President, who shall be a judge or an ex-judge or a magistrate or an ex-magistrate appointed by the President of Malta acting on the advice of the Prime Minister, and two members selected by the President of the Board from a panel of ordinary members:

Provided that if the President is an ex-judge or an ex-magistrate his appointment shall be for a term of five years and he shall vacate his office at the expiration of the term of the said appointment.

(2) There shall be a panel of six ordinary members, all with at least ten years relevant experience, appointed by the President of Malta acting on the advice of the Prime Minister, from amongst persons having relevant qualifications in any one or more of the fields of expertise related to the matters regulated by this Act or that may from to time to time be referred to the Board for resolution.

(3) In selecting the two ordinary members to sit on the Board under sub-article (1), the President shall take due account of the nature of the case and the market concerned.

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(4) The ordinary members of the Board shall be appointed for a term of five years which term of office may be renewed for one other term of up to five years.

(5) The ordinary members of the Dispute Resolution Board may resign their office by a letter addressed to the President of Malta. The resignation shall take effect when the letter signifying the resignation is received by the President of Malta or by any person authorized by him.

(6) An ordinary member of the Dispute Resolution Board may not be removed from office except by the President of Malta acting on the advice of the Prime Minister on the ground of proved inability to perform the functions of his office whether arising from infirmity of body or mind or any other cause, or proved misbehaviour.

(7) Notice of all appointments to the Dispute Resolution Board and of all other changes in its membership shall be published in the Gazette.

(8) The Dispute Resolution Board shall be independent from all parties to the dispute in the performance of its functions, and the members thereof in the exercise of their functions shall act on their own individual judgment and shall not be subject to the direction or control of any person or authority.

(9) The ordinary members of the Dispute Resolution Board shall not be precluded from the exercise of their respective professions.

(10) The ordinary members of the Dispute Resolution Board shall receive such remuneration established in accordance with the Fourth Schedule, which remuneration shall not be altered during the tenure of their appointment to their disadvantage:

Provided that the said Schedule may from time to time be varied by the Prime Minister:

Provided further that any such remuneration shall be paid out of the Consolidated Fund without the necessity of any further appropriation.

(11) A person shall not be qualified to be appointed or remain an ordinary member of the Dispute Resolution Board if:

(a) he has been declared an undischarged bankrupt; or

(b) he has been sentenced to imprisonment for six months or more by any court; or

(c) he has been found guilty of any offence against this Act, any law relating to the regulation of any utility service or any regulations made under this Act or any such laws; or

(d) he is a Member of the House of Representatives or of the European Parliament or of a Local Council.

(12) An ordinary member of the Dispute Resolution Board shall, before the commencement of any case, declare any interest he may have in the proceedings and the President shall, where he considers that such interest may prejudice the independence of the member concerned, appoint another member from the panel.

(13) Where proceedings have commenced and no final decision has yet been delivered and the member has ceased to be a member thereof or for any other reason is unable to perform the functions of his office, the President may elect to appoint another member from the panel in his stead, and should it be strictly necessary for the proper determination of the dispute recommence proceedings, or continue to hear the dispute with only one ordinary member:

Provided that where the term of appointment has expired and the ordinary member has not been reappointed, the ordinary member shall continue to hear the dispute until it is concluded.

(14) The President where he is an ex-judge or ex-magistrate and the ordinary members of the Dispute Resolution Board, shall, during their term of office, act with integrity and not engage in any activity which would harm the proper administration of justice or which, due to knowledge gained from business secrets or other confidential information during the tenure of their office, would give rise to conflict of interest and harm the interests of any parties to the proceedings before the Board. Any person who acts in contravention of this sub-article shall be guilty of an offence against this Act and shall on conviction be liable to a fine (*multa*) of not less than five thousand euro (€5,000) and not more than twenty fifty thousand euro (€25,000), and the court may, in addition, award the punishment of temporary or perpetual general interdiction from occupying any public office.

Conduct of proceedings and determination of disputes.

25. (1) Upon taking cognizance of a dispute, the Dispute Resolution Board shall notify the parties concerned of the matter under dispute, allowing them such reasonable time as may be determined by the Board to produce relevant information and to make their representations.

(2) The Dispute Resolution Board shall in all instances endeavour to determine any dispute referred to it within the shortest possible time, and in any case in accordance with the specific time frames established under this Act or under any other applicable law under which it may be empowered to determine disputes:

Provided that it shall be at the discretion of the Board on how it shall conduct proceedings before it. In particular the Board may, if it considers it appropriate in the circumstances, determine a dispute only on the basis of such written submissions and documentation as it may require, and it shall be at its discretion to determine whether oral hearings and, or on site visits are necessary:

Provided further that the Board shall in all instances abide with the principles of natural justice.

(3) The Dispute Resolution Board shall, after examining the facts and any representations submitted to it and such other information as it may require, determine the dispute.

(4) The Dispute Resolution Board may at its discretion whether of its own initiative or following a request of a party to the dispute if it considers such a request as being reasonable given the specific circumstances of the dispute, assist the parties in arriving at an amicable settlement on all or some of the issues in dispute before proceeding or continuing with the determination of the dispute:

Provided that in doing so the Board shall in all instances factor the need to settle the dispute in the shortest time possible and any negative impact that a party may suffer if there is a delay in resolving the dispute:

Provided further that an aggrieved party shall before making a dispute under this Part, where feasible, endeavour to settle any such dispute by seeking the mediation of the competent utility or infrastructure regulator or regulators as the case may be.

Registry of the Dispute Resolution Board. Cap. 12.

26. (1) The Registrar of Courts or any other person acting in his stead or on his behalf in accordance with the Code of Organization and Civil Procedure shall be the Registrar of the Dispute Resolution Board appointed in accordance with this Part.

(2) All acts brought before the Dispute Resolution Board shall be kept in the Registry of the Inferior Courts which shall be the registry of the Board.

(3) The Minister responsible for justice may by regulations under this Act establish:

(a) the fees that may be due to the Registry of the Dispute Resolution Board;

(b) the fees that may be due to advocates, legal procurators and other persons representing the parties appearing before the Board; and

(c) the fees that may be due to experts appearing before the Board:

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Provided that until fees are prescribed by the Minister responsible for justice under paragraphs (a) to (c), the fees established in the Code of Organization and Civil Procedure shall apply.

Cap. 12.

(4) The Registry of the Dispute Resolution Board shall, where applicable, keep both a non-confidential version, and where applicable when directed by the Board a confidential version of the records of each dispute referred to the Board.

(5) The records of the Dispute Resolution Board shall be accessible to all persons, and copies shall be given on payment of the prescribed fee to any person on request:

Provided that due regard shall be had to the protection of any confidential information and business secrets.

(6) All acts shall be filed, issued and served in accordance with the provisions of the Code of Organization and Civil Procedure, subject to any rules made under this Act, or regulations made thereunder or unless the Minister responsible for justice shall by regulation otherwise prescribe.

Cap. 12.

Personnel and sittings of the Dispute Resolution Board.

27. (1) The Registrar shall provide the necessary personnel for the holding of sittings of the Dispute Resolution Board. The officials so designated shall, in execution of their duties, enjoy and exercise all such powers as are vested by the Code of Organization and Civil Procedure in officials performing similar duties.

Cap. 12.

(2) The sittings of the Dispute Resolution Board shall, where applicable be held on such days and at such times as shall be fixed by the President in the building of the Courts in Malta and, or in Gozo or in any such other place in Malta and, or in Gozo as the President may consider appropriate in the circumstances.

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Power to make regulations relating to the procedure to be followed before the Dispute Resolution Board.

28. (1) The Dispute Resolution Board shall have the powers and shall follow the procedures laid out in the provisions of this Act and any regulations made thereunder.

(2) The Minister responsible for justice may make rules not inconsistent with this Act, and any regulations made thereunder, prescribing the procedures and the forms to be followed and used before the Dispute Resolution Board.

(3) In the absence of provisions or rules as aforesaid, the Dispute Resolution Board shall regulate its own procedures.

Dispute Resolution Board may appoint experts or require input from public sector bodies and power to summon witnesses.

29. (1) The Dispute Resolution Board, in determining any dispute referred to it, may:

(a) require any public sector body to provide any information or submit any report which the Board considers may be necessary to assist it in determining the said dispute; and, or

(b) appoint a qualified expert in any areas falling within the remit of the Board, to report to the Board on any aspect of any dispute referred to the Board:

Provided that the Board in requiring any such information and, or any such report, shall establish such time frames and such conditions as it may consider reasonable in the circumstances, including in the case of any such report as it may require in accordance with this article, the matters in relation to which it is seeking input from the said body or expert.

(2) The Dispute Resolution Board may, through its President, summon any person to appear before it and give evidence and produce documents, and the President shall have the power to administer the oath.

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Right of appeal to the Court of Appeal.

30. (1) Any party to a dispute referred to the Dispute Resolution Board who feels aggrieved with any decision given by the Board following its determination of any dispute referred to it may on a point of law contest such a decision before the Court of Appeal (Inferior Jurisdiction) as constituted in accordance with article 41(6) of the Code of Organization and Civil Procedure by means of an application filed in the registry of that court within twenty days from the date of the decision of the Dispute Resolution Board.

Cap. 12.

(2) The Minister responsible for justice may by regulations under this sub-article establish the fees payable in the registry of the court in relation to the filing of judicial acts in connection with appeals under this article:

Provided that until such fees are so established, the fees in Schedule A to the Code of Organization and Civil Procedure shall apply.

Cap. 12.

Decision, if appealed, to stand unless Court of Appeal decides otherwise.

31. (1) The decision of the Dispute Resolution Board pending an appeal before the Court of Appeal (Inferior Jurisdiction) shall stand and shall be adhered to by all the parties to whom the decision applies.

(2) The Court of Appeal (Inferior Jurisdiction), where it considers it to be appropriate, may, on the application of a party to the appeal, suspend in whole or in part the decision which is the subject of the appeal pending the final determination of the appeal. The Court of Appeal (Inferior Jurisdiction) in deciding whether or not to suspend the decision shall state its reasons and shall take into account all the relevant circumstances, including:

(a) the urgency of the matter,

(b) the effect on the party making the request if the application for suspension is not upheld, and

(c) the effect on competition and, or on end-users if the application is upheld:

Provided that a party, in making an application under this article, shall state the factual and legal grounds establishing a *prima facie* case for the suspension of the decision. The Court of Appeal (Inferior Jurisdiction) shall on receipt of any such application order the notification thereof to the other party or parties to the appeal affording them reasonable opportunity to make their response thereto:

Provided further that the Court of Appeal (Inferior Jurisdiction) in determining any such application may include such conditions as it considers necessary in the circumstances.

Time frame to determine a dispute may be extended in exceptional circumstances.

32. In those instances where the Act establishes that the maximum time frames for the resolution of a dispute referred to the Dispute Resolution Board may in exceptional circumstances be extended and the Board decides to extend the time frame, the Board shall in writing notify all the parties to the dispute accordingly, stating the reasons why the time frame is being extended, the period of extension and when it envisages that the dispute shall be determined.

Right to seek civil redress before the ordinary courts.

33. The right to refer a dispute under this Act to the Dispute Resolution Board shall be without prejudice to civil redress, including claims for any damages suffered, that a party may be entitled to seek at law before the ordinary courts.

Powers of the Dispute Resolution Board. Cap. 12.

34. (1) The Dispute Resolution Board shall have all such powers as are, by the Code of Organization and Civil Procedure vested in the First Hall of the Civil Court.

Cap. 12.

(2) The enforcement of the decisions of the Dispute Resolution Board, in the manner provided for in the Code of Organization and Civil Procedure, shall vest in the Board itself.

(3) In giving a decision in relation to a dispute under Part III of this Act, the Dispute Resolution Board may, where it considers that a party to the dispute has in a frivolous or vexatious manner failed to comply with a requirement under this Part, request the competent utility regulator to take such measures as that regulator may, in accordance with its powers at law, consider appropriate in the circumstances, including the imposition of administrative fines:

Provided that in deciding on what measures, if any, to take, the competent regulator shall consider if any such act or omission has impacted negatively on the cost of deployment of the high speed electronic communications networks.

Notification of disputes, etc., to the competent infrastructure regulator and to the Malta Communications Authority. Cap. 418.

35. Any person who files a dispute before the Dispute Resolution Board or an appeal from a decision given by the Board before the Court of Appeal (Inferior Jurisdiction), shall forthwith notify in writing the competent infrastructure regulator and the Malta Communications Authority with such dispute or appeal as the case may be.

Compliance with decisions issued by the Dispute Resolution Board.

36. (1) A party may in writing request the Malta Communications Authority to take such measures as the Authority in accordance with its powers at law may consider appropriate, to ensure that a decision issued by the Dispute Resolution Board is complied with:

Provided that in doing so the party concerned shall state its reasons why it considers it necessary that the Authority should intervene to ensure compliance:

Provided further that any such request may only be submitted if the aggrieved party demonstrates to the satisfaction of the Authority that continued non-compliance with the decision may impact negatively on its provision of electronic communications services and, or networks.

(2) The Malta Communications Authority may of its own initiative undertake any such measures in accordance with its powers at law if it considers that the continued non-compliance of a decision issued by the Dispute Resolution Board is impacting negatively on the provision of electronic communications services and, or networks in Malta.

PART V
Miscellaneous

Power to make regulations.

37. (1) Unless otherwise provided in this Act the Minister responsible for infrastructure may, of his initiative or where he considers necessary after consultation with any other Minister or Ministers responsible for other public sector bodies, make, vary or revoke any regulations in relation to any matters dealt with under this Act or required for the carrying into effect of this Act including but not limited to the following:

(a) any matter relating to rights of way including fees that may be charged for such rights; and, or

(b) for the manner in which any trench, pit, pole, stay, bracket or other essential accessory in connection with fixed electrical power and, or electronic communications network in Malta shall be cut, placed, erected or fixed and generally for the proper working of any such networks however so described.

(2) Any person who acts in contravention of any regulations made under this article shall be liable to a fine (*multa*) not exceeding ten thousand euro (€10,000).

Service of notice.

38. Unless otherwise provided in this Act any service of notice however so described to be given to any person in accordance with this Act shall be addressed to that person and shall be given to the person concerned in any of the following ways:

(a) by delivering it to the person;

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(b) by leaving it at the address at which the person ordinarily resides or carries on business;

(c) by sending it by registered post to the person at the address at which the person ordinarily resides or carries on business;

(d) if an address for the service of notices has been provided by the person, by leaving it at, or sending it by registered post addressed to the person to that address;

(e) in any case where the immediate giving of the notice is required, by sending it, by means of a facsimile machine or by electronic mail, to a device or facility for the reception of facsimiles or electronic mail located at the address at which the person ordinarily resides or carries on business or, if an address for the service of notices has been furnished by the person, that address, provided that the facsimile machine of the sender generates a message confirming successful transmission of the total number of pages of the notice or the facility of the sender for the reception of electronic mail generates a message confirming receipt of the electronic mail:

Provided that the provisions of this paragraph shall not apply to the notification of documents filed before the Tribunal, the Dispute Resolution Board or any Court however so described.

Minister may vary certain time frames in Part III.

39. The Minister may, where appropriate, on the advice of or after consultation with the competent infrastructure regulator or regulators and, or with the competent utility regulator or regulators, by legal notice lessen the time frames stated in the article 14(3), article 15(2) or article 15(4):

Provided that before doing so the Minister shall undertake a public consultation and consider any such submissions as may be made in the course of such a consultation.".

Addition of new schedules to the principal Act.

19. Immediately after article 39, as added to the principal Act, there shall be added the following new schedules:

"**FIRST SCHEDULE**
(Article 2)

In accordance with provisions of article 2 of this Act, within the context of the definition of the words "competent infrastructure regulator" the following public sector body is designated a "competent infrastructure regulator":

The Authority for Transport in Malta ("TM").

SECOND SCHEDULE
(Article 2)

In accordance with the provisions of article 2 of this Act, in the context of the definition of the words "competent utility regulator" the following public sector bodies are designated as "competent utility regulators":

The Malta Communications Authority ("MCA") is responsible for the regulation of electronic communications services and networks;

(2) The Regulator for Energy and Water Services ("REWS") is responsible for the regulation of energy services and networks and the regulation of water services and networks; and

(3) The Authority for Transport in Malta ("TM") is responsible for the exercise of regulatory functions relating to roads and to transport by air, rail, road or sea.

THIRD SCHEDULE
(Article 21)

Regulations listed in accordance with the provisions of article 21 of this Act:

The Electronic Communications Networks and Services (General) Regulations (S.L. 399.28).

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FOURTH SCHEDULE
(Article 24)

The remuneration payable to the President where the person appointed is a former judge or a former magistrate and to the two ordinary members of the Dispute Resolution Board shall be as follows:

(1) In the case of the President for:

- the first hour of a sitting or part thereof seventy five euro (€75), and

- every subsequent hour or part thereof sixty-five euro (€65).

(2) In the case of an ordinary member for:

- the first hour of a sitting or part thereof sixty euro (€60), and

- every subsequent hour or part thereof fifty euro (€50).

Provided that in the case of any sittings which are held outside the venue designated for the holding of Board sittings, the fee due to the President and to the ordinary members shall be increased by ten euro (€10) per hour or part thereof.".

Amendment of other enactments.

20. The enactments in the First Column of the Schedule to this Act shall have effect subject to the amendments appearing relative thereto in the Second Column of the said Schedule.

SCHEDULE
Amendment of Laws

First Column Enactment	Second Column Extent of Amendments

Electronic Communications (Regulation) Act. Cap. 399.

1. Article 12 thereof shall be substituted by the following:

"Imposition of sharing of wiring obligations.

12. The Authority may 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:

Provided that such sharing or co-ordination arrangements shall include rules for apportioning the costs of facility or property sharing adjusted for risk where appropriate.".

2. Immediately after article 12 thereof, there shall be added the following new article:

"Access to in-building physical infrastructure. Cap. 81.

12A. (1) The provisions of article 2 of the Utilities and Services (Regulation of Certain Works) Act shall, unless provided otherwise, apply with regard to the provisions of this article.

(2) The holder of a right to use the access point and the in-building physical infrastructure shall meet all reasonable requests for access from undertakings under fair and non-discriminatory terms and conditions, including price, where appropriate.

(3) An undertaking has the right:

(a) to roll out its network at its own costs up to the access point; and

(b) to access any existing in-building physical infrastructure with a view to deploying a high-speed electronic communications network if duplication is technically impossible or economically inefficient:

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Provided that if access referred to in paragraphs (a) or (b) is not achieved within two months from the date of receipt of a formal written request for access, then an aggrieved party may refer the dispute to the Dispute Resolution Board in order to assess compliance with the requirements provided with in the aforesaid paragraphs.

(4) The Dispute Resolution Board shall in determining any dispute referred to it in accordance with this article, take full account of the principle of proportionality, issue a binding decision to resolve the dispute raised within the shortest possible time frame and in any case within two months from the date of the receipt of the complete request except in exceptional circumstances in accordance with article 32 of the Utilities and Services (Regulation of Certain Works) Act.

Cap. 81.

(5) The Authority may, after having consulted with any other utility regulator or regulators as the case may be and with any such other public sector body or bodies as it may consider necessary in the circumstances, provide for exemptions from the obligations provided for in sub-article (3) for buildings where access to an existing network that terminates at the location of the end-user and that is suitable for the provision of high-speed electronic communications services, is ensured on objective, transparent, proportionate and non-discriminatory terms and conditions.

(6) In the absence of available high-speed-ready in-building infrastructure, an undertaking may terminate its network at the premises of the subscriber subject to the agreement of the subscriber provided that it minimizes the impact on the private property of third parties.

(7) The provisions of this article are without prejudice to the right to property of the owner of the access point or the in-building physical infrastructure, in cases where the holder of a right to use that infrastructure or access point is not the owner thereof, and to the right to property of other third parties such as landowners and building owners.

(8) A person suffering damages as a result of the exercise of the rights under this article shall be entitled to adequate financial compensation in accordance with applicable national legislation.".

Malta Communications Authority Act. Cap. 418.

3. Article 4 thereof shall be amended as follows:

(a) sub-article (13) thereof shall be deleted; and

(b) sub-article (14) thereof shall be renumbered as sub-article (13).

4. Sub-article (1) of article 31 thereof shall be amended as follows:

(a) for the words "or who fails to comply with any decision given by the Authority or with any authorization condition:" there shall be substituted the words "or who fails to comply with any decision given by the Authority or with any decision given by the Utilities Networks Dispute Resolution Board where the Authority considers that non-compliance by any person with such a decision may impact negatively on the provision of electronic communications services or networks, or with any authorization condition:"; and

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

"Provided that a reference to a decision given by the Utilities Networks Dispute Resolution Board includes any decision of the Board which is appealed from before the Court of Appeal but has not been suspended by the Court of Appeal, and any decision of the Court of Appeal following an appeal from any decision of the Board.".

5. Article 46 thereof shall be amended as follows:

(a) article 46 thereof shall be renumbered as sub-article (1) of the said article; and

(b) immediately after sub-article (1) thereof, as re-numbered, there shall be added the following new sub-article:

"(2) The Minister may, after consultation with the Authority, by order in the Gazette list in the Second Schedule, any European Union legislation however so described or part thereof which is directly applicable to Malta, which legislation, once so listed, shall be considered to be a law enforced by the Authority in accordance with its powers under Part VI:

Provided that the Minister may, after consultation with the Authority, by order in the Gazette amend such list.".

6. The Schedule thereof shall be renumbered as the First Schedule.

7. Immediately after the First Schedule thereof, as renumbered, there shall be added the following new Schedule:

"SECOND SCHEDULE

(Article 46(2))

The following legislation is being listed in accordance with the provisions of article 46(2):

(i) Regulation (EU) No 531/2012 of the European Parliament and of the Council of 13 June 2012 on roaming on public mobile communications networks within the Union; and

(ii) Regulation (EU) 2015/2120 of the European Parliament and of the Council of the 25 November 2015 laying down measures concerning open internet access and amending Directive 2002/22/EC on universal service and users' rights relating to electronic communications networks and services and Regulation (EU) No 531/2012 on roaming on public mobile communications networks within the Union.".

Authority for Transport in Malta Act. Cap. 499.

8. Article 47 thereof shall be amended as follows:

(a) the marginal note shall be substituted by the following:

"Administrative penalties."; and

(b) sub-article (1) thereof shall be substituted by the following:

"(1) Unless stated otherwise at law, the Authority shall have the power to impose in respect of any person who infringes any provisions of this Act, of any regulations made thereunder, or of those provisions of the Utilities and Services (Regulation of Certain Works) Act which the Authority is empowered to enforce or who fails to comply with any directive, decision or order however so described given by the Authority, an administrative penalty using such procedures as may be established in this Act or regulations made thereunder.".

Passed by the House of Representatives at Sitting No. 371 of the 4th April, 2016.

ANĠLU FARRUGIA
Speaker

RAYMOND SCICLUNA
Clerk of the House of Representatives

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Ippubblikat mid-Dipartiment tal-Informazzjoni (doi.gov.mt) — Valletta — ***Published by the Department of Information (doi.gov.mt) — Valletta***
Mitbugħ fl-Istamperija tal-Gvern fuq karta riċiklata — ***Printed at the Government Printing Press on recycled paper***

Prezz/*Price*
€4.32