

CHAPTER 399

ELECTRONIC COMMUNICATIONS (REGULATION) ACT

To regulate Electronic Communications.

*Substituted by:
VII. 2004.11.*

31st December, 1997
2nd January, 1998

ACT XXXIII of 1997, as amended by Acts XIX of 1998, XVIII of 2000, VI of 2001, XXVII of 2002, IX of 2003 and VII of 2004; Legal Notice 425 of 2007; and Act XXX of 2007.

PART I

PRELIMINARY

1. The short title of this Act is the Electronic Communications (Regulation) Act.

*Short title.
Amended by:
VII. 2004.11.*

2. In this Act, and in regulations made thereunder, unless the context otherwise requires -

*Interpretation.
Amended by:
XIX. 1998.3;
XVIII. 2000. 31;
VII. 2004.12.*

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

"the Act" means this Act and includes any regulations made thereunder unless the context otherwise requires;

"apparatus" includes any equipment or machinery however so described;

"Appeals Board" means the Communications Appeals Board established under the Malta Communications Authority Act;

Cap. 418.

"associated facilities" means those facilities associated with an electronic communications network and, or an electronic communications service which enable and, or support the provision of services through that network and, or service. It includes conditional access systems and electronic programme guides;

"the Authority and "the competent authority" mean the Malta Communications Authority established under the Malta Communications Authority Act;

Cap. 418.

"cable television networks" means any mainly wire-based infrastructure established primarily for the delivery or distribution of radio or television broadcast to the public;

"Community" means the European Communities;

"conditional access system" means any technical measure and, or arrangement whereby access to a protected radio or television broadcasting service in intelligible form is made conditional upon subscription or other form of prior individual authorisation;

"consumer" means any natural person who uses or requests a publicly available electronic communications service, or any such other communications services as the Minister may, after consultation with the Authority, by order in the Gazette establish, for purposes which are outside his trade, business or profession;

"cross-border" means to and from another Member State, unless stated otherwise;

"decision" includes any determination, measure, order, requirement or specification however so described made by the Authority and the word "decision" shall be construed accordingly;

Cap. 418.

"directive" means a directive issued by the Authority in terms of article 4 of the Malta Communications Authority Act;

"electronic communications network" means transmission systems and, where applicable, switching or routing equipment and other resources which permit the conveyance of signals by wire, by radio, by optical or by other electromagnetic means, including satellite networks, fixed (circuit-switched and packet-switched, including Internet) and mobile terrestrial networks, electricity cable systems, to the extent that they are used for the purpose of transmitting signals, networks used for radio and television broadcasting, and cable television networks, irrespective of the type of information conveyed;

Cap. 426.

"electronic communications service" means a service normally provided for remuneration which consists wholly or mainly in the conveyance of signals on electronic communications networks, including telecommunications services and transmission services in networks used for broadcasting, but exclude services providing, or exercising editorial control over, content transmitted using electronic communications networks and services; it does not include information society services, as defined in the Electronic Commerce Act, which do not consist wholly or mainly in the conveyance of signals on electronic communications networks;

"end-user" means a user not providing public communications networks or publicly available electronic communications services;

"European Commission" means the Commission of the European Communities;

"exclusive rights" means a right granted to an undertaking reserving to it the right to provide an electronic communications service or to undertake an electronic communications activity within a given geographical area to the exclusion of other undertakings;

"general authorisation" means the legal framework established by or under this Act ensuring rights for the provision of electronic communications networks or services and laying down sector specific obligations that may apply to all or to specific types of electronic communications networks and services in accordance with this Act;

"interconnection" means the physical and logical linking of public communications networks used by the same or a different undertaking in order to allow the users of one undertaking to communicate with users of the same or another undertaking, or to access services provided by another undertaking. Services may be provided by the parties involved or other parties who have access to the network. Interconnection is a specific type of access implemented between public network operators;

"internal market" means the internal market of the Community;

"local loop" means the physical circuit connecting the network termination point at the subscriber's premises to the main distribution frame or equivalent facility in the fixed public telephone network;

"Member State" means a Member State of the Community;

"the Minister" means the Minister responsible for communications;

"national regulatory authority" means the body or bodies notified for the purposes of Community law to the European Commission by a Member State as having been assigned tasks in the regulation of electronic communications services, electronic communications networks, associated facilities and associated services;

"network termination point" means the physical point at which a subscriber is provided with access to a public communications network; in the case of networks involving switching or routing, the network termination point is identified by means of a specific network address, which may be linked to a subscriber number or name;

"operator" means an undertaking providing or authorised to provide a public communications network or an associated facility;

"person" includes any body corporate and any body of persons whether or not it has a legal personality distinct from that of its members;

"prescribed" means prescribed by regulations made under this Act;

"provision of an electronic communications network" means the establishment, operation, control or making available of such a network;

"public communications network" means an electronic communications network used wholly or mainly for the provision of publicly available electronic communications services;

"public pay telephone" means a telephone available to the general public, for the use of which the means of payment may

include coins and, or credit and, or debit cards and, or pre-payment cards, including cards for use with dialling codes;

"public telephone network" means an electronic communications network which is used to provide publicly available telephone services; it supports the transfer between network termination points of speech communications, and also other forms of communication, such as facsimile and data;

"publicly available electronic communications service" means an electronic communications service available to the public;

"publicly available telephone service" means a service available to the public for originating and receiving national and international calls and access to emergency services through a number or numbers in a national or international telephone numbering plan, and in addition may, where relevant, include one or more of the following services:

- (i) the provision of operator assistance,
- (ii) directory enquiry services,
- (iii) directories,
- (iv) provision of public pay phones,
- (v) provision of service under special terms, and
- (vi) provision of special facilities for persons with disabilities or with special social needs and, or the provision of non-geographic services;

"satellite earth station network" mean a configuration of two or more earth stations which inter-work by means of a satellite;

"significant market power" means a position equivalent to dominance enjoyed by an undertaking either individually or jointly with others that is to say a position of economic strength affording it the power to behave to an appreciable extent independently of competitors, customers and ultimately consumers;

"special rights" means the rights that are granted to a limited number of undertakings which, within a given geographical area:

- (i) designates or limits to two or more the number of such undertakings authorised to provide an electronic communications service or undertake an electronic communications activity, otherwise than according to objective, proportional and non-discriminatory criteria, or
- (ii) confers on undertakings, otherwise than according to such criteria, legal or regulatory advantages which substantially affect the ability of any other undertaking to provide the same electronic communications activity in the same geographical area under substantially equivalent conditions;

"subscriber" means any person who or which is party to a contract with the provider of publicly available electronic communications services for the supply of such services;

"undertaking" means a person providing or authorised to provide electronic communications networks and, or services or associated facilities;

"universal services" means the minimum set of services of specified quality which is available to all users regardless of their geographical location and, in the light of specific national conditions, at an affordable price as may be defined under regulations made under this Act;

"user" means any person using or requesting a publicly available electronic communications service;

"wide-screen television service" means a television service that consists wholly or partially of programmes produced and edited to be displayed in a full height wide-screen format. The 16:9 format is the reference format for wide-screen television services.

PART II

REGULATION OF ELECTRONIC COMMUNICATIONS

*Amended by:
VII. 2004.13.*

1. Competent Authority to regulate Electronic Communications

3. The Malta Communications Authority established under the Malta Communications Authority Act shall be the competent authority to regulate electronic communications under this Act and, insofar as is provided in this Act, to enforce the provisions of this Act.

Malta
Communications
Authority.
*Substituted by:
XVIII. 2000.31;
VII. 2004.14.
Cap. 418.*

4. The objectives of the Authority in the exercise of its functions under the Act shall include:

Objectives of the
Authority.
*Substituted by:
XVIII. 2000.31;
VII. 2004.15.*

- (a) to promote competition by -
 - (i) ensuring that users, including disabled users, derive maximum benefit in terms of choice, price and quality;
 - (ii) ensuring that there is no distortion or restriction of competition in the electronic communications sector;
 - (iii) encouraging efficient investment in infrastructure, and promoting innovation; and
 - (iv) encouraging efficient use and ensuring the effective management of radio frequencies and numbering resources;
- (b) to contribute to the development of the internal market by -
 - (i) removing remaining obstacles to the provision of electronic communication networks, associated facilities and services and electronic communications services at Community level;
 - (ii) encouraging the establishment and development of trans-European networks and the interoperability of transnational services and end-to-end connectivity;

- (iii) ensuring that, in similar circumstances, there is no discrimination in the treatment of undertakings providing electronic communications networks and services and associated facilities; and
 - (iv) co-operating with electronic communications national regulatory authorities in Member States of the Community and with the European Commission in a transparent manner to ensure the development of consistent regulatory practice and the consistent application of Community law in this field;
- (c) to promote the interests of users within the Community by -
- (i) ensuring that all users have access to a universal service;
 - (ii) ensuring a high level of protection for consumers in their dealings with suppliers, in particular by ensuring the availability of simple and inexpensive dispute resolution procedures carried out by a body that is independent of the parties involved;
 - (iii) contributing to ensuring a high level protection of personal data and privacy;
 - (iv) promoting the provision of clear information, in particular requiring transparency of tariffs and conditions for using publicly available electronic communications services;
 - (v) addressing the needs of specific social groups, in particular disabled users; and
 - (vi) ensuring that the integrity and security of public communications networks are maintained;
- (d) ensuring that in so far as is practicable that there are provided in Malta such electronic communications services as satisfy all reasonable demands for such services including emergency services, public call services and directory information services.

Applicability of the Act.
 Amended by:
 XIX. 1998.3;
 XVIII. 2000.31.
 Substituted by:
 VII. 2004.17.

5. (1) This Act shall apply to the various communications markets unless otherwise stated in the Act.

(2) This Act shall not apply to the content of messages transmitted through any electronic communications network.

(3) The provisions of this Act shall be without prejudice to the operation of any other law -

- (a) in respect of services provided using electronic communications networks and services; or
- (b) in respect of content and broadcasting regulation or audiovisual policy; or
- (c) relating to radio and telecommunications terminal

equipment.

2. General provisions relating to the role of the Authority and the rights and obligations of undertakings

*Added by:
VII. 2004.18.*

6. Any person shall install or operate any electronic communications network or provide any electronic communications service in Malta in compliance with this Act.

Compliance when operating a network or providing a service.

*Added by:
XVIII. 2000.31.
Substituted by:
VII. 2004.19.
Amended by:
XXX. 2007.22.*

7. An undertaking authorised by or under this Act to operate a public communications network shall, in addition to complying with the provisions of this Act and with obligations in accordance with its authorisation, ensure:

Special obligations of providers of public communications networks.

*Added by:
XVIII. 2000.31.
Substituted by:
VII. 2004.19.
Amended by:
XXX. 2007.23.*

- (a) that the capacity, quantity and features of the network are sufficient for providing and maintaining an efficient communications network;
- (b) that the network is sufficient for and compatible with such international electronic communications services as the Authority may specify; and
- (c) the security of the network and any extension thereof.

8. An undertaking authorised by or under this Act to provide a publicly available electronic communications service shall -

Special obligations of providers of publicly available electronic communications services.

*Added by:
XVIII. 2000.31.
Substituted by:
VII. 2004.19.
Amended by:
XXX. 2007.24.*

- (a) provide such services efficiently, complying with the standards for quality generally accepted in the industry or as may from time to time be specified by the Authority;
- (b) notify the Authority and publish by notice in the media when the services are to be interrupted for the installation or repair or the changing of apparatus;
- (c) establish an efficient mechanism for receiving complaints and repairing failures in its networks and in the services provided;
- (d) comply with the provisions of the Act as well as with the terms and conditions of the authorisation, and abide by any directives or decisions of the Authority as the Authority may be empowered to issue by or under this Act.

9. (1) The Authority shall, subject to any procedures as may be prescribed under this Act and in accordance with the principles of competition law, define relevant markets appropriate to national circumstances, in particular relevant geographic markets and it shall carry out an analysis of such relevant markets. In doing so the Authority shall take the utmost account of any relevant recommendations and guidelines that the European Commission may issue from time to time.

Market definition and analysis.

*Added by:
XVIII. 2000. 31.
Substituted by:
VII. 2004.19.*

(2) Where the Authority concludes that a market is effectively competitive, it shall then not impose or maintain such regulatory obligations and controls as may be specified in regulations made under this Act.

(3) Where the Authority determines that a relevant market is not effectively competitive, it shall identify and designate undertakings with significant market power in that market and it shall impose upon such undertakings appropriate regulatory obligations and controls identified in subarticle (2) in accordance with any regulations made under this Act.

Consultation and transparency mechanism.
Added by: XVIII. 2000.31.
Substituted by: VII. 2004.19.
 Cap. 418.

- 10.** (1) Except in relation to -
- (a) any dispute being dealt with in accordance with this Act, or
 - (b) the exercise of any enforcement powers of the Authority under Part VII of the Malta Communications Authority Act, or
 - (c) cases where the Authority considers that there is an urgent need to act in order to safeguard competition and protect the interests of users in accordance with Community law,

where the Authority intends to take a decision in accordance with the Act which has a significant impact on a market for electronic communications networks or services, it shall make available to interested parties, a statement of the proposed decision and give such interested parties the opportunity to comment on the proposed decision within a period which the Authority considers reasonable.

(2) The Authority shall publish its consultation procedures and shall establish a single information point through which all current consultations can be accessed.

(3) The results of any consultations under this article shall be made publicly available by the Authority through such means as the Authority considers appropriate in the circumstances, except in the case of information which the Authority considers to be confidential.

Numbers.
Added by: XVIII. 2000.31.
Substituted by: VII. 2004.19.
Amended by: L.N. 425 of 2007.
 XXX. 2007.25.

11. (1) The Authority shall establish and manage the national numbering plan for electronic communication services, and shall control the assignment of all national numbering resources. In doing so it shall ensure that adequate numbers and numbering ranges are provided for all publicly available electronic communications services.

(2) The Authority shall as necessary, subject to ensuring the proper management of the national numbering plan, grant rights of use for numbers and number ranges for all publicly available electronic communications services according to procedures that are objective, transparent and non-discriminatory.

(3) The Authority shall, subject only to any limitation that may be specified by the Minister on grounds of national security, from time to time publish the main elements of the national numbering

plan and subsequent additions or amendments thereto.

(4) The Authority shall, in so far as is practicable, having regard to its objectives and functions as stated under this Act, support the harmonisation of numbering resources within the Community where necessary to support the development of pan-European services.

(5) The Authority may, without prejudice to the generality of any provisions by or under this Act relating to authorisations, attach conditions to rights of use for numbers to ensure efficient and effective management of all numbering resources.

(6) No undertaking shall assign to locations, terminals, persons or functions on public electronic communications networks, numbers that have not specifically been allocated to that person by the Authority for the purpose of providing publicly available electronic communications services.

(7) An undertaking allocated a range of numbers shall not discriminate against any other providers of electronic communications services as regards the number sequences used to give access to their services.

12. No restrictions shall be imposed or maintained on the provision of electronic communications services over electronic communications networks established by an undertaking providing electronic communications services, over infrastructures provided by third parties, or by means of sharing networks, other facilities or sites.

Prohibition of restrictions.
Amended by:
XVIII. 2000.31.
Substituted by:
VII. 2004.19.

3. Access and Interconnection

13. The Authority shall, acting in accordance with its objectives as stated in the Malta Communications Authority Act, encourage and where appropriate, ensure, in accordance with the provisions made by or under this Act, adequate access and interconnection and interoperability of services in such a way as to:

- (a) promote efficiency;
- (b) promote sustainable competition; and
- (c) give the maximum benefit to end-users.

Functions of the Authority with regard to access and interconnection.
Amended by:
XVIII. 2000.31;
XXVII. 2002.58.
Substituted by:
VII. 2004.19.
Cap. 418.

14. (1) No restrictions may be imposed or maintained that prevent -

- (a) undertakings in Malta, or
- (b) undertakings in Malta and in Member States,

from negotiating between themselves agreements on technical and commercial arrangements for access and, or interconnection, in accordance with Community law.

Prohibition of restrictions.
Amended by:
XVIII. 2000.31;
XXVII. 2002.58.
Substituted by:
VII. 2004.19.
Amended by:
L.N. 425 of 2007;
XXX. 2007.26.

(2) An undertaking requesting access or interconnection in Malta does not need to be authorised to operate in Malta if it is not providing services and does not operate a network in Malta.

- (3) An operator of public communications networks -

- (a) shall be entitled, and
- (b) when requested by another undertaking authorised to provide public communications networks, shall have an obligation,

to negotiate interconnection for the purpose of providing publicly available electronic communications services in order to ensure provision and interoperability of services in Malta and throughout the Community.

(4) An operator of public communications networks shall offer access and interconnection to other undertakings on terms and conditions consistent with obligations relating to access and interconnection imposed by the Authority in accordance with this Act.

(5) Without prejudice to information that an undertaking under or by this Act is required to provide under a general authorisation for rights of use or for specific obligations, an undertaking that acquires information from another undertaking before, during or after the process of negotiating access or interconnection arrangements shall use that information solely for the purpose for which the information was supplied and shall respect at all times the confidentiality of information transmitted or stored.

(6) An undertaking shall not pass on any information acquired referred to in subarticle (5) to any other party, in particular other subsidiaries or partners however so described of the undertaking where such information could provide a competitive advantage.

4. Accounting separation and financial reporting

15. Any undertaking providing a public communications network or a publicly available electronic communications service, that is also engaged in an activity other than the provision of such network or services on the basis of special or exclusive rights for the provision of that activity whether in Malta or in a Member State shall -

- (a) keep separate accounts audited in accordance with generally accepted auditing practices for the activities associated with the provision of that network or service, to the extent that would be required if those activities were carried out by legally independent companies, so as to identify all elements of cost and revenue, with the basis of their calculation and the detailed attribution methods used, related to their activities associated with the provision of electronic communications networks or services including an itemised breakdown of fixed asset and structural costs; or
- (b) have structural separation for the activities associated with the provision of electronic communications networks or services:

Provided that the Minister may, after consultation with the Authority, by order in the Gazette establish that the requirements

Obligation of undertakings in relation to accounting separation.
Amended by:
XVIII. 2000.31;
XXVII. 2002.58.
Substituted by:
VII. 2004.19.
Amended by:
L.N. 425 of 2007;
XXX. 2007.27.

referred to in paragraph (a) do not apply to undertakings the annual turnover of which in activities associated with electronic communications networks or services in the Members States is less than twenty five million euro (50,000,000) or any other such other amount as the Minister may, after consultation with the Authority, by order in the Gazette establish.

16. Where an undertaking providing public communications networks or publicly available electronic communications services is not subject to the requirements of the Companies Act and does not satisfy the small and medium-sized enterprise criteria of Community law accounting rules, it shall ensure that -

- (a) annual accounts shall be drawn up and submitted to independent audit and published, and
- (b) such audit shall be carried out in accordance with the relevant rules applicable in Malta and in the Community:

Provided that nothing in this subarticle shall be construed as imposing obligations that are more onerous than those imposed on companies in the Companies Act.

5. Authorisations

17. (1) An undertaking subject to the provisions of this Act, shall be entitled to provide electronic communications services or to establish, extend or provide electronic communications networks.

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

(3) The provision of electronic communications networks or services may, without prejudice to the specific obligations that may be imposed on providers of such networks and services by or under this Act, only be subject to a general authorisation.

(4) A general authorisation granted by or under this Act to an undertaking to provide electronic communications services and, or to establish and, or provide electronic communications networks, as well as any conditions attached thereto shall be based on objective, non-discriminatory, proportionate and transparent criteria.

18. (1) Any administrative charges imposed by the Authority on undertakings under general authorisation or to whom a right of use has been granted shall:

- (a) in total, cover only the administrative costs which will be incurred in the management, control and enforcement of the general authorisation scheme and of rights of use, and specific obligations, and may include costs for international cooperation, harmonisation and standardisation, market analysis,

Financial reporting.
Amended by:
XVIII. 2000.31.
Substituted by:
VII. 2004.19.
Amended by:
L.N. 425 of 2007;
XXX. 2007.28.
Cap. 386.

General authorisations.
Amended by:
XVIII. 2000.31.
Substituted by:
VII. 2004.19.

Administrative charges.
Amended by:
XVIII. 2000.31.
Substituted by:
VII. 2004.19.

monitoring compliance and other market control, as well as any regulatory work involving compliance with this Act and the preparation and enforcement of any directives and, or decisions issued by or under this Act; and

(b) be imposed upon the individual undertakings in an objective, transparent and proportionate manner which minimises additional administrative costs and attendant charges.

(2) The Authority shall, in relation to the imposition of such administrative charges, publish an annual overview of its administrative costs and of the total sum of charges collected.

(3) The Authority shall, in the case of charges imposed on an annual basis, make appropriate repayments or compensation in the case of overcharging, or impose additional charges in the case of undercharging of a person to whom a charge is imposed in the light of any difference between the total sum of administrative charges collected and the administrative costs incurred.

(4) Any fees that may be imposed for rights of use for radio frequencies and, or numbers shall reflect the need to ensure the optimal use of the radio frequency spectrum and the national numbering scheme.

(5) Any such fees referred to in subarticle (4) shall be objectively justified, transparent, non-discriminatory and proportionate in relation to their intended purpose and shall take into account the objectives as set out in article 4.

Authorisation of electronic communications networks and services.
Amended by:
XIX. 1998.3;
XVIII. 2000.31;
VI. 2001.29.
Substituted by:
VII. 2004.19.
Amended by:
L.N. 425 of 2007;
XXX. 2007.29.

19. (1) Subject to subarticle (4) any person who intends to provide an electronic communications network and, or electronic communications service shall, before doing so, notify the Authority of his intention to provide such a network and, or service.

(2) A notification under subarticle (1) shall be in such form as the Authority may from time to time determine and shall contain the information that is required to enable the Authority to maintain a list of providers of electronic communications networks and, or services.

(3) Upon receipt by the Authority of a notification in accordance with subarticle (1), the person concerned shall be deemed to be authorised to provide an electronic communications network and, or electronic communications service, subject to such conditions as may be imposed in accordance with this Act.

(4) The Authority may determine that any person providing an electronic communications network and, or electronic communications service of a particular class or description specified in such a decision, shall not be subject to the requirements of subarticle (1).

(5) The Authority may, with the approval of the Minister, by order in the Gazette amend the rights, conditions and procedures concerning general authorisations and rights of use for numbers provided that any such amendments may only be made in

objectively justified cases and in a proportionate manner:

Provided that the Authority before making any such amendment 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 such period of not less than thirty days as may be specified in the notice. The Authority may in circumstances which it considers to be exceptional, shorten such period.

20. Compliance with any authorisation by or under this Act enabling a person to install or operate any electronic communications network or provide any electronic communications service shall not relieve such a person from any requirement at law to apply for any other authorisation, licence or permit however so described, or from any obligation arising from any other law.

Requirement to obtain other authorisations, etc., required at law.
Added by: XVIII. 2000.31.
Substituted by: VII. 2004.19.

6. Obligations of vertically integrated public undertakings

21. A vertically integrated undertaking, over which the Government of Malta or of a Member State has effective control, which provides electronic communications networks and which is in a dominant position shall not discriminate in favour of its own activities.

Prohibition of discrimination in one's own favour.
Amended by: XVIII. 2000.31.
Substituted by: VII. 2004.19.
Amended by: L.N. 425 of 2007; XXX. 2007.30.

7. End-user interests and rights

22. (1) An undertaking shall provide a person subscribing to services providing connection and, or access to the public telephone network, with a written contract and it shall provide such services to end-users in accordance with such a written contract.

End-user rights and the information to be included.
Amended by: XVIII. 2000.31.
Substituted by: VII. 2004.19.

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

(3) Where a written contract is agreed to between an end-user and an undertaking which provides electronic communications services, other than one providing connection and, or access to the public telephone network, such contract shall include such information as may specified in accordance with subarticle (2).

(4) An undertaking referred to in subarticles (1) or (3) shall, not less than thirty days prior to the taking of effect of any proposed modification, notify every subscriber to that service -

- (a) of the proposed modification in the conditions of his contract for that service, and
- (b) of his right to withdraw without penalty from such contract if he does not accept the modification.

(5) A subscriber referred to in subarticle (3) may withdraw from his contract with the undertaking, without penalty if he does not accept a proposed modification referred to in subarticle (4).

Nullity of certain terms and conditions.
Amended by: XVIII. 2000.31.
Substituted by: VII. 2004.19.

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

8. Dispute resolution

Dispute resolution between undertakings.
Amended by: XVIII. 2000. 31.
Substituted by: VII. 2004.19.
Amended by: L.N. 425 of 2007.

24. *(Deleted by XXX. 2007.31.).*

Disputes involving consumers.
Amended by: XIX. 1998.3.
Substituted by: XVIII. 2000.31;
VII. 2004.19.

25. *(Deleted by XXX. 2007.31.).*

Extension of applicability to other laws.
Amended by: XVIII. 2000.31;
XXVII. 2002.58.
Substituted by: VII. 2004.19.

26. *(Deleted by XXX. 2007.31.).*

PART III

LEGAL PROTECTION OF SERVICES BASED ON OR CONSISTING OF CONDITIONAL ACCESS

Legal protection of services based on or consisting of conditional access.
Added by: IX. 2003.89.
Amended by: VII. 2004.21;
L.N. 425 of 2007.

27. (1) In this article:

"broadcaster" means the natural or legal person who has editorial responsibility for the composition of television programme services for reception by the general public and transmits them, or has them transmitted, complete and unchanged, by a third party;

"conditional access" means any technical measure or arrangement permitting access in an intelligible form, and subject to prior individual authorisation, to one of the services constituting a protected service;

"conditional access device" means any equipment, software, or arrangement designed or adapted to give access in an intelligible form to one of the services constituting a protected service;

"illicit device" means any equipment, software, or arrangement designed or adapted to give access in an intelligible form to one of the services constituting a protected service without the authorisation of the service provider;

"programme service" means all the items within a single service provided by a given broadcaster;

"protected service" means any of the following services when

provided against remuneration and on the basis of conditional access:

- (i) television programme services;
- (ii) radio broadcasting services including radio programmes intended for reception by the public, transmitted by wire or over the air, including by satellite;
- (iii) information society services offered by electronic means, at a distance and at the individual request of the recipient of the services,

or the provision of conditional access to the above services considered as a service in its own right.

(2) Any person who -

- (a) manufactures or produces illicit devices for commercial purposes; or
- (b) imports illicit devices into Malta for commercial purposes; or
- (c) distributes illicit devices in or from Malta for commercial purposes; or
- (d) sells or rents out illicit devices for commercial purposes; or
- (e) is in possession of illicit devices for commercial purposes; or
- (f) installs, maintains or replaces illicit devices for commercial purposes; or
- (g) commercially promotes, markets or advertises illicit devices,

Infringing acts constituting a criminal offence.

shall, on conviction, be liable to imprisonment for a term not exceeding one year or to a fine (*multa*) of twenty-three thousand and two hundred and ninety-euro (23,290) or to both such fine and imprisonment.

(3) In proceedings taken under subarticle (2) the Court shall order the Commissioner of Police to destroy goods established to be illicit devices without compensation of any sort to any person and, where a person is found guilty of infringing the provisions of subarticle (2) in respect of the said goods, at the cost of that person.

Destruction of illicit devices.

(4) A provider of a protected service whose interests are affected by any act mentioned in subarticle (2)(a) to (g) shall have against the perpetrator of any such act and in respect of such act:

Civil proceedings.

- (a) a civil action for damages, and
- (b) a right to demand a warrant of prohibitory injunction to obtain provisional protection of his interests, and
- (c) a right to demand an order from the competent Court for the destruction or, if appropriate, the disposal outside commercial channels of illicit devices.

PART IV

RADIO FREQUENCIES MANAGEMENT

Interpretation.
Added by:
VII. 2004.23.

28. In this Part unless the context otherwise requires "plan" means the "national radio frequency plan" as adopted by the Minister and published in accordance with the provisions of this Part.

Need of explicit
authorisation.
Added by:
VII. 2004.23.

29. Unless otherwise explicitly authorised by or under any law no person shall use any radio frequency that has not specifically been allocated to that person by the Authority in accordance with the national radio frequency plan:

Provided that the Minister may in writing authorise the Authority to depart from the plan. In doing so the Minister shall give his reasons and notice of such authorisation shall be made public.

Management of
radio frequencies.
Added by:
VII. 2004.23.

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

(2) Without prejudice to subarticle (3), no exclusive or special rights of use of radio frequencies shall be granted for the provision of electronic communications services.

(3) The Authority and the Minister shall in the exercise of their respective functions with regard to the allocation and assignment of such radio frequencies act in accordance with objective, transparent, non-discriminatory and proportionate criteria.

Adoption and
publication of a
plan.
Added by:
VII. 2004.23.

31. (1) The Minister shall draw up, adopt and publish a plan, which plan shall from time to time be revised and republished by the Minister as may be deemed necessary:

Provided that before adopting or revising the plan as the case may be, the Minister shall in all instances consult the Authority.

(2) The Minister shall in drawing up the plan establish the frequencies to be used and the purposes for which they may be used.

(3) The plan shall include a set of tables indicating frequency allocations in the radio spectrum at the date of publication of the plan.

Authorisations for
use of radio
frequencies.
Added by:
VII. 2004.23.

32. (1) The use of radio frequencies and apparatus, other than frequencies and apparatus to be used for the provision of broadcasting services and frequencies not assigned to the Authority under the national radio frequency plan, shall be subject to an authorisation by the Authority given in accordance with any regulations made under this Part.

(2) The Minister may after consulting the Authority make regulations:

- (a) on any aspect concerning the issue of authorisations under this Part;
- (b) as to the manner how radio frequencies and, or apparatus as may be designated, may be used without the need of an authorisation required under this Part.

33. The Minister, or the Authority with the approval of the Minister, may for the purpose of ensuring the most efficient and effective use of radio frequencies in accordance with the provisions of this Act, impose such requirements or take such measures as they may consider appropriate including but not limited to the redistribution or sharing of frequencies.

Powers of the Authority specific to radio frequencies.
Added by:
VII. 2004.23.

PART V

REGULATIONS

34. (1) The Minister may, either on the recommendation of the Authority or on his own initiative after consultation with the Authority, make regulations to give better effect to any of the provisions of this Act and in particular to:

Regulations.
Added by:
VII. 2004.23.
Amended by:
L.N. 425 of 2007;
XXX. 2007.32.

- (a) regulate electronic communications services and, or networks including interconnection of networks, collocation of facilities, carrier pre-selection, access to networks, rights of way, the transmission or reception of satellite signals, the maintenance of and publication, and access to any information however so described, stipulate universal service obligations, any matter concerning numbers including portability, plans and allocation, the obligations of an undertaking having significant market power, competition and consumer protection rules, billing procedures and billing accuracy, emergency services and directory services;
- (b) provide for any requirements that may be imposed on undertakings to adopt accounting systems as may be prescribed and to keep such operational, accounting, financial, statistical and technical records as may be specified in the regulations, including the provision to the Authority of such statement, returns and other information about any company in which an undertaking has a controlling interest as the Authority may require for the carrying out of its functions under the Act;
- (c) provide for the conditions applicable to any authorisations and, or licences however so described, and returns and reports to be made to the Authority;
- (d) regulate the manner in which an electronic communications and, or radiocommunications infrastructure or apparatus is to be installed, operated, maintained, protected or controlled and the technical standards or specifications to be observed with respect to such infrastructure or apparatus;

- (e) provide for the measures to be taken to ensure compliance with international and other standards used in the electronic communications and for the means to be used and the measures to be adopted to ensure safety and prevent danger, damage or nuisance in relation to any aspect of electronic communications;
- (f) regulate the quality and standard of electronic communications services to be provided, and quality of service targets and the establishment and maintenance of an efficient assistance service by undertakings for users;
- (g) provide for the complaint processing procedures to be implemented by an undertaking;
- (h) regulate television and radio distribution services including must carry rules, and the obligation to make channel capacity for public, governmental or educational use;
- (i) provide for any matter relating to the resolution of any disputes and, or complaints however so described relating to electronic communications networks or services including appeals from any decision, and the procedure to be followed in the resolution of cross-border disputes;
- (j) regulate the procedure for the resolution of disputes involving electronic communications networks and, or services and consumers and the relationship between the Authority and other public authorities responsible for the resolution of disputes;
- (k) provide for data retention obligations, and for rules regarding the access by the Authority and by the Police to data retained by undertakings, and prescribe measures to be taken by any person for the purpose of ensuring the inviolability of electronic communications transmitted and their confidentiality and the protection of privacy in relation to any electronic communications service including data protection measures in the electronic communications sector and data protection measures related to the use of information obtainable in the electronic communications sector for the purpose of direct marketing;
- (l) regulate the provision of information between Malta and the Community and, or Members States;
- (m) regulate and provide for any fees and, or charges however so described that may be payable to the Authority;
- (n) provide for any matters that may be required for the purpose of complying with any international obligations of Malta related to electronic communications in particular for the purpose of

- complying with any requirements however so described of the Community;
- (o) regulate the allocation or use of radio frequencies for electronic communications networks and, or services, including the transfer of rights to use radio frequencies and the procedure to be followed;
 - (p) regulate any matter relating to the regulation, administration, management and authorisation of radio spectrum, including the fees and conditions that may be imposed in relation thereto;
 - (q) empower the Authority to impose administrative fines not exceeding the sum of two hundred and thirty-two thousand and nine hundred and thirty-five euro (232,935) for each offence and four thousand and six hundred and fifty-five euro (4,655) for each day during which failure to comply with the Act persists, upon any person acting in contravention of any regulations made under this Act and to provide for the imposition and enforcement of such fines in accordance with the provisions of this Act and the Malta Communications Authority Act; Cap. 418.
 - (r) regulate the obligations including financial obligations of undertakings with regard to legal interception;
 - (s) prescribe anything that may be prescribed under this Act:

Provided that the Minister may, when making any regulations under this subarticle which relate to standards or to matters of a strictly technical nature, make such regulations in the English language only.

(2) The Minister may, after consultation with the Authority, by order in the Gazette empower any other public authority established by law to exercise any specific functions under this Act or under any regulations made thereunder where in the opinion of the Minister it is deemed appropriate in the particular circumstances for the said functions to be exercised by another public authority:

Provided that in issuing an order under this subarticle the Minister shall give his reasons therefor.

PART VI

CRIMINAL OFFENCES

- 35.** (1) Any person who -
- (a) constructs, repairs, maintains, alters or controls any apparatus or installation without having the qualifications required for that purpose by or under this Act;
 - (b) sells or offers for sale or provides or installs or uses any installation or apparatus which does not conform
- Offences of criminal nature specific to electronic communications.
Added by: VII. 2004.23.
Amended by: L.N. 425 of 2007.

with such technical standards or specifications as are required or established by or under this Act, or which he knows, or has reasonable cause to believe, to be defective or incompatible with the services for which it was sold, provided, installed or used;

- (c) provides any electronic communications service or installs or operates any electronic communications network or apparatus in breach of any provision of this Act or in breach of any condition, restriction or limitation imposed by or under this Act;
- (d) uses any electronic communications network or apparatus supplied by an undertaking for a purpose other than that for which it was supplied, or neglects to observe instructions which are issued by an undertaking for the proper use of the electronic communications network or apparatus or makes improper use thereof,

shall be guilty of an offence under this Act and shall, on conviction, be liable to a fine (*multa*) not exceeding twenty-three thousand and two hundred and ninety euro (23,290) and in the case of a continuing offence for a further fine (*multa*) not exceeding four hundred and sixty-five euro (465) for each day during which the offence continues.

(2) Any person who furnishes information to the Authority or the Minister which he knows, or has reasonable cause to believe to be false or misleading, or impedes or obstructs the Authority or the Minister, in the performance of any functions by or under this Act, shall be guilty of an offence under this Act, and shall on conviction, be liable to a fine (*multa*) not exceeding twenty-three thousand and two hundred and ninety euro (23,290) or to imprisonment for a period not exceeding six months, or to both such fine and imprisonment.

(3) Any person who being a person employed or detailed for duty with or attached to an undertaking -

- (a) gives any information with regard to any message with which he becomes acquainted by reason of his office to any person not entitled to receive such information;
- (b) wilfully alters or suppresses any message or the designation of the person to whom it is transmitted or to whom it is addressed, without a good cause;
- (c) wilfully omits, delays or obstructs the transmission or delivery of any message or cancels or destroys any message or an application for the transmission of any message without a good cause;
- (d) wilfully represents a message as having been sent by a person other than the sender or as being addressed to a person other than the addressee, or an application for the transmission of a message as having been made by a person other than the applicant, without good cause;
- (e) wilfully cancels or destroys any message not addressed

to him or an application for the transmission of a message, without good cause; or

- (f) unlawfully withdraws from the control of an undertaking, or of an individual employed or detailed for duty with, or attached to, an undertaking, a message addressed to another person,

shall be guilty of an offence under this Act and shall be liable, on conviction, to a fine (*multa*) not exceeding twenty-three thousand and two hundred and ninety euro (23,290) or to imprisonment for a period not exceeding six months, or to both such fine and imprisonment.

(4) Any person who assaults or obstructs or impedes any officer, employee or agent of an undertaking in the exercise of his duties with such undertaking shall be guilty of an offence under this Act, and shall on conviction be liable to a fine (*multa*) not exceeding eleven thousand and six hundred and forty-six euro and eighty-seven cents (11,646.87) or to imprisonment for a period not exceeding three months, or to both such fine and imprisonment.

35A. Any person who by means of an electronic communications network or apparatus -

- (a) threatens the commission of any crime; or
 (b) with intent to extort money or any other thing, or to make any gain, or with intent to induce another person to do or omit from doing any thing, threatens to accuse or to make a complaint against, or to defame, that or another person; or
 (c) makes any other improper use thereof,

shall be guilty of an offence under this Act and shall, on conviction, be liable to a fine (*multa*) not exceeding twenty-three thousand, two hundred and ninety-three euro and seventy-three cents (€23,293.73) and, in the case of a continuing offence, to a further fine (*multa*) not exceeding four hundred and sixty-five euro and eighty-seven cents (€465.87) for each day during which the offence continues.

36. Without prejudice to any other provision of this Act the Minister may, after consultation with the Authority, make regulations prescribing penalties for criminal offences against any regulations made under this Act, and such regulations may:

- (a) prescribe different fines (*multi*) for different offences;
 (b) prescribe fines (*multi*) calculated in accordance with the duration of the commission of the offence:

Provided that any such regulations as may be made shall not provide for a fine (*multa*) of more than twenty-three thousand and two hundred and ninety euro (23,290) or four hundred and sixty-five euro (465) for each day during which the offence persists.

Use of electronic communications apparatus to make threats.

Added by:
XXX. 2007.33.

Power of Minister to make regulations in relation to criminal offences.

Added by:
VII. 2004.23.
Amended by:
L.N. 425 of 2007.

Proceedings for a criminal offence.
Added by:
VII. 2004.23.
Amended by:
XXX. 2007.34.

Cap. 9.

37. (1) No proceedings for any criminal offence under this Act other than offences under article 27, under article 35(1)(d) or under article 35A shall be instituted without the consent of the Authority or at its request.

(2) Notwithstanding anything contained in the Criminal Code, an appeal to the court of competent jurisdiction shall lie to the prosecution against any judgement delivered in any proceedings with respect to an offence under this Act.

PART VII

SAVING, TRANSITORY AND EXEMPTIONS

Saving.
Added by:
VII. 2004.27.

38. (1) The repeal of articles 43, 44 (including the Schedule), 45, 46 and 47 of this Act as in force on the 1st May, 2004 shall be without prejudice to anything done or still to be done under the said articles.

(2) Any regulations made or kept in force by or under any of the provisions of this Act as in force on the 1st May, 2004 and still in force on the said date shall, until other provision is made under or by virtue of this Act, continue to be in force and have effect.

(3) Any directives, decisions or designations however so described made by the Authority under this Act as in force on the 1st May, 2004 and still in force on the said date shall continue to be in force until revoked or amended by the Authority.

(4) The provisions of article 44 of this Act as in force on the 1st May, 2004 shall continue to apply:

- (i) in respect of anything done at the time when they were in force and in respect of anything consequential, arising out of or related thereto whenever so done; and
- (ii) *mutatis mutandis* in respect of the implementation of this Act or any law or regulation with the purpose of market liberalisation or compliance with the international obligations of Malta with regard to electronic communications services or electronic communications networks.

Review of former obligations for access and interconnection.

Added by:
VII. 2004.27.

S.L. 399.09

S.L. 399.10

S.L. 399.14

S.L. 399.24

S.L. 399.26

S.L. 399.27

39. (1) Notwithstanding anything in this Act or in any regulations made thereunder, an undertaking shall continue to comply with any obligations concerning access and interconnection under this Act as previously entitled as the Telecommunications (Regulation) Act and any regulations made thereunder including under the Internet and Other Data Networks (Service Providers) Regulations, the Telecommunications Services (General) Regulations, the Interconnection (Obligations and Rates) Regulations, the Cable Systems (General) Regulations, the Telecommunications (Unbundled Access to the Local Loop) Regulations, the Telecommunications (Leased Lines) Regulations, applicable to it immediately before the coming into force of this Act until such time as the said regulations are amended or as specific obligations pursuant to a market analysis undertaken by the Authority in accordance with the provisions of this Act, are

imposed on any undertaking designated under article 9 of this Act.

(2) The Authority shall give such notice as it considers reasonable to any party affected by the amendment or withdrawal of obligations referred to in subarticle (1).

40. An undertaking shall continue to comply with any obligations applicable to it under this Act or any regulations made thereunder as in force on the 1 May 2004 and still in force on the said date relating to -

- (a) tariffs for the provision of access to and use of the public telephone access under the Telecommunications Services (General) Regulations; S.L. 399.10
- (b) carrier selection or pre-selection under the Telecommunications Services (General) Regulations; S.L. 399.10
- (c) leased lines imposed under the Telecommunications (Leased Lines) Regulations, S.L. 399.27

until such time as such obligations are amended or withdrawn pursuant to a market analysis undertaken by the Authority in accordance with the provisions of this Act.

41. (1) Any authorisation issued under this Act as previously entitled the Telecommunications (Regulation) Act or any regulations made thereunder as in force on the 1 May 2004 and still in force on the said date shall upon the coming into force of this article cease to have effect. The person holding such an authorisation shall upon such coming into force be deemed to be authorised to provide electronic communications services or to establish, extend or provide electronic communications networks under subtitle 5 to Part II of this Act and under any regulations made under this Act relating to authorisations:

Provided that such a person shall not later than ninety days, after the coming into force of this article notify the Authority in accordance with the provisions of subtitle 5 of Part II of this Act and of any regulations made under this Act relating to authorisations in electronic communications.

(2) Notwithstanding subarticle (1) where the Authority considers that the application of the said subarticle would result in a reduction of rights or extension of obligations on a person holding such an authorisation, the Authority may extend the validity of an authorisation issued under this Act for a period of not more than nine months from the coming into force of this article, provided that it considers that the rights of other persons are not adversely affected thereby.

42. Notwithstanding the repeal of the Telemalta Corporation Act, the provisions of articles 29 to 34 (both inclusive) of that Act shall remain in force and continue to have effect, and shall be deemed always to have remained in force and continued to have effect, with respect to the public officers therein mentioned; and as from the date of the repeal of the said Act, the provisions aforesaid shall have effect as if references in them to Telemalta were

Continuation of certain existing obligations.
Added by:
VII. 2004.27.

Existing authorisations.
Added by:
VII. 2004.27.

Savings.
Amended by:
XIX. 1998.3;
XVIII. 2000.31;
VII. 2004.25, 26.
Cap. 250.

references to the designated company.

Exemption from
the provisions of
this Act.

Added by:

XVIII. 2000.31.

Amended by:

VII. 2004.28;

XXX. 2007.35.

43. (1) Electronic communications networks and, or services of the State established to satisfy the exigencies of defence or public security are exempt from the provisions of this Act.

(2) The Prime Minister may by order published in the Gazette exempt from any of the provisions of this Act and from the provisions of any regulations made thereunder any electronic communications network and, or service belonging to a Government Department or to a body established by law or to a company in which the Government of Malta holds at least ninety per cent of all paid-up share capital and used for its own purposes or exclusively for the purposes of Government and in issuing such an exemption the Prime Minister may also impose conditions thereto as he deems fit.
