

**A BILL
entitled**

An Act to amend various laws relating to communications and to make provision with respect to matters ancillary thereto or connected therewith.

BE IT ENACTED by the President, by and with the advice and consent of the House of Representatives, in this present Parliament assembled, and by the authority of the same, as follows:

1. (1) The short title of this Act is Communication Laws (Amendment) Act, 2004. Title and commencement.

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

PART I

Amendment of the Malta Communications Authority Act

2. (1) This Part amends the Malta Communications Authority Act, and it shall be read and construed as one with the Malta Communications Authority Act, hereinafter in this Part referred to as “the principal Act”. Amendment of the Malta Communications Authority Act, Cap. 418.

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

3. In the long title of the principal Act, the words “telecommunications, data protection,” shall be substituted by the words “electronic communications, certain aspects of data protection in electronic communications, postal services”. Amendment of long and short titles of the principal Act.

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

(a) immediately before the definition of “Authority” there shall be inserted the following new definitions:

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

“Appeals Board” means the Communications Appeals Board established by article 36 of this Act;”;

(b) in the definition of “Authority” immediately after the words “article 3 of this Act” there shall be added the words “and any references in this Act or any other law to the Authority shall, unless the context otherwise requires, be construed as including a reference to any person authorised by the Authority to act for or on its behalf;”;

(c) the definition of “Chief Executive” shall be deleted;

(d) in the definition of “communications”:

(i) for the words “includes telecommunications” there shall be substituted the words “includes electronic communications”;

(ii) immediately after the words “data protection” there shall be added the words “in electronic communications”;

(iii) the words “, internet services,” shall be deleted;

(e) immediately after the definition of “contractor” there shall be inserted the following new definitions:

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

“directive” means a directive issued by the Authority in terms of article 4 of the principal Act;

“Director General” means the Director General appointed under article 5 of the principal Act;”;

(f) for the definition of “financial year” there shall be substituted the following:

“ “financial year” means any period of twelve months ending on the 31st December, so however that the Minister may, after consultation with the Authority, vary such date;”;

(g) after the definition of “Minister” there shall be inserted the following new definition:

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

(h) after the definition of “Public Officer” there shall be inserted the following new definition:

“ “undertaking” means a person providing or authorised to provide communications networks and, or services and, or associated facilities.”.

5. The words “Chief Executive” wherever they occur in the principal Act shall be substituted by the words “Director General”. General substitution in the principal Act.

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

(a) for the marginal note to article 4 there shall be substituted the following:

“Purpose, functions and powers of the Authority”;

(b) paragraph (r) of subarticle (3) thereof shall be renumbered as paragraph (s);

(c) immediately before paragraph (s) of subarticle (3) thereof as renumbered there shall be added the following new paragraph:

“(r) promote the interests of consumers and other users in Malta, particularly those who are disabled or of a pensionable age, especially in respect of the prices charged for, and the quality and variety of the said services;”;

(d) immediately after subarticle (3) thereof, there shall be added the following new subarticles:

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

(5) The Authority shall also have such other functions, responsibilities and powers as are set out by or under this Act or as may be assigned to it by or under any other law including all such powers as are necessary for or incidental to the performance of its functions by or under this Act or any other law. The Authority shall in the carrying out of its functions seek to ensure that the measures taken are proportionate having regard also to the objectives of the Authority.

Issue of directives
by the Authority.

(6) The Authority may issue such directives as it may consider to be necessary for the carrying into effect of or compliance with any of the provisions of this Act, or of any other law which the Authority is entitled to enforce, or any decisions that the Authority may make in accordance with its functions under this Act or any other law and it may amend or revoke such directives.

(7) Any directive issued by the Authority in accordance with this article and any amendment or revocation thereof shall be in writing, state the reasons on which it is based and shall be notified to the person concerned. The Authority may also publish any such directive in such manner as it may consider appropriate in the circumstances due account being taken of the importance of the directive and its impact on the market.

Co-operation with
the competent
authorities
responsible
for competition
issues and consumer
affairs etc.

(8) The Authority shall, where it considers appropriate, consult with the various competent authorities responsible for competition issues and consumer affairs and for such other areas as may impact on the sectors regulated by the Authority on matters of common interest in connection with the application of this Act and of any other law which the Authority is entitled to enforce.

(9) The Authority on the one hand and the competent authorities responsible for competition issues and consumer affairs on the other shall provide each other with the information necessary for the application of the provisions of this Act which information shall be provided within an appropriate timeframe taking into consideration the particular circumstances of the issues involved. In respect of the information exchanged, the receiving authority shall ensure the same level of confidentiality as the originating authority.

(10) Without prejudice to the enforcement powers that it has at law, the Authority may require any person to provide it with any information, including financial information, that the Authority considers necessary for the purpose of ensuring compliance with the provisions of, or decisions or directives made in accordance with this Act or any other law which the Authority is entitled to enforce.

Provision of information.

(11) Any information required by the Authority under subarticle (10) of this article shall be proportionate to the performance of its functions and obligations under this Act and in requiring any information as aforesaid, the Authority shall state why it requires the information requested.

(12) A person who is notified with a requirement under subarticle (10) of this article shall comply promptly with the requirement within the timescales and according to any level of detail as may be required by the Authority:

Provided that any such person shall, in complying with the provisions of this subarticle, state clearly to the Authority if any information provided by him is to be considered as confidential for commercial reasons. In doing so he shall give his reasons to the Authority. It shall be the Authority which shall decide whether the information indicated to it as being confidential should be so treated:

Provided further that the provisions of this subarticle relating to confidentiality shall apply to any information provided to the Authority for whatever reason whether under this Act or any other law the Authority is entitled to enforce.

(13) Any person who fails or refuses to comply with a requirement under subarticle (10) of this article shall commit an infringement of this Act and shall be liable to the imposition of an administrative fine by the Authority not exceeding the

sum of five thousand liri and, or one hundred liri for each day during which failure to comply persists.

Publication of information.

(14) The Authority shall, subject to the protection of any information which it considers confidential, publish from time to time such information as would, in the opinion of the Authority, contribute to an open and competitive market.”.

Amendment of article 30 of the principal Act .

7. In article 30 of the principal Act immediately after the words “functions of the Authority” there shall be added the words “and the Minister may, in compliance with any international obligations of Malta, make any regulations relating to the imposition of any fees, rates or other payments however so described that the Authority may levy and in particular may prescribe the manner and the purpose for their imposition.”.

Renumbering of Part VII and addition of new Parts VIII and IX to the principal Act.

8. Part VII of the principal Act shall be renumbered as Part IX and articles 29 and 30 shall be renumbered as articles 43 and 44 respectively, article 31 shall be deleted and immediately after Part VI of the principal Act there shall be added the following new Part VII and Part VIII:-

“PART VII – ENFORCEMENT AND SANCTIONS

Enforcement powers of the Authority.

29. (1) For the purposes of the exercise by the Authority of any of its functions under the Act or any other law the Authority is entitled to enforce, the Authority may:

(a) enter, at any reasonable time, any premises other than a place of residence, or any other place or any vehicle or vessel where any activity regulated by or under this Act or any other law which the Authority is entitled to enforce, takes place, or in the opinion of the Authority takes place, and search and inspect the premises, place, vehicle or vessel and any books, documents or records found therein,

(b) require any person to produce for inspection and take extracts from any books, documents or records relating to any activities regulated by or under this Act or any other law which the Authority is entitled to enforce, which are under the control of that person and, in the case of information in a non-legible form to reproduce it in a legible form, and to give to the Authority such information as the Authority may reasonably require in relation to any entries in such books, documents or records,

(c) require any person to maintain such books, documents or records for such period as may be reasonable as the Authority directs,

(d) require any person to give to the Authority any information that may be required with regard to any activities regulated by or under this Act or any other law the Authority is entitled to enforce,

(e) make such inspections, tests and measurements of any machinery, apparatus, appliances and other equipment at any place as the Authority may consider necessary.

(2) Any officer of the Authority or any other person duly authorised by the Authority to act on its behalf when exercising a power conferred by this article, shall if requested by any person thereby affected, produce to that person for inspection a certificate issued by the Authority stating that he is duly authorised to act for and on behalf of the Authority.

(3) In the course of the exercise of any of the powers under this article the Authority may request the assistance of the Police.

(4) The Directors and managers, by whatever name designated, or any other persons who are or have been in charge of the operations or activities falling under the supervisory or regulatory functions of the Authority shall assist and shall collaborate with the Authority in order to enable it to discharge its functions, and shall collate and transmit without any undue delay such information and documentation as the Authority may reasonably request from time to time.

(5) Any person who -

(a) obstructs, impedes or assaults an officer of the Authority or any other person duly authorised by the Authority to act on its behalf in the exercise of a power under this article,

(b) fails or refuses to comply with a requirement under this article,

(c) alters, suppresses or destroys any books, documents or records which the person concerned has

been required to produce, or may reasonably expect to be required to produce, or

(d) falsely represents himself to be an officer of the Authority or a person authorised by the Authority to act on its behalf,

shall be guilty of an offence against this Act, and shall on conviction be liable to a fine (multa) not exceeding five thousand liri or to imprisonment for a period not exceeding three months, or to both such fine and imprisonment.

Disclosure of confidential information.

30. (1) Except where otherwise provided by law, a person shall not knowingly disclose confidential information obtained by him while performing the duties of a member, officer or employee of the Authority or of an adviser or consultant to the Authority, unless he is duly authorised by the Authority to do so.

(2) In this article “confidential information” means any information however so described which is considered by the Authority to be confidential and in relation to which the Authority has notified the persons concerned of their duty of non-disclosure.

(3) A person who contravenes this article shall be guilty of an offence against this Act and shall on conviction be liable to a fine (multa) not exceeding one thousand Maltese liri.

(4) Nothing in this article shall prevent the disclosure of any information to the Authority or, by or on behalf of the Authority to the Minister or as may be required at law.

Other sanctions the Authority may impose.

31. (1) Without prejudice to the provisions of articles 32 and 33 of this Act and unless otherwise expressly provided under this Act or any other law which the Authority is entitled to enforce, the Authority may, if it deems appropriate, require any person who commits an infringement of any provisions of the Act or any other law which the Authority is entitled to enforce, to rectify his acts or omissions and to make his submissions thereto within such period not being less than thirty days and subject to such conditions as the Authority may consider reasonable in the circumstances.

(2) If the person concerned remedies the infringement within the period established by the Authority in accordance with subarticle (1) of this article and in writing agrees to abide

with any conditions that the Authority may impose in accordance with subarticle (1) of this article, the Authority shall desist from proceeding any further.

(3) If a person who commits an infringement of any provisions of this Act or any law that the Authority is entitled to enforce, fails to rectify his acts or omissions in accordance with subarticles (1) and (2) of this article, the Authority may:

(a) impose an administrative fine in accordance with the provisions of articles 32 and 33 of this Act, and

(b) in cases which the Authority considers to constitute a repeated and serious infringement, the Authority may withdraw or suspend the right to provide any services or networks regulated by or under this Act or any other law which the Authority is entitled to enforce.

(4) Notwithstanding the provisions of subarticles (1) and (3) of this article and of article 33, where the Authority has prima facie evidence that the infringement -

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

(ii) creates or may create serious economic or operational problems for other providers of communications services or networks, or for consumers,

the Authority may take urgent interim measures to remedy the situation in advance of reaching a final decision including the imposition of administrative fines:

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

(5) The Authority shall give its reasons for any decision taken under this article.

Administrative
infringements.

32. (1) The Authority may impose an administrative fine upon any person who:

(a) infringes any provision of this Act or of any other law which the Authority is entitled to enforce; or

(b) fails to comply with any directive or decision given by the Authority whether under this Act or any other law which the Authority is entitled to enforce:

Provided that in all cases where the Authority imposes an administrative fine in respect of anything done or omitted to be done by any person and such act or omission also constitutes a criminal offence, no proceedings may be taken or continued against the said person in respect of such criminal offence.

(2) An administrative fine imposed under subarticle (1) of this article shall not, unless provided otherwise by or under this Act, exceed one hundred thousand liri for each infringement or failure to comply and, or two thousand liri for each day of infringement or non-compliance as the case may be:

Provided that if the act or omission which constitutes an infringement is committed by an undertaking and has especially significant effects on the market to the detriment of competitors and, or consumers, the stated amount that may be imposed as an administrative fine may be exceeded provided that this is not more than five per cent of the turnover of the undertaking in the calendar year immediately preceding the year when the infringement was committed.

(3) In determining the amount of an administrative fine, regard shall be had in particular to the nature and extent of the infringement, its duration and its impact on the market and on consumers.

(4) The Minister may in regulations made under this Act establish the administrative fines that may be imposed by the Authority for breaches of the said regulations:

Provided that the amount of the fines that may be so prescribed shall not exceed the maximum amounts referred to under subarticle (2) of this article.

(5) Notwithstanding the provisions of any law, no precautionary warrant or order shall be issued by any court restraining the Authority from the exercise of any of the powers conferred upon it by or under this article.

Procedure
when
imposing an
administrative
fine.

33. (1) Before imposing an administrative fine the Authority shall write to the person concerned warning him that an administrative fine may be imposed and informing him of the amount of the fine that may be imposed and the specific reasons for which it may be imposed and granting the person concerned a period of not less than thirty days as the Authority may determine to be appropriate in the circumstances during which period the person concerned may make his submissions to the Authority:

Provided that where the Authority has used the procedure provided for in article 31 of this Act, the notice provided for in the said article and in this subarticle may be given concurrently and the Authority may determine that the period of thirty days referred to above shall commence upon the lapse of any period granted for the remedy of any infringement under article 31 of this Act.

(2) Before deciding whether to impose an administrative fine the Authority shall consider the submissions, if any, made to it under subarticle (1) of this article.

(3) If after the lapse of the period during which submissions may be made in accordance with subarticle (1) of this article the Authority considers that the person concerned has not given any valid proof or reasons to demonstrate that the administrative fine referred to in subarticle (1) of this article should not be imposed, the Authority shall impose an administrative fine in accordance with this Act and shall give notice in writing to the person concerned specifying the nature of the infringement and the amount of the administrative fine due.

(4) The notice as referred to in subarticle (3) of this article shall, without prejudice to the right of appeal under article 38 of this Act, upon the service of a copy thereof by means of a judicial act on the person indicated in the notice, constitute an executive title for all effects and the purposes of Title VII of Part I of Book Second of the Code of Organization and Civil Procedure. Cap. 12.

(5) Notwithstanding the provisions of subarticle (2) of article 256 of the Code of Organization and Civil Procedure, Cap. 12. the executive title referred to in subarticle (4) of this article shall not be enforceable before the lapse of thirty days from the service of the judicial act therein referred to:

Provided that where an appeal against an administrative fine in accordance with article 38 of this Act has been filed, the provisions of article 38 of this Act shall apply.

Administrative
infringements
by bodies
corporate.

34. Where an administrative infringement of any provision of this Act or any other law which the Authority is entitled to enforce is committed by a body corporate and is proved to have been committed with the consent or involvement of or to be attributable to any gross negligence on the part of a person being a director, manager, secretary or other officer however so described of the body corporate or a person who was purporting to act in any such capacity, that person, as well as the body corporate, shall be liable to be proceeded against and punished as if he was responsible for the said infringement .

Prescription
for offences
and
administrative
infringements.

35. The prosecution of a criminal offence or the initiation of proceedings to impose an administrative fine under this Act or under any other law which the Authority is entitled to enforce shall be prescribed by the lapse of two years from the date on which the offence or administrative infringement is alleged to have been committed.

PART VIII

COMMUNICATIONS APPEALS BOARD

Communi-
cations
Appeals
Board.

36. (1) There shall be an Appeals Board, to be known as the Communications Appeals Board which shall have jurisdiction to hear and determine appeals from decisions of the Authority as provided in this Act or in any law or regulations.

(2) The Communications Appeals Board shall be appointed by the Prime Minister, and shall be composed of:

(a) a chairman who shall be an advocate with at least seven years practice, and

(b) two other members who shall be selected by the Chairman of the Appeals Board from amongst panels of persons appointed by the Prime Minister and having such commercial, technical, or financial experience in the fields of electronic communications, postal services and such other areas relating to communications in respect of which the Appeals Board has jurisdiction.

(3) The Chairman and members of the panels of the Appeals Board shall be appointed for a term of three years and shall be eligible for re-appointment.

(4) The Appeals Board shall be independent in the performance of its functions.

(5) The Chairman and members of the Appeals Board may be challenged or abstain for any of the reasons for which a judge may be challenged or abstain in accordance with the Code of Organization and Civil Procedure. In such a case the Prime Minister shall appoint a person, having the qualifications of the chairman or member challenged or abstaining, to sit in substitution.

(6) A member of the House of Representatives or of the European Parliament or of a local council shall be disqualified from being appointed or continuing to be the Chairman or a member of the Appeals Board for as long as he holds that office.

(7) The Chairman or member of the Appeals Board may only be removed from office by the Prime Minister on grounds of gross negligence, conflict of interest, incompetence, or acts or omissions unbecoming a member of the Appeals Board. In doing so the Prime Minister shall lay before the House of Representatives a statement giving the reasons for the removal of the said member.

(8) The Chairman or a member of the Appeals Board shall for a period of one year following the termination for whatever reason of his appointment not engage in any activity which because of conflict of interest would have been incompatible with the exercise of his functions. Any person who acts in breach of this subarticle shall be guilty of an offence against this Act and shall on conviction be liable to a fine (multa) of not more than one thousand liri and shall be barred from being appointed to any similar posts for a period of not less than ten years.

(9) The Prime Minister shall designate a person to serve as secretary to the Appeals Board and who shall serve in such a capacity in accordance with the ethical standards appropriate to his position.

Appeals from decisions other than the imposition of administrative fines of the Authority.
Cap. 81.
Cap. 254.
Cap. 350.
Cap 399.

37. (1) Unless otherwise provided by law an appeal shall lie to the Appeals Board from a decision or a directive of the Authority made under this Act, the Electronic Communications (Regulation) Act, the Utilities and Services (Regulation of Certain Works) Act or the Postal Services Act:

Provided that the Prime Minister may by order in the Gazette extend the jurisdiction of the Appeals Board to:

- (a) any other decisions that the Authority may take under any other law which the Authority is entitled to enforce, and
- (b) any decision taken by or on behalf of Government or by any public authority in relation to or having a substantial bearing on communications.

(2) The right of appeal to the Appeals Board shall be competent to any person aggrieved by the decision:

Provided that in any case, a person making an appeal to the Appeals Board shall also explain his juridical interest in impugning the decision or directive appealed from.

(3) Without prejudice to the provisions of article 38 of this Act:

- (a) An appeal from a decision or directive of the Authority shall be made by application and shall be filed with the secretary of the Appeals Board within thirty days from the date on which the said decision has been notified to the party appealing; and
- (b) The application of appeal shall be notified to the Authority, which shall not later than twenty days from such notification file its reply thereto with the secretary of the Appeals Board.

Appeals against an administrative fine imposed by the Authority.

38. (1) Without prejudice to the provisions of this Part, the procedure to be followed in relation to appeals against administrative fines imposed by the Authority shall be regulated by the provisions of this article.

(2) A person who is notified with a judicial act referred to in subarticle (4) of article 33 of this Act may within thirty days from the date of such notification lodge an appeal before the Appeals Board objecting to the administrative fine so fixed.

(3) The Appeals Board shall not annul an administrative fine as aforesaid unless such fine cannot at law be imposed in the circumstances of the case, or cannot at law be fixed in the amount established by the Authority due account being given to the principle of proportionality.

(4) The Appeals Board shall, without delay, set down the appeal for hearing at an early date, which date shall in no case be later than forty days from the date of the service of the appeal on the Authority.

(5) The appeal, and the notification of the date fixed for hearing, shall be notified to the Authority without delay, and the Authority shall file its reply thereto within twenty days from the date of the notification of the appeal.

(6) The decision of the Appeals Board upon an appeal referred to in subarticle (2) of this article, confirming the imposition of a fine established by the Authority or reducing any such fine, shall upon becoming *res judicata* be deemed to be a decision of the Appeals Board equivalent to a decision of the First Hall of the Civil Court ordering payment by the appellant of the administrative fine as confirmed or reduced.

(7) There shall be a right of appeal to the Court of Appeal to any of the parties to the proceedings before the Appeals Board in accordance with article 41 of this Act.

Decisions of
the Appeals
Board.

39. (1) In determining an appeal the Appeals Board shall take into account the merits of the appeal, and may in whole or in part, confirm or annul the decision appealed from, giving in writing the reasons for its decision and shall cause such decision to be made public and communicated to the parties to the appeal.

(2) Subject to the provisions of article 41 the decisions of the Appeals Board shall be final and binding.

(3) Where the Appeals Board considers that, having regard to its determination of the appeal and all other relevant matters, there are sufficient reasons rendering it equitable to do so, it may, either of its own motion or on application by a consumer being a party to the appeal, order that the whole or part of the costs of any such party appearing before the Appeals Board relating to the engagement of a lawyer and, or of a technical adviser shall be paid to the consumer concerned by any other party to the appeal named in the order.

Procedure of
the Appeals
Board.

40. (1) In the exercise of its functions the Appeals Board may summon any person to appear before it and give evidence and produce documents, and the Chairman of the Appeals Board shall have the power to administer the oath.

(2) The Appeals Board shall endeavour to determine an appeal within one hundred and twenty days from the lapse of the period by when the Authority may file its reply to the aforesaid appeal and in any case shall deliver its final decision not later than sixty days from when the parties declare that they have concluded with their evidence and made their final submissions.

(3) The Appeals Board in order to assist it in the exercise of its functions may appoint independent and impartial experts to advise it on any issue that may be relevant to any appeal lodged before it. In such cases the Appeals Board shall be entitled to make both provisional and final orders in respect of the payment of the costs and fees of such experts by any of the parties to the appeal.

(4) The Appeals Board in the exercise of its functions shall have the same powers as are competent to the First Hall, Civil Court according to law.

(5) The Minister may subject to the provisions of this Act, by regulations prescribe the procedure to be followed before the Appeals Board, and subject thereto and to any other provisions of this Act, the Appeals Board may regulate its own procedure.

(6) The Minister may, with the concurrence of the Minister responsible for finance by regulation, establish any such fees as are considered to be necessary in relation to any proceedings before the Appeals Board.

(7) The Minister may by regulation amend any of the periods stated in subarticle (2) of this article.

Appeal to
the Court of
Appeal.

41. (1) Any party to an appeal to the Appeals Board, including the Authority, who feels aggrieved by a decision of the Appeals Board, may on a question of law appeal to 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 thirty days from the date of the decision of the Appeals Board.

(2) The Minister responsible for justice may by regulation under this subarticle 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.

(3) The Board established under article 29 of the Code of Organization and Civil Procedure may make Rules of Court governing appeals to the Court of Appeal under this article.

Status of decision or directive pending an appeal before the Appeals Board or the Court of Appeal.

42. (1) The decision or the directive of the Authority pending an appeal whether before the Appeals Board or the Court of Appeal, shall stand and shall be adhered to by all the parties to whom the decision or the directive applies.

(2) The Appeals Board or the Court of Appeal as the case may be, where it considers it to be appropriate, may on the application of a party to the appeal, suspend the decision or the directive of the Authority pending the final determination of the appeal. The Appeals Board or the Court of Appeal in deciding to suspend the decision or the directive shall state their reasons for doing so.

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

Addition of new articles 45 and 46 to the principal Act.

“Exemption from liability.

45. The members, officers and employees of the Authority in the performance of their functions under this Act or any other law administered by the Authority, shall not be liable for any loss or damage suffered by any person by reason of anything done or omitted to be done in good faith in the course of the administration of this Act or any other law.

Service of Notice.

46. (1) Where a notice however so described is required to be given by the Authority to any person whether under this Act or under any other law administered by the Authority, the notice shall be addressed to that person and shall be given to the person in any of the following ways:

(a) by delivering it to the person,

(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 Authority considers that 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 paragraph (e) of this article shall not apply to the notification of documents filed before the Appeals Board or any Court.

Proceedings
for debts due
to the
Authority.

47. (1) Where the Authority desires to sue for the recovery of a debt due to the Authority under any law which it is entitled to enforce for any licence or authorisation fee or other similar fee or charge however so described that may be due, the Chairman, Director General or an officer of the Authority duly authorised by the Authority to act on its behalf may make a declaration on oath before the registrar, a judge or a magistrate wherein he states the nature of the debt and the name of the debtor and confirm that it is due.

(2) The declaration referred to in sub-article (1) shall be served upon the debtor by means of a judicial act and it shall have the same effect as a final judgement of the competent court unless the debtor shall, within a period of twenty days from service upon him of the said declaration, oppose the claim by filing an application demanding that the court declare the claim unfounded.

(3) The application filed in terms of sub-article (2) shall be served upon the Authority, which shall be entitled to file a

reply within a period of twenty days. The court shall appoint the application for hearing on a date after the lapse of that period.”.

PART II

Amendments to the Telecommunications (Regulation) Act

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

Amendments to the Telecommunications (Regulation) Act, Cap. 399.

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

11. (1) For the long title of the principal Act there shall be substituted the following:

Amendment of long and short titles of the principal Act.

“AN ACT TO REGULATE ELECTRONIC COMMUNICATIONS.”.

(2) In article 1 of the principal Act for the words “Telecommunications (Regulation) Act” there shall be substituted the words “Electronic Communications (Regulation) Act”.

12. For all the definitions in article 2 of the principal Act there shall be substituted the following:

Amendment of article 2 of the principal Act.

“ “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;

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“Appeals Board” means the Communications Appeals Board established under the Malta Communications Authority Act;

“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;

“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;

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“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;

“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.”.

Amendment of titles of Part II of the principal Act.

13. In the title to Part II of the principal Act, and in sub-title 1 thereof, for the word “Telecommunications” there shall be substituted the words “Electronic Communications”.

Substitution of article 3 of the principal Act.

14. For article 3 of the principal Act there shall be substituted the following:

“Malta Communications Authority. Cap. 418.

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.”.

15. For article 4 of the principal Act there shall be substituted the following: Substitution of article 4 of the principal Act.

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

(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.”.

Deletion of the words of heading of subtitle 2 of Part II of the principal Act.

16. In the heading to subtitle 2 of Part II of the principal Act the words between articles 4 and 5, “2. Authorisation for telecommunications systems or services” shall be deleted, and article 5 shall be read and construed as part of subtitle 1.

Substitution of article 5 of the principal Act.

17. For article 5 of the principal Act there shall be substituted the following:

“Applicability
of the Act.

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.”.

18. Immediately after article 5 of the principal Act, there shall be added the following new subheading to subtitle 2 of Part II:

Addition of new
subheading to
subtitle 2 of Part II
of the principal Act.

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

19. For articles 6 to 26 of the principal Act there shall be substituted the following:-

Substitution of
articles 6 to 26 of
the principal Act.

“Compliance
when
operating a
network or
providing a
service.

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

(2) Failure to comply with subarticle (1) of this article shall constitute an infringement of this Act.

Special
obligations
of providers
of public
communica-
tions
networks.

7. (1) 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:

(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.

(2) Failure to comply with subarticle (1) of this article shall constitute an infringement of this Act.

Special obligations of providers of publicly available electronic communications services.

8. (1) An undertaking authorised by or under this Act to provide a publicly available electronic communications service shall:

(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.

(2) Failure to comply with subarticle (1) of this article shall constitute an infringement of this Act.

Market definition and analysis.

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.

(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 may impose upon such undertakings appropriate regulatory obligations and controls identified in subarticle (2) of this article in accordance with any regulations made under this Act.

Consultation
and
transparency
mechanism.

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 by or under this Act, or any other law, 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.

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.

(8) Any undertaking which commits an infringement of any provisions of this article shall be liable to the imposition of an administrative fine by the Authority not exceeding the sum of ten thousand liri and, or two hundred liri for each day during which failure to comply persists.

Prohibition
of
restrictions.

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.

3. Access and Interconnection

Functions of the Authority with regard to 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.

Prohibition of restrictions.

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.

(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) of this article to any other party, in particular other subsidiaries or partners however so described of the undertaking where such information could provide a competitive advantage.

(7) Any undertaking which commits an infringement of this article shall be liable to the imposition of an administrative fine by the Authority not exceeding the sum of ten thousand liri and, or two hundred liri for each day during which failure to comply persists.

4. Accounting separation and financial reporting

Obligation of undertakings in relation to accounting separation.

15. (1) 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 referred to in paragraph (a) of subarticle (1) of this article 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 one million Maltese Liri or any other such other amount as the Minister may, after consultation with the Authority, by order in the Gazette establish.

(2) Any undertaking which fails to comply with a requirement under this article shall be liable to the imposition of an administrative fine by the Authority not exceeding the sum of ten thousand liri and, or two hundred liri for each day during which failure to observe this article persists.

Financial reporting.
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16. (1) 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 sub-article shall be construed as imposing obligations that are more onerous than those imposed on companies in the Companies Act.

(2) Any undertaking which fails to comply with a requirement under this article shall be liable to the imposition of an administrative fine by the Authority not exceeding the sum of ten thousand liri and, or two hundred liri for each day during which failure to observe this article persists.

5. Authorisations

General
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.

Administrative
charges

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, 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) of this article 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 of the Act.

Authorisation
of electronic
communi-
cations
networks and
services.

19. (1) Subject to subarticle (4) of this article 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) of this article 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) of this article, 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) of this article.

(5) Any person who fails or refuses to comply with a requirement under this article shall be liable to the imposition of an administrative fine by the Authority not exceeding the sum of five thousand liri and, or one hundred liri for each day during which failure to observe this article persists.

(6) The Authority may 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.

Requirement to obtain other authorisations etc. required at law.

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.

6. Obligations of vertically integrated public undertakings

Prohibition of discrimination in one's own favour.

21. (1) 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.

(2) An undertaking which commits an infringement of subarticle (1) of this article shall be liable to the imposition of an administrative fine by the Authority not exceeding the sum of ten thousand liri and, or two hundred liri for each day during which failure to comply persists.

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. (2) A contract referred to in subarticle (1) of this article shall expressly include such information as may 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 be specified in accordance with subarticle (2) of this article.

(4) An undertaking referred to in subarticles (1) or (3) of this article shall, not less than 30 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) of this article may withdraw from his contract with the undertaking, without penalty if he does not accept a proposed modification referred to in subarticle (4) of this article.

Nullity of certain terms and conditions. 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. 24. (1) In the event of a dispute arising between undertakings established in Malta in connection with obligations under the Act, the Authority shall subject to

subarticle (2) of this article, at the request of any party to the dispute, initiate an investigation of the dispute and, as soon as possible and in any case, other than in circumstances which the Authority considers exceptional, within four months from the date on which the dispute was notified to it by a party to the dispute, make a determination to resolve the dispute and ensure compliance with this Act:

Provided that nothing in this article shall be construed as restricting or prohibiting the Authority from undertaking of its own initiative any investigation of any disputes it may become aware of and which the Authority believes ought to be investigated.

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

(3) Where the Authority decides not to initiate an investigation under subarticle (2) of this article, it shall inform the parties of such decision as soon as possible thereafter.

(4) If four months from the date of a decision referred to in subarticle (3) of this article the dispute is not resolved and the party seeking redress has not initiated legal proceedings before the ordinary courts or any other competent adjudicative fora however so described, the Authority shall, at the request of any of the parties to the dispute, initiate an investigation and give a decision in accordance with the provisions of this article.

(5) In giving a decision under this article the Authority shall have regard to the its objectives under article 4 of the Act stated in the Malta Communications Authority Act.

(6) An undertaking to which a decision under this article applies shall, saving the provisions of article 42 of the Malta Communications Authority Act, forthwith comply with that decision. If the undertaking fails to do so, it shall be deemed to have committed an infringement of this article and the Authority may impose an administrative fine of not more than two thousand liri for each day of non-compliance in accordance with the provisions of this Act. The period of non-

compliance shall be deemed to have commenced from the date of notification of the decision of the Authority or from any such other date as may be communicated in the decision which date shall in any case be on or subsequent to the date of notification.

(7) In issuing a decision under this article the Authority shall state the reasons on which it is based, and shall, subject to such requirements of commercial confidentiality as it may deem appropriate, notify the parties to the dispute with a copy of the decision.

(8) The Authority shall publish notice of a decision given under this article and shall indicate where copies of or information regarding the decision may be obtained.

(9) The procedure referred to in this article shall not preclude any party to the dispute from bringing an action before the courts or any other competent adjudicative fora.

(10) The Minister may by regulation vary the periods stated in sub-articles (1) and (4) of this article.

Disputes
involving
consumers.

25. (1) Where a dispute however so described arises between an undertaking and a consumer further to a complaint by a consumer alleging an infringement of the principal Act, any party to such a dispute may refer the dispute to the Authority:

Provided that in making a complaint the consumer must prima facie show that he has been affected by the act or omission of the undertaking giving rise to the complaint.

(2) Upon receipt of any reference as aforesaid, or upon otherwise becoming aware of any such dispute that the Authority believes should be investigated, the Authority shall notify all the parties to the dispute that the matter is being investigated. In doing so the Authority shall regulate its own procedure, which procedure shall, as far as is reasonably possible, be transparent, simple, inexpensive and conducive to a prompt and fair settlement of the dispute, and shall afford all parties to the dispute reasonable opportunity to make their submissions and to produce any relevant information:

Provided that the Authority may decide not to initiate an investigation in accordance with this article where it is

satisfied that other means of resolving the dispute in a timely manner are available to the parties or if legal proceedings in relation to the dispute have been initiated by any party to the dispute.

(3) The Authority in resolving any disputes referred to it under this article, may issue directives to an undertaking requiring that undertaking to comply with any measure the Authority may specify for the resolution of the dispute. Such directives may, having regard to its determination of the dispute and to all other relevant matters, include an order to effect the reimbursement of payments received or to make compensation payments. Such payments may also include the whole or part of the costs of any party relating to the engagement of a lawyer and, or of a technical adviser in relation to any submissions relating to the dispute.

(4) The Authority shall make publicly available any administrative procedures it may from time to time establish in relation to the handling of any disputes referred to it under this article.

(5) The provisions of this article shall be without prejudice to the right of a consumer to have recourse to any other body in resolving any such disputes.

(6) In issuing a decision under this article the Authority shall state the reasons on which it is based, and shall, subject to such requirements of commercial confidentiality as it may deem appropriate, notify the parties to the dispute with a copy of the decision.

(7) The Authority shall publish notice of a decision given under this article and shall indicate where copies of or information regarding the decision may be obtained.

(8) A person may, where the dispute involves undertakings in more than one Member State, request the Authority to co-ordinate its efforts with any relevant regulatory authority in another Member State with a view to bringing about a resolution of the dispute.

Extension of applicability to other laws.

26. The Minister may by order in the Gazette extend the applicability of the procedures established under article 24 and, or article 25 of this Act to any other law which the Authority is entitled to enforce.”.

20. Articles 27 to 32 of the principal Act shall be deleted.

Deletion of articles 27 to 32 of the principal Act.

21. Article 32A of the principal Act shall be renumbered as article 27 thereof and the following heading of Part III shall be inserted immediately before it:

Renumbering of article 32A of the principal Act.

“Part III - Legal Protection of services based on or consisting of conditional access”.

22. Articles 33 to 40 of the principal Act shall be deleted.

Deletion of articles 33 to 40 of the principal Act.

23. Immediately after article regulation 27 as renumbered of the principal Act there shall be added the following new Parts:-

Addition of new Parts IV to VI and articles regulations 28 to 37 in the principal Act.

“Part IV

Radio Frequencies Management

Interpretation. 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. 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. 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) of this article, 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.

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.

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.

Powers of the
Authority
specific to
Radio
frequencies.

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.

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:

(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) 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 one hundred thousand Maltese liri for each offence and two thousand Maltese liri 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;

(r) regulate the obligations including financial obligations of undertakings with regard to legal interception;

(s) prescribe anything that may be prescribed under this Act.

(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 sub-article the Minister shall give his reasons therefor.

Part VI

Criminal Offences

Offences of criminal nature specific to electronic communications.

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 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 ten thousand liri and in the case of a continuing offence for a further fine (multa) not exceeding two hundred liri 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 ten thousand liri 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 ten thousand liri 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 five thousand liri or to imprisonment for a period not exceeding three months, or to both such fine and imprisonment.

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

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 ten thousand liri or two hundred Maltese liri for each day during which the offence persists.

37. (1) No proceedings for any criminal offence under this Act other than offences under article 27 or under paragraph (d) of subarticle (1) of article 35 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.”.

Substitution of heading preceding article 41 of the principal Act.

24. For the heading “Part III – Savings and Transitory Provisions” immediately preceding article 41 of the principal Act there shall be substituted the following:

“PART VII

“Saving, Transitory and Exemptions”.

25. Subarticle (1) of article 41 of the principal Act shall be deleted and subarticle (2) of the said article 41 shall be renumbered as the whole provision of the new article 44.

Renumbering
of article
41 of the
principal
Act.

26. Articles 42 to 44 (including the Schedule) and 45 to 47 of the Act shall be deleted.

Substitution
of articles 42
to 47 of the
principal
Act.

27. Immediately after article 37 of the principal Act there shall be substituted the following:-

Addition of
new articles
38
to 41 of the
principal Act.

“Saving.

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. L.N. 151 of 2000. L.N. 243 of 2000. L.N. 167 of 2001. L.N. 45 of 2003. L.N. 61 of 2003

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, 1999, the Telecommunications Services (General) Regulations 2000, the Interconnection (Obligations and Rates) Regulations, 2000, the Cable Systems (General) Regulations 2001, the Telecommunications (Unbundled Access to the Local Loop) Regulations, 2003, the Telecommunications (Leased Lines) Regulations 2003, 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) of this article.

Continuation of certain existing obligations. L.N. 151 of 2000. L.N.61 of 2003

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, 2000,

(b) carrier selection or pre-selection under the Telecommunications Services (General) Regulations, 2000,

(c) leased lines imposed under the Telecommunications (Leased Lines) Regulations, 2003,

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.

Existing
authorisations.
Cap. 399.

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) of this article 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.”.

28. Article 48 of the principal Act shall be renumbered as article 43 and shall be amended as follows:-

Renumbering and
amendment
of article 48 of the
principal Act.

(a) in subarticle (1) thereof the words “Telecommunications systems and installations” shall be substituted with the words “Electronic communications networks and, or services”;

(b) in subarticle (2) thereof –

(i) the words “any installation or telecommunications system” shall be substituted with the words “any electronic communications network and, or service” ;; and

(ii) after the words “body established by law” there shall be added the words “or to a company in which the Government of Malta holds at least ninety per cent of all paid-up share capital” and after the words “for its own purposes” there shall be added the words “or exclusively for the purposes of Government”.

Part III

Amendment of the Postal Services Act

Amendment of the Postal Services Act, Cap. 254.

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

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

Amendment of article 2 of the principal Act.

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

(a) immediately after the definition of “access points” there shall be added the following new definition:

“Cap. 418. “Appeals Board” means the Communications Appeals Board established under the Malta Communications Authority Act;”;

(b) the definition of “Postal Services Appeals Board” and of “Appeals Board” shall be deleted.

General substitution in the principal Act.

31. The words “Postal Services Appeals Board” wherever they occur in the principal Act shall be substituted by the words “Appeals Board”;

Amendment of article 4 of the principal Act.

32. For article 4 of the principal Act there shall be substituted the following:-

“Appeals. Cap. 418. 4. Unless provided otherwise in this Act or in any other law, an appeal shall lie to the Appeals Board from a decision of the Authority made under this Act or under any regulations made under this Act, and such appeal shall be regulated by the provisions of the Part VIII of the Malta Communications Authority Act.”.

- 33.** Articles 5 and 6 of the principal Act shall be deleted. Deletion of articles 5 and 6 of the principal Act.
- 34.** Subarticle (5) of article 12 of the principal Act shall be deleted. Amendment of article 12 of the principal Act.
- 35.** For article 20 of the principal Act there shall be substituted the following:- Substitution of article 20 of the principal Act.
- “20. The services reserved for the universal services provider designated in accordance with this Act, shall be those established in accordance with the Fourth Schedule. The Minister may, after consulting the Authority, amend by legal notice in the Gazette the Fourth Schedule in order to comply with the international obligations of Malta.”.
- 36.** In article 23 of the principal Act for the words “by notice in the Gazette ” there shall be substituted the words “by legal notice”. Amendment of article 23 of the principal Act.
- 37.** Immediately after the Third Schedule to the principal Act there shall be added the following new schedule: Addition of new Fourth Schedule to the principal Act.

“FOURTH SCHEDULE

(Article 20)

Reserved Services

1. The services which shall be reserved for the universal services provider designated in accordance with this Act are the clearance, sorting, transport and delivery of items of inland correspondence, cross-border and direct mail, whether by accelerated delivery or not, within both of the following weight and price limits –

(a) the weight limit shall be -

- (i) from the 1st May, 2004, 100 grams, and
- (ii) from the 1st January, 2006, 50 grams;

(b) these weights limits do not apply –

- (i) from the 1st May, 2004, if the price is equal to or more than, three times, and

(ii) from the 1st January, 2006, if the price is equal to or more than two and a half times,

the public tariff for an item of correspondence in the first weight step of the fastest category.

2. The weight or price restrictions referred to in this Schedule shall not apply with regard to a free postal service for the blind or partially sighted persons that may be provided by the universal provider.

3. Document exchange shall not be reserved.”.

PART IV

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

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

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

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

Amendment of article 2 of the principal Act.

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

(a) for the definition of “electrical power and telecommunications systems” there shall be substituted the following:

“ “electrical power and electronic communications networks” includes any electrical power or communication line or instrument however so described used for the supply of power or for electronic communications;”;

(b) after the definition of “electrical power and electronic communications networks” there shall be inserted the following new definitions -

“ “electronic communications networks” and “electronic communications service” shall respectively have the same

meanings as under the Electronic Communications (Regulation) Act;”;

(c) paragraph (b) in the definition of the word “Regulator” shall be substituted with the following new paragraph –

“Cap. 418. (b) in the case of works in connection with any electronic communications service and, or electronic communications networks, the Malta Communications Authority as established under the Malta Communications Authority Act;”;

(d) the definitions of “telecommunications” and “telecommunication service” shall be deleted.

40. In article 3 of the principal Act for the words “telecommunications systems” there shall be substituted the words “electronic communications networks”. Amendment of article 3 of the principal Act.

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

(a) the words “telecommunication service” wherever they occur in the article shall be substituted with the words “electronic communications service”;

(b) in subarticle (2) thereof, for the words “may also order” there shall be substituted the words “may, after consultation with the Malta Communications Authority, also order”;

(c) immediately at the end of subarticle (2) thereof, there shall be added the following proviso:

“Provided that the Malta Transport Authority shall before issuing an order under this subarticle, afford a reasonable opportunity to all interested parties to express their views.”;

(d) in subarticle (3), the first proviso thereto shall be deleted and in the second proviso thereto for the words “provided further that” there shall be substituted the words “provided that”;

(e) in sub-article (6) thereof, for the words from “The Regulator shall, after examining” to the words “the charges due to the said recipient.” there shall be substituted the words “The Regulator shall, after examining the facts and representations placed before him and such other information as he may require, determine the charges due to the recipient of an order made under subarticle (2) of this article:

Provided that where the reference is made by a provider of an electronic communications service, in relation to any works concerning such service, the Regulator shall apply the provisions of the Electronic Communications (Regulation) Act on dispute resolution.”;

(f) after subarticle (9) thereof, there shall be added the following new subarticles:

“(10) The Malta Transport Authority in the exercise of its functions under this article in so far as these relate to any works related to electronic communications, shall :

(a) act on the basis of transparent and publicly available procedures, applied without discrimination and without delay;

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

(c) give reasons for its decisions:

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

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

(11) A person providing electronic communications networks and, or services or associated facilities who is aggrieved by any decision taken under this article by the Malta

Transport Authority or by the Regulator concerning any works relating to electronic communications, may, after having exhausted the remedy provided for in subarticles (5) and (6) of this article where applicable, appeal to the Communications Appeals Board established under the Malta Communications Authority Act:

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

Provided further that the Malta Communications Authority shall also be notified with any appeal filed under this subarticle and shall be entitled to make submissions thereon.

The provisions of Part VIII of the Malta Communications Authority Act, relating to the hearing of appeals by the Communications Appeals Board from decisions of the Malta Communications Authority shall apply *mutatis mutandis* to appeals filed under this article.”. Cap. 418.

PART V

Amendment of the Malta Maritime Authority Act

42. (1) This Part amends the Malta Maritime Authority Act, and it shall be read and construed as one with the Malta Maritime Authority Act, hereinafter in this Part referred to as “the principal Act”. Amendment of the Malta Maritime Authority Act, Cap. 352.

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

43. Article 28 of the principal Act shall be amended as follows: Amendment of article 28 of the principal Act

(a) subarticle (2) thereof shall be renumbered as subarticle (3);

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

“(2) The Minister, after consultation with the Authority and the Malta Communications Authority, may make

regulations on any aspect relating to the use of radiocommunications by merchant ships.”.

PART VI

Amendment of the Electronic Commerce Act

Amendment of the Electronic Commerce Act, Cap. 426.

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

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

Amendment of article 4 of the principal Act.

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

(a) subarticle (1) thereof shall be substituted with the following:

“(1) Unless otherwise prescribed, the provisions of articles 5 to 15 shall not apply to those activities or areas as are listed in the Fifth Schedule. The Minister may after consultation with the competent authority, by notice in the Gazette amend the Fifth Schedule.”; and

(b) in subarticle (2) thereof the words “after consultation with the Minister as in the Minister’s opinion” shall be substituted with the words “after consultation with that Minister as in his opinion”.

Amendment of article 25 of the principal Act.

46. After paragraph (g) of subarticle (1) of article 25 of the principal Act there shall be added the following new paragraph:-

“(h) the compliance with any international obligation entered into by Government in relation to any aspect of electronic commerce regulated by or under this Act.”.

Addition of Fifth Schedule to the principal Act.

47. After the Fourth Schedule to the principal Act there shall be added the following:

“FIFTH SCHEDULE

(Article 4)

Activities or areas listed in accordance with article 4

(a) the field of taxation;

(b) matters in relation to information society services covered by any laws relating to data protection including the Data Protection Act, the Processing of Personal Data (Telecommunications) Regulations, 2003 and the Telecommunications (Personal Data and Protection of Privacy) Regulations, 2003;

(c) questions in relation to agreements or practices governed by competition law;

(d) the following activities of information society services:

i) the activities of notaries or equivalent professions to the extent that they involve a direct and specific connection with the exercise of public authority,

ii) the representation of a client and defence of his interests before the courts,

iii) gambling activities which involve wagering a stake with monetary value in games of chance, including lotteries and betting transactions;

(e) contracts that create or transfer rights over immovable property other than leasing rights;

(f) contracts of suretyship granted and on collateral security furnished by persons acting for purposes outside their trade, business or profession;

(g) the law governing the creation, execution, amendment, variation or revocation of:

i) a will or any other testamentary instrument;

ii) a trust; or

iii) a power of attorney;

(h) any law governing the making of an affidavit or a solemn declaration, or requiring or permitting the use of one for any purpose;

(i) the rules, practices or procedures of a court or tribunal however so described;

(j) any law relating to the giving of evidence in criminal proceedings;

(m) any law relating to the protection of public health or consumer interests in so far as this protection does not restrict the freedom to provide information society services.”

PART VII

Amendment of the Wireless Telegraphy Ordinance

Amendment of the Wireless Telegraphy Ordinance, Cap. 49.

48. (1) This Part amends the Wireless Telegraphy Ordinance, and it shall be read and construed as one with the Wireless Telegraphy Ordinance, hereinafter in this Part referred to as “the principal law”.

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

Amendment of long and short titles of the principal law.

49. (1) The short title of the principal Law shall be deleted and substituted by the words the “Radiocommunications Act”.

(2) The long title of the principal Law shall be deleted and substituted with the following:

“An Act to regulate radiocommunications.”.

(3) In article 1 of the principal Law for the words “Wireless Telegraphy Ordinance” there shall be substituted the words “Radiocommunications Act”.

Substitution of certain words in the principal law.

50. Unless otherwise provided in this Part the following words wherever they occur in the principal Law shall be substituted as follows:

(a) the word “Ordinance” with the word “Act”;

(b) the words “wireless telegraphy” or “wireless telegraph” with the word “radiocommunications”.

51. In article 2 of the principal Law the definition of “Minister” shall be substituted with the following: Amendment of article 2 of the principal Law.

“ “Minister” means the Minister responsible for communications and to the extent of any delegation made in terms of article 2A includes the Malta Communications Authority or any body established by law so delegated in terms of the said article.”.

52. The following new article 2A shall be added after article 2 of the principal Law: Addition of new article 2A to the principal Law.

“Delegation of powers by Minister. 2A. (1) The Minister may by order in the Gazette delegate any of his powers or functions under this Act, other than the power to make regulations, to the Malta Communications Authority or to any other body established by law or to a Government agency and in making any such delegation the Minister may delegate different powers and functions to different bodies as stated above:

Provided that in delegating any such powers and, or functions the Minister may specify the purpose and limits, if any, of such delegation.

(2) The Minister shall be entitled to revoke or vary any delegation made in terms of subarticle (1) by order in the Gazette.”.

53. In article 3(1) of the principal law the words “Provided that no licence shall be required for sound only broadcast receivers.” shall be substituted with the following: Amendment of article 3 of the principal Law.

“Provided that no licence shall be required for sound only broadcast receivers:

Provided further that the Minister may, after consultation with the Malta Communications Authority, by order in the Gazette exempt certain categories of apparatus from the requirements of this article.”.

54. Article 6 of the principal Law shall be amended as follows: Amendment of article 6 of the principal Law.

(a) subarticle (1) thereof shall be amended as follows:

(i) the numeral (1) shall be deleted;

(ii) the words “one thousand liri” shall be substituted with the words “two thousand liri”;

(iii) the words “two thousand liri” shall be substituted with the words “four thousand liri”;

(iv) the proviso thereto shall be substituted with the following new proviso:

“Provided that notwithstanding the above provisions, the Minister may make regulations in relation to any procedures for the out-of-court settlement of disputes that may be adopted, including any agreement in writing that may be entered into with a person accused of an offence under this article, and any agreement for the payment of a fine in lieu of prosecution for an offence under this Act.”; and

(b) subarticles (2) and (3) thereof shall be deleted.

Amendment of article 7 of the principal Law

55. In article 7 of the principal law the definition of “wireless telegraphy inspector” shall be substituted with the following new definition:

““maritime radiocommunications inspector” means an officer appointed by the Minister for the purposes of this Part of the Act, and any references to inspector in this Part shall be construed as referring to any such inspector.”.

Amendment of article 8 of the principal Law

56. In article 8 of the principal Law the words “shall be provided with a wireless telegraph installation and a licence to keep and use the same, and shall maintain a wireless telegraph service” shall be substituted with the words “shall be provided with a radiocommunications installation being a Global Maritime Distress Safety System (GMDSS) or such other radiocommunications installation as the Minister may prescribe in respect of any category of ships and a licence to keep and use the same, and shall maintain a radiocommunications service”.

Amendment of article 10 of the principal Law

57. In subarticle (1) of article 10 of the principal Law the words “a wireless telegraph installation” shall be substituted with the words “a radiocommunications installation”.

Addition of new Part IV to the principal law

58. After article 18 of the principal Law there shall be added the following new Part:

“PART IV

Miscellaneous

Power to
make
regulations

19. The Minister may make regulations for the better carrying out of any of the provisions of this Act and without prejudice to the generality of the aforesaid power such regulations may in particular provide for:

(a) the manner in which radiocommunications apparatus is to be installed, operated, maintained, protected or controlled;

(b) the technical standards or specifications to be observed with respect to radiocommunications apparatus; and

(c) any matter that may be required for the purpose of complying with any international obligations of Malta relating to radiocommunications including those relating to standards in Malta.

20. The Prime Minister may by order in the Gazette exempt from the provisions of this Act any radiocommunications apparatus used by the State to satisfy the exigencies of defence, public security or civil protection requirements.”.

59. The Schedule to the principal Law shall be amended as follows:

Amendment of the
Schedule to the
principal Law

(a) the words “Wireless Telegraphy (Broadcast Licence Charges) Regulations, 1962” wherever they occur shall be substituted with the words “Radiocommunications (Broadcast Licence Charges) Regulations, 1962”;

(b) the words “by the Hotels and Catering Establishments Board” wherever they occur in the First Schedule thereto shall be substituted with the words “Malta Tourism Authority”.

Objects and Reasons

The main object of the the Bill is to amend various laws relating to the communications sector including the Telecommunications (Regulation) Act, and the Malta Communications Authority Act and to provide for matters ancillary to and consequential thereto.