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I assent.

(L.S.)

GEORGE VELLA
President

27th July, 2021

ACT No. LII of 2021

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:

Short title and commencement.

1. (1) The short title of this Act is the Communications Laws (Amendment No. 2) Act, 2021.

(2) Unless otherwise provided in this Act, 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.

Scope.

(3) The scope of this Act is to amend various laws relating to the communications sectors so as to transpose certain provisions of Directive (EU) 2018/1972 establishing the European Electronic Communications Code and to address other matters concerning other sectors regulated by the Malta Communications Authority.

PART I
AMENDMENTS TO THE UTILITIES AND SERVICES
(REGULATION OF CERTAIN WORKS) ACT

2. (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".

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

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

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

Amendment of article 2 of the principal Act.

(a) immediately after the definition "access point" there shall be added the following new definitions:

" "associated facilities" means associated services, physical infrastructures and other facilities or elements associated with a network or a utility service, which enable or support the provision of services through that network or service, or have the potential to do so, and include buildings or entries to buildings, building wiring, antennae, towers and other supporting constructions, ducts, conduits, masts, manholes and cabinets;

"associated service" means a service associated with a network or a utility service which enables or supports the provision, self-provision or automated-provision of services through that network or service, or has the potential to do so, and includes number translation or systems offering equivalent functionality, conditional access systems and electronic programme guides (EPGs) as well as other services such as identity, location and presence service;"

(b) immediately after the definition "energy" there shall be added the following new definition:

" "facilities" includes the placing of cables and wires or other works carried out either below, above, by the side of or in any building, entry to or common parts of any building or tenement and any trenches, pits, poles, stays, brackets and all other accessories essential to the proper working of the networks to be cut, placed, erected in or affixed to or within any building, entry to or

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common area of any building or any tenement however so described;"

(c) in the definition "high-speed electronic communications network" the words "may by notice in the Gazette vary such speeds;" shall be substituted by the words "may by notice in the Gazette amend this definition to increase such speeds;"

(d) in the definition "in-building physical infrastructure" the words "end-user's location" shall be substituted by the words "location of the end-user";

(e) in the definition "major renovation works" the words "end-user's location" shall be substituted by the words "location of the end-user"; and

(f) immediately after the definition "network operator" there shall be added the following new definition:

"network termination point" unless the context otherwise requires, has the same meaning as defined under article 2 of the Electronic Communications (Regulation) Act;"

Cap. 399.

Substitution of article 4 of the principal Act.

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

"4. (1) For the purposes of this Act, it shall be lawful for the competent infrastructure regulator, either of its own initiative or on the application of a network operator made in accordance with this Part, to order the installation of facilities on, over or under public or private property. Any such order shall be notified by the aforesaid regulator to the owner of the said tenement at least ten days prior to the carrying out of any of the works aforesaid.

(2) The competent infrastructure regulator shall consider and decide an application by a network operator for the granting of rights to install facilities on, over or under public or private property in accordance with the applicable provisions of this Part.

(3) Where public or local authorities retain ownership or control of undertakings providing any utility services and, or networks, there shall be in place an effective structural separation of the function responsible for granting the rights referred to in sub-article (2) from the activities associated with

ownership or control."

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

Amendment of
article 4A of the
principal Act.

(a) sub-articles (1) and (2) thereof shall be substituted by the following:

"(1) Where a network operator has exercised the right under national law to install facilities on, over or under public or private property, or has taken advantage of a procedure under national law for the expropriation or use of property, the competent infrastructure regulator may order the collocation, use or sharing of network elements and, or facilities on, over or under public or private property in relation to any cables, wires, physical infrastructure or associated facilities or other accessories, however so described, used or to be used for the provision of any utilities by a provider of any such utilities in any buildings, common areas, entries to buildings, trenches, pits, ducts, conduits, manholes, cabinets or on any poles, masts, antennae, towers or other supporting constructions, stays or brackets, cut, placed, erected or affixed by another provider of any such utilities.

(2) An order under sub-article (1) may be issued only in those specific areas where the competent infrastructure regulator considers that the issue of such an order is necessary to protect the environment, public health, public security or to meet town planning and country objectives. In doing so the competent infrastructure regulator may also:

(a) order the taking of such measures as it may consider necessary to facilitate the coordination of public works; and

(b) provide for rules of apportioning the costs of facility or property sharing.";

(b) sub-articles (3) and (4) thereof shall be renumbered as sub-articles (4) and (5) and immediately after sub-article (2) thereof there shall be added the following new sub-article:

"(3) An order under sub-article (1) may be issued by the competent infrastructure regulator acting of its own initiative or following the written request of an undertaking providing an utility service or network, or of

a competent utility regulator who considers the issue of such an order necessary for the provision of a utility service. Before deciding whether to issue such an order, the competent infrastructure regulator shall conduct a public consultation during which all interested parties, including where applicable the competent utility regulator or regulators as the case may be, are afforded such reasonable opportunity as the competent infrastructure regulator considers appropriate in the circumstances, to express their views in writing."; and

(c) in sub-article (4) thereof, as renumbered, the words "Provided that the competent infrastructure regulator shall before issuing any such order afford such reasonable opportunity as it may consider appropriate in the circumstances to all interested persons to express their views in writing." shall be substituted by the words "Provided that no such order shall be issued if it relates to a dispute lodged before the Dispute Resolution Board under this Act, or to an appeal before the competent appellate adjudicative forum contesting a final decision issued by that Board on any such dispute lodged before it.".

Substitution of article 4D of the principal Act.

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

"4D. (1) The competent infrastructure regulator in the exercise of its functions under this Act shall:

(a) act on the basis of simple, efficient, transparent and publicly available procedures, applied without discrimination and without delay, and shall in any case make a decision within six months from the date of an application made in accordance with the provisions of this Part, except in the case of expropriation;

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

(c) give reasons for its decisions:

Provided that the competent infrastructure regulator shall, in relation to amendments that it may consider making to any rights, conditions and procedures relating to works carried out in accordance with this Part, ensure that any amendment is only made in objectively

justified cases and in a proportionate manner. Before making any such amendment, the competent infrastructure regulator shall give notice in such manner as it considers appropriate of its intention, inviting interested parties, including users and consumers, to make representations on the proposed amendments within a period of not less than thirty days as may be specified in the notice. The competent infrastructure regulator may in those circumstances which it considers to be exceptional, shorten such period:

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

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

(3) The competent infrastructure regulator may require any person to provide it with any information which it considers to be necessary for the performance of its tasks under this Part."

7. In article 4E of the principal Act the words "A person or a competent utility regulator aggrieved by any regulatory decision" shall be substituted by the words "Unless provided otherwise in this Act, a person or a competent utility regulator aggrieved by any regulatory decision".

Amendment of article 4E of the principal Act.

8. Part IV and Part V of the principal Act shall be renumbered as Part V and Part VI and immediately after article 21 of the principal Act there shall be added the following new heading:

Addition of a new heading to the principal Act.

**"PART IV
Utilities Services Advisory Committee".**

9. Immediately after sub-article (4) of article 25 of the principal Act there shall be added the following new sub-articles:

Amendment of article 25 of the principal Act

"(5) A party in filing a dispute before the Disputes Resolution Board shall ensure that the application submitting the dispute to the Board contains the following:

(a) a clear and correct statement of the subject-

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matter and the cause or causes giving rise to the dispute;

(b) a clear and detailed statement of the facts of which the party filing the dispute may be aware of;

(c) a copy of all the relevant documentation in support of the dispute being made; and

(d) the remedy being requested from the Disputes Resolution Board.

(6) The Disputes Resolution Board shall within two working days of receipt of the application submitting the dispute, notify the party against whom the dispute has been made, with a copy of the application, giving the said party such time as the Board may consider reasonable to file a written response, which time shall not in any case exceed twenty days.

(7) A party in replying to a dispute made against it shall in the first instance state whether it is contesting some or all of the claims stated in the application. If the said party is contesting some or all of the claims, it shall then submit a written response to the Disputes Resolution Board which shall include the following:

(a) any such pleas as would be taken to be waived if not raised before the contestation of the dispute;

(b) a clear and correct statement of the pleas on the merits of the claims in dispute;

(c) a clear and detailed statement of facts of which the party replying to the dispute is aware of, denying, admitting or explaining the circumstances of fact set out in the dispute; and

(d) a copy of any relevant documentation in support of its response:

Provided that the Dispute Resolution Board shall within three working days of receipt of this response notify the party making the dispute with the same."

Addition of
new article 32A
to the principal
Act.

10. After article 32 of the principal Act there shall be added the

following new article:

"Time frame by which a dispute must be submitted.

32A. A party which intends to refer a dispute to the Dispute Resolution Board in accordance with this Act or any other law, under which a dispute may be referred to the aforesaid Board, shall submit its dispute to the Board within one year from when the cause giving rise to the dispute arose. Failure to do so within such a period, shall render the reference of any such dispute to the Board null and void."

11. In article 39 of the principal Act the words "The Minister may" shall be substituted by the words "The Minister responsible for infrastructure, may".

Amendment of article 39 of the principal Act.

**PART II
AMENDMENTS TO THE ELECTRONIC
COMMUNICATIONS (REGULATION) ACT**

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

Amendments to the Electronic Communications (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.

13. In the principal Act the following words, wherever they occur, shall be substituted as follows:

General amendment to the principal Act.

(a) in the Maltese version of the principal Act, the word "dħul" with the word "aċċess";

(b) the words "disabled end-user" with the words "end-user with disability"; and

(c) the words "radio frequencies" with the words "radio spectrum".

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

Amendment of article 2 of the principal Act.

(a) the definition "access" shall be substituted by the following:

" "access" means the making available of facilities and, or services, to another undertaking, under defined

conditions, on either an exclusive or a non-exclusive basis, for the purpose of providing electronic communications services including when they are used for the delivery of information society services or broadcast content services. It covers, *inter alia*, access to:

(a) 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);

(b) physical infrastructure including buildings, ducts and masts;

(c) relevant software systems including operational support systems;

(d) information systems or databases for pre-ordering, provisioning, ordering, maintaining and repair requests, and billing;

(e) number translation or systems offering equivalent functionality;

(f) fixed and mobile networks, in particular for roaming; and

(g) conditional access systems for digital television services and access to virtual network services;"

(b) the definition "Access Directive" shall be deleted;

(c) the definition "associated services" shall be substituted by the following:

" "associated service" means a service associated with an electronic communications network and, or an electronic communications service which enables and, or supports the provision, self-provision or automated-provision of services through that network and, or service, or has the potential to do so and includes number translation or systems offering equivalent functionality, conditional access systems and electronic programme guides (EPGs), as well as other services such as identity, location and presence service;"

(d) the definitions "Authorisation Directive" and "authorised undertaking" shall be deleted;

(e) the definition "BEREC" shall be substituted by the following:

" "BEREC" means the Body of European Regulators for Electronic Communications established by Regulation (EU) 2018/1071 of the European Parliament and of the Council of 11 December 2018 establishing the Body of European Regulators for Electronic Communications (BEREC) and the Agency for Support for BEREC (BEREC Office);";

(f) the definition "call" shall be deleted;

(g) in the definition "conditional access system" the words "means any technical measure, and, or arrangement whereby access" shall be substituted by the words "means any technical measure, authentication system and, or arrangement whereby access";

(h) in the definition "consumer" the words "business or profession;" shall be substituted by the words "business, craft or profession;";

(i) immediately after the definition "consumer" there shall be added the following new definition:

" "the Council" means the Council of the European Union;";

(j) immediately after the definition "decision" there shall be added the following new definitions:

" "Decision No. 676/2002/EC" means Decision No. 676/2002/EC of the European Parliament and of the Council of 7 March 2002 on a regulatory framework for radio spectrum policy in the European Community (Radio Spectrum Decision);

"Directive 2008/63/EC" means Directive 2008/63/EC of 20 June 2008 on competition in the markets in telecommunications terminal equipment;

"Electronic Communications Code" means the Directive (EU) 2018/1972 of the European Parliament and of the Council establishing the European Electronic

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Communications Code;";

(k) the definitions "Directive on Privacy and Electronic Communications" and "disabled end-users" shall be deleted;

(l) the definition "electronic communications network" shall be substituted by the following:

" "electronic communications network" means transmission systems, whether or not based on a permanent infrastructure or centralised administration capacity, and, where applicable, switching or routing equipment and other resources, including network elements which are not active, which permit the conveyance of signals by wire, by radio, by optical or by other electromagnetic means, including satellite networks, fixed (circuit-switched and packet-switched, including Internet) and mobile 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;";

(m) the definition "electronic communications service" shall be substituted by the following:

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" "electronic communications service" means a service normally provided for remuneration through electronic communications networks, which encompasses, with the exception of services providing or exercising editorial control over, content transmitted using electronic communications networks and services, the following types of services:

(a) "internet access service" as defined in point (2) of the second paragraph of Article 2 of Regulation (EU) 2015/2120;

(b) interpersonal communications service; and

(c) services consisting wholly or mainly in the conveyance of signals such as transmission services used for the provision of machine-to-machine services and for broadcasting;";

(n) immediately after the definition "electronic communications service" there shall be added the following new

definitions:

" "emergency communication" means communications by means of interpersonal communications services between an end-user and the PSAP with the goal to request and receive emergency relief from emergency services;

"emergency service" means a service, recognized as such by the Government, that provides immediate and rapid assistance in situations where there is, in particular, a direct risk to life or limb, to individual or public health or safety, to private or public property, or to the environment, in accordance with national law;"

(o) in the definition "end-user" the words "public communications networks" shall be substituted by the words "public electronic communications networks";

(p) immediately after the definition "end-user" there shall be added the following new definitions:

" "end-users with disabilities" means persons with disabilities as defined in the Equal Opportunities (Persons with Disability) Act, whose special needs as end-users are either due to a disability or related to ageing; Cap. 413.

"Frequency Plan" means the National Frequency Allocation Plan as adopted by the Authority and published in accordance with the provisions of this Act;"

(q) the definitions "European Electronic Communications Directives", "exclusive rights", and "Framework Directive" shall be deleted;

(r) immediately after the definition "harmful interference" there shall be added the following new definition:

" "harmonised radio spectrum" means radio spectrum for which harmonised conditions relating to its availability and efficient use have been established by way of technical implementing measures in accordance with Article 4 of EU Decision No. 676/2002/EC (Radio Spectrum Decision);" ;

(s) the definition "interconnection" shall be substituted by the following:

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" "interconnection" means a specific type of access implemented between public network operators by means of the physical and logical linking of public electronic 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 where such services are provided by the parties involved or other parties who have access to the network;"

(t) immediately after the definition "interconnection" there shall be added the following new definition:

" "interpersonal communications service" means a service normally provided for remuneration that enables direct interpersonal and interactive exchange of information *via* electronic communications networks between a finite number of persons, whereby the persons initiating or participating in the communication determine its recipient(s), and does not include services which enable interpersonal and interactive communication merely as a minor ancillary feature that is intrinsically linked to another service;"

(u) the definition "local loop" shall be substituted by the following:

" "local loop" means the physical path used by electronic communications signals connecting the network termination point to a distribution frame or equivalent facility in the fixed public electronic communications network;"

(v) the definition "network termination point" shall be substituted by the following:

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

(w) immediately after the definition "network termination point" there shall be added the following new definition:

" "number-based interpersonal communications service" means an interpersonal communications service which connects with publicly assigned numbering resources, namely a number or numbers in national or international numbering plans, or which enables communication with a number or numbers in national or international numbering plans:

Provided that the mere use of a number as an identifier should not be considered to be equivalent to the use of a number to connect with publicly assigned numbers and should therefore, in itself, not be considered to be sufficient to qualify a service as a number-based interpersonal communication service;"

(x) in the definition "operator" the words "a public communications network" shall be substituted by the words "a public electronic communications network";

(y) the definition "provision of an electronic communications network" shall be deleted;

(z) in the definition "public communications network" the words "public communications network" shall be substituted by the words "public electronic communications network";

(aa) the definition "public pay telephone" shall be deleted;

(bb) immediately after the definition "public electronic communications network" there shall be added the following new definition:

" "public safety answering point" or "PSAP" means a physical location where an emergency communication is first received under the responsibility of a public authority or a private organisation recognized by the Government;"

(cc) the definition "publicly available telephone service" shall be deleted;

(dd) immediately after the definition "publicly available electronic communications service" there shall be added the following new definitions:

" "radio spectrum allocation" means the designation of a given radio spectrum band for use by one or more types of radio communications services, where

appropriate, under specified conditions;

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

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

"RSPG" means the Radio Spectrum Policy Group established by the European Commission Decision of 11 June 2019 setting up the Radio Spectrum Policy Group;"

(ee) immediately after the definition "satellite earth station network" there shall be added the following new definitions:

" "security of networks and services" means the ability of electronic communications networks and services to resist, at a given level of confidence, any action that compromises the availability, authenticity, integrity or confidentiality of those networks and services, of stored or transmitted or processed data, or of the related services offered by, or accessible through, those electronic communications networks or services;

"shared use of radio spectrum" means access by two or more users to use the same radio spectrum bands under a defined sharing arrangement, authorised on the basis of a general authorization, individual rights of use for radio spectrum or a combination thereof, including regulatory approaches such as licensed shared access aiming to facilitate the shared use of a radio spectrum band, subject to a binding agreement of all parties involved, in accordance with sharing rules as included in their rights of use for radio spectrum in order to guarantee to all users predictable and reliable sharing arrangements, and without prejudice to the application of competition law;"

(ff) in the definition "significant market power" the words "significant market power" shall be substituted by the words "significant market power" or "SMP";

(gg) the definitions "spectrum allocation" and "subscriber" shall be deleted;

(hh) immediately after the definition "special rights" there shall be added the following new definition:

" "terminal equipment" means terminal equipment as defined in point (1) of Article 1 of EU Commission Directive 2008/63/EC;"

(ii) the definition "Universal Service Directive" shall be deleted;

(jj) immediately after the definition "user" there shall be added the following new definitions:

" "very high capacity network" means either an electronic communications network which consists wholly of optical fibre elements at least up to the distribution point at the serving location, or an electronic communications network which is capable of delivering, under usual peak-time conditions, similar network performance in terms of available downlink and uplink bandwidth, resilience, error-related parameters, and latency and its variation:

Provided that network performance can be considered similar regardless of whether the end-user experience varies due to the inherently different characteristics of the medium by which the network ultimately connects with the network termination point; and

"voice communications service" means a publicly available electronic communications service which uses specifically assigned numbering resources from the national numbering plan for originating and receiving, directly or indirectly, national calls or national and international calls through a number or numbers in a national or international numbering plan. "Voice communications service" is a subset of "number-based interpersonal communications service." "; and

(kk) the definition "wide-screen television service" shall

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be deleted.

Amendment of article 3 of the principal Act.

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

(a) sub-articles (2) and (3) thereof shall be substituted by the following:

"(2) The Authority shall have a separate annual budget which it shall implement autonomously, which budget shall be made public. The Authority shall be afforded adequate financial and human resources to carry out its functions under this Act and under any other applicable laws relating to electronic communications which the Authority is entitled to enforce, including such resources to enable the Authority to actively participate in and contribute to BEREC and to any functions related to international cooperation.

(3) In fulfilling its functions and duties under this Act and under any other laws relating to electronic communications which the Authority is entitled to enforce, the Authority shall actively support the goals of BEREC of promoting greater regulatory coordination and consistency in the application of the Electronic Communications Code, and shall also take the utmost account of the guidelines, opinions, recommendations, common positions, best practices and methodologies adopted by BEREC when the Authority is adopting decisions for national markets.";

(b) in sub-article (4) thereof the words "Article 19 of the Framework Directive" shall be substituted by the words "Article 38 of the Electronic Communications Code"; and

(c) sub-article (5) thereof shall be deleted.

Substitution of article 4 of the principal Act.

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

"Objectives of the Authority.

4. (1) In the carrying out of its tasks at law, the Authority shall, to the extent that it is empowered at law, pursue and take the utmost account of each of the following policy objectives:

(a) promote connectivity and access to, and take-up of, very high capacity networks, including fixed, mobile and wireless networks, by all citizens and businesses of the European Union;

(b) promote competition in the provision of electronic communications networks and associated facilities, including efficient infrastructure-based competition, and in the provision of electronic communications services and associated services;

(c) contribute to the development of the internal market by removing remaining obstacles to, and facilitating convergent conditions for, investment in, and the provision of, electronic communications networks, electronic communications services, associated facilities and associated services, throughout the European Union, by developing common rules and predictable regulatory approaches, by favouring the effective, efficient and coordinated use of radio spectrum, open innovation, the establishment and development of trans-European networks, the provision, availability and interoperability of pan-European services, and end-to-end connectivity;

(d) promote the interests of the citizens of the European Union, by ensuring connectivity and the widespread availability and take-up of very high capacity networks, including fixed, mobile and wireless networks, and of electronic communications services, by enabling maximum benefits in terms of choice, price and quality on the basis of effective competition, by maintaining the security of networks and services, by ensuring a high and common level of protection for end-users through the necessary sector-specific rules and by addressing the needs, such as affordable prices, of specific social groups, in particular end-users with disabilities, elderly end-users and end-users with special social needs, and choice and equivalent access for end-users with disabilities:

Provided that where the European Commission establishes benchmarks and reports on the effectiveness of the measures taken by the Authority towards achieving the objectives referred to in this sub-article, the Authority shall, where necessary, assist the European Commission.

(2) The Authority shall, in pursuit of the policy objectives referred to in sub-article (1), *inter alia*:

(a) promote regulatory predictability by ensuring a consistent regulatory approach over appropriate review periods and through cooperation with other national regulatory and competent authorities in other Member States, with BEREC, with the RSPG and with the European Commission;

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

(c) apply national law and European Union law in a technically neutral fashion, to the extent that this is consistent with the achievement of the objectives set out in sub-article (1);

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

(e) take due account of the variety of conditions relating to infrastructure, competition, the circumstances of end-users and, in particular consumers in the various geographic areas in Malta including local infrastructure managed by natural persons on a not-for-profit basis; and

(f) impose *ex-ante* regulatory obligations only to the extent necessary to secure effective and sustainable competition in the interest of end-users and relax or lift such obligations as soon as that condition is fulfilled.

(3) The Authority shall, in the performance of its functions at law, act impartially, objectively, transparently and in a non-discriminatory and proportionate manner.

(4) The Authority shall contribute to the development of the internal market by working in a transparent manner with the national regulatory authorities of other Member States, the European Commission and BEREC, in order to ensure the consistent application in all Member States of the Electronic Communications Code. In doing so the Authority shall, in particular, work with the European Commission and BEREC to identify the types of instruments and remedies best suited to address particular types of situations in the market."

17. Immediately after article 4 of the principal Act there shall be added the following new article:

Addition of new article 4A to the principal Act.

"Strategic planning and coordination of radio spectrum policy.

4A. (1) The Authority shall cooperate with the competent authorities in other Member States and with the European Commission in the strategic planning and harmonisation of the use of radio spectrum in the European Union in accordance with European Union policies for the establishment and functioning of the internal market in electronic communications. In doing so it shall take into consideration, *inter alia*, the economic, safety, health, public interest, freedom of expression, cultural, scientific, social and technical aspects of European Union policies, as well as the various interests of radio spectrum user communities, with the aim of optimising the use of radio spectrum and avoiding harmful interference.

(2) The Authority in cooperating with the competent authorities in other Member States and with the European Commission shall promote the coordination of radio policy approaches in the European Union and, where appropriate, harmonised conditions with regard to the availability and efficient use of radio spectrum necessary for the establishment and functioning of the internal market in electronic communications.

(3) The Authority shall, through the RSPG, cooperate with the competent authorities in other Member States and with the European Commission in accordance with sub-article (1), and upon their request with the European Parliament and with the Council, in support of the strategic planning and coordination of radio spectrum policy approaches in the European Union, by:

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(a) developing best practices on radio spectrum related matters, with a view to implementing the Electronic Communications Code;

(b) facilitating the coordination between Malta and other Member States with a view to implementing the Electronic Communications Code and other European Union law and to contributing to the development of the internal market; and

(c) co-ordinating the approaches to the assignment and authorisation of use of radio spectrum and publishing reports or opinions on radio spectrum related matters."

Amendment of article 5 of the principal Act.

18. Article 5 of the principal Act shall be amended as follows:

(a) in sub-article (1) thereof the words "unless otherwise stated in this Act." shall be substituted by the words "unless otherwise stated in this Act or any other law."; and

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

"(3) The provisions of this Act shall be without prejudice to:

(a) obligations imposed by any other law in respect of services provided using electronic communications networks and services;

(b) measures taken at European Union or national level, in accordance with European Union law, to pursue general interest objectives in particular relating to the protection of personal data and privacy, content regulation and audiovisual policy;

(c) the operation of any other law relating to radio and telecommunications terminal equipment;

(d) any action taken for public order and public security purposes and for defence; or

(e) Regulations (EU) No. 531/2012 and (EU) 2015/2120 and the Radio Equipment Regulations."

S.L. 427.41.

Addition of new article 5A to the principal Act.

19. Immediately after article 5 of the principal Act there shall be

added the following new article:

"Tasks onerous on the Authority specific to electronic communications.

5A. (1) The Authority shall be responsible for the following tasks:

(a) implementing *ex ante* market regulation, including the imposition of access and interconnection obligations;

(b) ensuring the resolution of disputes between undertakings;

(c) managing the general authorisation framework;

(d) developing the frequency plan;

(e) carrying out radio spectrum management and decisions, including matters relating to market-shaping and competition elements of processes related to the rights of use for radio spectrum for electronic communications networks and services;

(f) contributing to the protection of end-user rights in the electronic communications sector, in coordination, where relevant with other competent authorities;

(g) developing and managing the national numbering plan and the granting of rights of use for all national numbering resources;

(h) assessing and monitoring closely market-shaping and competition issues regarding open internet access;

(i) ensuring the integrity and security of public electronic communications networks and publicly available electronic communications service;

(j) assessing the unfair burden and calculating the net cost of the provision of universal service; and

(k) ensuring number portability between providers of voice communications services.

(2) The performance of the tasks listed under sub-article (1) shall be without prejudice to any other tasks which the Authority is required to perform by law.

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(3) The Authority shall publish in an easily accessible form the tasks assigned to it under the Electronic Communications Code and where applicable those assigned to other competent authorities, as well as any change thereof."

Amendment of article 7 of the principal Act.

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

(a) in the marginal note thereto the words "public communications networks" shall be substituted by the words "public electronic communications networks";

(b) the words "a public communications network" shall be substituted by the words "a public electronic communications network"; and

(c) in paragraph (a) thereof the words "an efficient communications network;" shall be substituted by the words "an efficient electronic communications network;".

Substitution of article 9 of the principal Act.

21. Article 9 of the principal Act shall be substituted by the following:

"Market definition and analysis.

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

Substitution of article 10 of the principal Act.

22. Article 10 of the principal Act shall be substituted by the following:

"Numbers.

10. The Authority shall establish and manage the national numbering plan for electronic communication services, and shall control the allocation and assignment of all national numbering resources."

Amendment of article 11 of the principal Act.

23. In sub-article (1) of article 11 of the principal Act the words "the European Electronic Communications Directives" shall be substituted by the words "the Electronic Communications Code".

Deletion of articles 12 and 12A of the principal Act.

24. Articles 12 and 12A of the principal Act shall be deleted.

- 25.** Articles 14 to 21 of the principal Act shall be deleted. Deletion of articles 14 to 21 of the principal Act.
- 26.** Articles 23 and 24 of the principal Act shall be deleted. Deletion of articles 23 and 24 of the principal Act.
- 27.** Article 25 of the principal Act shall be amended as follows: Amendment of article 25 of the principal Act.
- (a) the definition "protected service" in sub-article (1) thereof shall be substituted by the following:
- " "protected service" means any of the following services when provided against remuneration and on the basis of conditional access:
- (a) television programme services;
- (b) radio broadcasting services including radio programmes intended for reception by the public, transmitted by wire or over the air, including by satellite;
- (c) information society services offered by electronic means at a distance and at the individual request of the recipient of the services; or
- (d) the provision of conditional access to the above services considered as a service in its own right."; and
- (b) in sub-article (2) thereof the words "twenty-three thousand and two hundred and ninety euro (23,290)" shall be substituted by the words "twenty-five thousand euro (€25,000)".
- 28.** Article 26 of the principal Act shall be amended as follows: Amendment of article 26 of the principal Act.
- (a) sub-articles (1) and (2) thereof shall be renumbered as sub-articles (2) and (3) thereof; and immediately before sub-article (2) as renumbered there shall be added the following new sub-article:
- "(1) In this Part the words "general authorisation", wherever they occur, shall be substituted by the words "apparatus general authorisation".";
- (b) in sub-article (2) thereof as renumbered:

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(i) the definition "apparatus" shall be substituted by the following:

" "apparatus" or "equipment" means an electrical or electronic product, which intentionally emits and, or receives radio waves for the purpose of radiocommunication and, or radiodetermination, or an electrical or electronic product which must be completed with an accessory, such as antenna, so as to intentionally emit and, or receive radio waves for the purpose of radiocommunication and, or radiodetermination;"

(ii) immediately after the definition " "apparatus" or "equipment" " there shall be added the following new definition:

" "apparatus general authorisation" means the framework established by or under this Part laying down the rights and obligations of persons installing, making use of or dealing in any such radiocommunications apparatus as the Authority may from time to time in accordance with the provisions of this Part by decision designate;"

(iii) the definition "general authorisation" shall be deleted;

(iv) immediately after the definition "broadcast receiving apparatus" there shall be added the following new definition:

" "installed" means radiocommunications apparatus that is connected to a source of energy so as to intentionally emit and, or receive radio waves;"

(v) the definition "radiocommunications" shall be substituted by the following:

" "radiocommunications" means communications involving the transmission, emission and, or reception by means of radio waves;"

(vi) in the definition "radiocommunications individual licence" the words "in accordance with article 30 or article 32 as the case may be." shall be substituted by

the words "in accordance with article 30;" and

(vii) immediately after the definition "radiocommunications individual licence" there shall be added the following new definitions:

"radiodetermination" means the determination of the position, velocity and, or other characteristics of an object, or the obtaining of information relating to these parameters, by means of the propagation properties of radio waves; and

"radio waves" means electromagnetic waves of frequencies arbitrarily lower than 3000 GHz, propagated in space without artificial guide."

29. Articles 27, 28 and 29 of the principal Act shall be deleted.

Deletion of articles 27, 28 and 29 of the principal Act.

30. Article 30 of the principal Act shall be substituted by the following:

Substitution of article 30 of the principal Act.

"Individual licences.

30. (1) Unless otherwise provided by or under this Part, no person shall, without a radiocommunications individual licence given in writing by the Authority, install or use an apparatus.

(2) A radiocommunications individual licence granted under this article may be issued subject to such terms, conditions and, or limitations as the Authority may think fit, including in particular limitations as to the apparatus which may be installed or used, the places where, the purposes for which, the circumstances in which and the persons by whom the apparatus may be used, as may be established under such a licence:

Provided that any such licence may only be issued if the prescribed fee is first received in full:

Provided further that any such licence may be revoked, or the terms, conditions or limitations thereof varied by a notice in writing of the Authority served on the holder of the individual licence or by a general notice issued by the Authority, applicable to individual licences of the class to which the individual licence in question belongs, and made public.

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(3) A radiocommunications individual licence shall, unless previously revoked by the Authority, continue to be in force for such period as may be specified in the licence."

Addition of new articles 30A and 30B to the principal Act.

31. Immediately after article 30 of the principal Act there shall be added the following new articles:

"Apparatus general authorisations.

30A. (1) The Authority may by decision issue any apparatus general authorisation. In doing so the Authority shall establish any such terms and conditions, including those of a technical nature, as it may consider necessary, in particular to ensure the efficient use of radio spectrum:

Provided that the Authority may by decision amend any such terms or conditions.

(2) In issuing or amending any apparatus general authorisation the Authority shall first publish on its website and, or any other means of communication, a statement of the proposed apparatus general authorisation or of any amendments thereto, giving any interested parties the opportunity to comment on the proposed apparatus general authorisation or amendments thereto within a period the Authority considers reasonable:

Provided that the requirement for the Authority to publish a statement of the proposed apparatus general authorisation or of any amendments thereto and to give any interested parties the opportunity to comment on the proposed apparatus general authorisation or amendments thereto shall not apply where such amendments are strictly limited to compliance with any international obligations of Malta.

(3) The Authority shall ensure that any apparatus general authorisations or amendments thereto are given publicity.

Enforcement.

30B. (1) The Authority may require any person who:

(a) is using an apparatus in breach of any of the provisions of this Part and, or of any authorisation conditions as may be applicable to that apparatus; or

(b) is using or allowing such apparatus to be used for unauthorised frequencies,

to desist from the use of any such apparatus and, or require such a person to deliver the apparatus to the Authority:

Provided that the Authority may seize and, or retain any such apparatus and, or cause the use of any such apparatus to be disabled or restricted in any manner, under such conditions and for such period of time as the Authority may specify where it results to the Authority that such apparatus is being used in breach of this Part or of any authorisation conditions that may apply in relation to the said apparatus.

(2) Any expenses incurred by the Authority in the exercise of its functions under this article including in the seizure, retention, or storage however so described of the said apparatus, shall be recoverable as a civil debt by the Authority from any person acting in breach of this article."

32. Article 31 of the principal Act shall be substituted by the following:

Substitution of article 31 of the principal Act.

"Penalties.

31. Unless otherwise provided in this Part, any person who contravenes any of the provisions of this Part, or of any regulations made thereunder, or who acts in breach of any terms, conditions or limitations, however so described, attached to an individual licence or to an apparatus general authorisation, shall be liable on conviction to a fine (*multa*) of not less than five hundred euro (€500) and not more than twenty five thousand euro (€25,000) in respect of each apparatus, and upon the demand of the prosecution, the Court may order the apparatus to be forfeited and delivered to the Authority to be disposed of or stored, as the Authority may consider appropriate in the circumstances:

Provided that the Authority shall in such instances recover as a civil debt any costs it may incur in the disposal or storage however so described of any such apparatus from the person found guilty."

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Addition of new article 31A to the principal Act.

33. After article 31 of the principal Act there shall be added the following new article:

"Harmful interference caused by radiocommunications apparatus.

31A. (1) Radiocommunications apparatus shall only be used in a manner so as to effectively use and support the efficient use of radio spectrum in order to avoid harmful interference.

(2) The Authority may authorise a public body established at law to install or use radiocommunications apparatus capable of causing deliberate interference. Any such apparatus shall be used exclusively to satisfy exigencies of defence, public security requirements, including the securing or maintaining security or good order and discipline in correctional or detention institutions, however so described:

Provided that no such authorisation shall be required in cases of manifest urgency which may cause a threat to public security or public safety.

(3) An authorisation granted by the Authority under this article shall not in any manner constitute an authorisation to legally intercept communications.

(4) In granting an authorisation in accordance with this article, the Authority shall establish any technical and operational conditions which it deems appropriate to safeguard the integrity of public electronic communications networks and, or services, including radiodetermination.

(5) An authorisation granted under this article shall be in writing."

Amendment of article 33 of the principal Act.

34. Article 33 of the principal Act shall be amended as follows:

(a) in the marginal thereto the words "of article 30" shall be substituted by the words "of articles 30 and 30A"; and

(b) the words "Order in the Gazette" and "of article 30" shall respectively be substituted by the words "order in the Gazette" and "of articles 30 and 30A".

Amendment of article 34 of the principal Act.

35. Article 34 of the principal Act shall be amended as follows:

(a) paragraph (c) thereof shall be substituted by the following:

"(c) for any aspect relating to the use of radiocommunications by aircrafts and ships, including merchant ships, foreign warships and foreign military aircraft;"

(b) in sub-paragraph (i) of paragraph (d) thereof the words "a fine (*multa*) not exceeding ten thousand euro (€10,000), or" shall be substituted by the words "a fine (*multa*) not exceeding twenty five thousand euro (€25,000), and, or five hundred euro (€500) for each day during which the offence continues; or";

(c) in sub-paragraph (ii) of paragraph (d) thereof the word "persists:" shall be substituted by the word "continues:";

(d) paragraph (f) thereof shall be substituted by the following:

"(f) for any fees and, or charges, however so described, that may be payable in relation to any matters regulated by this Part, including the issue or renewal of any individual radiocommunications licences or authorisations however so described:

Provided that the Minister may, with the concurrence of the Minister responsible for finance, reduce or remit any such fee or charge. Before doing so the Minister shall first consult the Authority;" and

(e) paragraph (g) thereof shall be deleted and paragraphs (h) and (i) thereof shall be renumbered as paragraphs (g) and (h) thereof.

36. Article 35 of the principal Act shall be deleted.

Deletion of article 35 of the principal Act.

37. The words of the heading of Part V of the principal Act "Radio Frequencies Management" shall be substituted by the words "Management of and Access to Radio Spectrum".

Substitution of heading of Part V of the principal Act.

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

Amendment of article 36 of the principal Act.

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

"(1) In this Part, unless the context otherwise requires, "general authorisation" means a framework established by or under this Part laying down the rights

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and obligations for the use of radio spectrum, when the use of the radio spectrum is not subject to an individual licence.";

(b) in sub-article (2) thereof the words "radio frequency plan." shall be substituted by the words "Frequency Plan."

Substitution of article 37 of the principal Act.

39. Article 37 of the principal Act shall be substituted by the following:

"Authorisation of the use of radio spectrum.

37. (1) The Authority shall facilitate the use of radio spectrum, including shared use, under general authorisations issued under this Act or following individual rights of use for radio spectrum authorised by the Authority in accordance with this Act, or following explicit authorisation in accordance with any other law.

(2) The Authority shall limit the granting of individual rights of use for radio spectrum to situations where such rights are necessary to maximise efficient use because of demand and taking into account the criteria set out in this sub-article. In all other cases, the Authority shall set out the conditions for the use of radio spectrum in a general authorisation. To this end the Authority shall decide on the most appropriate regime for authorising the use of radio spectrum, taking account of:

(a) the specific characteristics of the radio spectrum concerned;

(b) the need to protect against harmful interference;

(c) the development of reliable conditions for radio spectrum sharing, where appropriate;

(d) the need to ensure technical quality of communications or service;

(e) the objectives of general interest as laid down by the Minister in accordance with European Union law; and

(f) the need to safeguard efficient use of radio spectrum.

(3) When considering whether to issue general authorisations or to grant individual rights of use for the harmonised radio spectrum, taking into account technical implementing measures adopted in accordance with Article 4 of Decision No. 676/2002/EC, the Authority shall seek to minimise problems of harmful interference, including in cases of shared use of radio spectrum on the basis of a combination of general authorisation and individual rights of use:

Provided that where appropriate, the Authority shall consider the possibility to authorise the use of radio spectrum based on a combination of general authorisation and individual rights of use, taking into account the likely effects of different combinations of general authorisations and individual rights of use and of gradual transfers from one category to the other on competition, innovation and market entry.

(4) The Authority shall seek to minimise restrictions on the use of radio spectrum by taking appropriate account of technological solutions for managing harmful interference in order to impose the least onerous authorisation regime possible.

(5) When taking a decision pursuant to sub-articles (1) and (2) with a view to facilitating the shared use of radio spectrum, the Authority shall ensure that the conditions for the shared use of radio spectrum are clearly set out. Such conditions shall facilitate efficient use of radio spectrum, competition and innovation."

40. Article 38 of the principal Act shall be substituted by the following:

Substitution of article 38 of the principal Act.

"Management of radio spectrum.

38. (1) The Authority shall ensure the effective management of the radio spectrum for electronic communications networks and services in Malta in accordance with articles 4 and 4A. In doing so the Authority shall take into account that the radio spectrum is a public good that has an important social, cultural and economic value.

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

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

(b) the Authority shall in the exercise of its functions with regard to the allocation of, the issuing of general authorisations in respect of, and the granting of individual rights of use for radio spectrum for electronic communications networks and, or services, act in accordance with objective, transparent, pro-competitive, non-discriminatory and proportionate criteria.

(3) In applying the provisions of this article, the Authority shall respect relevant international agreements, including the ITU Radio Regulations, and other agreements adopted in the framework of the ITU applicable to radio spectrum and may take public policy considerations into account.

(4) Upon the grant of rights for the use of radio spectrum and in any case not less than once a year, the Authority shall publish the assignment of such rights in so far as these relate to the provision of electronic communications services."

Substitution of article 39 of the principal Act.

41. Article 39 of the principal Act shall be substituted by the following:

"Adoption and publication of a frequency plan.

39. (1) The Authority shall draw up, adopt and publish a frequency plan, which frequency plan shall from time to time be revised and published by the Authority as it may be deemed necessary:

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

Provided further that the requirement to consult with the Minister shall not apply where such revisions are limited to compliance with any international obligations of Malta.

(2) The Authority shall in drawing up the frequency plan, establish which frequencies are assigned under this Act and, or under any other law and the purposes for which they may be used."

42. Articles 40 to 45 of the principal Act shall be deleted.

Deletion of articles 40 to 45 of the principal Act.

43. Article 46 of the principal Act shall be substituted by the following:

Substitution of article 46 of the principal Act.

"Powers of the Authority specific to radio spectrum.

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

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

Amendment of article 47 of the principal Act.

(a) in sub-article (1) thereof:

(i) paragraph (a) shall be substituted by the following:

"(a) regulate electronic communications services and, or networks including interconnection of networks, collocation and sharing of network elements and associated facilities, conduct of a geographical survey, carrier pre-selection, access to networks, rights of way, security of networks and services, the transmission or reception of satellite signals, the maintenance of and publication, and access to any information however so described, stipulate universal service obligations, any matter concerning numbers including portability, plans and allocation, any matter concerning e-mail forwarding or other similar services to ensure fair competition or for end-user protection purposes, the obligations of an undertaking having significant market power, competition and end-user or consumer protection

rules including but not limited to rules relating to the suspension, termination and renewal of electronic communications services to end-users and, or consumers, the use of unfair terms in electronic communications contracts, unfair commercial practices in so far as they relate to the provision of electronic communications services to end-users and, or consumers, compensation and refund arrangements, billing procedures and billing accuracy, emergency communications and services, public warning systems, harmonised services for social value, and directory enquiry services;"

(ii) paragraph (q) shall be substituted by the following:

"(q) empower the Authority to impose administrative fines not exceeding the sum of two hundred and fifty thousand euro (€250,000) for each breach and, or five thousand euro (€5,000) for each day during which failure to comply with this Act continues, 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 with the Malta Communications Authority Act;"

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(iii) paragraphs (r) to (u) shall be renumbered as paragraphs (s) to (v);

(iv) immediately after paragraph (q) there shall be added the following new paragraph:

"(r) provide for rules to be applicable in relation to the imposition of any administrative fines as may be made under this article where any person fails to comply with this Act;"

(v) in paragraph (u) as renumbered the words "or five hundred euro (€500) for each day during which the offence persists;" shall be substituted by the words "and, or five hundred euro (€500) for each day during which the offence continues;"

(b) in sub-article (2) thereof:

(i) the words "The Minister may," shall be

substituted by the words "Without prejudice to the provisions of article 5A, the Minister may,"; and

(ii) immediately thereafter there shall be added the following new sub-articles:

"(3) The Minister may, when making any regulations under this article, require that the Authority acts in co-ordination and, or consults with any other public body or bodies as the Minister may from time to time determine. In doing so the Minister shall consult with any such other Minister as may be responsible for any such public bodies, and with the Authority.

(4) The Authority may by order in the Gazette amend the rights, conditions and procedures concerning general authorisations and rights of use for radio spectrum or for numbering resources or rights, to install facilities, as provided for in this Act or any regulations made thereunder. Any such amendments shall only be made in objectively justified cases and in a proportionate manner, taking into consideration, where appropriate, the specific conditions applicable to transferable rights of use for radio spectrum or for numbering resources:

Provided that except where the proposed amendments are minor and have been agreed with the holder of the rights or of the general authorisation, the Authority shall before making any amendments in accordance with this sub-article, give notice in such a manner as it considers appropriate of its intention to make such amendments, inviting interested parties, including users and consumers, to express their views on the proposed amendments within a period of not less than four weeks as may be specified in the notice. The said period of four weeks shall not apply in exceptional circumstances:

Provided further that the Authority shall publish any such amendments giving its reasons therefor."

45. Article 48 of the principal Act shall be amended as follows:

(a) in sub-article (1) thereof the words "be liable to a fine

Amendment of article 48 of the principal Act.

(*multa*) not exceeding twenty three thousand and two hundred and ninety euro (€23,290) and in the case of a continuing offence for a further fine (*multa*) not exceeding four hundred and sixty-five euro (€465) for each day during which the offence continues." shall be substituted by the words "be liable to a fine (*multa*) not exceeding twenty-five thousand euro (€25,000) and in the case of a continuing offence for a further fine (*multa*) not exceeding five hundred euro (€500) for each day during which the offence continues.";

(b) in sub-article (2) thereof the words "to a fine (*multa*) not exceeding twenty-three thousand and two hundred and ninety euro (€23,290)" shall be substituted by the words "to a fine (*multa*) not exceeding twenty-five thousand euro (€25,000)";

(c) in sub-article (3) thereof the words "to a fine (*multa*) not exceeding twenty-three thousand and two hundred and ninety euro (€23,290)" shall be substituted by the words "to a fine (*multa*) not exceeding twenty-five thousand euro (€25,000)";

(d) in sub-article (4) thereof:

(i) the words "to a fine (*multa*) not exceeding eleven thousand and six hundred and forty-six euro and eighty-seven cents (€11,646.87)" shall be substituted by the words "to a fine (*multa*) not exceeding fifteen thousand euro (€15,000)"; and

(ii) immediately thereafter there shall be added the following new sub-article:

"(5) Any person who, without being duly authorised at law, uses any apparatus for the purpose of deliberately interfering with radiocommunications shall be guilty of an offence under this Act and shall on conviction be liable to a fine (*multa*) not exceeding fifty thousand euro (€50,000) and, or to a daily fine (*multa*) not exceeding one thousand euro (€1,000) for each day of non-compliance, and, or to imprisonment for a period not exceeding one year, or to such fine or fines and to such imprisonment."

Amendment of article 49 of the principal Act.

46. In article 49 of the principal Act the words "be liable to a fine (*multa*) not exceeding twenty-three thousand, two hundred and ninety-three euro and seventy-three cents (€23,293.73) and, in the case of a continuing offence, to a further fine (*multa*) not exceeding four hundred and sixty-five euro and eighty-seven cents (€465.87) for each

day during which the offence continues;" shall be substituted by the words "be liable to a fine (*multa*) not exceeding twenty five thousand euro (€25,000) and, in the case of a continuing offence, to a further fine (*multa*) not exceeding five hundred euro (€500) for each day during which the offence continues;".

47. In article 50 of the principal Act the words "a fine (*multa*) of more than twenty-three thousand euro and two hundred and ninety euro (€23,290) or four hundred and sixty-five euro (€465) for each day during which the offence persists." shall be substituted by the words "a fine (*multa*) of more than twenty-five thousand euro (€25,000) and, or five hundred euro (€500) for each day during which the offence continues.".

Amendment of article 50 of the principal Act.

48. Article 52 of the principal Act shall be substituted by the following:

Substitution of article 52 of the principal Act.

"Saving.

52. (1) Any regulations made or kept in force by or under any of the provisions of this Act as in force on the 21st December, 2020 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.

(2) Any directives, decisions or designations however so described made by the Authority under this Act as in force on the 21st December, 2020 and still in force on the said date shall continue to be in force until revoked or amended by the Authority.".

49. Articles 53 and 54 of the principal Act shall be deleted.

Deletion of articles 53 and 54 of the principal Act.

50. Article 55 of the principal Act shall be substituted by the following:

Substitution of article 55 of the principal Act.

"Exemption from the provisions of this Act.

55. (1) The Prime Minister may by order published in the Gazette exempt from any of the provisions of this Act, any electronic communications network and, or service, or any radiocommunications apparatus exclusively used by the State for activities concerning public security, defence, State security, including the economic well-being of the State in the case of activities pertaining to State security matters, and the activities of the State in the area of criminal law:

Provided that no exemptions shall be granted with respect to:

(a) the requirement of having an explicit authorisation issued by the Authority for the rights of use for radio spectrum; or

(b) the installation or use of radiocommunications apparatus capable of causing deliberate interference, as provided for in article 31A.

(2) The Prime Minister shall, in making an order under this article, first consult with the Authority, and may after having done so, impose any such conditions as he may consider appropriate in the circumstances."

**PART III
AMENDMENTS TO THE MALTA
COMMUNICATIONS AUTHORITY ACT**

Amendments to the Malta Communications Authority Act. Cap. 418.

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

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

General amendment to the principal Act.

52. In the Maltese text the words "multa amministrattiva" or "multi amministrattivi", wherever they occur in the principal Act, shall be substituted with the words "penali amministrattiva" or "penalitajiet amministrattivi" respectively.

Amendment of article 2 of the principal Act.

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

(a) immediately after the definition "this Act" there shall be added the following new definition:

" "associated facilities" means those associated services, physical infrastructures and other facilities or elements associated with an electronic communications network and, or an electronic communications service which enable and, or support the provision of services through that network and, or service or have the potential to do so, and include *inter alia* buildings or entries to buildings, building wiring, antennae, towers and other

supporting constructions, ducts, conduits, masts, manholes, and cabinets;"

(b) the definition "BEREC" shall be substituted by the following:

" "BEREC" means the Body of European Regulators for Electronic Communications established by Regulation (EU) 2018/1971 of the European Parliament and of the Council of 11 December 2018 establishing the Body of European Regulators for Electronic Communications (BEREC) and the Agency for Support for BEREC (BEREC Office);"

(c) in the definition "Board" the words "means the Board of the Authority" shall be substituted by the words "unless the context otherwise requires, means the Board of the Authority";

(d) immediately after the definition "communications" there shall be added the following new definition:

" "consumer" means any natural person who uses or requests a communications service for purposes which are outside his trade, business, craft or profession";

(e) in the definition "contractor" the words "article 5(3)" shall be substituted by the words "article 5(2)";

(f) immediately after the definition "directive" there shall be added the following new definition:

" "Electronic Communications Code" means Directive (EU) 2018/1972 of the European Parliament and of the Council of the 11 December 2018 establishing the European Electronic Communications Code;"

(g) immediately after the definition "end-user" there shall be added the following new definition:

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

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(h) the definition "European Electronic Communications Directives" shall be deleted;

(i) immediately after the definition "public officer" there

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shall be added the following new definition:

" "RSPG" means the Radio Spectrum Policy Group established by the European Commission Decision of 11 June 2019 setting up the Radio Spectrum Policy Group;"
and

(j) in the definition "undertaking" the words "or associated facilities;" shall be substituted by the words "or associated facilities; and".

Amendment of
article 3 of the
principal Act.

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

(a) sub-articles (2) and (3) thereof shall be substituted by the following:

"(2) The members of the Board shall be appointed by the Minister from amongst persons of recognised standing and professional experience on the basis of merit, skills, knowledge and relevant experience, for a term of not less than three (3) years but not exceeding six (6) years, which term shall be specified in the instrument of appointment, and the members so appointed may, subject to the requirements of this article, be re-appointed on the expiration of their term of office for another term:

Provided that in appointing the members of the Board, the Minister shall act in an open and transparent manner and shall ensure the continuity of decision-making by the Authority:

Provided further that any such appointments shall be published in the Gazette by the Minister.

(3) The Minister shall designate one of the other members of the Board as Deputy Chairman and the member so designated shall have all the powers and perform all the functions of the Chairman during his absence or inability to act as Chairman, or while the Chairman is on vacation or during any vacancy in the post of the Chairman.";

(b) in paragraph (a) of sub-article (4) thereof the words "or a member of the House of Representatives; or" shall be substituted by the words "or a member of the House of Representatives or of a Local Council; or";

(c) in paragraph (c) of sub-article (6) thereof the words

"the Minister may suspend the member if he is being investigated for a criminal offence; or" shall be substituted by the words "the Minister may suspend the member if he is being investigated for such a criminal offence; or";

(d) sub-article (7) thereof shall be substituted by the following:

"(7) If the Minister dismisses a member of the Board from office, such dismissal shall be made public at the time of dismissal from office. In doing so the Minister shall provide the member concerned with a statement of reasons for his dismissal. If the statement of reasons for dismissal is not made public then, the member concerned shall have the right to request that the statement of reasons for his dismissal be made public, in which case the Minister shall publish such statement without any delay:

Provided that the member so dismissed may contest the decision of the Minister to dismiss him on both points of fact and of law by means of an action to be filed before the Civil Court within twenty days of the notification of the aforesaid decision to the said member. The provisions of the Code of Organization and Civil Procedure for the hearing and determination of cases shall apply to any such action.";

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(e) sub-article (8) thereof shall be substituted by the following:

"(8) If a member resigns or if the office of a member of the Board is otherwise vacant or if a member is for any reason unable to perform the functions of his office, the Minister may appoint a person who is qualified to be appointed as a member, to be a temporary member of the Board. Any person so appointed shall, subject to the provisions of sub-articles (4), (5) and (6), cease to be such a member when a person has been appointed to fill the vacancy or, as the case may be, when the member who was unable to perform the functions of his office resumes those functions:

Provided that any temporary appointment made under this article shall not at any one time exceed the period of one year."; and

(f) in sub-article (9) thereof the words "Any member of

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the Authority" shall be substituted by the words "Any member of the Board".

Addition of new article 3A to the principal Act.

55. Immediately after article 3 of the principal Act there shall be added the following new article:

"Independence of the Authority – Separation of Regulatory and Operational Functions. 3A. The Authority shall be legally distinct from, and functionally independent of, any person providing any networks, equipment or services however so described which are regulated by the Authority."

Amendment of article 4 of the principal Act.

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

(a) in sub-paragraph (iv) of paragraph (a) of sub-article (1) thereof the words "the protection of public health;" shall be substituted by the words "the protection of public health and of the environment;"

(b) in sub-article (3) thereof:

(i) in paragraph (k) the words "establish measures for the protection of the environment" shall be substituted by the words "establish measures, as necessary, for the protection of the environment";

(ii) in paragraph (t) the words "disabled end-users" shall be substituted by the words "end-users with disabilities";

(iii) paragraph (v) shall be renumbered as paragraph (w) and immediately after paragraph (u) thereof there shall be added the following new paragraph:

"(v) deal with and, or determine any matter relating to mediation in and, or resolution of any dispute or complaint, however so described, relating to any aspect of communications regulated by the Authority under any law;"

(iv) immediately after paragraph (w) as renumbered there shall be added the following new paragraph:

"(x) manage scarce resources used by space systems for the provision of satellite communications services; and";

(c) the marginal note to sub-article (8) thereof shall be substituted by the following:

"Cooperation with other authorities."; and

(d) sub-articles (9) and (10) thereof shall be substituted by the following:

"(9) The Authority on the one hand and the competent authorities responsible for competition issues and consumer affairs, and such other competent authorities responsible for other areas as may impact on the sectors regulated by the Authority on the other, shall consult and cooperate on matters of common interest, and in doing so shall provide each other with the information necessary for the application of the provisions of this Act, of any other law which the Authority is entitled to enforce, and of any other law relating to competition issues and, or consumer affairs or to any of the communications sectors falling within the remit of the Authority, which information shall be provided within an appropriate time-frame taking into consideration the particular circumstances of the issues involved:

Provided that European Union data protection rules shall apply in respect of the information exchanged, and 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 carrying out its functions, or which is necessary for the European Commission, BEREC or any other EU regulatory body in relation to the sectors that fall within the remit of the Authority in order to ensure compliance in accordance 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.

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

Amendment of article 4A of the principal Act.

(a) in sub-article (1) thereof the words "where the Authority intends to take a decision in accordance with any law which it is entitled to enforce, and which decision has a significant impact in a market for any communications networks or services, it shall make available to interested parties a statement of the proposed decision and give such parties the opportunity to comment on the proposed decision within a period

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which the Authority considers reasonable." shall be substituted by the words "where the Authority intends to take a decision in accordance with any law which it is entitled to enforce, which decision has a significant impact in a market for any communications networks or services, it shall make available to interested parties a statement of the proposed decision. The Authority shall give such parties the opportunity to comment on the proposed decision within a period which the Authority considers reasonable, having regard to the complexity of the matter, which period other than in exceptional circumstances, shall not be shorter than thirty days:

Provided that in relation to electronic communications the period of consultation shall not be less than thirty days.";

(b) sub-article (2) thereof shall be substituted by the following:

"(2) Where the Authority intends to take a decision on issues related to any end-user and, or consumer rights, including equivalent access and choice for end-users with disabilities, in particular where such a decision has a significant impact on a market for any communications networks and, or services, the Authority shall ensure that in carrying out the consultation mechanism referred to in sub-article (1), as far as is appropriate for the purposes of its functions under this Act or any other law the Authority is entitled to enforce, it shall take into account the views of end-users, in particular consumers, and end-users with disabilities, manufacturers and undertakings that provide communications networks and, or services.";

(c) in sub-article (3) thereof the words "which all current consultations can be assessed" shall be substituted by the words "which all current consultations can be accessed"; and

(d) in sub-article (4) thereof the words "except in the case of information which the Authority considers to be confidential" shall be substituted by the words "except in the case of confidential information, in accordance with European Union and national rules on commercial confidentiality.".

Addition of new articles 4B, 4C, 4D and 4E to the principal Act.

58. Immediately after article 4A of the principal Act there shall be

added the following new articles:

"Development of codes of conduct and operating standards.

4B. (1) The Authority may either on its own initiative or in coordination with other competent authorities provide guidance to interested parties when these are developing mechanisms, involving consumers, user groups and service providers, to improve the general quality of service provision by, *inter alia*, developing and monitoring codes of conduct and operating standards.

(2) The Authority may request undertakings to prepare a code of practice that includes the minimum standards of service provided to end-users. The Authority may also provide guidance to the employees or representatives, however so described, of such undertakings in their dealings with end-users.

Co-operation in the promotion of lawful content.

4C. Without prejudice to national rules in accordance with European Union law promoting cultural and media policy objectives such as cultural and linguistic diversity and media pluralism, competent authorities in coordination, where relevant, with the Authority, may promote cooperation between undertakings providing electronic communications networks or services, and sectors interested in the promotion of lawful content in electronic communications networks and services:

Provided that such cooperation may also include coordination of the public-interest information to be provided pursuant to applicable national law and European Union law.

Compliance with data protection rules.

4D. The Authority shall comply with European Union and national data protection rules when processing personal data.

Requirement to obtain other authorisations required at law.

4E. Compliance with any authorisation by or under any law which the Authority is entitled to enforce, enabling a person to operate, install or use any communications service or network or any radiocommunications apparatus, shall not relieve a person from any requirement at law to apply for and obtain any other authorisation, licence or permit however so described, or from any obligation arising from any other law, licence, authorisation or permit however so described."

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Substitution of article 6 of the principal Act.

59. Article 6 of the principal Act shall be substituted by the following:

"Independence of the Authority and its relations with the Minister.

6. (1) The Authority shall act independently and objectively in the exercise of its functions at law, including in the development of its internal procedures and organisation of its staff, and shall operate in a transparent and accountable manner in accordance with European Union law. In doing so the Authority shall not seek or take instructions from any other person in relation to the exercise of the tasks assigned to it by law, this without prejudice to any supervision, however so described, that may be undertaken in accordance with the Constitution of Malta.

(2) The Minister may, in relation to matters that appear to him to affect the public interest, from time to time give to the Authority directions in writing of a general character on the policy to be followed in the carrying out of the functions vested in the Authority by or under this Act, and the Authority shall, as soon as may be, give effect to all such directions. The Minister in giving any such directions shall state in writing the reasons therefor:

Provided that any such directions shall not be inconsistent with the provisions of this Act:

Provided further that the Authority shall afford to the Minister facilities for obtaining information with respect to its property and activities and furnish him with returns, accounts and other information with respect thereto, and afford to him facilities for the verification of information furnished, in such manner and at such times as he may reasonably require.

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(3) The provisions of article 77 of the Public Finance Management Act shall not apply to the Authority."

Addition of new article 6A to the principal Act.

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

"Suspension or overturning of a decision by the Authority.

6A. Unless otherwise provided for by law, decisions taken by the Authority shall only be suspended or overturned by the competent court or tribunal as prescribed under this Act."

61. Sub-article (2) of article 7 of the principal Act shall be substituted by the following: Amendment of article 7 of the principal Act.

"(2) The legal representation of the Authority shall vest in the Chairman, in the Chief Executive Officer if any, and such other member of the Board or officer of the Authority as the Board may appoint:

Provided that the Board may appoint one or more members of the Board or one or more officers of the Authority to appear in the name or on behalf of the Authority in any judicial proceedings and in any act, contract, instrument or other document whatsoever."

62. In article 9 of the principal Act the words "with the concurrence of the Minister." shall be substituted by the words "without prejudice to any supervision, however so described, that may be undertaken in accordance with the Constitution of Malta." Amendment of article 9 of the principal Act.

63. In article 10 of the principal Act the words "as it may, in accordance with article 9, determine" shall be substituted by the words "as it may determine". Amendment of article 10 of the principal Act.

64. In sub-article (1) of article 11 of the principal Act the words "the Prime Minister's direction." shall be substituted by the words "the direction of the Prime Minister". Amendment of article 11 of the principal Act.

65. In sub-article (5) of article 14 of the principal Act the words "may be invested" shall be substituted by the words "may be invested by the Authority". Amendment of article 14 of the principal Act.

66. In sub-article (2) of article 15 of the principal Act the words "one hundred and sixteen thousand and four hundred and sixty-four euro (€116,465)" shall be substituted by the words "one hundred and fifty thousand euro (€150,000)". Amendment of article 15 of the principal Act.

67. Sub-articles (1) to (3) of article 22 of the principal Act shall be substituted by the following: Amendment of article 22 of the principal Act.

"(1) All monies accruing to the Authority shall be paid into a bank or banks appointed as bankers of the Authority by a resolution of the Board. Such monies shall, as far as practicable, be paid into such banks from day to day, except such sum as the Board may authorise to be retained to meet petty disbursements and immediate cash payments.

(2) All payments out of funds of the Authority, other than petty disbursements not exceeding a sum fixed by the

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Board, shall be made by such officer or officers of the Authority as the Board shall appoint or designate for that purpose.

(3) Cheques against and withdrawals from any bank account of the Authority shall be signed by such officer of the Authority as may be appointed or designated by the Board for that purpose and shall be countersigned by the Chairman or such other member of the Board or officer of the Authority as may be authorised by the Board for that purpose."

Deletion of article 23 of the principal Act.

68. Article 23 of the principal Act shall be deleted.

Amendment of article 24 of the principal Act.

69. Article 24 of the principal Act shall be amended as follows:

(a) in the marginal note thereto the words "Annual report" shall be substituted by the words "Annual report and other reporting requirements";

(b) article 24 thereof shall be renumbered as article 24(1) and immediately thereafter there shall be added the following new sub-article:

"(2) Without prejudice to the requirements under sub-article (1), the Authority shall report annually, amongst other matters, on the state of the markets in relation to the sectors falling under its remit, on the decisions it issues, on its human and financial resources and how those resources are attributed and on its future plans. The Authority shall ensure that such reports are made public."; and

(c) in article 24(1) as renumbered the words "not later than six weeks" shall be substituted by the words "not later than thirteen weeks".

Amendment of article 29 of the principal Act.

70. Article 29 of the principal Act shall be amended as follows:

(a) in sub-article (1) thereof:

(i) in paragraph (a) the words "any vehicle or vessel where any activity" shall be substituted by the words "any vehicle, vessel or aircraft where any activity";

(ii) paragraphs (b) to (h) shall be renumbered as paragraphs (c) to (i) thereof; and

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

"(b) enter a place of residence for the purpose of any investigation or inspection in relation to any activity regulated by or under this Act or any other law which the Authority is entitled to enforce during any time between eight o'clock in the morning and six o'clock in the evening:

Provided that in cases of manifest urgency the Authority may carry out such investigation or inspection outside the aforesaid time:

Provided further that the Authority shall, at all times, as is reasonable taking into account the gravity of the specific circumstances, give adequate prior written notice to the person or persons residing in the said place of residence, of the conduct and the purpose of the investigation or inspection to be undertaken;"

(iv) in paragraph (i) as renumbered the words "International Commission for Non-Ionising Radiation Protection" shall be substituted by the words "International Commission on Non-Ionising Radiation Protection" and immediately thereafter there shall be added the following new paragraph:

"(j) arrange or require an undertaking to do an independent audit or operations review of any of the regulated activities of that undertaking. The costs of any such audit or operations review shall be borne by the undertaking:

Provided that the Authority before proceeding to arrange or require any such audit or operations review shall notify in writing the undertaking concerned, warning it of the audit or operations review that may be taken and the reasons therefor, requiring the undertaking to make its written submissions to the Authority within a period of not less than twenty days from the date of the notification of any such warning.";

(b) sub-articles (2) to (5) thereof shall be renumbered as sub-articles (3) to (6) thereof and immediately after sub-article (1) there shall be added the following new sub-article:

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"(2) The Authority shall exercise any power of entry as referred to in sub-article (1) only in such a manner as is reasonably required in the interest of public safety, public order, public health or public benefit."

Amendment of article 30 of the principal Act.

71. In sub-article (3) of article 30 of the principal Act the words "not exceeding ten thousand euro (€10,000)." shall be substituted by the words "not exceeding twenty-five thousand euro (€25,000)."

Amendment of article 31 of the principal Act.

72. Sub-articles (1) and (2) of article 31 of the principal Act shall be substituted by the following:

"(1) Without prejudice to any other provisions under this Act or any other law which the Authority is entitled to enforce, the Authority may take the following measures in respect of any person who infringes any provision of this Act or of any other law which the Authority is entitled to enforce, or who fails to comply with any decision given by the Authority, or with any decision given by the Utilities Networks Dispute Resolution Board where the Authority considers that non-compliance by any person with such a decision may impact negatively on the provision of electronic communications services and, or networks, or with any authorization condition, or with any binding decision issued by the European Commission pursuant to the Electronic Communications Code, namely:

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

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

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

(d) order the taking of any such measures as the Authority may, in accordance with its powers at law, consider necessary in protecting the rights of end-users as established by any law or any decision which the Authority is entitled to enforce where the act or omission of any person negatively impacts such rights:

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

(2) In cases where the Authority considers that a person has seriously and, or repeatedly infringed the provisions of this Act or of any other law which the Authority is entitled to enforce, or of any decision of the Authority or of any authorisation condition, the Authority may withdraw or suspend any related authorisation granted by or under this Act or any other law which the Authority is entitled to enforce, or prevent a person from continuing to provide any communications service or network:

Provided that, without prejudice to the generality of the above, the following instances shall be considered to constitute a serious and, or repeated breach:

(a) the unjustified and continued withholding of information requested by the Authority in accordance with its powers at law; and

(b) persistent and repeated instances of non-cooperation with the Authority."

73. In sub-article (2) of article 32 of the principal Act the words "infringement with" shall be substituted by the words "infringement within". Amendment of article 32 of the principal Act.

74. Immediately after sub-article (3) of article 33 of the principal Act there shall be added the following new sub-article: Amendment of article 33 of the principal Act.

"(4) An administrative fine may be imposed with retroactive effect in accordance with the provisions of this Act even if the breach in question was subsequently rectified."

75. Article 34 of the principal Act shall be deleted. Deletion of article 34 of the principal Act.

76. Article 35 of the principal Act shall be amended as follows: Amendment of article 35 of the principal Act.

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

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"Prescription for the taking of enforcement measures."; and

(b) the words "The prosecution of a criminal offence or the initiation of proceedings to impose an administrative fine under this Act" shall be substituted by the words "Unless stated otherwise at law, the prosecution of a criminal offence, the initiation of proceedings to impose an administrative fine or other sanctions, and the initiation of any other enforcement measures however so described under this Act".

Amendment of article 36 of the principal Act.

77. Sub-article (3) of article 36 of the principal Act shall be deleted.

Amendment of article 37 of the principal Act.

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

(a) in the marginal note thereto the words "Cap. 350" shall be deleted;

(b) in sub-article (1) thereof the words "the Broadcasting Act" shall be deleted.

Amendment of article 38 of the principal Act.

79. In sub-article (1) of article 38 of the principal Act in the Maltese text the words "għall-multa amministrattiva" shall be substituted by the words "għall-penali amministrattiva".

Amendment of article 41 of the principal Act.

80. In article 41 of the principal Act the words "may appeal to the Court of Appeal" shall be substituted by the words "may on a point of law and, or of fact appeal to the Court of Appeal".

Amendment of article 42A of the principal Act.

81. In article 42A of the principal Act the words "The Authority shall provide such information to the European Commission and, to BEREC after a reasoned request from either" shall be substituted by the words "The Authority shall provide such information, as well as the decisions or judgments given, to the European Commission and, to BEREC after a reasoned request from either body".

Amendment of article 43 of the principal Act.

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

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

"(1) Unless otherwise provided in any other law, in the event of a dispute occurring between:

(a) undertakings in Malta within the same communications sector; or

(b) undertakings providing electronic

communications networks and, or services in Malta on the one hand, and other such undertakings providing electronic communications networks and, or services in other Member States benefiting from obligations of access or interconnection on the other hand; or

(c) undertakings providing electronic communications networks and, or services in Malta on the one hand, and undertakings providing associated facilities in Malta on the other hand:

Provided that with regard to any obligations arising under any law, decision or authorisation condition which the Authority is entitled to enforce, the Authority shall, at the request of any party to the dispute, investigate the matter and shall issue a binding decision to resolve the dispute in the shortest possible time-frame, and in any case within four months from the date on which the dispute was notified to it:

Provided further that such period of four months may be extended in circumstances which the Authority considers exceptional:

Provided further that if all the parties to a dispute agree not to pursue further with the dispute with a view to achieving an amicable settlement on all the issues in dispute, and three months elapse from when all parties do so agree to discuss an amicable settlement, then the dispute shall be considered to be terminated at the lapse of the aforesaid period of three months if during that period none of the parties in writing requests the continuation of the determination of the dispute by the Authority. A party in making such a request shall state its reasons therefor.";

(b) in sub-article (4) thereof the words "If four months from the date" shall be substituted by the words "If after four months from the date";

(c) in sub-article (10) thereof the words "The Minister may by regulation" shall be substituted by the words "The Minister may, in accordance with EU legislation, by regulation"; and immediately thereafter there shall be added the following

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new sub-article:

"(11) Nothing in this article shall preclude the Authority if it considers appropriate in any circumstances that may arise in accordance with this article, either of its own initiative or at the request of a party to a dispute, from undertaking any mediation in relation to the said dispute."

Amendment of article 44 of the principal Act.

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

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

"(3) The Authority, in resolving any disputes referred to it under this article, may issue directives to the person against whom the complaint has been lodged, requiring that person to comply with any measure that the Authority may specify in accordance with its powers at law for the resolution of the dispute:

Provided that where, in a dispute lodged by an end-user, the end-user is requesting the payment of compensation and, or other civil redress and the amount involved does not exceed the competence of the Consumer Claims Tribunal or the Small Claims Tribunal, the Authority may refer such dispute for determination by the Consumer Claims Tribunal or the Small Claims Tribunal as appropriate."; and

(b) in sub-article (4) thereof the word "administrative" shall be deleted.

Amendment of article 44A of the principal Act.

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

(a) in sub-article (1) thereof the words "involving persons enjoying authorisations in more than one Member State" shall be substituted by the words "involving undertakings in more than one Member State";

(b) sub-articles (2) and (3) thereof shall be substituted by the following:

"(2) In addition to sub-article (1), a dispute arising under the Electronic Communications (Regulation) Act or the Electronic Communications Code between undertakings in different Member States, where the dispute lies within the competence of the Authority and national regulatory authorities from other Member

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States, that dispute shall be subject to the following:

(a) any person may refer such a dispute to the Authority, and where the dispute affects trade between Malta and other Member States, the Authority shall notify the dispute to BEREC in order to bring about a consistent resolution of the dispute in accordance with the objectives set out in article 4 of the Electronic Communications (Regulation) Act. In doing so the Authority shall await the opinion of BEREC subsequent to the notification before taking any action to resolve the dispute: Cap. 399.

Provided that in exceptional circumstances where there is an urgent need to act, in order to safeguard competition or protect the interests of end-users, the Authority may, either at the request of any person to the dispute or of its own initiative, adopt interim measures:

(b) where the Authority makes a determination for the purposes of resolving a dispute under this article, the provisions of article 43 shall, where applicable, apply:

Provided further that the Authority when imposing any obligations on an undertaking in resolving a dispute shall abide with the provisions of the Electronic Communications Code, and shall take the utmost account of the opinion adopted by BEREC taken in accordance with paragraph 3 of Article 27 of the Electronic Communications Code, which opinion shall be adopted within thirty days.

(3) The procedure referred to in this article does not preclude a person to the dispute from bringing an action before the courts or any other competent adjudicative forum."; and

(c) immediately after sub-article (3) thereof there shall be added the following new sub-article:

"(4) The provisions of this article shall not apply to disputes relating to radio spectrum coordination covered by Part V of the Electronic Communications (Regulation) Act." Cap. 399.

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Amendment of
article 46 of the
principal Act.

85. Sub-article (1) of article 46 of the principal Act shall be substituted by the following:

"(1) The Minister may, after consultation with the Authority, make regulations in respect of any of the functions assigned to the Authority including such functions as may be assigned in compliance with any international obligations of Malta and in respect of alternative dispute resolution, or any other dispute or complaint handling procedures, however so described, relating to any of the communications sectors regulated by the Authority, which regulations may also provide for any such fees and, or charges however so described that may be payable to the Authority in relation to the exercise of any such functions:

Provided that the Minister may establish the procedure to be followed by the Authority in the investigation of any infringements and the enforcement of any sanctions that the Authority may be empowered by law to impose."

Amendment of
article 50 of the
principal Act.

86. In sub-article (3) of article 50 of the principal Act the words "not less than five hundred euro (€500) and not more than five thousand euro (€5,000)." shall be substituted by the words "not less than one thousand euro (€1,000) and not more than ten thousand euro (€10,000)."

Amendment of
the First
Schedule to the
principal Act.

87. In the First Schedule to the principal Act in the first column under the title "Name of public authority" there shall be added the words "Authority for Transport in Malta", and in the second column under the title "Type of authorisation" there shall be added the words "Ship station licences (individual authorisations)."

Passed by the House of Representatives at Sitting No. 489 of the 14th July, 2021.

ANĠLU FARRUGIA
Speaker

RAYMOND SCICLUNA
Clerk of the House of Representatives