

**L.N. 379 of 2021**

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

**Electronic Communications Networks and Services (General)  
Regulations, 2021**

IN EXERCISE of the powers conferred upon him by articles 34 and 47 of the Electronic Communications (Regulation) Act, the Minister responsible for communications, after consultation with the Malta Communications Authority, has made the following regulations:-

**PART I  
PRELIMINARY**

**1.** (1) The title of these regulations is the Electronic Communications Networks and Services (General) Regulations, 2021. Citation and commencement.

(2) These regulations shall come into force on 1st October, 2021.

**2.** In these regulations, unless the context otherwise requires: Interpretation.

""Act" means the Electronic Communications (Regulation) Act, 2021; Cap. 399.

"application programming interface" or "API" means the software interface between applications, made available by broadcasters or service providers, and the resources in the enhanced digital television equipment for digital television and radio services;

"authorised undertaking" means an undertaking deemed to be authorised to provide electronic communications networks and, or services in accordance with these regulations;

"call" means a connection established by means of a publicly available interpersonal communications service allowing two-way voice communication;

"caller location information" means, in a public mobile network, the data processed, derived from network infrastructure or handsets, indicating the geographic position of an end-user's mobile terminal equipment, and, in a public fixed network, the data about the physical address of the network termination point;

"the Charter" means the Charter of Fundamental Rights of the European Union;

"competent authority" and, or "competent public body" means any national or regional authority, and any national or regional public body or bodies as the Minister may, after consultation with the Authority and with the Minister responsible for such public authority or body, designate under the Fourteenth Schedule in accordance with his powers under article 47 of the Act, to be responsible or to undertake any of the functions however so described, as stipulated in these regulations;

"Decision (EU) 2017/899" means Decision (EU) 2017/899 of the European Parliament and of the Council of 17 May 2017 on the use of the 470-790 MHz frequency band in the European Union;

"Decision No 243/2012/EU" means Decision No 243/2012/EU of the European Parliament and of the Council of 14 March 2012 establishing a multiannual radio spectrum policy programme;

"Directive 2003/98/EC" means Directive 2003/98/EC of the European Parliament and of the Council of 17 November 2003 on the re-use of public sector information;

"Directive 2014/30/EU" means Directive 2014/30/EU of the European Parliament and of the Council of 26 February 2014 on the harmonisation of the laws of the Member States relating to electromagnetic compatibility;

"Directive 2014/53/EU" means Directive 2014/53/EU of the European Parliament and of the Council of 16 April 2014 on the harmonisation of the laws of the Member States relating to the making available on the market of radio equipment and repealing Directive 1999/5/EC;

"Directive 2014/61/EU" means Directive 2014/61/EU of the European Parliament and of the Council of 15 May 2014 on measures to reduce the cost of deploying high-speed electronic communications networks;

"Directive (EU) 2015/1535" means Directive (EU) 2015/1535 of the European Parliament and of the Council of 9 September 2015 laying down a procedure for the provision of information in the field of technical regulations and of rules on

Information Society services;

"durable medium" means any instrument which enables the consumer or the trader to store information addressed personally to him in a way which is accessible for future reference for a period of time for the purposes of such information and which allows the unchanged reproduction of the information stored;

"enhanced digital television equipment" means set-top boxes intended for connection to television sets or integrated digital television sets, able to receive digital interactive television services;

"ENISA" means the European Union Agency for Network and Information Security;

"gateway operator" means an undertaking providing or authorised to provide a public electronic communications network and, or publicly available electronic communications services which includes a submarine connection between the Maltese islands and, or includes an international connection between Malta and other countries;

"geographic number" means a number from the national numbering plan where part of its digit structure contains geographic significance used for routing calls to the physical location of the network termination point;

"ICNIRP" means the International Commission on Non-Ionising Radiation Protection;

"most appropriate PSAP" means a PSAP established by responsible authorities to cover emergency communications from a certain area or for emergency communications of a certain type;

"number-independent interpersonal communications service" means an interpersonal communications service which does not connect with publicly assigned numbering resources, namely, a number or numbers in national or international numbering plans, or which does not enable communication with a number or numbers in national or international numbering plans;

"non-geographic number" means a number from the national numbering plan that is not a geographic number, such as mobile, freephone and premium-rate numbers;

"other electronic communications services" include:

(i) services consisting wholly or mainly in the conveyance of signals such as transmission services for the provision of machine-to-machine (M2M) or Internet of Things (IoT);

(ii) number-based interpersonal non-voice communications services;

(iii) publicly available telephone directories and directory enquiry services;

(iv) other publicly available electronic communications services; and

(v) non-publicly available electronic communications services.

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

"radio local area network" or "RLAN" means a low-power wireless access system, operating within a small range, with a low risk of interference with other such systems deployed in close proximity by other users, using, on a non-exclusive basis, harmonised radio spectrum;

"Recommendation 1999/519/EC" means Council Recommendation of 12 July 1999 on the limitation of exposure of the general public to electromagnetic fields (0 Hz to 300 GHz);

"Regulation (EU) No 1315/2013" means Regulation (EU) No 1315/2013 of the European Parliament and of the Council of 11 December 2013 on European Union guidelines for the development of the trans-European transport network and repealing Decision No 661/2010/EU;

"Regulation (EU) 2016/679" means Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation);

"Regulation (EU) 2018/1971" means 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), amending Regulation (EU) 2015/2120 and repealing Regulation (EC) No 1211/2009;

"security incident" means an event having an actual adverse effect on the security of electronic communications networks and, or services;

"small-area wireless access point" means low-power wireless network access equipment of a small size operating within a small range, using licensed radio spectrum or licence-exempt radio spectrum or a combination thereof, which may be used as part of a public electronic communications network, which may be equipped with one or more low visual impact antennae, and which allows wireless access by users to electronic communications networks regardless of the underlying network topology, be it mobile or fixed;

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

"television and radio distribution services" means the delivery of television and, or radio broadcasts or other television services to a subscriber through an electronic communications network;

"total conversation service" means a multimedia real time conversation service that provides bidirectional symmetric real time transfer of motion video, real time text and voice between users in two or more locations;

"transnational markets" means markets identified in accordance with regulation 53 which cover the European Union or a substantial part thereof located in more than one Member State; and

"TFEU" means the Treaty on the Functioning of the European Union."

**3.** (1) These regulations shall, unless the context otherwise requires, apply to: Application.

- (a) public electronic communications networks;
- (b) voice communications services;

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- (c) internet access services;
- (d) television and radio distribution services; and
- (e) other electronic communications services.

(2) Any person providing any of the services or operating any of the networks mentioned in this regulation shall comply with these regulations.

## **PART II COMPETITION**

Competition  
rules.

**4.** (1) An undertaking shall refrain from doing anything by an act or omission, which has the effect or the intention of preventing, restricting or distorting competition.

(2) The Authority shall, to the extent that it shall be empowered under the laws that it is entitled to enforce, ensure that the principles of competition law are fully adhered to in the electronic communications sector, in particular with regard to:

- (a) the examination of any interconnection agreements;
- (b) the conditions for market access to undertakings;
- (c) the schemes established for funding universal service obligations;
- (d) the access to rights of way;
- (e) the cross-ownership of different networks and the joint provision of networks and, or services; and
- (f) the emergence of any global and regional partnerships and alliances:

Provided that for the purpose of exercising its duties and functions under the Act, the Authority may seek the advice of the competent authority responsible for competition.

## **PART III GENERAL AUTHORISATION**

General  
authorisation of  
electronic  
communications  
networks and  
services.

**5.** (1) An undertaking shall be entitled to provide electronic communications services and, or networks, in accordance with the Act and with these regulations:

Provided that an undertaking shall only be prevented from

providing electronic communications networks or services, where this is necessary for the reasons set out in Article 52(1) of the TFEU. Any such limitation to the freedom to provide electronic communications networks and services shall be duly reasoned and shall be notified to the European Commission.

(2) The provision of electronic communications networks or services, other than number-independent interpersonal communications services shall, without prejudice to the specific obligations referred to in regulation 7(2) or rights of use referred to in article 37 of the Act and regulation 81, be subject only to a general authorisation.

(3) In accordance with the Act and these regulations, any undertaking subject to a general authorisation as stated in subregulation (2) shall notify the Authority in writing of its intention to provide such a network or service before commencing with the provision of any such network or service.

(4) An undertaking in submitting a notification for a general authorisation to the Authority, shall not be required to obtain an explicit decision or any other administrative act from any public authority before exercising the rights derived from the general authorisation. Upon notification to the Authority, an undertaking may start the activity so notified, where necessary subject to the provisions on the rights of use under the Act and these regulations.

(5) The notification submitted in accordance with this regulation shall not entail more than a declaration by a person to the Authority of his intention to start the provision of electronic communications networks and, or services, and the submission of such minimum information as is required to allow the Authority and BEREC to keep a register of providers of electronic communications networks and, or services:

Provided that the information shall be limited to:

- (a) the name of the provider;
- (b) the legal status of the provider, its form and registration number;
- (c) the official address for service of notice in Malta, and the geographical address of the main establishment of the provider in Malta or any other Member State, as the case may be;
- (d) the website address of the provider, where applicable,

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associated with the provision of electronic communications networks and, or services;

(e) a contact person and contact details;

(f) a short description of the networks and, or services intended to be provided;

(g) the Member State or Member States where the networks and, or services are being provided; and

(h) an estimated date for starting the activity.

(6) No additional or separate notification requirements shall be imposed other than those required under this regulation.

(7) In line with any guidelines for the notification template and maintenance of a European Union database of the notifications transmitted to the competent authorities in all Member States that BEREC may publish in order to approximate notification requirements, the Authority shall, by electronic means, forward each notification received to BEREC without undue delay.

(8) An undertaking shall notify in writing the Authority of any changes to the information supplied under sub-regulation (5)(a) to (e) within fourteen (14) days of such change, and in relation to the information referred to in sub-regulation (5)(f) to (h) within fourteen (14) days prior to the commencement of the relevant activity.

(9) An undertaking shall notify in writing the Authority immediately when it ceases to provide any electronic communications networks and, or services under these regulations, and shall remain responsible for the fulfilment of any obligations as a provider of such networks and, or services until such notification is received and acknowledged by the Authority:

Provided that the Authority may specify any such additional requirements onerous on the undertaking concerned as the Authority considers necessary in order to ensure the protection of end-users and, or to prevent any disruption to other authorised undertakings.

(10) Any right, interest or entitlement resulting from a general authorisation is not transferable and shall only be exercised by the undertaking identified in the notification made to the Authority in accordance with the provisions of this regulation, and shall apply only to the electronic communications service and, or network described in that notification.



6. (1) The Authority may decide to specify an electronic communications network or service of a particular category as being a network or service in relation to which an undertaking is not subject to the notification requirements as provided for in regulation 5. Any such undertaking is deemed to be authorised under these regulations.

Decision where notification under regulation 5 is not required.

(2) The Authority in making such determination shall give its reasons therefor.

7. (1) The general authorisation for the provision of electronic communications networks and, or services, and the rights of use for radio spectrum and rights of use for numbering resources may be subject only to the conditions listed in the First Schedule which conditions shall be non-discriminatory, proportionate and transparent:

Conditions attached to the general authorisation and to the rights of use for radio spectrum and for numbering resources and specific obligations.

Provided that in the case of rights of use for radio spectrum, such conditions shall ensure the effective and efficient use thereof and shall be in accordance with regulations 32 and 38, and in the case of rights of use for numbering resources, they shall be in accordance with regulation 81.

(2) Specific obligations which may be imposed on undertakings providing electronic communications networks and, or services under regulation 48(1) and (8) and regulations 50, 55 and 70, or on those undertakings designated to provide universal service under these regulations, shall be legally separate from the rights and obligations under the general authorisation:

Provided that the Authority, in order to achieve transparency, shall refer to the criteria and procedures for imposing such specific obligations on individual undertakings in the general authorisation.

(3) The general authorisation shall contain only conditions which are specific for that sector and are set out in Parts A, B and C of the First Schedule and shall not duplicate conditions which are applicable to undertakings by virtue of any other national law.

(4) The conditions of the general authorisation shall not be duplicated where they grant the right of use for radio spectrum or for numbering resources.

8. (1) The conditions applicable to general authorisations shall be those as stated in the Thirteenth Schedule:

Conditions attached to general authorisation to provide electronic communications services and, or networks.

Provided that the Authority may in accordance with regulation 7 amend the Thirteenth Schedule. In doing so the Authority shall not impose any conditions not listed under Part A of the First Schedule:

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Provided further that, the Authority may establish that certain conditions may not apply to such categories of undertakings as may be specified by the Authority.

(2) Any conditions attached to a general authorisation, or non-application of conditions to such categories of undertakings as may be specified under sub-regulation (1), shall be objectively justified, non-discriminatory, proportionate and transparent in relation to the electronic communications network or service concerned.

(3) An undertaking shall comply with the conditions attached to the general authorisation applicable to it.

(4) The Authority shall not attach as a condition to a general authorisation, any specific obligations that it may impose on an undertaking nor any conditions which are applicable to undertakings by virtue of any other law.

Non-compliance with conditions of general authorisation.

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**9.** If the Authority considers that an undertaking which enjoys a general authorisation is not complying with one or more conditions of a general authorisation, the Authority may in accordance with the applicable provisions under Part VI of the Malta Communications Authority Act, take such measures as it considers appropriate, including interim measures, to ensure compliance.

Declarations to facilitate the exercise of rights to install facilities and rights of interconnection.

**10.** (1) The Authority shall, within one week of the receipt of a request of an undertaking, issue to that undertaking in such form as the Authority may from time to time determine, a standardised declaration confirming, where applicable, that the undertaking has submitted a notification under regulation 5(3).

(2) When issuing a declaration under this regulation, the Authority shall detail the circumstances under which an undertaking providing electronic communications networks and, or services under the general authorisation has the right to apply for rights to install facilities, negotiate interconnection, and obtain access or interconnection, in order to facilitate the exercise of those rights.

(3) Where the Authority considers it appropriate to do so, it may issue such a declaration as an automatic reply following the notification pursuant to regulation 5(3).

(4) The Authority shall establish and maintain a register of those undertakings that have notified the Authority of an intention to provide a network or service pursuant to regulation 5(3) and such information contained in any such notification as the Authority considers appropriate, other than information which the Authority reasonably considers to be confidential, shall be entered in the register established

and maintained under this sub-regulation:

Provided that the Authority may, as necessary, amend or delete an entry in the register.

(5) A person may inspect the register free of charge at all reasonable times and may, at a reasonable charge to be determined by the Authority, make copies of, or take extracts from, entries in the register.

**11.** (1) An undertaking subject to the general authorisation pursuant to regulation 5 shall have the right to:

List of minimum rights derived from the general authorisation.

(a) provide electronic communications networks and services;

(b) have its application for the necessary rights to install facilities considered in accordance with articles 4 and 4D of the Utilities and Services (Regulation of Certain Works) Act;

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(c) use, subject to regulations 7 and 42, and article 37 of the Act, radio spectrum in relation to electronic communications networks and, or services; and

(d) have its application for the necessary rights of use for numbering resources considered in accordance with regulation 81.

(2) Where such an undertaking is providing electronic communications networks or services to the public, the general authorisation shall give it the right to:

(a) negotiate interconnection with and, where applicable, obtain access to, or interconnection from, other providers of public electronic communications networks or publicly available electronic communications services covered by a general authorisation in the European Union in accordance with the Act and these regulations; and

(b) be given an opportunity to be designated to provide different elements of the universal service or to cover different parts of Malta in accordance with regulations 73 or 74.

**12.** (1) Any administrative charges imposed by the Authority on undertakings providing electronic communications networks or services under the general authorisation or to which a right of use has been granted, shall:

Administrative charges.

(a) cover, in total, only the administrative costs incurred in the management, control and enforcement of the general authorisation system and of the rights of use and of specific obligations as referred to in regulation 7(2) which may include costs for international cooperation, harmonisation and standardisation, market analysis, monitoring compliance and other market control, as well as regulatory work involving preparation and enforcement of legislation and regulatory decisions; and

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

(2) The Authority shall publish an annual overview of its administrative costs and of the total sum of the charges collected. Where there is a difference between the total sum of the charges and the administrative costs, appropriate adjustments shall be made.

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

(4) An undertaking providing electronic communications networks and, or services under the general authorisation shall pay to the Authority such administrative charges as are established under Part A of the Twelfth Schedule:

Provided that in all cases, any such charges shall be established in accordance with this regulation.

Accounting  
separation and  
financial  
reports.

**13.** (1) An undertaking providing public electronic communications networks or publicly available electronic communications services which has special or exclusive rights for the provision of services in other sectors in Malta or in another Member State, shall:

(a) keep separate accounts for the activities associated with the provision of electronic communications networks or services, to the extent that would be required if those activities were carried out by legally independent entities, in order to identify all elements of cost and revenue, with the basis of their calculation and the detailed attribution methods used, related to

such activities, including an itemised breakdown of fixed assets and structural costs; or

(b) have structural separation for the activities associated with the provision of electronic communications networks or services:

Provided that the Minister may, after consultation with the Authority, by order in the Gazette establish that the requirements referred to in this sub-regulation do not apply to undertakings which have an annual turnover of less than fifty million euro (€50,000,000) or any such inferior amount as the Minister may, after consultation with the Authority, establish in the Gazette in activities associated with electronic communications networks and, or services in the European Union.

(2) Where an undertaking providing public electronic communications networks or publicly available electronic communications services is not subject to the requirements of national company law and does not satisfy the small and medium-sized enterprise criteria of European Union law accounting rules, its financial reports shall be drawn up and submitted to independent audit and published. The audit shall be carried out in accordance with the relevant European Union and national rules:

Provided that the provisions of this sub-regulation shall also apply to the separate accounts required under paragraph (a) of the subregulation (1) of this regulation.

**14.** (1) Without prejudice to regulation 20 and articles 31, 32 and 33 of the Malta Communications Authority Act, the rights to install facilities or rights of use for radio spectrum or for numbering resources before the expiry of the period for which they are granted, shall not be restricted or withdrawn, except where justified pursuant to sub-regulation (2) of this regulation, and, where applicable, in accordance with the First Schedule, and to any relevant national provisions regarding compensation for the withdrawal of rights.

Restriction or withdrawal of rights.  
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(2) In line with the need to ensure the effective and efficient use of radio spectrum, or the implementation of the technical implementing measures adopted under Article 4 of Decision No 676/2002/EC, the Authority may restrict or withdraw the rights of use for radio spectrum, including the rights referred to in regulation 36, based on pre-established and clearly defined procedures which the Authority shall from time to time establish, in accordance with the principles of proportionality and non-discrimination:

Provided that in such cases, the holders of the rights may, where appropriate and in accordance with European Union law and national law, seek to be compensated appropriately.

(3) A modification in the use of radio spectrum as a result of the application of regulation 32(3) and (4) or of regulation 32(5) and (6) shall not alone constitute grounds to justify the withdrawal of a right of use for radio spectrum.

(4) Any intention to restrict or withdraw rights under the general authorisation or individual rights of use for radio spectrum or for numbering resources without the consent of the holder of the rights shall be subject to consultation of the interested parties in accordance with article 4A of the Malta Communications Authority Act.

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#### **PART IV PROVISION OF INFORMATION, SURVEYS AND CONSULTATION MECHANISM**

Information  
request to  
undertakings.

**15.** (1) The Authority may require undertakings providing electronic communications networks and services, associated facilities, or associated services, to provide all the information, including financial information, necessary for the Authority and BEREC to ensure conformity with the provisions of, or decisions or opinions adopted in accordance with, the Electronic Communications Code, the Act, these regulations and Regulation (EU) 2018/1971:

Provided that the Authority shall have the power to require such undertakings to submit information concerning future network or service developments that could have an impact on the wholesale services that they make available to competitors, as well as any information on electronic communications networks and associated facilities, which is disaggregated at local level and sufficiently detailed to enable the geographical survey and designation of areas in accordance with regulation 17.

(2) If the Authority considers that the information collected in accordance with sub-regulation (1) is insufficient for the Authority and, or BEREC to carry out their regulatory tasks under European Union law, the Act or these regulations, such information may be required from other relevant undertakings active in the electronic communications or closely related sectors.

(3) The Authority may require undertakings designated as having significant market power on wholesale markets to submit accounting data on the retail markets that are associated with those wholesale markets.

(4) The Authority may request information pursuant to any of its regulatory tasks at law from the single information points established pursuant to Directive 2014/61/EU.

(5) Any request for information made in accordance with this regulation shall be proportionate to the performance of the task being undertaken by the Authority, or BEREC as the case may be, and shall be reasoned.

(6) An undertaking shall provide any information requested in accordance with this regulation, promptly and in accordance with the timescales and level of detail required by the Authority.

(7) The Authority shall provide the European Commission, after a reasoned request, with the information necessary for the European Commission to carry out its tasks under the TFEU. The information requested by the European Commission shall be proportionate to the performance of those tasks:

Provided that where the information provided refers to information previously provided by undertakings at the request of the Authority, such undertakings shall be informed accordingly by the Authority:

Provided further to the extent necessary and unless the Authority has made an explicit and reasoned request to the contrary, the European Commission shall make the information provided available to any other such authority in another Member State.

(8) Subject to the requirements of sub-regulation (9), the Authority shall ensure that the information submitted to it can be made available to another such authority in Malta or in another Member State and to BEREC, after a substantiated request, where necessary to allow either authority, or BEREC, to fulfil its responsibilities under European Union law.

(9) Where information gathered pursuant to sub-regulation (1), including information gathered in the context of a geographical survey, is considered to be confidential by the Authority in accordance with European Union and national rules on commercial confidentiality, the European Commission, BEREC and any other competent authorities concerned shall ensure such confidentiality:

Provided that such confidentiality shall not prevent the sharing of information between the Authority, the Commission, BEREC and any other competent authorities concerned in a timely manner for the purposes of reviewing, monitoring and supervising the

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application of the Electronic Communications Code, the Act and these regulations.

(10) Acting in accordance with national rules on public access to information and subject to European Union and national rules on commercial confidentiality and protection of personal data, the Authority shall publish information that contributes to an open and competitive market:

Provided that in doing so the Authority shall also publish the terms of public access to such information including the procedures for obtaining such access.

Information required with regard to the general authorisation, rights of use and specific obligations.

**16.** (1) Without prejudice to any information requested pursuant to regulation 15 and to information and reporting obligations under national law other than the general authorisation, the Authority may require undertakings to provide information with regard to the general authorisation, the rights of use or the specific obligations referred to in regulation 7(2), which is proportionate and objectively justified in particular for the purposes of:

(a) verifying, on a systematic or case-by-case basis, compliance with condition 1 of Part A, conditions 2 and 6 of Part D, and conditions 2 and 7 of Part E of the First Schedule and of compliance with obligations as referred to in regulation 7(2) and in the Thirteenth Schedule;

(b) verifying, on a case-by-case basis, compliance with conditions as set out in the First Schedule and in the Thirteenth Schedule where a complaint has been received, or where the Authority has other reasons to believe that a condition is not complied with, or in the case of an investigation by the Authority of its own initiative;

(c) carrying out procedures for and the assessment of requests for granting rights of use;

(d) publishing comparative overviews of quality and price of services for the benefit of consumers;

(e) collating clearly defined statistics, reports or studies;

(f) carrying out market analyses for the purposes of the Electronic Communications Code, the Act and these regulations including data on the downstream or retail markets associated with or related to the markets which are the subject of the market analysis;



(g) safeguarding the efficient use and ensuring the effective management of radio spectrum and of numbering resources;

(h) evaluating future network or service developments that could have an impact on wholesale services made available to competitors, on territorial coverage, on connectivity available to end-users or on the designation of areas pursuant to regulation 17;

(i) conducting geographical surveys; and

(j) responding to reasoned requests for information by BEREC:

Provided that the information referred to in paragraphs (a) and (b), and (d) to (j) shall not be required prior to, or as a condition for, market access.

(2) As regards the rights of use for radio spectrum, the information referred to in sub-regulation (1) shall refer in particular to the effective and efficient use of radio spectrum as well as to compliance with any coverage and quality of service obligations attached to the rights of use for radio spectrum and their verification.

(3) Where the Authority requires an undertaking to provide information as referred to in sub-regulation (1) it shall inform that undertaking of the specific purpose for which this information is to be used.

(4) The Authority shall not duplicate requests of information already made by BEREC pursuant to Article 40 of Regulation (EU) 2018/1971 where BEREC has made the information received available to the Authority.

17. (1) The Authority shall be responsible for the conduct of a geographical survey of the reach of electronic communications networks capable of delivering broadband ('broadband networks') by 21 December 2023, and shall update it at least every three years thereafter.

Geographical surveys of network deployments.

(2) The geographical survey referred to in subregulation (1) shall include a survey of the current geographic reach of broadband networks within Malta, as required for the tasks of the Authority and, or other competent authorities under the Act, these regulations or any other applicable law, and for the surveys required for the application of State aid rules.

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(3) In undertaking a geographical survey in accordance with this regulation, the Authority may also decide to include in the geographical survey, a forecast for a period determined by it of the reach of broadband networks, including very high capacity networks, within Malta:

Provided that such forecast shall include all relevant information, including information on planned deployments by any undertaking or public authority, of very high capacity networks and significant upgrades or extensions of networks to at least 100 Mbps download speeds. For this purpose, the Authority shall request undertakings and other public authorities to provide such information to the extent that it is available and can be provided with reasonable effort.

(4) The Authority shall decide, with respect to tasks specifically attributed to it under the Act and these regulations, the extent to which it is appropriate to rely on all or part of the information gathered in the context of a forecast undertaken in accordance with this regulation.

(5) The information collected in the geographical survey shall be at an appropriate level of detail and shall include sufficient information on the quality of service and relative parameters and shall be treated in accordance with regulation 15(9).

(6) The Authority may designate an area with clear territorial boundaries where, on the basis of the information gathered and any forecast prepared pursuant to sub-regulation (3), the Authority determines that, for the duration of the relevant forecast period, no undertaking or public authority has deployed or is planning to deploy a very high capacity network or significantly upgrade or to extend its network to a performance of at least 100 Mbps download speeds. In so doing the Authority shall publish the designated areas on its website.

(7) Within a designated area, the Authority may invite undertakings and public authorities to declare their intention to deploy very high capacity networks over the duration of the relevant forecast period. Where this invitation results in a declaration by an undertaking or public authority of its intention to do so, the Authority may require other undertakings and public authorities to declare any intention to deploy very high capacity networks, or significantly upgrade or extend its network to a performance of at least 100 Mbps download speeds in this area:

Provided that the Authority shall specify the information to be included in any such submissions made in accordance with this regulation, in order to ensure at least a similar level of detail as that

taken into consideration in any forecast pursuant to sub-regulation (3):

Provided further that in so doing, the Authority shall also inform any undertaking or public authority expressing its interest as to whether the designated area is covered or likely to be covered by a next-generation access network offering download speeds below 100 Mbps on the basis of the information gathered pursuant to this regulation.

(8) The Authority shall only impose sanctions in the context of the procedure referred to in sub-regulation (7) where an undertaking or public authority knowingly or due to gross negligence provides misleading, erroneous or incomplete information:

Provided that when determining the amount of fines including where applicable of daily fines to be imposed in such instances, the Authority shall consider *inter alia*, whether the behaviour of the undertaking or public authority has had a negative impact on competition and, in particular, whether, contrary to the information originally provided or any update thereof, the undertaking or public authority either has deployed, extended or upgraded a network, or has not deployed a network and has failed to provide an objective justification for that change of plan.

(9) Measures pursuant to this regulation shall be taken in accordance with an efficient, objective, transparent and non-discriminatory procedure, whereby no undertaking is excluded *a priori*.

(10) The Authority in defining coverage obligations attached to rights of use for radio spectrum and for verifying availability of services falling within the universal service obligations in Malta, shall take into account the results of the geographical survey and of any designated areas pursuant to this regulation.

(11) The competent authorities including where applicable local or regional authorities with responsibility for the allocation of public funds for the deployment of electronic communications networks and for the design of national broadband plans shall take into account the results of the geographical survey and of any designated areas pursuant to this regulation.

(12) When conducting the geographical survey the Authority shall supply those results to other relevant authorities subject to the receiving authority ensuring the same level of confidentiality and protection of business secrets as the Authority, and shall inform the parties which provided the information accordingly. Those results

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shall also be made available to BEREC and the European Commission upon their request and under the same conditions.

(13) If the relevant information is not available on the market, the Authority shall make the data from the geographical surveys which are not subject to commercial confidentiality, directly accessible in accordance with Directive 2003/98/EC to allow for its reuse:

Provided that the Authority shall also, where information tools enabling end-users to determine the availability of connectivity in different areas are not available on the market, make available such tools ensuring that these include a level of detail which is useful to support the choice of operator or service provider of the end-user.

Consultation  
and  
transparency  
mechanism.  
Cap. 418

**18.** The provisions under article 4A of the Malta Communications Authority Act shall also apply where the Authority intends to provide for restrictions in accordance with regulation 32(3), (4), (5) and (6), which have a significant impact in a market for any communications networks or services:

Provided that for the purposes of regulation 23, the Authority shall inform the RSPG at the moment of publication about any such proposed decision which falls within the scope of the comparative or competitive selection procedure pursuant to regulation 42(2) and (3) and relates to the use of radio spectrum for which harmonised conditions have been set by technical implementing measures in accordance with Decision No 676/2002/EC in order to enable its use for wireless broadband electronic communications networks and services.

Radio Spectrum  
Coordination  
among Member  
States.

**19.** (1) The Authority shall ensure that the use of radio spectrum is organised in Malta in a way that no other Member State is prevented from allowing on the territory of that Member State the use of harmonised radio spectrum in accordance with European Union law, especially due to cross-border harmful interference between Malta and any another Member State or Member States:

Provided that the Authority shall take all necessary measures to this effect without prejudice to the obligations of Malta under international law and relevant international agreements such as the ITU Radio Regulations and the ITU Radio Regional Agreements.

(2) The Authority shall cooperate with other Member States, and where appropriate through the RSPG, in the cross-border coordination of the use of radio spectrum in order to:

- (a) ensure compliance with sub-regulation (1); or

(b) resolve any problem or dispute in relation to cross-border coordination or cross-border harmful interference between Malta and other Member States, as well as with third countries, which prevent Malta and, or other Member States from using the harmonised radio spectrum in their territory.

(3) In order to ensure compliance with sub-regulation (1), the Authority, in consultation with the Minister, may request the RSPG to use its good offices to address any problem or dispute in relation to cross-border coordination or cross-border harmful interference.

(4) Where the actions referred to in sub-regulations (2) or (3) have not resolved the problem or dispute, the Authority, in consultation with the Minister, may request the European Commission to adopt decisions to resolve cross-border harmful interference which prevent Malta from using the harmonised radio spectrum in its territory.

(5) The Authority, in consultation with the Minister, may request the European Union to provide legal, political and technical support to resolve radio spectrum coordination issues with countries neighbouring the European Union, including candidate and acceding countries, in such a way that Malta can observe its obligations under European Union law.

## PART V IMPLEMENTATION

**20.** Without prejudice to the generality of its powers under the Act and under the Malta Communications Authority Act, the Authority:

(a) shall monitor and supervise compliance with the conditions of the general authorisation, of the rights of use for radio spectrum, and for numbering resources, with the specific obligations referred to in regulation 7(2) and with the obligation to use radio spectrum effectively and efficiently in accordance with articles 4A and 38 of the Act and with regulation 33; and

(b) may require undertakings subject to a general authorisation or benefiting from rights of use for radio spectrum or for numbering resources to provide all information necessary to verify compliance with the conditions of the general authorisation or of rights of use for radio spectrum and for numbering resources or with the specific obligations referred to in regulation 7(2) or regulation 33, in accordance with regulation 16.

Compliance with the conditions of the general authorisation or of rights of use for radio spectrum and for numbering resources and compliance with specific obligations. Cap. 418.

**PART VI  
INTERNAL MARKET PROCEDURES**

Consolidating  
the internal  
market for  
electronic  
communicat-  
ions.

**21.** (1) Except where otherwise provided in any recommendations or guidelines adopted pursuant to article 34 of the Electronic Communications Code, upon completion of the public consultation, if required under regulation 18, where the Authority intends to take a measure which:

- (a) falls within the scope of regulations 48, 52, 54, 55 or 70; and
- (b) would affect trade between Malta and other Member States,

the Authority shall publish the draft measure and communicate it to the European Commission, to BEREC, and to the national regulatory authorities in other Member States at the same time, and in doing so shall state the reasons for the measure in accordance with regulation 15(9):

Provided that the aforesaid national regulatory authorities, BEREC and the European Commission may comment on that draft measure within one month from receipt of the draft measure, which period shall not be extended.

(2) The draft measure referred to in sub-regulation (1) shall not be adopted for a further two months, where that measure aims to:

- (a) define a relevant market which is different from those defined in the recommendation referred to in Article 64(1) of the Electronic Communications Code; or
- (b) decide whether or not to designate an undertaking as having, either individually or jointly with others, significant market power, under regulation 54(6) and (7) or (8);

and the draft measure would affect trade between Malta and other Member States, and the European Commission has indicated to the Authority that it considers that the draft measure would create a barrier to the internal market or that it has serious doubts as to its compatibility with European Union law and in particular with the objectives referred to in article 4 of the Act:

Provided that the two-month period shall not be extended:

Provided further that, the European Commission shall inform BEREC and the Authority of its reservations in such a case and

simultaneously make them public.

(3) BEREC shall publish an opinion on the reservations of the European Commission referred to in sub-regulation (2), indicating whether it considers that the draft measure should be maintained, amended or withdrawn and shall, where appropriate, provide specific proposals to that end.

(4) Within the two month period referred to in sub-regulation (2), the European Commission may either:

(a) take a decision requiring the Authority to withdraw the draft measure; or

(b) take a decision to lift its reservations referred to in sub-regulation (2):

Provided that the European Commission shall take utmost account of the opinion of BEREC before taking a decision:

Provided further that decisions referred to in paragraph (a) shall be accompanied by a detailed and objective analysis of why the European Commission considers that the draft measure is not to be adopted, together with specific proposals for amending it.

(5) Where the European Commission has adopted a decision in accordance with paragraph (a) of sub-regulation (4) requiring the Authority to withdraw a draft measure, the Authority shall amend or withdraw the draft measure within six months of the date of the decision of the European Commission:

Provided that where the draft measure is amended, the Authority shall undertake a public consultation in accordance with article 4A of the Malta Communications Authority Act, and shall notify the amended draft measure to the European Commission in accordance with sub-regulation (1). Cap. 418.

(6) The Authority shall take the utmost account of comments of the other national regulatory authorities, of BEREC and of the European Commission and may, except in the cases covered by sub-regulation (2) and by paragraph (a) of sub-regulation (4), adopt the resulting draft measure and shall, where it does so, communicate it to the European Commission.

(7) The Authority shall communicate to the European Commission and to BEREC all adopted final measures which fall under sub-regulation (1).

(8) In exceptional circumstances, where the Authority considers that there is an urgent need to act, in order to safeguard competition and protect the interests of users, by way of derogation from the procedure set out in sub-regulations (1) and (2), it may immediately adopt proportionate and provisional measures:

Provided that in doing so the Authority shall, without delay, communicate those measures, with its full reasons therefor, to the European Commission, to the other national regulatory authorities, and to BEREC:

Provided further that, a decision of the Authority to render such measures permanent or extend the period for which they are applicable shall be subject to sub-regulations (1) and (2).

(9) The Authority may withdraw a draft measure made in accordance with this regulation at any time.

Procedure for  
the consistent  
application of  
remedies.

**22.** (1) Where an intended measure covered by regulation 21(1) aims to impose, amend or withdraw an obligation on an undertaking according to regulations 48 or 54 in conjunction with regulations 56 to 63 and regulation 70, the European Commission may, within the one month period referred to in regulation 21(1), notify the Authority and BEREC of its reasons for considering that the draft measure would create a barrier to the internal market or of its serious doubts as to its compatibility with European Union law. In such a case, the draft measure shall not be adopted for a further three months following the notification by the European Commission:

Provided that in the absence of such notification, the Authority may adopt the draft measure, taking utmost account of any comments made by the European Commission, BEREC or any other national regulatory authority.

(2) Within the three month period referred to in sub-regulation (1), the European Commission, BEREC and the Authority shall cooperate closely to identify the most appropriate and effective measure in light of the objectives laid down in article 4 of the Act, whilst taking due account of the views of market participants and the need to ensure the development of consistent regulatory practice.

(3) Within six weeks from the beginning of the three month period referred to in sub-regulation (1), BEREC shall issue an opinion on the notification by the European Commission referred to in sub-regulation (1), indicating whether it considers that the draft measure should be amended or withdrawn and, where appropriate, provide specific proposals to that end. In that opinion reasons therefor shall be



provided and shall be made public.

(4) If in its opinion, BEREC shares the serious doubts of the European Commission, BEREC shall cooperate closely with the Authority to identify the most appropriate and effective measure. Before the end of the three month period referred to in subregulation (1), the Authority may either:

(a) amend or withdraw its draft measure taking utmost account of the notification by the European Commission referred to in sub-regulation (1) and of the opinion of BEREC; or

(b) maintain its draft measure.

(5) The European Commission may, within one month following the end of the three month period referred to in sub-regulation (1) and taking utmost account of the opinion of BEREC, if any:

(a) issue a recommendation requiring the Authority to amend or withdraw the draft measure, including specific proposals to that end and providing reasons for its recommendation, in particular where BEREC does not share the serious doubts of the Commission;

(b) take a decision to lift its reservations indicated in accordance with sub-regulation (1); or

(c) for draft measures falling under regulations 48(4) or 63(3), take a decision requiring the Authority to withdraw the draft measure, where BEREC shares the serious doubts of the European Commission, accompanied by a detailed and objective analysis of why the European Commission considers that the draft measure should not be adopted, together with specific proposals for amending the draft measure, subject to the procedure referred to in regulation 21(5), which shall apply *mutatis mutandis*.

(6) Within one month of the European Commission issuing the recommendation in accordance with paragraph (a) of sub-regulation (5) or lifting its reservations in accordance with paragraph (b) of subregulation (5), the Authority shall communicate to the European Commission and to BEREC the adopted final measure:

Provided that such period may be extended to allow the Authority to undertake a public consultation in accordance with article 4A of the Malta Communications Authority Act.

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(7) Where the Authority decides not to amend or withdraw the

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draft measure on the basis of the recommendation issued under paragraph (a) of sub-regulation (5), it shall give its reasons therefor.

(8) The Authority may withdraw the proposed draft measure at any stage of the procedure.

Peer review process.

**23.** (1) Where the Authority intends to undertake a selection procedure in accordance with regulation 42(2) and (3) in relation to radio spectrum for which harmonised conditions have been set by technical implementing measures in accordance with Decision No 676/2002/EC in order to enable its use for wireless broadband networks and services, it shall, pursuant to article 23 of the Electronic Communications Code, inform the RSPG about any draft measure which falls within the scope of the comparative or competitive selection procedure pursuant to regulation 42(2) and (3) and indicate whether and when it shall request the RSPG to convene a Peer Review Forum.

(2) When the RSPG convenes a peer Review Forum, the Authority shall provide an explanation on how the draft measure:

(a) promotes the development of the internal market, the cross-border provision of services, as well as competition, and maximises the benefits for the consumer, and overall achieves the objectives set in articles 4 and 37 of the Act, regulations 32 and 33, as well as in Decisions No 676/2002/EC and No 243/2012/EU;

(b) ensures effective and efficient use of radio spectrum; and

(c) ensures stable and predictable investment conditions for existing and prospective radio spectrum users when deploying networks for the provision of electronic communications services which rely on radio spectrum.

(3) The Authority may following the Peer Review Forum:

(a) request the RSPG to adopt a report on how the draft measure achieves the objectives provided in sub-regulation (2), reflecting the views exchanged in the Peer Review Forum; and

(b) request the RSPG to adopt an opinion on this draft measure.

Harmonised assignment of radio spectrum.

**24.** Where the use of radio spectrum has been harmonised, access conditions and procedures have been agreed, and undertakings to which the radio spectrum shall be assigned have been selected in

accordance with international agreements and European Union rules, then the Authority shall grant the right of use for such radio spectrum in accordance therewith:

Provided that where all national conditions attached to the right to use the radio spectrum concerned have been satisfied in the case of a common selection procedure, the Authority shall not impose any further conditions, additional criteria or procedures which would restrict, alter or delay the correct implementation of the common assignment of such radio spectrum.

25. (1) The Authority may, where it considers it appropriate, cooperate with other Member States and with the RSPG, taking into account any interest expressed by market participants, by jointly establishing the common aspects of an authorisation process and, where appropriate, also jointly conducting the selection process to grant individual rights of use for radio spectrum.

Joint authorisation process to grant individual rights of use for radio spectrum.

(2) When designing a joint authorisation process under this regulation, the Authority and the competent authorities of cooperating Member States may take into consideration the following criteria, namely that:

(a) the individual national authorisation processes shall be initiated and implemented together with the competent authorities of the other Member States in accordance with a jointly agreed schedule;

(b) it shall provide, where appropriate, for common conditions and procedures for the selection and granting of individual rights of use for radio spectrum in Malta and the other Member State or Member States concerned;

(c) it shall provide, where appropriate, for common or comparable conditions to be attached to the individual rights of use for radio spectrum in Malta and the Member State or Member States concerned, *inter alia* allowing users to be assigned similar radio spectrum blocks; and

(d) it shall be open at any time to Malta and the other Member State or Member States until the joint authorisation process has been conducted.

(3) Where, in spite of the interest expressed by market participants and such interest impacts Malta, and the Authority does not act jointly with the other Member State or Member States, the Authority shall inform those market participants of its reasons explaining its decision therefor.

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Standardisation.

**26.** (1) The Authority shall encourage the use of the standards or specifications referred to in Article 39(1) of the Electronic Communications Code for the provision of services, technical interfaces or network functions, to the extent strictly necessary to ensure interoperability of services, end-to-end connectivity, facilitation of provider switching and portability of numbers and identifiers, and to improve freedom of choice for users.

(2) Where standards or specifications have not been published in accordance with Article 39(1) of the Electronic Communications Code, the Authority shall encourage the implementation of standards or specifications adopted by the European standardisation organisations:

Provided that in the absence of such standards or specifications, the Authority shall encourage the implementation of international standards or recommendations adopted by the International Telecommunication Union (ITU), the European Conference of Postal and Telecommunications Administrations (CEPT), the International Organisation for Standardisation (ISO) and the International Electrotechnical Commission (IEC).

(3) Any standards or specifications referred to in Article 39(1) of the Electronic Communications Code or in this regulation shall not prevent access as may be required under the Act or these regulations, where feasible.

S.L. 427.41. (4) This regulation does not apply in respect of any of the essential requirements, interface specifications or harmonised standards to which the Radio Equipment and Telecommunications Terminal Equipment and the Mutual Recognition of their Conformity Regulations applies.

## **PART VII SECURITY**

Availability of services in the event of catastrophic network breakdown and, or *force majeure*.

**27.** (1) An undertaking providing publicly available electronic communications services over public electronic communications networks, shall take all necessary measures to ensure the fullest possible availability of such service in the event of catastrophic network breakdown or in the case of *force majeure*.

(2) The Authority may specify the obligations to be complied with by such undertakings for the purpose of ensuring compliance with this regulation. In doing so the Authority shall also factor any particular characteristics, such as insularity, where the consequences of catastrophic events or of *force majeure* are likely to cause severe and, or prolonged service deterioration and, or disruption:

Provided further that the Authority may, after considering the nature and extent of the services provided and any attendant relevant circumstances, require such undertakings, in line with the principles of reasonableness and proportionality, to adopt such resilient and secure solutions as the Authority may consider appropriate, in such a manner as to ensure the availability of such services.

**28.** (1) Providers of public electronic communications networks or of publicly available electronic communications services, or gateway operators shall take appropriate and proportionate technical and organisational measures to appropriately manage the risks posed to the security of networks and services:

Security of  
networks and  
services.

Provided that having regard to the state of the art, such measures shall ensure a level of security appropriate to the risk presented. In particular, measures, including encryption where appropriate, shall be taken to prevent and minimise the impact of security incidents on users and on other networks and services.

(2) Providers of public electronic communications networks or of publicly available electronic communications services, or gateway operators shall notify without undue delay the Authority of:

(a) any security incident that has a significant impact on the operation of networks or services; or

(b) failure or serious degradation of connectivity provided by a gateway operator.

(3) The measures referred to under sub-regulations (1) and (2) shall at least:

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

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

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

Provided that the Authority may audit the measures taken by the providers of public electronic communications networks or of publicly available electronic communications services, or gateway operators, and issue recommendations on best practice concerning the level of security which such measures should achieve.

B 3012

(4) In order to determine the significance of the impact of a security incident, where available the following parameters shall, in particular, be taken into account:

- (a) the number of users affected by the security incident;
- (b) the duration of the security incident;
- (c) the geographical spread of the area affected by the security incident;
- (d) the extent to which the functioning of the network or service is affected; and
- (e) the extent of the impact on economic and societal activities.

(5) Where appropriate, the Authority shall inform the competent authorities in other Member States and ENISA of any security incidents as may be notified to it in accordance with this regulation. The Authority may also inform the public and, or may require the providers of public electronic communications networks or of publicly available electronic communications services, or gateway operators to inform the public of any such security incident, where it determines that disclosure of the security incident is in the public interest.

(6) Once a year, the Authority shall submit a summary report to the European Commission and to ENISA on the notifications received and the action taken in accordance with this Part.

(7) In the case of a particular and significant threat of a security incident in public electronic communications networks or publicly available electronic communications services, providers of such networks or services and gateway operators shall inform any of their users who may be potentially affected by such a threat of any possible protective measures or remedies which they can take. Where appropriate, such providers and gateway operators shall also inform their users of the threat itself.

Security and integrity of networks and services - A gateway operator.

**29.** (1) Without prejudice to any other obligations under this Part, a gateway operator shall at all times:

- (a) adopt appropriate measures to safeguard the integrity and resiliency of the network elements utilised to provide connectivity; and
- (b) secure the availability of capacity, or have in place alternative measures, sufficient to ensure an adequate level of

uninterrupted connectivity.

(2) A gateway operator shall not unreasonably refuse the provision of capacity to another gateway operator for the purposes of meeting the obligations established by sub-regulation (1):

Provided that the Authority shall have the discretion to determine whether a gateway operator acted unreasonably or otherwise by taking into account the specific circumstances relating to the request for the provision of capacity.

**30.** (1) In order to ensure compliance with the requirements of this Part, the Authority may issue binding instructions, however so described, which may include such measures as it may consider necessary to remedy a security incident or to prevent one from occurring when a significant threat has been identified, and may include time-limits for implementation of such measures by providers of public electronic communications networks or publicly available electronic communications services, or by gateway operators.

Implementation  
and  
enforcement.

(2) The Authority may require a provider of public electronic communications networks or publicly available electronic communications services, or gateway operators to:

(a) provide information needed to assess the security and integrity of its networks and services, including documented security policies;

(b) submit to a security audit carried out by a qualified independent body or by the Authority, as the Authority may determine, and make the results thereof available to the Authority in order to assess amongst other matters the following:

(i) the level of security, integrity and resiliency of any public electronic communications network and, or service, or of the network elements operated by a gateway operator; and

(ii) compliance with any guidelines or binding instructions that the Authority may establish in accordance with the provisions of this Part:

Provided that the cost of any such audit shall be paid by the provider or gateway operator concerned:

(c) establish the necessary contingency plans for the purpose of complying with the requirements under this Part;

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(d) submit such contingency plans to the Authority as the Authority may reasonably determine; and

(e) publish information regarding the measures it has in place in order to meet the obligations under this Part.

(3) The Authority shall investigate cases of non-compliance and the effects thereof on the security of the networks and services.

S.L. 460.35. (4) The Authority may, where it considers necessary, require the assistance of the Computer Security Incident Response Team ('CSIRT') designated in accordance with the Measures for High Common Level of Security of Network and Information Systems Order.

S.L. 460.35. (5) The Authority shall, where appropriate and in accordance with national law, consult and cooperate with the relevant national law enforcement authorities, the competent authorities within the meaning of the Measures for High Common Level of Security of Network and Information Systems Order, and the Information and Data Protection Commissioner.

## **PART VIII MARKET ENTRY AND DEPLOYMENT**

Fees for rights of use for radio spectrum.

**31.** An undertaking authorised to use radio spectrum shall pay to the Authority such fees for rights of use of radio spectrum that are used for the provision of electronic communications networks or services and associated facilities which ensure the optimal use of such resources. Such fees shall be those provided for under Part B of the Twelfth Schedule. Any such fees shall be objectively justified, transparent, non-discriminatory and proportionate in relation to their intended purpose and shall take into account the general objectives stated in the Act and shall be set at a level which ensures efficient assignment and use of radio spectrum, including by:

(a) setting reserve prices as minimum fees for rights of use for radio spectrum by having regard to the value of those rights in their possible alternative uses;

(b) taking into account costs entailed by conditions attached to those rights; and

(c) applying, to the extent possible, payment arrangements linked to the actual availability for use of the radio spectrum.

Management of radio spectrum.

**32.** (1) In the exercise of its functions under the Act, the



Authority shall promote the harmonisation of use of radio spectrum by electronic communications networks and services across the European Union, consistent with the need to ensure effective and efficient use thereof and in pursuit of benefits for the consumer such as competition, economies of scale and interoperability of networks and services. In so doing, the Authority shall act in accordance with article 4A of the Act and with Decision No 676/2002/EC, *inter alia*, by:

(a) pursuing wireless broadband coverage in Malta at high quality and speed, as well as coverage of major national and European transport paths, including trans-European transport network as referred to in Regulation (EU) No 1315/2013 of the European Parliament and of the Council;

(b) facilitating the rapid development in the European Union of new wireless communications technologies and applications, including, where appropriate, in a cross-sectoral approach;

(c) ensuring predictability and consistency in the granting, renewal, amendment, restriction and withdrawal of rights of use for radio spectrum in order to promote long-term investments;

(d) ensuring the prevention of cross-border or national harmful interference in accordance with regulation 19 and article 37 of the Act respectively, and taking appropriate pre-emptive and remedial measures to that end;

(e) promoting the shared use of radio spectrum between similar or different uses of radio spectrum in accordance with competition law;

(f) applying the most appropriate and least onerous authorisation system possible in accordance with article 37 of the Act in such a way as to maximise flexibility, sharing and efficiency in the use of radio spectrum;

(g) applying rules for the granting, transfer, renewal, modification and withdrawal of rights of use for radio spectrum that are laid down in a clear and transparent manner in order to guarantee regulatory certainty, consistency and predictability; and

(h) pursuing consistency and predictability throughout the European Union regarding the way the use of radio spectrum is authorised in protecting public health taking into account

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Recommendation 1999/519/EC, the radiation emission standards adopted and published by ICNIRP, or by a national public authority which at law is responsible for the adoption of any such standards, or with any other appropriate standard as may be specified at law.

(2) Where the Authority considers that there is a lack of market demand for the use of a band in the harmonised radio spectrum, it may then allow an alternative use of all or part of that band, including the existing use, in accordance with sub-regulations (5), (6) and (7) provided that:

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(a) the finding of a lack of market demand for the use of such a band is based on a public consultation in accordance with article 4A of the Malta Communications Authority Act, including a forward-looking assessment of market demand;

(b) such alternative use does not prevent or hinder the availability or the use of such a band in other Member States; and

(c) the Authority takes due account of the long-term availability or use of such a band in the European Union and the economies of scale for equipment resulting from using the harmonised radio spectrum in the European Union:

Provided that any decision to allow alternative use on an exceptional basis shall be subject to a regular review and shall in any event be reviewed promptly upon a duly justified request by a prospective user to the Authority for use of the band in accordance with the technical implementing measure:

Provided further that the Authority shall inform the European Commission and the other Member States of the decision taken by the Authority, together with the reasons therefor, as well as of the outcome of any review.

(3) Without prejudice to sub-regulation (1), the Authority shall ensure that all types of technology used for the provision of electronic communications networks or services may be used in the radio spectrum declared available for electronic communications services in the Frequency Plan in accordance with European Union law.

(4) Notwithstanding the provisions of this regulation the Authority may provide for proportionate and non-discriminatory restrictions to the types of radio network or wireless access technology used for electronic communications services where it considers that this is necessary to:

- (a) avoid harmful interference;
- (b) protect public health against electromagnetic fields, taking utmost account of Recommendation 1999/519/EC, the radiation emission standards adopted and published by ICNIRP, or by a national public authority which at law is responsible for the adoption of any such standards, or with any other appropriate standard as may be specified at law;
- (c) ensure technical quality of service;
- (d) ensure maximisation of radio spectrum sharing;
- (e) safeguard efficient use of radio spectrum; or
- (f) ensure the fulfilment of a general interest objective in accordance with sub-regulation (5).

(5) Without prejudice to the sub-regulation (6) the Authority shall ensure that all types of electronic communications services may be provided in the radio spectrum declared available for electronic communications services in the Frequency Plan in accordance with European Union law:

Provided that the Authority may provide for proportionate and non-discriminatory restrictions to the types of electronic communications services to be provided, including, where necessary, to fulfil a requirement under the ITU Radio Regulations.

(6) Measures taken by the Authority in accordance with these regulations that require an electronic communications service to be provided in a specific band available for electronic communications services shall be justified in order to ensure the fulfilment of a general interest objective as laid down by the Minister in accordance with European Union law, including, but not limited to:

- (a) safety of life;
- (b) the promotion of social, regional or territorial cohesion;
- (c) the avoidance of inefficient use of radio spectrum; or
- (d) the promotion of cultural and linguistic diversity and media pluralism, for example the provision of radio and television broadcasting services:

Provided that a measure which prohibits the provision of any

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other electronic communications service in a specific band may be provided for only where necessary to protect the safety of life services. The Authority in consultation with the Minister may, on an exceptional basis, also extend such a measure in order to fulfil other general interest objectives in accordance with national law and European Union law.

(7) The Authority in consultation with the Minister shall regularly review the necessity of the restrictions referred to in sub-regulations (4), (5) and (6), and shall make the results of those reviews public.

Conditions attached to individual rights of use for radio spectrum.

**33.** (1) The Authority shall attach conditions to individual rights of use for radio spectrum in accordance with regulation 7(1) in such a way as to ensure optimal and the most effective and efficient use of radio spectrum.

(2) The Authority shall, before the assignment or renewal of any rights under sub-regulation (1) clearly establish any such conditions, including the level of use required and the possibility to fulfil that requirement through trading or leasing, in order to ensure the implementation of those conditions in accordance with regulation 20:

Provided that conditions attached to renewals of right of use for radio spectrum shall not provide undue advantages to existing holders of those rights:

Provided further that the Authority in making such conditions shall specify the applicable parameters, including any deadline for exercising the rights of use, the non-fulfilment of which would entitle the Authority to withdraw the right of use or impose other measures.

(3) The Authority shall, in a timely and transparent manner, consult and inform interested parties regarding conditions attached to individual rights of use before their imposition. In doing so the Authority shall determine in advance and inform interested parties, in a transparent manner, of the criteria for the assessment of the fulfilment of those conditions.

(4) The Authority may specify that certain conditions shall not apply to such categories of undertakings as may be specified by the Authority.

(5) The Authority shall ensure that where a requirement is specified as a condition of a right of use for radio spectrum, such a requirement shall not be specified as a condition of the general authorisation.

(6) Any person authorised to use radio spectrum, shall pay to the Authority such fees for rights of use of radio spectrum as may be established under Part B of the Twelfth Schedule:

Provided that in all cases, any such fees shall be established in accordance with regulation 31.

(7) When attaching conditions to individual rights of use for radio spectrum, the Authority may, in particular with a view to ensuring effective and efficient use of radio spectrum or promoting coverage, provide for the following possibilities:

- (a) sharing of radio spectrum or sharing of passive or active infrastructure which relies on radio spectrum;
- (b) commercial roaming access agreements; or
- (c) joint roll-out of infrastructures for the provision of networks or services which rely on the use of radio spectrum.

(8) The Authority shall not prevent the sharing of radio spectrum in the conditions attached to the rights of use for radio spectrum.

(9) Implementation by undertakings of conditions attached pursuant to sub-regulation (7) shall remain subject to competition law.

**34.** Without prejudice to the provisions of the Act and taking into account the relevant national circumstances, the Authority may lay down rules in order to prevent spectrum hoarding, in particular by setting out strict deadlines for the effective exploitation of the rights of use by the holder of the rights. These rules shall be established and applied in a proportionate, non-discriminatory and transparent manner.

Rules preventing spectrum hoarding.

**35.** (1) Where it is necessary the Authority shall, upon request, grant individual rights of use for radio spectrum to any undertaking for the provision of electronic communications networks or services under the general authorisation referred to in regulations 5 and 6, subject to regulations 7 and 8, to regulation 16(1)(c) and to regulation 42 and to any other rules ensuring the efficient use of those resources in accordance with the Act and these regulations.

Granting of individual rights of use for radio spectrum.

(2) The Authority shall establish open, objective, transparent, non-discriminatory and proportionate procedures for the grant of individual rights of use for radio spectrum:

Provided that the Authority may establish specific criteria and procedures for the granting of individual rights of use for radio spectrum to providers of radio or television broadcast content services

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with a view to pursuing general interest objectives in accordance with European Union law and with regulation 32:

Provided further that an exception to the requirement of open procedures may apply where the granting of individual rights of use for radio spectrum to the providers of radio or television broadcast content services is necessary to achieve a general interest objective in accordance with European Union law.

(3) The Authority shall consider applications for individual rights of use for radio spectrum in the context of selection procedures pursuant to objective, transparent, proportionate and non-discriminatory eligibility criteria that are set out in advance and reflect the conditions to be attached to such rights. In doing so the Authority may request all necessary information from applicants in order to assess, on the basis of those criteria, their ability to comply with those conditions. Where the Authority concludes that an applicant does not possess the required ability, it shall provide a duly reasoned decision to that effect.

(4) When granting individual rights of use for radio spectrum, the Authority shall specify whether those rights can be transferred or leased by the holder of the rights, and under which conditions. The provisions of regulations 32 and 38 shall apply in this regard.

(5) The Authority shall take, communicate and make public the decisions on the granting of individual rights of use for radio spectrum as soon as possible after the receipt of the complete application, and within six weeks after such receipt in the case of radio spectrum declared available for electronic communications services in the Frequency Plan.

Provided that such time limit shall be without prejudice to regulation 42(9) and to any applicable international agreements relating to the use of radio spectrum or of orbital positions.

Duration of rights.

**36.** (1) Where the Authority authorises the use of radio spectrum through individual rights of use for a limited period, it shall ensure that the right of use is granted for a period that is appropriate in light of the objectives pursued in accordance with regulation 42(2), (3) and (4), taking due account of the need to ensure competition, as well as, in particular the effective and efficient use of radio spectrum, and to promote innovation and efficient investments, including by allowing for an appropriate period for investment amortisation.

(2) Where the Authority grants individual rights of use for radio spectrum for which harmonised conditions have been set by technical

implementing measures in accordance with Decision No 676/2002/EC in order to enable its use for wireless broadband electronic communications services ('wireless broadband services') for a limited period, it shall ensure regulatory predictability for the holders of the rights over a period of at least twenty years regarding conditions for investment in infrastructure which relies on the use of such radio spectrum, taking account of the requirements referred to in sub-regulation (1):

Provided that the provisions of this regulation are subject, where relevant, to any modification of the conditions attached to those rights of use in accordance with article 47(4) of the Act. In this regard the Authority shall ensure that such rights are valid for a duration of at least fifteen years and include, where necessary in order to comply with this sub-regulation, an adequate extension thereof, under the conditions laid down in this sub-regulation.

(3) The Authority shall make available the general criteria for an extension of the duration of rights of use, in a transparent manner, to all interested parties in advance of granting rights of use, as part of the conditions laid down under regulation 42(5) and (8). Such general criteria shall relate to:

(a) the need to ensure the effective and efficient use of the radio spectrum concerned, the objectives pursued in regulation 32(1)(a) and (b), or the need to fulfil general interest objectives related to ensuring safety of life, public order, public security or defence; and

(b) the need to ensure undistorted competition.

(4) By not later than two years before the expiry of the initial duration of an individual right of use, the Authority shall conduct an objective and forward-looking assessment of the general criteria laid down for the extension of the duration of that right of use in light of regulation 32(1)(c):

Provided that the Authority has not initiated enforcement action for non-compliance with the conditions of the rights of use pursuant to regulation 20, it shall grant the extension of the duration of the right of use unless it concludes that such an extension would not comply with the general criteria laid down in sub-regulation (3)(a) or (b). On the basis of that assessment, the Authority shall notify the holder of the right as to whether the extension of the duration of the right of use is to be granted:

Provided further that if such extension is not to be granted, the

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Authority shall apply regulation 35 for granting rights of use for that specific radio spectrum band.

(5) Any measure taken under sub-regulations (2), (3) and (4) shall be proportionate, non-discriminatory, transparent and reasoned.

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(6) By way of derogation from article 4A of the Malta Communications Authority Act, interested parties shall have the opportunity to comment on any draft measure pursuant to sub-regulations (3) and (4) for a period of at least three months.

(7) This regulation is without prejudice to the application of regulations 14 and 20.

(8) When establishing fees for rights of use, the mechanism provided for under this regulation shall be taken into account.

(9) Where the Authority considers that there is justification, it may then derogate from sub-regulations (2) to (6) in the following cases:

(a) in limited geographical areas, where access to high-speed networks is severely deficient or absent and this is necessary to ensure achievement of the objectives of regulation 32(1);

(b) for specific short-term projects;

(c) for experimental use;

(d) for any uses of radio spectrum which, in accordance with regulation 32(3), (4), (5) and (6), can coexist with wireless broadband services; or

(e) for any alternative use of radio spectrum in accordance with regulation 32(2).

(10) The Authority may adjust the duration of rights of use laid down in this regulation to ensure the simultaneous expiry of the said duration of rights in one or several bands.

Renewal of individual rights of use for harmonised radio spectrum.

**37.** (1) The Authority shall take a decision on the renewal of individual rights of use for harmonised radio spectrum in a timely manner before the duration of those rights expires, except where, at the time of assignment, the possibility of renewal has been explicitly excluded:

Provided that for such a purpose, the Authority shall assess



the need for such renewal of its own initiative or upon request by the holder of the right, in the latter case not earlier than five years prior to expiry of the duration of the rights concerned. This shall be without prejudice to renewal clauses applicable to existing rights.

(2) In taking a decision pursuant to sub-regulation (1), the Authority shall consider, *inter alia*:

(a) the fulfilment of the objectives set out in article 4 of the Act, regulation 32(1) and regulation 35(2), as well as public policy objectives under European Union law or national law;

(b) the implementation of a technical implementing measure adopted in accordance with Article 4 of Decision No 676/ 2002/EC;

(c) the review of the appropriate implementation of the conditions attached to the right concerned;

(d) the need to promote, or avoid any distortion of, competition in line with regulation 39;

(e) the need to render the use of radio spectrum more efficient in light of technological or market evolution; and

(f) the need to avoid severe service disruption.

(3) When considering possible renewal of individual rights of use for harmonised radio spectrum for which the number of rights of use is limited pursuant to sub-regulation (2), the Authority shall conduct an open, transparent and non-discriminatory procedure, and shall, *inter alia*:

(a) give all interested parties the opportunity to express their views through a public consultation in accordance with article 4A of the Malta Communications Authority Act; and

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(b) clearly state the reasons for such possible renewal.

(4) The Authority shall take into account any evidence arising from the consultation pursuant to sub-regulation (3) of market demand from undertakings other than those holding rights of use for radio spectrum in the band concerned when deciding whether to renew the rights of use or to organise a new selection procedure in order to grant the rights of use pursuant to regulation 42.

(5) A decision to renew the individual rights of use for harmonised radio spectrum may be accompanied by a review of the

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fees as well as of the other terms and conditions attached thereto. Where appropriate, the fees for the rights of use may be adjusted as necessary in accordance with regulation 31.

Transfer or lease of individual rights of use for radio spectrum.

**38.** (1) An undertaking may transfer or lease individual rights of use for radio spectrum in the bands identified in the Frequency Plan to other undertakings in accordance with the conditions attached to such rights of use of radio spectrum and with applicable law:

Provided that conditions attached to individual rights to use radio spectrum shall continue to apply after the transfer or lease, unless otherwise stated by the Authority:

Provided further that, the Authority may determine that this sub-regulation shall not apply where the individual right of use for radio spectrum of the undertaking was initially granted free of charge or assigned for broadcasting.

(2) Without prejudice to any applicable law or any procedures that the Authority may specify, an undertaking shall notify its intention to transfer or lease rights of use for radio spectrum, as well as the effective transfer thereof to the Authority, and the Authority shall ensure that such intention is made public:

Provided that in the case of a harmonised radio spectrum, any such transfer shall comply with such harmonised use.

(3) The Authority shall allow the transfer or lease of rights of use for radio spectrum where the original conditions attached to the rights of use are maintained.

(4) Without prejudice to the need to ensure the absence of a distortion of competition, in particular in accordance with regulation 39, the Authority:

(a) shall submit transfers and leases to the least onerous procedure possible;

(b) shall not refuse the lease of rights of use for radio spectrum where the lessor undertakes to remain liable for meeting the original conditions attached to the rights of use; and

(c) shall not refuse the transfer of rights of use for radio spectrum unless there is a clear risk that the new holder is unable to meet the original conditions for the right of use.

(5) Any administrative charge imposed on undertakings in connection with processing an application for the transfer or lease of

rights of use for radio spectrum, shall comply with regulation 12.

(6) Sub-regulation (4)(a), (b) and (c) are without prejudice to the competence of the Authority to enforce compliance with the conditions attached to the rights of use at any time, both with regard to the lessor and the lessee, in accordance with applicable national law.

(7) The Authority shall facilitate the transfer or lease of rights of use for radio spectrum by considering any request to adapt the conditions attached to the rights in a timely manner and by ensuring that those rights or the relevant radio spectrum may to the best extent be partitioned or disaggregated.

(8) In light of any transfer or lease of rights of use for radio spectrum, the Authority shall make relevant details relating to tradable individual rights publicly available in a standardised electronic format when the rights are created and keep those details for as long as the rights exist.

**39.** (1) The Authority shall promote effective competition and avoid distortions of competition in the internal market when deciding to grant, amend or renew rights of use for radio spectrum for electronic communications networks and services in accordance with the Act, these regulations and the Electronic Communications Code.

Competition in relation to rights of use for radio spectrum.

(2) When granting, amending or renewing rights of use for radio spectrum, the Authority may take those measures as it may consider to be appropriate in the circumstances, such as:

(a) limiting the amount of radio spectrum bands for which rights of use are granted to any undertaking, or, in justified circumstances, attaching conditions to such rights of use, such as the provision of wholesale access, national or regional roaming, in certain bands or in certain groups of bands with similar characteristics;

(b) reserving, if appropriate and justified with regard to a specific situation in the national market, a certain part of a radio spectrum band or group of bands for assignment to new entrants;

(c) refusing to grant new rights of use for radio spectrum or to allow new radio spectrum uses in certain bands, or attaching conditions to the grant of new rights of use for radio spectrum or to the authorisation of new uses of radio spectrum, in order to avoid the distortion of competition by any assignment, transfer or accumulation of rights of use;

(d) including conditions prohibiting, or imposing

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conditions on, transfers of rights of use for radio spectrum, not subject to European Union or national merger control, where such transfers are likely to result in significant harm to competition; or

(e) amending the existing rights in accordance with the Act, these regulations, or the Electronic Communications Code where this is necessary to remedy *ex post* a distortion of competition by any transfer or accumulation of rights of use for radio spectrum:

Provided that the Authority shall, taking into account market conditions and available benchmarks, base its decisions on an objective and forward-looking assessment of the market competitive conditions, of whether such measures are necessary to maintain or achieve effective competition, and of the likely effects of such measures on existing and future investments by market participants in particular for network roll-out. In doing so the Authority shall take into account the approach to market analysis as set out in regulation 54(5).

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(3) When applying sub-regulation (2), the Authority shall act in accordance with the procedures provided in article 47(4) of the Act, article 4A of the Malta Communications Authority Act, and regulations 14 and 23.

Co-ordinated  
timing of  
assignments.

**40.** (1) The Authority shall cooperate with the relevant competent authorities in other Member States in order to coordinate the use of harmonised radio spectrum for electronic communications networks and services in the European Union, taking due account of the different national market situations. This may include identifying one, or, where appropriate, several common dates by when the use of specific harmonised radio spectrum shall be authorised.

(2) Where harmonised conditions have been set by technical implementing measures in accordance with Decision No 676/2002/EC in order to enable the radio spectrum use for wireless broadband networks and services, the Authority shall allow the use of that radio spectrum, as soon as possible and at the latest thirty months after the adoption of that measure, or as soon as possible after the lifting of any decision to allow alternative use on an exceptional basis pursuant to regulation 32(2). This is without prejudice to Decision (EU) 2017/899 and to the right of initiative of the European Commission to propose legislative acts.

(3) The Authority may delay the deadline provided for in sub-regulation (2) for a specific band under the following circumstances:

(a) to the extent justified by a restriction to the use of that

band based on the general interest objective provided in regulation 32(6)(a) or (d);

(b) in the case of unresolved cross-border coordination issues resulting in harmful interference with third countries, provided the Authority has, where appropriate, requested European Union assistance pursuant to regulation 19(5);

(c) safeguarding national security and defence; or

(d) *force majeure*.

Provided that the Authority shall review any such delay at least every two years.

(4) The Authority may delay the deadline provided for in sub-regulation (2) for a specific band to the extent necessary and up to thirty months in the case of:

(a) of unresolved cross-border coordination issues resulting in harmful interference between Malta and another Member State or Member States, provided that the Authority takes all necessary measures in a timely manner pursuant to regulation 19(3) and (4);

(b) of the need to ensure, and the complexity of ensuring, the technical migration of existing users of that band.

(5) In the event of a delay under sub-regulation (3) or (4), the Authority shall inform the other Member States and the European Commission of such a delay in a timely manner, stating the reasons.

**41.** (1) For terrestrial systems capable of providing wireless broadband services, the Authority in consultation with the Minister shall, where necessary in order to facilitate the roll-out of 5G, take all appropriate measures to:

Coordinated timing of assignments for specific 5G bands.

(a) reorganise and allow the use of sufficiently large blocks of the 3,4-3,8 GHz band;

(b) allow the use of at least 1 GHz of the 24,25-27,5 GHz band, provided that there is clear evidence of market demand and of the absence of significant constraints for migration of existing users or band clearance.

(2) Measures taken pursuant to subregulation (1) shall comply with the harmonised conditions set by technical implementing measures in accordance with Article 4 of Decision No 676/2002/EC.

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Procedure for limiting the number of rights of use to be granted for radio spectrum.

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**42.** (1) Without prejudice to regulation 40, where the Authority concludes that a right to use radio spectrum cannot be subject to a general authorisation and where it considers whether to limit the number of rights of use to be granted for radio spectrum, it shall, *inter alia*:

(a) clearly state the reasons for limiting the rights of use, in particular by giving due weight to the need to maximise benefits for users and to facilitate the development of competition, and review, as appropriate, the limitation at regular intervals or after a reasonable request by the affected undertakings;

(b) give all interested parties, including users and consumers, the opportunity to express their views on any limitation through a public consultation in accordance with article 4A of the Malta Communications Authority Act.

(2) When the Authority concludes that the number of rights of use is to be limited, it shall clearly establish, and give reasons for, the objectives pursued by means of a competitive or comparative selection procedure under this regulation, and where possible quantify them, giving due weight to the need to fulfil national and EU internal market objectives.

(3) The objectives that the Authority may set out with a view to designing the specific selection procedure shall, in addition to promoting competition, shall be limited to one or more of the following:

(a) promoting coverage;

(b) ensuring the required quality of service;

(c) promoting efficient use of radio spectrum, including by taking into account the conditions attached to the rights of use and the level of fees; and, or

(d) promoting innovation and business development.

(4) The Authority shall clearly define and justify the choice of the selection procedure, including any preliminary phase to access the selection procedure. The Authority shall also clearly state the outcome of any related assessment of the competitive, technical and economic situation of the market and provide reasons for the possible use and choice of measures pursuant to regulation 23.

(5) The Authority shall publish any decision on the selection

procedure chosen and the related rules, clearly stating the reasons therefor. The Authority shall also publish the conditions that are to be attached to the rights of use.

(6) After having determined the selection procedure, the Authority shall invite applications for rights of use.

(7) Where the Authority concludes that additional rights of use for radio spectrum or a combination of general authorisation and individual rights of use can be granted, it shall publish that conclusion and initiate the process of granting such rights.

(8) Where the granting of rights of use for radio spectrum needs to be limited, the Authority shall grant such rights on the basis of selection criteria and of a selection procedure which are objective, transparent, non-discriminatory and proportionate. Any such selection criteria shall give due weight to the achievement of the objectives and requirements of articles 4 and 4A of the Act, and regulations 19 and 32.

(9) Where competitive or comparative selection procedures are to be used, the Authority may extend the maximum period of six weeks referred to in regulation 35(5) for as long as necessary to ensure that such procedures are fair, reasonable, open and transparent to all interested parties, but by no longer than eight months, subject to any specific timetable established pursuant to regulation 40:

Provided that such time limits shall be without prejudice to any applicable international agreements relating to the use of radio spectrum and satellite coordination.

(10) This regulation is without prejudice to the transfer of rights of use for radio spectrum in accordance with regulation 38.

**43.** (1) The Authority shall allow the provision of access through RLANs to a public electronic communications network, as well as the use of the harmonised radio spectrum for that provision, subject only to the applicable general authorisation conditions relating to radio spectrum use as referred to in article 37(2) of the Act:

Access to radio  
local area  
networks  
(RLANs.)

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S.L. 399.43. Provided that where that provision is not part of an economic activity or is ancillary to an economic activity or a public service which is not dependent on the conveyance of signals on those networks, any undertaking, public authority or end-user providing such access shall not be subject to any general authorisation for the provision of electronic communications networks or services pursuant to regulation 5, to obligations regarding end-users rights pursuant to regulations 80, 81, 82 and 83, and to regulation 7 of the Emergency Communications, the Single European Call service ('112' Number) and the European Harmonised Services of Social Value ('116' Numbering Range) Regulations, or to obligations to interconnect their networks pursuant to regulation 48(1).

Cap. 426. (2) Article 19 of the Electronic Commerce Act shall apply to the provisions of this regulation.

(3) The Authority shall not prevent providers of public electronic communications networks or publicly available electronic communications services from allowing access to their networks to the public, through RLANs, which may be located at the premises of an end-user, subject to compliance with the applicable general authorisation conditions and the prior informed agreement of the end-user concerned.

(4) In accordance in particular with Article 3(1) of Regulation (EU) 2015/2120, the Authority shall ensure that providers of public electronic communications networks or publicly available electronic communications services do not unilaterally restrict or prevent end-users from:

(a) accessing RLANs of their choice provided by third parties; or

(b) allowing reciprocally or, more generally, accessing the networks of such providers by other end-users through RLANs, including on the basis of third-party initiatives which aggregate and make publicly accessible the RLANs of different end-users.

(5) The Authority shall not limit or prevent end-users from allowing access, reciprocally or otherwise, to their RLANs by other end-users, including on the basis of third-party initiatives which aggregate and make the RLANs of different end-users publicly accessible.

(6) The Authority shall not unduly restrict the provision of access to RLANs to the public:



(a) by public sector bodies or in public spaces close to premises occupied by such public sector bodies, when that provision is ancillary to the public services provided on those premises; and

(b) by initiatives of non-governmental organisations or public sector bodies to aggregate and make reciprocally or more generally accessible the RLANs of different end-users, including, where applicable, the RLANs to which public access is provided in accordance with paragraph (a) of this subregulation.

**44.** (1) The Authority shall not unduly restrict the deployment of small area wireless access points.

Deployment and operation of small-area wireless access points.

(2) The Authority shall ensure that any rules governing the deployment of small-area wireless access points are nationally consistent. In doing so the Authority shall publish such rules in advance of their application in consultation with any such public authority as the Authority may consider necessary:

Provided that in particular, the competent authority responsible for town planning shall not subject the deployment of small area wireless access points complying with the characteristics laid down pursuant to paragraph 2 of Article 57 of the Electronic Communications Code to any individual town planning permit or other individual prior permits. By way of derogation from this proviso the aforesaid competent authority may require permits for the deployment of small-area wireless access points on buildings or sites of architectural, historical or natural value protected in accordance with national law or where necessary for public safety reasons. Article 18 of Utilities and Services (Regulation of Certain Works) Act shall apply to the granting of those permits.

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(3) This regulation is without prejudice to the essential requirements laid down in the Radio Equipment and Telecommunications Terminal Equipment and the Mutual Recognition of their Conformity Regulations and to the authorisation regime applicable for the use of the relevant radio spectrum.

S.L. 427.41.

(4) In the context of the application of the procedures adopted under national law, notably those under Parts III and IV of the Utilities and Services (Regulation of Certain Works) Act, operators shall have the right to access any physical infrastructure controlled by national, regional or local public authorities, which is technically suitable to host small-area wireless access points or which is necessary to connect such access points to a backbone network, including street furniture, such as light poles, street signs, traffic lights, billboards and bus stops

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and stations:

Provided that public authorities shall meet all reasonable requests for access on fair, reasonable, transparent and non-discriminatory terms and conditions, which shall be made public at the single information point established under the Utilities and Services (Regulation of Certain Works) Act.

(5) Without prejudice to any commercial agreements, the deployment of small-area wireless access points shall not be subject to any fees or charges going beyond the administrative charges in accordance with regulation 12.

Technical regulations on electromagnetic fields.

**45.** The procedures laid down in Directive (EU) 2015/1535 shall apply with respect to any draft measure by competent national health authorities taken in accordance with their powers at law, that would impose on the deployment of small-area wireless access points different requirements with respect to electromagnetic fields than those provided for in Recommendation 1999/519/EC.

## **PART IX ACCESS**

General framework for access and interconnection.

**46.** (1) No restrictions may be imposed or maintained which prevent undertakings in Malta, or in Malta and other Member States from negotiating between themselves agreements on technical and commercial arrangements for access or interconnection, in accordance with European Union law:

Provided that the undertaking requesting access or interconnection in Malta does not need to be authorised to operate in Malta if it is not providing services and does not operate a network in Malta.

(2) Without prejudice to regulation 101, no legal or administrative measures shall be maintained which require undertakings, when granting access or interconnection, to offer different terms and conditions to different undertakings for equivalent services or measures imposing obligations that are not related to the actual access and interconnection services provided, and this without prejudice to the conditions set out in the First Schedule.

Rights and obligations of undertakings.

**47.** (1) Operators of public electronic communications networks shall have a right and, when requested by other undertakings authorised in accordance with regulation 11, an obligation, to negotiate with each other interconnection for the purpose of providing publicly available electronic communications services, in order to ensure provision and interoperability of services in Malta and throughout the

European Union:

Provided that operators shall offer access and interconnection to other undertakings on terms and conditions consistent with obligations imposed by the Authority pursuant to regulations 48, 50 and 55.

(2) Without prejudice to regulation 16, an undertaking that acquires information from another undertaking before, during or after the process of negotiating access or interconnection arrangements, shall use that information solely for the purpose for which it was supplied and respect at all times the confidentiality of information transmitted or stored. Such an undertaking shall not pass on the received information to any other party, in particular to other departments, subsidiaries or partners, however so described, for whom such information could provide a competitive advantage.

(3) The Authority may provide that negotiations be conducted through neutral intermediaries if it considers that conditions of competition so require.

**48.** (1) The Authority shall, acting in pursuit of the objectives set out in article 4 of the Act, encourage and, where appropriate, ensure, in accordance with the Act and these regulations, adequate access and interconnection, and the interoperability of services:

Powers and responsibilities of the Authority with regard to access and interconnection.

Provided that in doing so the Authority shall exercise its responsibility in a way that promotes efficiency, sustainable competition, the deployment of very high capacity networks, efficient investment and innovation, and gives the maximum benefit to end-users:

Provided further that the Authority shall provide guidance and make publicly available the procedures applicable to gain access and interconnection to ensure that small and medium-sized enterprises and operators with a limited geographical reach can benefit from the obligations imposed.

(2) Without prejudice to measures that may be taken regarding undertakings designated as having significant market power in accordance with regulation 55, the Authority may impose:

(a) to the extent necessary to ensure end-to-end connectivity, obligations on undertakings subject to general authorisation that control access to end-users, including, in justified cases, the obligation to interconnect their networks where this is not already the case;

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(b) in justified cases and to the extent necessary, obligations on undertakings subject to general authorisation that control access to end-users to make their services interoperable;

(c) to the extent necessary to ensure accessibility for end-users to digital radio and television broadcasting services and related complementary services specified by the Authority, obligations on operators to provide access to the other facilities referred to in Part II of the Second Schedule on fair, reasonable and non-discriminatory terms;

(d) in justified cases, where end-to-end connectivity between end-users is endangered due to a lack of interoperability between interpersonal communications services, and to the extent necessary to ensure end-to-end connectivity between end-users, obligations on relevant providers of number-independent interpersonal communications services which reach a significant level of coverage and user uptake, to make their services interoperable:

Provided that the obligations referred to in paragraph (d) shall be imposed only:

(i) to the extent necessary to ensure interoperability of interpersonal communications services and may include proportionate obligations on providers of those services to publish and allow the use, modification and redistribution of relevant information by the Authority and other providers, or to use and implement standards or specifications listed in regulation 26 or of any other relevant European or international standards;

(ii) where the European Commission, after consulting BEREC and taking utmost account of its opinion, has found an appreciable threat to end-to-end connectivity between end-users throughout the European Union or in at least three Member States and has adopted implementing measures specifying the nature and scope of any obligations that may be imposed, which implementing measures shall be adopted in accordance with the examination procedure referred to in Article 118(4) of the Electronic Communications Code.

(3) Without prejudice to sub-regulations (1) and (2), the Authority may impose obligations, upon reasonable request, to grant access to wiring and cables and associated facilities inside any building or up to the first concentration or distribution point as

determined by the Authority, where that point is located outside the building:

Provided that where the Authority considers that the replication of such network elements would be economically inefficient or physically impracticable, the Authority may then impose such obligations on providers of electronic communications networks or on the owners of such wiring and cables and associated facilities, where those owners are not providers of electronic communications networks. Any access conditions that may be so imposed, may include specific rules on access to such network elements and to associated facilities and associated services, on transparency and non-discrimination and on apportioning the costs of access, which where appropriate, shall be adjusted to take into account risk factors.

(4) Where the Authority concludes, having regard, where applicable, to the obligations resulting from any relevant market analysis, that the obligations imposed in accordance with the sub-regulation (1), do not sufficiently address high and non-transitory economic or physical barriers to replication which underlie an existing or emerging market situation significantly limiting competitive outcomes for end-users, the Authority may extend the imposition of such access obligations, on fair and reasonable terms and conditions, beyond the first concentration or distribution point, to a point that it determines to be the closest to end-users, capable of hosting a sufficient number of end-user connections to be commercially viable for efficient access seekers:

Provided that in determining the extent of the extension beyond the first concentration or distribution point, the Authority shall take utmost account of relevant BEREC guidelines. If justified on technical or economic grounds, the Authority may impose active or virtual access obligations.

(5) The Authority shall not impose obligations in accordance with sub-regulation (4) on providers of electronic communications networks where the Authority determines that:

(a) the provider has the characteristics listed in regulation 67(1) and makes available a viable and similar alternative means of reaching end-users by providing access to a very high capacity network to any undertaking, on fair, non-discriminatory and reasonable terms and conditions:

Provided that such an exemption may be extended by the Authority to other providers offering, on fair, non-discriminatory and reasonable terms and conditions, access to a very high capacity

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network;

Provided further by way of derogation the Authority may impose obligations on providers of electronic communications networks fulfilling the criteria laid down in this paragraph where the network concerned is publicly funded;

or

(b) the imposition of obligations would compromise the economic or financial viability of a new network deployment, in particular by small local projects.

(6) Without prejudice to sub-regulations (1) and (2), the Authority may impose on undertakings providing or authorised to provide electronic communications networks, obligations in relation to the sharing of passive infrastructure or obligations to conclude localised roaming access agreements, in both cases if it considers that such obligations are directly necessary for the local provision of services which rely on the use of radio spectrum, in accordance with European Union law and provided that no viable and similar alternative means of access to end-users is made available to any undertaking on fair and reasonable terms and conditions:

Provided that the Authority may impose such obligations only where this possibility is clearly provided for when granting the rights of use for radio spectrum and where justified on the grounds that, in the area subject to such obligations, the market-driven deployment of infrastructure for the provision of networks or services which rely on the use of radio spectrum is subject to insurmountable economic or physical obstacles and therefore access to networks or services by end-users is severely deficient or absent:

Provided further that in those circumstances where the Authority considers that access and sharing of passive infrastructure alone does not suffice to address the situation, the Authority may then impose obligations on sharing of active infrastructure.

(7) In the exercise of its functions under this regulation the Authority shall have regard to:

(a) the need to maximise connectivity throughout the European Union, along major transport paths and in particular territorial areas, and to the possibility to significantly increase choice and higher quality of service for end-users;

(b) the efficient use of radio spectrum;

- (c) the technical feasibility of sharing and associated conditions;
- (d) the state of infrastructure-based as well as service-based competition;
- (e) technological innovation; and
- (f) the overriding need to support the incentive of the host to roll out the infrastructure in the first place.

Provided that in the event of dispute resolution, the Authority may, *inter alia*, impose on the beneficiary of the sharing or access obligation, the obligation to share radio spectrum with the infrastructure host in the relevant area.

(8) Obligations and conditions imposed in accordance with sub-regulations (1) to (7) shall be objective, transparent, proportionate and non-discriminatory, and shall be implemented in accordance with the procedures referred to in article 4A of the Malta Communications Authority Act, and in regulations 21 and 22: Cap. 418.

Provided that the Authority shall assess the results of any such obligations and conditions within five years after the adoption of the previous measure adopted in relation to the same undertakings, and in doing so assess whether it would be appropriate to withdraw or amend them in light of evolving conditions. The Authority shall notify the outcome of its assessment in accordance with the procedures referred to in article 4A of the Malta Communications Authority Act and in regulations 21 and 22.

(9) For the purpose of sub-regulations (1) and (2), the Authority may intervene on its own initiative where justified in order to secure the policy objectives of article 4 of the Act and, in particular with the procedures referred to in article 4A of the Malta Communications Authority Act, and regulation 21. Cap. 418.

(10) The Authority shall take the utmost account of any guidelines issued by BEREC in accordance with Article 61(7) of the Electronic Communications Code when defining the location of network termination points.

**49.** (1) In this regulation the words "rights holder" means the holder of a right to use an access point or the in-building physical infrastructure. Access to in-building physical infrastructure.

(2) The provisions of article 2 of the Utilities and Services (Regulation of Certain Works) Act shall, unless provided otherwise, Cap. 81.

apply with regard to the provisions of this regulation.

(3) The rights holder shall meet all reasonable requests for access from public electronic communications network operators under fair and non-discriminatory terms and conditions.

(4) The rights holder shall not, in relation to the use of, and access to, the access point or in-building physical infrastructure by a public electronic communications network operator impose any rent or other charges, however so described, on the public electronic communications network operator:

Provided that where the rights holder incurs any reasonable cost in providing access to the public electronic communications network operator to carry out works related to the deployment, maintenance and repair of its network, the rights holder may recover such cost from the public electronic communication network operator on a cost-recovery basis.

(5) A public electronic communications network operator has the right:

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

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

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

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

(7) The Authority may, after having consulted with any other utility regulatoras the case may be and with any such other public sector body as it may consider necessary in the circumstances, provide



for exemptions from the rights provided for in sub-regulation (5) for buildings where access to an existing network that terminates at the location of the end-user and that is suitable for the provision of high-speed electronic communications services, is ensured on objective, transparent, proportionate and non-discriminatory terms and conditions.

(8) In the absence of available high-speed-ready in-building infrastructure, a public electronic communications network operator may terminate its network at the premises of the end-user without prejudice to the agreement of the end-user, provided that it minimizes the impact on the private property of third parties, and does so at its own cost.

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

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

**50.** (1) The conditions laid down in Part I of the Second Schedule apply in relation to conditional access to digital television and radio services broadcast to viewers and listeners in the European Union, irrespective of the means of transmission. Conditional access systems and other facilities.

(2) Where, as a result of a market analysis carried out in accordance with regulation 54(1), (2), (3) and (4), the Authority finds that one or more undertakings do not have significant market power on the relevant market, it may amend or withdraw the conditions with respect to those undertakings, in accordance with the procedures referred to in article 4A of the Malta Communications Authority Act and regulation 21, only to the extent that: Cap. 418.

(a) accessibility for end-users to radio and television broadcasts and broadcasting channels and services specified in accordance with regulation 101 would not be adversely affected by such amendment or withdrawal; and

(b) the prospects for effective competition in the following markets would not be adversely affected by such amendment or withdrawal:

(i) retail digital television and radio broadcasting

services; and

(ii) conditional access systems and other associated facilities.

Provided that the Authority shall give an appropriate notice period to parties affected by such amendment or withdrawal of conditions.

(3) Conditions applied in accordance with this regulation are without prejudice to the faculty of the Authority to impose obligations in relation to the presentational aspect of EPGs and similar listing and navigation facilities.

(4) Notwithstanding sub-regulation (1), the Authority may, periodically review the conditions applied in accordance with this regulation, by undertaking a market analysis in accordance with regulation 54(1), (2), (3) and (4) to determine whether to maintain, amend or withdraw the conditions applied.

Market analysis and significant market power - Undertakings with significant market power.

**51.** (1) The provisions of this regulation shall apply where these regulations require that the Authority determines whether an undertaking has significant market power in accordance with the procedure referred to in regulation 54.

(2) An undertaking shall be deemed to have significant market power if, either individually or jointly with others, it enjoys a position equivalent to dominance, namely a position of economic strength affording it the power to behave to an appreciable extent independently of competitors, customers and ultimately consumers.

(3) The Authority shall, when assessing whether two or more undertakings are in a joint dominant position in a market, act in accordance with European Union law, and shall take into the utmost account the guidelines on market analysis and the assessment of significant market power published by the European Commission pursuant to regulation 52.

(4) Where an undertaking has significant market power on a specific market, the Authority may also designate that undertaking as having significant market power on a closely related market, where the links between the two markets allow the market power held on the specific market to be leveraged into the closely related market, thereby strengthening the market power of the undertaking. In such instances the Authority may consider remedies aiming to prevent the application of such leverage in the closely related market pursuant to regulations 56, 57, 58 and 61.

**52.** (1) The Authority shall, taking the utmost account of the Recommendation on Relevant Product and Service Markets and of the SMP guidelines published by the European Commission in accordance with the provisions of Article 64(1) and (2) of the Electronic Communications Code, define relevant markets appropriate to national circumstances, in particular relevant geographic markets within Malta by taking into account, *inter alia*, the degree of infrastructure competition in those areas, in accordance with the principles of competition law:

Procedure for the identification and definition of markets, and for the identification of transnational markets.

Provided that the Authority shall, where relevant, also take into account the results of the geographical survey conducted in accordance with regulation 17(1) to (5). In doing so the Authority shall follow the procedures referred to in article 4A of the Malta Communications Authority Act and in regulation 21 before defining the markets that may differ from those identified in the aforesaid Recommendation of the European Commission.

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(2) If the European Commission, or the Authority and at least another national regulatory authority from another Member State submit a reasoned request, including supporting evidence, BEREC shall conduct an analysis of a potential transnational market. After consulting stakeholders and taking utmost account of the analysis carried out by BEREC, the European Commission may adopt decisions identifying transnational markets in accordance with the principles of competition law and taking utmost account of the Recommendation and SMP guidelines adopted in accordance with Article 64 of the Electronic Communications Code.

(3) In the case of transnational markets identified in accordance with sub-regulation (2), the Authority and the national regulatory authority or authorities of the other Member State or States concerned shall jointly conduct the market analysis taking the utmost account of the SMP guidelines and, in a concerted fashion, shall decide on any imposition, maintenance, amendment or withdrawal of regulatory obligations referred to in regulation 54(8) and in Article 67(4) of the Electronic Communications Code. The Authority together with the national regulatory authority or authorities of the other Member State or States concerned shall jointly notify to the European Commission their draft measures regarding the market analysis and any regulatory obligations pursuant to regulations 21 and 22 and to Articles 32 and 33 of the Electronic Communications Code:

Provided that the Authority and one or more national regulatory authorities from other Member State or States may also jointly notify their draft measures regarding the market analysis and any regulatory obligations in the absence of transnational markets,

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where they consider that market conditions in the respective jurisdictions are sufficiently homogeneous.

Procedure for the identification of transnational demand.

**53.** The Authority shall take into utmost account any guidelines that BEREC may issue in accordance with the provisions of Article 66 of the Electronic Communications Code when performing its regulatory tasks. Such guidelines may provide the basis for interoperability of wholesale access products across the European Union and may include guidance for the harmonisation of technical specifications of wholesale access products capable of meeting such identified transnational demand.

Market analysis procedure.

**54.** (1) The Authority shall determine whether a relevant market defined in accordance with regulation 52 is such as to justify the imposition of the regulatory obligations set out under the Act and these regulations. In doing so the Authority shall carry out an analysis, where appropriate, in collaboration with the national competition authorities.

(2) The Authority shall take utmost account of the SMP guidelines and shall follow the procedures referred to in article 4A of the Malta Communications Authority Act and in regulation 21 when conducting such analysis.

(3) A market may be considered to justify the imposition of regulatory obligations set out in these regulations if all of the following criteria are met:

(a) high and non-transitory structural, legal or regulatory barriers to entry are present;

(b) there is a market structure which does not tend towards effective competition within the relevant time horizon, having regard to the state of infrastructure-based competition and other sources of competition underlying the barriers to entry; and

(c) competition law alone is insufficient to adequately address any identified market failures.

(4) Where the Authority conducts an analysis of a market that is included in the Recommendation on the Relevant Product and Service Markets, it shall consider that sub-regulation (3)(a), (b) and (c) have been met, unless the Authority determines that one or more of such criteria is not met in the specific national circumstances.

(5) Where the Authority conducts the analysis required by sub-regulation (1), it shall consider developments from a forward-looking perspective in the absence of regulation imposed on the basis of this regulation in that relevant market, taking into account all of the following:

(a) market developments affecting the likelihood of the relevant market tending towards effective competition;

(b) all relevant competitive constraints, at the wholesale and retail levels, irrespective of whether the sources of such constraints are considered to be electronic communications networks, electronic communications services, or other types of services or applications which are comparable from the perspective of the end-user, and irrespective of whether such constraints are part of the relevant market;

(c) other types of regulation or measures imposed and affecting the relevant market or related retail market or markets throughout the relevant period, including, without limitation, obligations imposed in accordance with article 4A of the Utilities and Services (Regulation of Certain Works) Act, and with regulations 47 and 48; and Cap. 81.

(d) regulatory obligations imposed on other relevant markets on the basis of this regulation.

(6) Where the Authority concludes that a relevant market does not justify the imposition of regulatory obligations in accordance with the procedure in sub-regulations (1) to (5), or where the conditions set out in sub-regulation (8) are not met, it shall not impose or maintain any specific regulatory obligations in accordance with regulation 55:

Provided that where there already are sector specific regulatory obligations imposed in accordance with regulation 55, the Authority shall withdraw such obligations placed on undertakings in that relevant market.

(7) The Authority shall ensure that parties affected by a withdrawal of obligations done in accordance with this regulation, receive an appropriate notice period, defined by balancing the need to ensure a sustainable transition for the beneficiaries of those obligations and end-users, end-user choice, and that regulation does not continue for longer than necessary:

Provided that when setting such a notice period, the Authority may determine specific conditions and notice periods in relation to existing access agreements.

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(8) Where the Authority determines that, in a relevant market the imposition of regulatory obligations in accordance with sub-regulations (1) to (5) is justified, it shall identify any undertakings which individually or jointly have a significant market power on that relevant market in accordance with regulation 51. In doing so the Authority shall impose on such undertakings appropriate specific regulatory obligations in accordance with regulation 55 or maintain or amend such obligations where they already exist if it considers that the outcome for end-users would not be effectively competitive in the absence of those obligations.

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(9) The Authority shall act in accordance with the procedures referred to in article 4A of the Malta Communications Authority Act and regulation 21, when taking measures in accordance with sub-regulations (6), (7) and (8). In doing so the Authority shall carry out an analysis of the relevant market and notify the corresponding draft measure in accordance with regulation 21:

(a) within five years from the adoption of a previous measure where the Authority has defined the relevant market and determined which undertakings have significant market power:

Provided that the aforesaid five year period may, on an exceptional basis, be extended for up to one year, where the Authority has notified a reasoned proposal for an extension to the European Commission no later than four months before the expiry of the five year period, and the European Commission has not objected within one month of the notified extension; or

(b) within three years from the adoption of a revised Recommendation on relevant markets, for markets not previously notified to the European Commission.

(10) Where the Authority considers that it may not complete or has not completed its analysis of a relevant market identified in the Recommendation within the time limit laid down in sub-regulation (9), the Authority may request BEREC to provide it with assistance in completing the analysis of the specific market and the specific obligations to be imposed. With this assistance, the Authority shall, within six months of the limit laid down in sub-regulation (9), notify the draft measure to the European Commission in accordance with regulation 21.

Imposition,  
amendment or  
withdrawal of  
obligations.

**55.** (1) Where an undertaking is designated as having significant market power on a specific market as a result of a market analysis carried out in accordance with regulation 54, the Authority shall, as it considers appropriate, impose the obligations set out in

regulations 56 to 61 and 63 to 67.

(2) In accordance with the principle of proportionality, the Authority shall choose the least intrusive way of addressing the problems identified in the market analysis.

(3) The Authority shall impose the obligations set out in regulations 56 to 61 and 63 to 67 only on undertakings that have been designated as having significant market power in accordance with sub-regulations (1) and (2), without prejudice to:

(a) regulations 48 and 50;

(b) article 4A of the Utilities and Services (Regulation of Certain Works) Act, regulation 13, Condition 7 in Part D of the First Schedule as applied by virtue of regulation 7(1), regulations 83 and 94 and the relevant provisions as contained in Part XIII and in the Processing of Personal Data (Electronic Communications Sector) Regulations containing obligations on undertakings other than those designated as having significant market power; or

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(c) the need to comply with international commitments.

(4) In exceptional circumstances, where the Authority intends to impose on undertakings designated as having significant market power obligations for access or interconnection other than those set out in regulations 56 to 61 and 63 to 67, the Authority shall submit a request to the European Commission.

(5) Any obligations imposed in accordance with this regulation shall be:

(a) based on the nature of the problem identified by the Authority in its market analysis, where appropriate taking into account the identification of transnational demand pursuant to regulation 53;

(b) proportionate, having regard, where possible, to the costs and benefits;

(c) justified in light of the objectives laid down in article 4 of the Act; and

(d) imposed following consultation in accordance with article 4A of the Malta Communications Authority Act and regulation 21.

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(6) In relation to the need to comply with international commitments referred to in sub-regulation (3), the Authority shall notify decisions to impose, amend or withdraw obligations on undertakings to the European Commission, in accordance with the procedure referred to in regulation 21.

(7) The Authority shall consider the impact of new market developments, such as in relation to commercial agreements, including co-investment agreements, influencing competitive dynamics. If such developments are not sufficiently important to require a new market analysis in accordance with regulation 54, the Authority shall assess without delay whether it is necessary to review the obligations imposed on undertakings designated as having significant market power and amend any previous decision, including by withdrawing obligations or imposing new obligations, in order to ensure that such obligations continue to meet the conditions set out in sub-regulation (5):

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Provided that such amendments shall be imposed only after consultations in accordance with article 4A of the Malta Communications Authority Act and regulation 21.

Obligation of transparency.

**56.** (1) The Authority may, in accordance regulation 55, impose obligations of transparency in relation to interconnection and, or access, requiring undertakings to make public specific information, such as accounting information, prices, technical specifications, network characteristics and expected developments thereof, as well as terms and conditions for supply and use, including any conditions altering access to or use of services and applications, in particular with regard to migration from legacy infrastructure, where such conditions are allowed by the Authority in accordance with European Union law.

(2) The Authority may in particular where an undertaking has obligations of non-discrimination, require that undertaking to publish a reference offer, which shall be sufficiently unbundled to ensure that undertakings are not required to pay for facilities which are not necessary for the service requested. The offer shall contain a description of the relevant offerings broken down into components according to market needs, and the associated terms and conditions, including prices:

Provided that the Authority may, *inter alia*, impose changes to reference offers to give effect to obligations imposed under these regulations.

(3) The Authority may specify the precise information to be made available, the level of detail required and the manner of publication.



(4) Notwithstanding sub-regulation (3), where an undertaking has obligations under regulations 59 or 60 concerning wholesale access to network infrastructure, the Authority shall ensure the publication of a reference offer taking utmost account of the BEREC guidelines on the minimum criteria for a reference offer made in accordance with Article 69(4) of the Electronic Communications Code, and that key performance indicators are specified, where relevant, as well as corresponding service levels, and shall closely monitor and ensure compliance with them:

Provided that the Authority may, where necessary, predetermine the associated financial penalties in accordance with European Union law and national legislation.

**57.** (1) The Authority may, in accordance with regulation 55, impose obligations of non-discrimination, in relation to interconnection and, or access. Obligations of non-discrimination.

(2) Obligations of non-discrimination shall ensure, in particular, that the undertaking applies equivalent conditions in equivalent circumstances to other providers of equivalent services, and provides services and information to others under the same conditions and of the same quality as it provides for its own services, or those of its subsidiaries or partners:

Provided that the Authority may impose on any such undertaking obligations to supply access products and services to all undertakings, including to itself, on the same timescales, terms and conditions, including those relating to price and service levels, and by means of the same systems and processes, in order to ensure equivalence of access:

Provided further that such obligations of non-discrimination may be based on equivalence of inputs or equivalence of outputs as may be established by the Authority on a case by case basis.

**58.** (1) The Authority may, in accordance with regulation 55, impose obligations for accounting separation in relation to specified activities related to interconnection and, or access. Obligation of accounting separation.

(2) Without prejudice to the generality of sub-regulation (1), the Authority may require a vertically integrated undertaking to make transparent its wholesale prices and its internal transfer prices, *inter alia* to ensure compliance where there is an obligation of non-discrimination under regulation 57 or, where necessary, to prevent unfair cross-subsidy. In doing so that Authority may specify the format and accounting methodology to be used.

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(3) Without prejudice to regulation 15, in order to facilitate the verification of compliance with obligations of transparency and non-discrimination, the Authority may require that accounting records, including data on revenues received from third parties, are provided on request.

(4) The Authority may publish information that would contribute to an open and competitive market. In so doing, the Authority shall comply with European Union law and national legislation on commercial confidentiality.

Access to civil engineering.

**59.** (1) The Authority may, in accordance with regulation 55, impose obligations on undertakings to meet reasonable requests for access to, and use of, civil engineering assets including, but not limited to, buildings or entries to buildings, building cables, including wiring, antennae, towers and other supporting constructions, poles, masts, ducts, conduits, inspection chambers, manholes and cabinets, in situations where, having considered the market analysis, the Authority concludes that denial of access, or access given under unreasonable terms and conditions having a similar effect, would hinder the emergence of a sustainable competitive market and would not be in the interest of end-users.

(2) The Authority may impose obligations on an undertaking to provide access in accordance with this regulation, irrespective of whether the assets that are affected by the obligation are part of the relevant market in accordance with the market analysis, provided that the obligation is necessary and proportionate to meet the objectives of article 4 of the Act.

Obligations of access to, and use of, specific network elements and associated facilities.

**60.** (1) The Authority may, in accordance with regulation 55, impose obligations on undertakings to meet reasonable requests for access to, and use of, specific network elements and associated facilities, in situations where the Authority considers that denial of access or unreasonable terms and conditions having a similar effect would hinder the emergence of a sustainable competitive market at the retail level, and would not be in the interest of the end-user.

(2) When undertaking any measures in accordance with this regulation, the Authority may require undertakings *inter alia*:

(a) to give third parties access to, and use of, specific physical network elements and associated facilities, as appropriate, including unbundled access to the local loop and sub-loop;

(b) to give third parties access to specific active or virtual network elements and services;

- (c) to negotiate in good faith with undertakings requesting access;
- (d) not to withdraw access to facilities already granted;
- (e) to provide specific services on a wholesale basis for resale by third parties;
- (f) to grant open access to technical interfaces, protocols or other key technologies that are indispensable for the interoperability of services or virtual network services;
- (g) to provide co-location or other forms of associated facilities sharing;
- (h) to provide specific services needed to ensure interoperability of end-to-end services to users, or roaming on mobile networks;
- (i) to provide access to operational support systems or similar software systems necessary to ensure fair competition in the provision of services;
- (j) to interconnect networks or network facilities;
- (k) to provide access to associated services such as identity, location and presence service.

Provided that the Authority may require that any of these obligations are subject to conditions covering fairness, reasonableness and timeliness.

(3) Where the Authority considers the appropriateness of imposing any of the possible specific obligations referred to in sub-regulations (1) and (2), and in particular where the Authority assesses, in accordance with the principle of proportionality, whether and how such obligations are to be imposed, the Authority shall analyse whether other forms of access to wholesale inputs, either on the same or on a related wholesale market, would be sufficient to address the identified problem in the interest of end-users.

(4) An assessment done in accordance with sub-regulation (3) shall include commercial access offers, regulated access pursuant to regulation 48, or existing or planned regulated access to other wholesale inputs pursuant to this regulation. In doing so the Authority shall take account in particular of the following factors:

- (a) the technical and economic viability of using or

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installing competing facilities, in light of the rate of market development, considering the nature and type of interconnection or access involved, including the viability of other upstream access products, such as access to ducts;

(b) the expected technological evolution affecting network design and management;

(c) the need to ensure technology neutrality enabling the parties to design and manage their own networks;

(d) the feasibility of providing the access offered, in relation to the capacity available;

(e) the initial investment by the facility owner, taking account of any public investment made and the risks involved in making the investment, with particular regard to investments in, and risk levels associated with, very high capacity networks;

(f) the need to safeguard competition in the long term, with particular attention to economically efficient infrastructure-based competition and innovative business models that support sustainable competition, such as those based on co-investment in networks;

(g) where appropriate, any relevant intellectual property rights; and

(h) the provision of pan-European services.

(5) Where the Authority considers, in accordance with regulation 55, imposing obligations on the basis of regulation 59 or of this regulation, it shall examine whether the imposition of obligations in accordance with regulation 59 alone would be a proportionate means by which to promote competition and the interest of end-users.

(6) When imposing obligations on an undertaking to provide access in accordance with this regulation, the Authority may lay down technical or operational conditions to be met by the provider or the beneficiaries of such access, where it considers necessary to ensure normal operation of the network:

Provided that any obligations to meet specific technical standards or specifications shall comply with the standards and specifications laid down in accordance with regulation 26.

**61.** (1) The Authority may, in accordance with regulation 55, impose obligations relating to cost recovery and price control, including obligations for cost orientation of prices and obligations concerning cost-accounting systems, for the provision of specific types of interconnection and, or access, in situations where a market analysis indicates that a lack of effective competition means that the undertaking concerned may sustain prices at an excessively high level, or may apply a price squeeze, to the detriment of end-users.

Price control  
and cost  
accounting  
obligations.

(2) In determining whether price control obligations would be appropriate, the Authority shall take into account the need to promote competition and long-term end-user interests related to the deployment and take-up of next-generation networks, and in particular of very high capacity networks. In particular, to encourage investments by the undertaking, including in next-generation networks, the Authority shall take into account the investment made by the undertaking:

Provided that where the Authority considers price control obligations to be appropriate, it shall allow the undertaking a reasonable rate of return on adequate capital employed, taking into account any risks specific to a particular new investment network project.

(3) The Authority shall consider not imposing or maintaining obligations pursuant to this regulation, where the Authority establishes that a demonstrable retail price constraint is present and that any obligations imposed in accordance with regulations 56 to 60, including, in particular, any economic replicability test imposed in accordance with regulation 57, ensures effective and non-discriminatory access.

(4) When the Authority considers it appropriate to impose price control obligations on access to existing network elements, the Authority shall also take account of the benefits of predictable and stable wholesale prices in ensuring efficient market entry and sufficient incentives for all undertakings to deploy new and enhanced networks.

(5) The Authority shall ensure that any cost recovery mechanism or pricing methodology that is mandated serves to promote the deployment of new and enhanced networks, efficiency and sustainable competition and maximises sustainable end-user benefits. In this regard, the Authority may also take account of prices available in comparable competitive markets.

(6) Where an undertaking has an obligation regarding the cost orientation of its prices, the burden of proof that charges are derived

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from costs, including a reasonable rate of return on investment, shall lie with the undertaking concerned. For the purpose of calculating the cost of efficient provision of services, the Authority may use cost accounting methods independent of those used by the undertaking:

Provided that the Authority may require an undertaking to provide full justification for its prices, and may, where appropriate, require prices to be adjusted.

(7) The Authority shall ensure that, where implementation of a cost-accounting system is mandated in order to support price control, a description of the cost-accounting system shall be made publicly available by the undertaking concerned, showing at least the main categories under which costs are grouped and the rules used for the allocation of costs:

Provided that a qualified independent body shall verify compliance with the cost-accounting system and shall publish annually a statement concerning compliance. The cost of any such verification shall be borne by the undertaking concerned.

Termination  
rates.

**62.** (1) The Authority shall closely monitor, and ensure compliance with, the application of the European Union-wide voice termination rates by providers of voice termination services pursuant to Article 75 of the Electronic Communications Code:

Provided that the Authority may, at any time, require a provider of voice termination services to amend the rate it charges to other undertakings if it does not comply with the delegated act referred to in paragraph 1 of Article 75 of the Electronic Communications Code.

(2) The Authority shall annually report to the European Commission and to BEREC with regard to its application of Article 75 of the Electronic Communications Code.

(3) Where the European Commission decides, following its review in accordance with paragraph 2 of Article 75 of the Electronic Communications Code, not to impose a maximum mobile voice termination rate or a maximum fixed voice termination rate, or to impose neither one, the Authority may then conduct a market analysis of voice termination markets in accordance with regulation 54, to assess whether the imposition of regulatory obligations is necessary.

(4) If as a result of an analysis undertaken in accordance with sub-regulation (3), the Authority decides to impose cost-oriented termination rates in a relevant market, the Authority shall follow the principles, criteria and parameters set out in the Third Schedule, and its draft measure shall be subject to the procedures referred to in article 4A of the Malta Communications Authority Act, and in regulations 21 and 22. Cap. 418.

**63.** (1) Undertakings which have been designated as having significant market power in one or several relevant markets in accordance with regulation 54, may offer commitments, in accordance with the procedure set out in regulation 66 and without prejudice to sub-regulation (2), to open the deployment of a new very high capacity network that consists of optical fibre elements up to the end-user premises or base station to co-investment, for example by offering co-ownership or long-term risk sharing through co-financing or through purchase agreements giving rise to specific rights of a structural character by other providers of electronic communications networks or services. Regulatory treatment of new very high capacity network elements.

(2) When the Authority assesses commitments made in accordance with sub-regulation (1), the Authority shall determine, in particular, whether the offer to co-invest complies with all of the following conditions:

(a) that the offer is open at any moment during the lifetime of the network to any provider of electronic communications networks or services;

(b) that the offer would allow other co-investors which are providers of electronic communications networks or services to compete effectively and sustainably in the long term in downstream markets in which the undertaking designated as having significant market power is active, on terms which include:

(i) fair, reasonable and non-discriminatory terms allowing access to the full capacity of the network to the extent that it is subject to co-investment;

(ii) flexibility in terms of the value and timing of the participation of each co-investor;

(iii) the possibility to increase such participation in the future; and

(iv) reciprocal rights awarded by the co-investors after the deployment of the co-invested infrastructure;

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(c) it is made public by the undertaking in a timely manner and, if the undertaking does not have the characteristics listed in regulation 67(1), at least six months before the start of the deployment of the new network, then that period may be prolonged by the Authority at its discretion for such reasonable period as it may consider appropriate. In so doing, the Authority shall take due account of national circumstances;

(d) access seekers not participating in the co-investment can benefit from the outset from the same quality, speed, conditions and end-user reach as were available before the deployment, accompanied by a mechanism of adaptation over time confirmed by the Authority in light of developments on the related retail markets, that maintains the incentives to participate in the co-investment:

Provided that such mechanism shall ensure that access seekers have access to the very high capacity elements of the network at a time, and on the basis of transparent and non-discriminatory terms, which reflect appropriately the degrees of risk incurred by the respective co-investors at different stages of the deployment and take into account the competitive situation in retail markets;

(e) it complies at a minimum with the criteria set out in the Fourth Schedule and is made in good faith.

(3) If the Authority concludes, taking into account the results of the market test conducted in accordance with regulation 66(2) and (3), that the co-investment commitment offered complies with the conditions set out in sub-regulation (2), then the Authority shall make that commitment binding pursuant to regulation 66(5) to (8) and shall not impose any additional obligations pursuant to regulation 55 as regards the elements of the new very high capacity network that are subject to the commitments, if at least one potential co-investor has entered into a co-investment agreement with the undertaking designated as having significant market power:

Provided that the provisions of this sub-regulation shall be without prejudice to the regulatory treatment of circumstances that do not comply with the conditions set out in sub-regulation (2), taking into account the results of any market test conducted in accordance with regulation 66(2) and (3), but that have an impact on competition and are taken into account for the purposes of regulations 54 and 55:

Provided further that by way of derogation from this sub-regulation the Authority may, in duly justified circumstances, impose, maintain or adapt remedies in accordance with regulations 55 to 61 as



regards new very high capacity networks in order to address significant competition problems on specific markets, where the Authority establishes that, given the specific characteristics of these markets, those competition problems would not otherwise be addressed.

(4) The Authority shall, on an ongoing basis, monitor compliance with the conditions set out in sub-regulation (1) and may require the undertaking designated as having significant market power to provide it with annual compliance statements:

Provided that this regulation shall be without prejudice to the power of the Authority to take decisions pursuant to article 43 of the Malta Communications Authority Act in the event of a dispute arising between undertakings in connection with a co-investment agreement considered by the Authority to comply with the conditions set out in sub-regulation (2). Cap. 418.

**64.** (1) Where the Authority concludes that the appropriate obligations imposed under regulations 56 to 61 have failed to achieve effective competition and that there are important and persisting competition problems or market failures identified in relation to the wholesale provision of certain access product markets, it may, on an exceptional basis, in accordance with regulation 55(4), impose an obligation on vertically integrated undertakings to place activities related to the wholesale provision of relevant access products in a business entity operating independently: Functional separation.

Provided that such business entity shall supply access products and services to all undertakings, including to other business entities within the parent company, on the same time scales and terms and conditions, including those relating to price and service levels, and by means of the same systems and processes.

(2) When the Authority intends to impose an obligation of functional separation, it shall submit a request to the European Commission that includes:

- (a) evidence justifying the conclusions of the Authority as referred to in sub-regulation (1);
- (b) a reasoned assessment concluding that there is no, or little prospect of effective and sustainable infrastructure-based competition within a reasonable time-frame;
- (c) analysis of the expected impact on the Authority, on the undertaking, in particular on the workforce of the separated undertaking, and on the electronic communications sector as a

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whole, and on incentives to invest therein, in particular with regard to the need to ensure social and territorial cohesion, and on other stakeholders including, in particular, the expected impact on competition and any potential resulting effects on consumers;

(d) an analysis of the reasons justifying that this obligation would be the most efficient means to enforce remedies aimed at addressing the competition problems or the markets failures identified.

(3) The draft measure shall include the following elements:

(a) the precise nature and level of separation, specifying in particular the legal status of the separate business entity;

(b) an identification of the assets of the separate business entity, and the products or services to be supplied by that entity;

(c) the governance arrangements to ensure the independence of the staff employed by the separate business entity, and the corresponding incentive structure;

(d) rules for ensuring compliance with the obligations;

(e) rules for ensuring transparency of operational procedures, in particular towards other stakeholders; and

(f) a monitoring programme to ensure compliance, including the publication of an annual report.

(4) Following the decision of the European Commission taken in accordance with regulation 55(3) on the draft measure referred to therein, the Authority shall conduct a coordinated analysis of the different markets related to the access network in accordance with the procedure set out in regulation 54. On the basis of that analysis, the Authority shall impose, maintain, amend or withdraw obligations, in accordance with the procedures set out in article 4A of the Malta Communications Authority Act and in regulation 21.

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(5) An undertaking on which functional separation has been imposed may be subject to any of the obligations referred to in regulations 56 to 61 in any specific market where it has been designated as having significant market power in accordance with regulation 54, or any other obligations authorised by the European Commission pursuant to regulation 55(3).

**65.** (1) Undertakings which have been designated as having significant market power in one or several relevant markets in accordance with regulation 54 shall inform the Authority at least three months before any intended transfer of their local access network assets or a substantial part thereof to a separate legal entity under different ownership, or establishment of a separate business entity in order to provide all retail providers, including its own retail divisions, with fully equivalent access products:

Voluntary separation by a vertically integrated undertaking.

Provided that such undertakings shall also inform the Authority of any change of that intent, as well as the final outcome of the process of separation:

Provided further that such undertakings may also offer commitments regarding access conditions that are to apply to their network during an implementation period after the proposed form of separation is implemented, with a view to ensuring effective and non-discriminatory access by third parties. The offer of commitments shall include sufficient details, including in terms of timing of implementation and duration, in order to allow the Authority to conduct its tasks in accordance with sub-regulation (2). Such commitments may extend beyond the maximum period for market reviews set out in regulation 54(9).

(2) The Authority shall assess the effect of the intended transaction, together with the commitments offered, where applicable, on existing regulatory obligations under these regulations:

Provided that for this purpose, the Authority shall conduct an analysis of the different markets related to the access network in accordance with the procedure set out in regulation 54, taking into account any commitments offered by the undertaking, having regard in particular to the objectives set out in article 4 of the Act. In so doing, the Authority shall consult third parties in accordance with article 4A of the Malta Communications Authority Act, and shall address, in particular, those third parties which are directly affected by the intended transaction:

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Provided further that, on the basis of its analysis, the Authority shall impose, maintain, amend or withdraw obligations, in accordance with the procedures set out in article 4A of the Malta Communications Authority Act and in regulation 21, applying, if appropriate, regulation 67. In its decision, the Authority may make the commitments binding, totally or in part. By way of derogation from regulation 54(9), the Authority may make the commitments binding, totally or in part, for the entire period for which they are offered.

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(3) Without prejudice to regulation 67, the legally or operationally separate business entity that has been designated as having significant market power in any specific market in accordance with regulation 54 may be subject, as appropriate, to any of the obligations referred to in regulations 56 to 61 or any other obligations authorised by the European Commission pursuant to regulation 55(3), where any commitments offered are insufficient to meet the objectives set out in article 4 of the Act.

(4) The Authority shall monitor the implementation of the commitments offered by the undertakings that the Authority has made binding in accordance with sub-regulation (2) and shall consider their extension when the period for which they are initially offered has expired.

Commitments  
procedure.

**66.** (1) Undertakings designated as having significant market power may offer to the Authority commitments regarding conditions for access, co-investment, or both, applicable to their networks in relation, *inter alia*, to:

(a) cooperative arrangements relevant to the assessment of appropriate and proportionate obligations pursuant to regulation 55;

(b) co-investment in very high capacity networks pursuant to regulation 63; or

(c) effective and non-discriminatory access by third parties pursuant to regulation 65, both during an implementation period of voluntary separation by a vertically integrated undertaking and after the proposed form of separation is implemented.

Provided that the offer for commitments shall be sufficiently detailed including as to the timing and scope of their implementation and their duration, to allow the Authority to undertake its assessment pursuant to sub-regulations (2) and (3). Such commitments may extend beyond the periods for carrying out market analysis provided in regulation 54(9).

(2) In order to assess any commitments offered by an undertaking pursuant to sub-regulation (1), the Authority shall, except where such commitments clearly do not fulfil one or more relevant conditions or criteria, perform a market test, in particular on the offered terms, by conducting a public consultation of interested parties, in particular of third parties which are directly affected. As part of such a consultation, potential co-investors or access seekers may provide views on the

compliance of the commitments offered with the conditions provided, as applicable, in regulations 55, 63 or 65 and may propose changes.

(3) As regards the commitments offered under this regulation, the Authority shall, when assessing obligations pursuant to regulation 55(5), have particular regard to:

(a) evidence regarding the fair and reasonable character of the commitments offered;

(b) the openness of the commitments to all market participants;

(c) the timely availability of access under fair, reasonable and non-discriminatory conditions, including to very high capacity networks, before the launch of related retail services; and

(d) the overall adequacy of the commitments offered to enable sustainable competition on downstream markets and to facilitate cooperative deployment and take-up of very high capacity networks in the interest of end-users.

(4) Taking into account all the views expressed in the consultation, and the extent to which such views are representative of different stakeholders, the Authority shall communicate to the undertaking designated as having significant market power its preliminary conclusions whether the commitments offered comply with the objectives, criteria and procedures set out in this regulation and, as applicable, in regulations 55, 63 or 65, and under which conditions it may consider making the commitments binding:

Provided that the undertaking may revise its initial offer to take account of the preliminary conclusions of the Authority and with a view to satisfying the criteria set out in this regulation and, as applicable, in regulations 55, 63 or 65.

(5) Without prejudice to the first paragraph of regulation 63(3), the Authority may issue a decision to make the commitments binding, totally or in part.

(6) By way of derogation from regulation 54(9), the Authority may make some or all commitments binding for a specific period, which may be the entire period for which they are offered, and in the case of co-investment commitments made binding pursuant to first paragraph of regulation 63(3), the Authority shall make them binding for a period of a minimum of seven years.

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(7) Subject to regulation 63, this regulation is without prejudice to the application of the market analysis procedure pursuant to regulation 54 and the imposition of obligations pursuant to regulation 55.

(8) Where the Authority makes commitments binding pursuant to this regulation, it shall assess under regulation 55 the consequences of that decision for market development and the appropriateness of any obligation that it has imposed or would have imposed, in default of those commitments, have considered imposing pursuant to that regulation or regulations 56 to 61:

Provided that when notifying the relevant draft measure under regulation 55 in accordance with regulation 21, the Authority shall attach the notified draft measure with the commitments decision.

(9) The Authority shall monitor, supervise and ensure compliance with the commitments that it has made binding in accordance with sub-regulations (5) to (8) in the same way in which it monitors, supervises and ensures compliance with obligations imposed under regulation 55, and shall consider the extension of the period for which they have been made binding when the initial period expires. If the Authority concludes that an undertaking has not complied with the commitments that have been made binding in accordance with sub-regulations (5) to (8), it may impose penalties on such undertaking in accordance with articles 31 to 33 of the Malta Communications Authority Act:

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Provided that without prejudice to the procedure for ensuring compliance of specific obligations under regulation 20, the Authority may reassess the obligations imposed in accordance with regulation 55(7).

Wholesale-only undertakings.

**67.** (1) The Authority when determining whether to designate an undertaking which is absent from any retail markets for electronic communications services as having significant market power in one or several wholesale markets in accordance with regulation 54, shall consider whether that undertaking has the following characteristics:

(a) all companies and business units within the undertaking, all companies that are controlled but not necessarily wholly owned by the same ultimate owner, and any shareholder capable of exercising control over the undertaking, only have activities, current and planned for the future, in wholesale markets for electronic communications services and therefore do not have activities in any retail market for electronic communications services provided to end-users in the European

Union; and

(b) the undertaking is not bound to deal with a single and separate undertaking operating downstream that is active in any retail market for electronic communications services provided to end-users, because of an exclusive agreement, or an agreement which *de facto* amounts to an exclusive agreement.

(2) If the Authority concludes that the conditions laid down in sub-regulation (1) are fulfilled, it may impose on that undertaking only obligations pursuant to regulations 57 and 60 or relative to fair and reasonable pricing if justified on the basis of a market analysis including a prospective assessment of the likely behaviour of the undertaking designated as having significant market power.

(3) The Authority shall review obligations imposed on the undertaking in accordance with this regulation at any time if it concludes that the conditions laid down in sub-regulation (1) are no longer met, and it shall, as appropriate, apply regulations 54 to 61.

(4) The undertakings shall, without undue delay, inform the Authority of any change of circumstance relevant to sub-regulation (1)(a) and (b).

(5) The Authority shall also review obligations imposed on the undertaking in accordance with this regulation if on the basis of evidence of terms and conditions offered by the undertaking to its downstream customers, the Authority concludes that competition problems have arisen or are likely to arise to the detriment of end-users which require the imposition of one or more obligations provided in regulations 56, 58, 59 or 61, or the amendment of the obligations imposed in accordance with sub-regulation (2).

(6) The imposition of obligations and their review in accordance with this regulation shall be implemented in accordance with the procedures referred to in article 4A of the Malta Communications Authority Act and in regulations 21 and 22. Cap. 418.

**68.** (1) Undertakings which have been designated as having significant market power in one or several relevant markets in accordance with regulation 54 shall notify the Authority in advance and in a timely manner when they plan to decommission or replace with a new infrastructure parts of the network, including legacy infrastructure necessary to operate a copper network, which are subject to obligations pursuant to regulations 55 to 67. Migration from legacy infrastructure.

(2) The Authority shall ensure that the decommissioning or replacement process includes a transparent timetable and conditions,

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including an appropriate notice period for transition, and establishes the availability of alternative products of at least comparable quality providing access to the upgraded network infrastructure substituting the replaced elements if necessary to safeguard competition and the rights of end-users.

(3) With regard to assets which are proposed for decommissioning or replacement, the Authority may withdraw the obligations after having ascertained that the access provider:

(a) has established the appropriate conditions for migration, including making available an alternative access product of at least comparable quality as was available using the legacy infrastructure enabling the access seekers to reach the same end-users; and

(b) has complied with the conditions and process notified to the Authority in accordance with this regulation:

Cap. 418. Provided that such withdrawal shall be implemented in accordance with the procedures referred to in article 4A of the Malta Communications Authority Act and in regulations 21 and 22.

(4) This regulation shall be without prejudice to the availability of regulated products imposed by the Authority on the upgraded network infrastructure in accordance with the procedures set out in regulations 54 and 55.

BEREC guidelines on very high capacity networks.

**69.** The Authority shall take into utmost account any guidelines on very high capacity networks that BEREC may issue in accordance with Article 82 of the Electronic Communications Code.

Regulatory control of retail services.

**70.** (1) The Authority shall impose any regulatory obligations as it may consider appropriate on undertakings identified as having significant market power on a given retail market in accordance with regulation 51, where:

(a) as a result of a market analysis carried out in accordance with regulation 54, the Authority determines that a given retail market identified in accordance with regulation 52 is not effectively competitive; and

(b) the Authority concludes that obligations imposed under regulations 56 to 61 would not result in the achievement of the objectives set out in article 4 of the Act:

Provided that the obligations that the Authority may impose shall be based on the nature of the problem identified and shall be



proportionate and justified in light of the objectives laid down in article 4 of the Act. Such obligations may include requirements that the identified undertakings do not charge excessive prices, inhibit market entry or restrict competition by setting predatory prices, show undue preference to specific end-users, or unreasonably bundle services:

Provided further that the Authority may apply to such undertakings appropriate retail price cap measures, measures to control individual tariffs, or measures to orient tariffs towards costs or prices on comparable markets, in order to protect end-user interests whilst promoting effective competition.

(2) The Authority shall ensure that where an undertaking is subject to retail tariff regulation or other relevant retail controls, the necessary and appropriate cost-accounting systems are implemented. In doing so the Authority may specify the format and accounting methodology to be used:

Provided that compliance with the cost-accounting system shall be verified by a qualified independent body, the cost of which verification shall be borne by the undertaking concerned:

Provided further that the Authority shall ensure that a statement concerning compliance is published annually.

(3) Without prejudice to regulations 72 and 75 the Authority shall not apply retail control mechanisms under sub-regulation (1) to geographical or retail markets where the Authority is satisfied that there is effective competition.

## **PART X**

### **Universal Service Obligations**

71. (1) The Authority shall ensure that all consumers in Malta have access at an affordable price, in light of specific national conditions, to an available adequate broadband internet access service and to voice communications services at the quality specified, including the underlying connection, at a fixed location.

Affordable  
universal  
service.

(2) The Authority may also ensure the affordability of the services referred to in sub-regulation (1) that are not provided at a fixed location where the Authority considers this to be necessary to ensure the full social and economic participation of consumers in society.

(3) The Authority shall, in the light of national conditions and the minimum bandwidth enjoyed by the majority of consumers in Malta,

and taking into account the BEREC report on best practices made in accordance with Article 84(3) of the Electronic Communications Code, define the adequate broadband internet access service for the purposes of sub-regulation (1) with a view to ensuring the bandwidth necessary for social and economic participation in society. The adequate broadband internet access service shall be capable of delivering the bandwidth necessary for supporting at least the minimum set of services set out in the Fifth Schedule.

(4) When a consumer so requests, the connection referred to in sub-regulation (1) and, where applicable, in sub-regulation (2), may be limited to support voice communications services.

(5) The Authority may extend the scope of application of this regulation to end-users that are micro-enterprises, small and medium-sized enterprises, and not-for-profit organisations.

Provision of  
affordable  
universal  
service.

**72.** (1) The Authority shall monitor the evolution and level of retail prices of the services referred to in regulation 71(1) available on the market, in particular in relation to national prices and national consumer income.

(2) The Authority may, in light of national conditions, establish that retail prices for the services referred to in regulation 71(1) are not affordable, because consumers with a low income or special social needs are prevented from accessing such services. In such instances the Authority shall take measures to ensure affordability for such consumers of adequate broadband internet access service and voice communications services at least at a fixed location:

Provided that to this end, the Authority may, where applicable together with any competent public bodies, take such measures as it considers appropriate to ensure that support is provided to such consumers for communication purposes or require providers of such services to offer to those consumers tariff options or packages different from those provided under normal commercial conditions, or both. For this purpose, the Authority may require such providers to apply common tariffs, including geographic averaging, throughout Malta.

(3) In exceptional circumstances, in particular where the imposition of obligations under the proviso to sub-regulation (2) on all providers would result in an evident excessive administrative or financial burden for providers or for Government, the Authority may, on an exceptional basis, decide to impose the obligation to offer those specific tariff options or packages only on designated undertakings, in which case regulation 73 shall apply to such designations *mutatis mutandis*.

(4) Where the Authority designates undertakings in accordance with sub-regulation (3), it shall ensure that all consumers with a low-income or special social needs benefit from a choice of undertakings offering tariff options addressing their needs, unless ensuring such choice is impossible, or it would create an excessive additional organisational or financial burden.

(5) The Authority shall ensure that consumers entitled to such tariff options or packages referred to in subregulation (2) have a right to conclude a contract either with a provider of the services referred to in regulation 71(1), or with an undertaking designated in accordance with this regulation, and that their number remains available to them for an adequate period and unwarranted disconnection of the service is avoided.

(6) The Authority shall ensure that undertakings which provide tariff options or packages to consumers with a low income or special social needs pursuant to sub-regulation (2) keep the Authority informed of the details of such offers.

(7) The Authority shall ensure that the conditions under which undertakings provide tariff options or packages pursuant to sub-regulation (2) are fully transparent, and are published and applied in accordance with the principle of non-discrimination. The Authority may require such tariff options or packages to be modified or withdrawn.

(8) The Authority shall, together where applicable with the competent public body or bodies, ensure, in light of national conditions, that support is provided, as appropriate, to consumers with disabilities, and that other specific measures are taken, where appropriate, with a view to ensuring that related terminal equipment, and specific equipment and specific services that enhance equivalent access, including where necessary total conversation services and relay services, are available and affordable.

(9) When applying this regulation, the Authority shall seek to minimise market distortions, and may take such measures as it considers necessary to ensure effective compliance therewith.

(10) The Minister may, after consultation with the Authority, by order in the Gazette extend the scope of application of this regulation to end-users that are micro-enterprises, small and medium-sized enterprises and not-for-profit organisations.

**73.** (1) The Authority may establish, taking into account the results, where available, of the geographical survey conducted in

Availability of  
universal  
service.

accordance with regulation 17(1) to (5) and any additional evidence where necessary, that the availability at a fixed location of an adequate broadband internet access service as defined in accordance with regulation 71(3) and of voice communications services cannot be ensured under normal commercial circumstances or through other potential public policy tools in Malta or different parts of Malta. In doing so the Authority may impose appropriate universal service obligations to meet all reasonable requests by end-users for accessing those services in the relevant parts of Malta.

(2) The Authority shall determine the most efficient and appropriate approach for ensuring the availability at a fixed location of an adequate broadband internet access service as defined in accordance with regulation 71(3) and of voice communications services, whilst respecting the principles of objectivity, transparency, non-discrimination and proportionality. In doing so the Authority shall seek to minimise market distortions, in particular the provision of services at prices or subject to other terms and conditions which depart from normal commercial conditions, whilst safeguarding the public interest.

(3) The Authority may impose obligations to ensure for end-users the availability at a fixed location of an adequate broadband internet access service as defined in accordance with regulation 71(3) and of voice communications services. In doing so the Authority may designate one or more undertakings to guarantee such availability throughout Malta:

Provided that the Authority may designate different undertakings or sets of undertakings to provide an adequate broadband internet access service and voice communications services at a fixed location or to cover different parts of Malta.

(4) When the Authority designates undertakings in any part or in all of Malta to ensure availability of services in accordance with sub-regulation (3), it shall use an efficient, objective, transparent and non-discriminatory designation mechanism, whereby no undertaking is *a priori* excluded from being designated. Such designation methods shall ensure that an adequate broadband internet access service and voice communications services at a fixed location are provided in a cost-effective manner and may be used as a means of determining the net cost of the universal service obligations in accordance with regulation 76.

(5) When an undertaking designated in accordance with sub-regulation (3) intends to dispose of a substantial part or all of its local access network assets to a separate legal entity under different

ownership, it shall inform the Authority in advance and in a timely manner, in order to allow the Authority to assess the effect of the intended transaction on the provision at a fixed location of an adequate broadband internet access service as defined in accordance with regulation 71(3), and of voice communications services:

Provided that the Authority may impose, amend or withdraw specific obligations in accordance with regulation 7(2).

**74.** (1) The Authority may continue to ensure the availability or affordability of other services, except for adequate broadband internet access service as defined in accordance with regulation 71(3) and voice communications services at a fixed location, if the Authority considers that national circumstances justify the need for such services:

Status of the existing universal service.

Provided that if the Authority designates undertakings in any part or all of Malta for the provision of such services, then regulation 73 shall apply:

Provided further that the financing of such obligations shall comply with regulation 77.

(2) The Authority shall review the obligations imposed pursuant to this regulation by 21 December 2021, and every three years thereafter.

**75.** (1) Providers of an adequate broadband internet access service and of voice communications services in accordance with regulations 71 to 74, shall in providing facilities and services additional to those referred to in regulation 71, establish terms and conditions in such a way that the end-user is not obliged to pay for facilities or services which are not necessary or not required for the service requested.

Control of expenditure.

(2) Providers of an adequate broadband internet access service and of voice communications services referred to in regulation 71 that provide services pursuant to regulation 72, shall offer the specific facilities and services set out in Part A of the Sixth Schedule as applicable, in order that consumers can monitor and control expenditure. Such providers shall put in place a system to avoid unwarranted disconnection of voice communications services or of an adequate broadband internet access service with regard to consumers as referred to in regulation 72, including an appropriate mechanism to verify continued interest in using the service:

Provided that the Authority may extend the scope of application of this sub-regulation to end-users that are

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microenterprises, small and medium-sized enterprises, and not-for-profit organisations.

(3) The Authority may waive the requirements of sub-regulation (2) in all or part of Malta if it is satisfied that the facility is widely available throughout Malta.

Cost of  
universal  
service  
obligations.

**76.** (1) Where the Authority considers that the provision of an adequate broadband internet access service as defined in accordance with regulation 71(3) and of voice communications services as set out in regulations 71, 72 and 73 or the continuation of the existing universal service as set out in regulation 74 may represent an unfair burden on providers of such services that request compensation, then the Authority shall calculate the net costs of such provision.

(2) For the purpose of sub-regulation (1), the Authority shall:

(a) calculate the net cost of the universal service obligations, taking into account any market benefit which accrues to a provider of an adequate broadband internet access service as defined in accordance with regulation 71(3) and voice communications services as set out in regulations 71, 72 and 73 or the continuation of the existing universal service as set out in regulation 74, in accordance with the Seventh Schedule; or

(b) make use of the net costs of providing universal service identified by a designation mechanism in accordance with regulation 73(4).

(3) Providers requesting compensation shall submit a detailed written request to the Authority which shall include the accounts and other information serving as the basis for the calculation of the net cost of universal service obligations under paragraph (a) of sub-regulation (2). Such requests with all the information submitted therewith shall be audited or verified by the Authority or a body independent of the relevant parties after such body has been approved by the Authority. The results of the cost calculation and the conclusions of the audit shall be publicly available.

Financing of  
universal  
service  
obligations.

**77.** (1) Where, on the basis of the net cost calculation referred to in regulation 76, the Authority finds that a provider is subject to an unfair burden, the Authority shall, upon request from the provider concerned, decide to do one or both of the following:

(a) introduce a mechanism to compensate that provider for the determined net costs under transparent conditions from public funds;

(b) share the net cost of universal service obligations between providers of electronic communications networks and services:

Provided that a mechanism under paragraph (a) may only be established with the approval of the Minister granted with the concurrence of the Minister responsible for finance.

(2) Where the net cost is shared in accordance with paragraph (b) of sub-regulation (1), the Authority shall establish a sharing mechanism administered by the Authority or a body independent from the beneficiaries under the supervision of the Authority.

(3) Only the net cost, as determined in accordance with regulation 76 of the obligations laid down in regulations 71 to 74 may be financed.

(4) A sharing mechanism established in accordance with this regulation shall respect the principles of transparency, least market distortion, non-discrimination and proportionality, in accordance with the principles set out in Part B of the Seventh Schedule:

Provided that the Authority may decide not to require contributions from undertakings whose national turnover is less than any such set limit as may, from time to time, be determined by the Authority.

(5) Any charges related to the sharing of the cost of universal service obligations shall be unbundled and identified separately for each undertaking:

Provided that the Authority shall not impose on, or collect any charges from, undertakings that are not providing services in Malta.

**78.** (1) Where the net cost of universal service obligations is to be calculated in accordance with regulation 76, the Authority shall ensure that the principles for net cost calculation, including the details of methodology to be used, are publicly available. Transparency.

(2) Where a mechanism for sharing the net cost of universal service obligations as referred to in regulation 77(2) to (5) is established, the Authority shall ensure that the principles for cost sharing and compensation of the net cost are publicly available.

(3) Subject to European Union and national rules on commercial confidentiality, the Authority shall publish an annual report providing the details of calculated cost of universal service obligations, identifying the contributions made by all undertakings involved,

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including any market benefits that may have accrued to the undertakings pursuant to universal service obligations laid down in regulations 71 to 74.

Additional  
mandatory  
services.

**79.** The Authority may decide to make services additional to those included in the universal service obligations referred to in regulations 71 to 74, publicly available in Malta:

Provided that in such cases, no compensation mechanism involving specific undertakings shall be imposed.

## **PART XI NUMBERING RESOURCES**

Numbering  
resources.

**80.** (1) The Authority shall establish and manage the national numbering plan for electronic communications services and shall control the granting of rights of use for all national numbering resources. In doing so the Authority shall ensure that adequate numbering resources are provided for the provision of publicly available electronic communications services:

Provided that in granting rights of use for national numbering resources, the Authority shall establish procedures that are objective, transparent and non-discriminatory.

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

(3) The Authority may also, in exceptional circumstances and at its discretion, grant rights of use for numbering resources from the national numbering plan for the provision of specific services to entities other than providers of electronic communications networks or services, provided that adequate numbering resources are made available to satisfy current and foreseeable future demand. In doing so, such undertakings shall demonstrate to the Authority their ability to manage the numbering resources and to comply with any relevant requirements set out pursuant to regulation 81:

Provided that the Authority may suspend the further granting of rights of use for numbering resources to such undertakings if the Authority considers that there is a risk of exhaustion of numbering resources.

(4) The Authority shall ensure that the national numbering plan and procedures are applied in a manner that gives equal treatment to



all providers of publicly available electronic communications services, and at its discretion to the entities eligible in accordance with sub-regulation (3). In particular, the Authority shall ensure that an entity to which the right of use for numbering resources has been granted does not discriminate against providers of electronic communications services as regards the numbering resources used to give access to their services.

(5) The Authority shall make available a range of non-geographic numbers which may be used for the provision of electronic communications services other than interpersonal communications services, throughout the European Union, without prejudice to Regulation (EU) No 531/2012 and to regulation 83(2):

Provided that without prejudice to the requirements of this regulation, the Authority may allow the use of such numbers in other non-European Union Member States:

Provided further that where rights of use for numbering resources have been granted in accordance with sub-regulation (3) to entities other than providers of electronic communications networks or services, this sub-regulation shall apply to the specific services for the provision of which the rights of use have been granted.

(6) The Authority shall ensure that the conditions listed in Part E of the First Schedule that may be attached to the rights of use for numbering resources used for the provision of services outside Malta, and their enforcement, are as stringent as the conditions and enforcement applicable to services provided within Malta, in accordance with these regulations.

(7) The Authority shall also ensure in accordance with regulation 81(7) that providers using Maltese numbering resources in other Member States or non-European Union Member States comply with consumer protection and other national rules related to the use of numbering resources applicable in those countries where the numbering resources are used. This obligation is without prejudice to the enforcement powers of the competent authorities of those countries:

Provided that the Authority may, where it considers necessary, seek the assistance of BEREC in coordinating its activities and those of competent authorities of other Member States in coordinating their activities to ensure the efficient management of numbering resources with a right of extraterritorial use within the European Union.

(8) In accordance with Article 93(4) of the Electronic

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Communications Code, where BEREC establishes and maintains a database on the numbering resources with a right of extraterritorial use within the European Union, the Authority shall as necessary transmit the relevant information to BEREC.

(9) The Authority shall ensure that the '00' code is the standard international access code.

(10) The Authority shall, subject to any limitations that may be specified by the Minister after consultation with the Minister responsible for national security, on the grounds of national security, ensure that the national numbering plans, and all subsequent additions or amendments thereto, are published on its website and such other means of public media as it may consider appropriate.

(11) The Authority shall support the harmonisation of specific numbers or numbering ranges within the European Union where it promotes both the functioning of the internal market and the development of pan-European services.

Procedure for granting of rights of use for numbering resources.

**81.** (1) The Authority may on receipt of a written request in such form as it may from time to time determine, grant individual rights of use for numbering resources to any undertaking for the provision of electronic communications networks or services covered by a general authorisation referred to in regulation 5, subject to regulations 7 and 8 and to regulation 16(1)(c) and to any other rules ensuring the efficient use of those numbering resources in accordance with these regulations.

(2) The Authority shall grant rights of use for numbering resources through open, objective, transparent, non-discriminatory and proportionate procedures. In doing so the Authority shall, at its discretion, specify whether those rights can be transferred by the holder of the rights, and under which conditions.

(3) Where the Authority grants rights of use for numbering resources for a limited period, then the duration of that period shall be appropriate for the service concerned with a view to the objective pursued, taking due account of the need to allow for an appropriate period for investment amortisation.

(4) The Authority shall decide on the granting of rights of use for numbering resources as soon as possible after receipt of the complete application, and within three weeks in the case of numbering resources that have been allocated for specific purposes within the national numbering plan:

Provided that such decisions shall be made publicly available

on the website of the Authority.

(5) Where the Authority has determined, after consulting interested parties in accordance with article 4A of the Malta Communications Authority Act, that rights of use for numbering resources of exceptional economic value are to be granted through competitive or comparative selection procedures, then the Authority may extend the three week period referred to in sub-regulation (4) by up to a further three weeks. Cap. 418.

(6) The Authority shall not limit the number of individual rights of use to be granted, except where this is necessary to ensure the efficient use of numbering resources.

(7) Where the rights of use for numbering resources include their extraterritorial use in accordance with regulation 80(5) to (7), the Authority shall attach to those rights of use specific conditions in order to ensure compliance with all the relevant national consumer protection rules and national law related to the use of numbering resources applicable in those countries where the numbering resources are used.

(8) Upon request from a national regulatory or other competent authority of a country where the numbering resources are used, demonstrating a breach of relevant consumer protection rules or national laws related to the use of numbering resources of that country, the Authority shall enforce the conditions attached under the sub-regulation (7), including, in serious cases, by withdrawing the rights of extraterritorial use for the numbering resources granted to the undertaking concerned.

(9) This regulation shall also apply in those exceptional circumstances where, at its discretion, the Authority grants rights of use for numbering resources to entities other than providers of electronic communications networks or services in accordance with regulation 80(3).

**82.** (1) Authorised undertakings shall pay to the Authority such fees for the rights of use for numbering resources as provided for under Part C of the Twelfth Schedule, which fees may be amended by the Minister, by order in the Gazette in accordance with the requirements of this regulation. Fees for rights of use for numbering resources.

(2) Any fees imposed for the rights of use of numbering resources shall reflect the need to ensure the optimal use of such resources. Such fees shall be objectively justified, transparent, non-discriminatory and proportionate in relation to their intended purpose taking into account the general objectives stated in article 4 of the Act.

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Access to numbers and services.

**83.** (1) Where economically feasible, except where a called end-user has chosen for commercial reasons to limit access by calling parties located in specific geographical areas, the Authority shall take all necessary steps to ensure that end-users are able to:

(a) access and use services using non-geographic numbers within the European Union; and

(b) access all numbers provided in the European Union, regardless of the technology and devices used by the operator, including those in the national numbering plans of Member States and Universal International Freephone Numbers (UIFN).

(2) The Authority may require providers of public electronic communications networks or publicly available electronic communications services to block, on a case-by-case basis, access to numbers or services where this is justified by reasons of fraud or misuse, and to require that in such cases providers of electronic communications services withhold relevant interconnection or other service revenues.

## PART XII END-USER RIGHTS

Exemption of certain micro-enterprises.

**84.** (1) With the exception of regulations 85 and 86, this Part shall not apply to microenterprises providing number-independent interpersonal communications services unless they also provide other electronic communications services.

(2) Undertakings shall ensure that end-users are through a durable medium, informed of an exemption under sub-regulation (1), before concluding a contract with a micro-enterprise benefiting from such an exemption.

Non-discrimination.

**85.** Providers of electronic communications networks or services shall not apply any different requirements or general conditions of access to, or use of, networks or services to end-users, for reasons related to the nationality, place of residence or place of establishment of the end-user, unless such different treatment is objectively justified.

Fundamental rights safeguard.

**86.** (1) National measures regarding access to or use of by end-users to services and applications through electronic communications networks shall respect the Charter and the general principles of European Union law.

(2) Any measure regarding access to, or use of, by end-users to services and applications through electronic communications networks liable to limit the exercise of the rights or freedoms recognised by the

Charter shall be imposed only if it is provided for by law and respects those rights or freedoms, is proportionate, necessary, and genuinely meets general interest objectives recognised by European Union law or the need to protect the rights and freedoms of others in line with Article 52(1) of the Charter and with the general principles of European Union law, including the right to an effective remedy and to a fair trial:

Provided that such measures shall be taken only with due respect for the principle of the presumption of innocence and the right to privacy:

Provided further that a prior, fair and impartial procedure shall be guaranteed, including the right to be heard of the person concerned, subject to the need for appropriate conditions and procedural arrangements in duly substantiated cases of urgency in accordance with the Charter.

**87.** (1) Before a consumer is bound by a contract or any corresponding offer, providers of publicly available electronic communications services other than transmission services used for the provision of machine-to-machine services, shall provide the information referred to in regulations 4 and 5 of the Consumer Rights Regulations and, in addition, the information listed in the Eighth Schedule, to the extent that such information relates to a service they provide.

Information requirements for contracts.

S.L. 378.17.

(2) The information referred to in sub-regulation (1) shall be provided in a clear and comprehensible manner on a durable medium or, where provision on a durable medium is not feasible, in an easily downloadable document made available by the provider. The provider shall expressly draw the attention of the consumer to the availability of that document and the importance of downloading it for the purposes of documentation, future reference and unchanged reproduction:

Provided that the information shall, upon request, be provided in an accessible format for end-users with disabilities in accordance with European Union law harmonising accessibility requirements for products and services.

(3) Providers of publicly available electronic communications services other than transmission services used for the provision of machine-to-machine services, shall provide consumers with a concise and easily readable contract summary, which summary shall identify the main elements of the information requirements in accordance with sub-regulation (1). Those main elements shall include at least:

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(a) the name, address and contact information of the provider and, if different, the contact information for any complaint;

(b) the main characteristics of each service provided;

(c) the respective prices for activating the electronic communications service and for any recurring or consumption-related charges, where the service is provided for direct monetary payment;

(d) the duration of the contract and the conditions for its renewal and termination;

(e) the extent to which the products and services are designed for end-users with disabilities; and

(f) with respect to internet access services, a summary of the information required pursuant to points (d) and (e) of Article 4(1) of Regulation (EU) 2015/2120.

(4) Providers subject to the obligations under sub-regulations (1) and (2), shall duly complete the contract summary template established in accordance with Article 102(3) of the Electronic Communications Code, with the required information and provide the contract summary free of charge to consumers, prior to the explicit consent of the consumer to the contract, including distance contracts:

Provided that where, for objective technical reasons, it is impossible to provide the contract summary at that moment, then the contract summary shall be provided without undue delay thereafter, and the contract shall become effective when the consumer has confirmed his agreement after receipt of the contract summary;

Provided further that in accordance with this regulation, the Authority may determine the manner as to how a consumer gives his consent to the contract

(5) The information referred to in sub-regulations (1) to (4), shall become an integral part of the contract and shall not be altered unless the contracting parties expressly agree otherwise.

(6) Any term or condition in a contract for the provision of publicly available electronic communications services other than transmission services used for the provision of machine-to-machine services, even if agreed to by the consumer, shall be null and void to the extent that it is inconsistent with any provisions made by or under the Act or the terms and conditions of the general authorisation under

which the service is provided.

(7) Where internet access services or publicly available interpersonal communications services are billed on the basis of either time or volume consumption, the providers of such services shall offer consumers the facility to monitor and control the usage of each of those services. This facility shall include access to timely information on the level of consumption of services included in a tariff plan:

Provided that providers shall notify consumers before any consumption limit included in their tariff plan is reached and when a service included in their tariff plan is fully consumed.

(8) The Authority may from time to time:

(a) establish rules requiring providers to notify consumers before any consumption limit included in their tariff plan is reached, and when a service included in their tariff plan is fully consumed;

(b) require providers to furnish such additional information on the consumption level, and temporarily prevent further use of the relevant service in excess of a financial or volume limit as the Authority may determine; and

(c) establish other information requirements to be included in contracts not related to aspects regulated under this regulation, in particular to address newly emerging issues.

(9) The information referred to in sub-regulations (1) to (4) and (8), shall also be provided to end-users that are micro-enterprises, small enterprises or not-for-profit organisations, unless they have explicitly agreed to waive all or parts of those provisions.

**88.** (1) Where providers of internet access services or publicly available interpersonal communication services make the provision of such services subject to terms and conditions, then such providers shall ensure that the information referred to in the Ninth Schedule, is published in a clear, comprehensive, machine-readable manner and in an accessible format for end-users with disabilities in accordance with European Union legislation harmonising accessibility requirements for products and services:

Transparency, comparison of offers and publication of information.

Provided that such information shall be updated regularly by such providers:

Provided further that the Authority may specify additional requirements regarding the form in which such information is to be

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published, which information shall at the request of the Authority be supplied to the Authority before its publication. The Authority in specifying any such requirements concerning end-users with disabilities, shall consult with the Commission for the Rights of Persons with Disability and such other national competent authorities as it considers appropriate in the circumstances.

(2) The Authority shall ensure that end-users have access free of charge to at least one independent comparison tool which enables them to compare and evaluate different internet access services and publicly available number-based interpersonal communications services, and, where applicable, publicly available number-independent interpersonal communications services, with regard to:

(a) prices and tariffs of services provided against recurring or consumption-based direct monetary payments; and

(b) the quality of service performance, where minimum quality of service is offered or the undertaking is required to publish such information pursuant to regulation 89.

(3) The comparison tool referred to in sub-regulation (2) shall:

(a) be operationally independent from the providers of such services, thereby ensuring that those providers are given equal treatment in search results;

(b) clearly disclose the owners and operators of the comparison tool;

(c) set out clear and objective criteria on which the comparison is to be based;

(d) use plain and unambiguous language;

(e) provide accurate and up-to-date information and state the time of the last update;

(f) be open to any provider of internet access services or publicly available interpersonal communications services, making available the relevant information, and include a broad range of offers covering a significant part of the market and, where the information presented is not a complete overview of the market, a clear statement to that effect, before displaying results;

(g) provide an effective procedure to report incorrect information; and



(h) include the possibility to compare prices, tariffs and quality of service performance between offers available to consumers and, where the Authority so requires, between those offers and the standard offers publicly available to other end-users:

Provided that comparison tools fulfilling the requirements in paragraphs (a) to (h), shall, upon request by the provider of the tool, be certified by the Authority.

(4) Third parties shall have the right to use free of charge and in open data formats, the information published by providers of internet access services or publicly available interpersonal communications services, for the purposes of making available such independent comparison tools referred to in this regulation.

(5) Providers of internet access services and, or of publicly available number-based interpersonal communications services, shall distribute public interest information free of charge to existing and new end-users, where appropriate, by the means that they ordinarily use in their communications with end-users. In such a case, that public interest information shall be provided by the relevant public authorities in a standardised format and shall, *inter alia*, cover the following topics:

(a) the most common uses of internet access services and publicly available number-based interpersonal communications services to engage in unlawful activities or to disseminate harmful content, in particular where it may prejudice respect for the rights and freedoms of others, including infringements of data protection rights, copyright and related rights, and their legal consequences; and

(b) the means of protection against risks to personal security, privacy and personal data when using internet access services and publicly available number-based interpersonal communications services.

(6) Providers of internet access services and, or of publicly available number-based interpersonal communications services, shall notify the Authority of any new service offers and, or tariffs plans or any changes thereto within one working day from their launch in a format as may be determined by the Authority.

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Quality of service related to internet access services and publicly available interpersonal communications services.

**89.** (1) The Authority may require providers of internet access services and of publicly available interpersonal communications services to publish comprehensive, comparable, reliable, user-friendly and up-to-date information for end-users on the quality of their services, to the extent that they control at least some elements of the network either directly or by virtue of a service level agreement to that effect, and on measures taken to ensure equivalence in access for end-users with disabilities.

(2) The Authority may also require providers of publicly available interpersonal communications services to inform consumers if the quality of the services they provide depends on any external factors, such as control of signal transmission or network connectivity. Such information shall, on request of the Authority, be supplied to the Authority before its publication.

(3) The measures to ensure quality of service shall comply with Regulation (EU) 2015/2120.

(4) The Authority shall specify, taking utmost account of BEREC guidelines, the quality of service parameters to be measured, the applicable measurement methods, and the content, form and manner of the information to be published, including possible quality certification mechanisms. Where appropriate, the parameters, definitions and measurement methods set out in the Tenth Schedule, shall be used.

Remedies.

**90.** (1) Any significant continued or frequently recurring discrepancy between the actual performance of an electronic communications service, other than a number-independent interpersonal communications service, and the performance indicated in the contract, shall entitle the consumer to seek remedies including the right to terminate the contract free of cost, and, or receive any compensation and, or refunds as specified in their contract.

(2) Providers of publicly available electronic communications services other than number-independent interpersonal communications services and other than transmission services used for the provision of machine-to-machine services, shall establish and operate appropriate and reasonable compensation and, or refund schemes to allow for the reimbursement of payments and compensation for any loss incurred by a consumer where contracted service quality levels or terms and conditions are not met by any such providers for reasons that are not attributable to the consumer:

Provided that such compensation and, or refund arrangements shall not apply in cases of *force majeure*:

Provided further that the Authority may, having regard to the nature of services and complaints, provide for any such measures as it may consider necessary to ensure the effectiveness of such schemes including minimum criteria to be complied with by any such providers.

91. (1) Notwithstanding any provision of a contract entered into with a provider of a publicly available electronic communications service, an end-user shall in accordance with the provisions of this regulation, have the right at any time, to terminate the said contract through simple means acceptable to the Authority.

Contract  
duration and  
termination.

(2) Where an end-user decides to unilaterally terminate a contract for the provision of publicly available electronic communications services other than number-independent interpersonal communications services and other than transmission services used for the provision of machine-to-machine services prior to the expiry of the initial contractual period:

(a) any advance notice period in the contract requiring the end-user to inform the provider concerned about his intention to terminate the service shall not exceed one month; and

(b) any applicable charges due by the end-user for terminating the service prior to the expiry of the initial contractual period shall be proportionate and reasonable:

Provided that the Authority shall take such measures as it considers necessary to ensure the effective application of the provisions of this sub-regulation.

(3) The Authority shall take such measures as it considers necessary to ensure that:

(a) conditions and procedures for contract termination are simple and do not act as a disincentive to changing a service provider; and

(b) contracts concluded between consumers and providers of publicly available electronic communications services other than number-independent interpersonal communications services and other than transmission services used for the provision of machine-to-machine services, do not mandate a commitment period longer than twenty four months, which period may be shortened by the Authority. In doing so the Authority shall ensure that there is always applicable a maximum contractual commitment period:

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Provided that any such requirement shall not apply to the duration of an instalment contract where the consumer has agreed in a separate contract to instalment payments exclusively for deployment of a physical connection, in particular to very high capacity networks:

Provided further that an instalment contract for the deployment of a physical connection shall not include terminal equipment, such as a router or modem, and shall not preclude consumers from exercising their rights under this regulation.

(4) Sub-regulation (3), shall also apply to end-users that are micro-enterprises, small enterprises or not-for-profit organisations, unless they have explicitly agreed to waive those provisions.

(5) Where a contract or national legislation provides for automatic prolongation of a fixed duration contract for electronic communications services other than number-independent interpersonal communications services and other than transmission services used for the provision of machine-to-machine services, then after such prolongation, end-users may terminate the contract at any time by giving thirty days prior notice and without incurring any costs except the charges for receiving the service during the notice period and any applicable reasonable and justified charges in connection with unreturned loaned equipment:

Provided that before the contract is automatically extended, providers shall inform end-users, in a prominent and timely manner and on a durable medium, of the end of the contractual commitment and of the means by which to terminate the contract. In doing so providers shall give end-users best tariff advice relating to their services.

(6) Providers of publicly available electronic communications services other than number-independent interpersonal communications services and other than transmission services used for the provision of machine-to-machine services shall provide end-users with best tariff information at least annually:

Provided further that the Authority may from time to time issue guidelines to providers on the provision of best tariff advice and information related to their services.

(7) Where an end-user has the right to terminate a contract for a publicly available electronic communications service, other than a number-independent interpersonal communications service, pursuant to this regulation or to other provisions of European Union or national law, no compensation shall be due by the end-user other than for

retained non-loaned subsidised terminal equipment. Where an end-user chooses to retain any bundled non-loaned terminal equipment, any compensation due by the end-user shall not exceed its *pro rata temporis* value as agreed at the moment of the conclusion of the contract or the remaining part of the service fee until the end of the contract, whichever is less applies:

Provided that the provider shall lift any condition on the use of that terminal equipment on other networks free of charge at the latest upon payment of compensation or at an earlier stage as may be specified by the Authority.

**92.** (1) End-users shall have the right to terminate their contract without incurring any further costs upon notice of changes in the contractual conditions proposed by the provider of publicly available electronic communications services other than number-independent interpersonal communications services, unless the proposed changes are:

Modification of contractual conditions by providers and rights of end-users.

- (a) exclusively to the benefit of the end-user;
- (b) are of a purely administrative nature and have no negative effect on the end-user; or
- (c) are directly imposed by European Union or national law.

(2) Providers shall notify end-users at least thirty days in advance of any change in the contractual conditions in a clear and comprehensible manner and on a durable medium. Where applicable, providers shall simultaneously inform end-users of their right to terminate the contract without incurring any further costs if they do not accept the new conditions, which right shall be exercisable within thirty days from notification of the change in contractual conditions by the provider.

(3) Providers shall notify the Authority in writing, prior to notification to its end-users, in a timely manner as may be specified by the Authority, of any proposed modifications to the contractual conditions.

(4) The Authority may, upon a written request by any such provider, made in accordance with any requirements laid down by the Authority, in cases where the proposed modifications to the contractual conditions are manifestly of benefit to all end-users to that service, exempt that provider from the requirement onerous on it to grant its end-users the right to terminate the contract in accordance with this regulation.

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(5) The Authority may determine the format, content and the manner of the notification required under this regulation and may increase the aforesaid period of thirty days referred to in sub-regulation (2) to a period of not more than ninety days.

Rights applicable to certain end-users.

**93.** As far as transmission services used for machine-to-machine services are concerned, the rights mentioned in regulations 91(7) and 92(2), shall benefit only end-users that are consumers, micro-enterprises, small enterprises, and not-for-profit organisations.

Provider switching and number portability.

**94.** (1) In the case of switching between providers of internet access services, the providers concerned shall provide the end-user with adequate information before and during the switching process, and shall ensure continuity of the internet access service, unless this is technically not feasible.

(2) The receiving provider shall ensure that the activation of the internet access service occurs within the shortest possible time on the date and within the timeframe expressly agreed with the end-user, whereas the transferring provider shall continue to provide its internet access service on the same terms until the receiving provider activates its internet access service.

(3) Loss of internet access service during the switching process shall not exceed one working day.

(4) The Authority shall take such measures as it considers necessary to ensure the efficiency and simplicity of the switching process for the end-user. In doing so the Authority may require undertakings to comply with such measures as the Authority may by decision establish.

(5) End-users subscribed to voice communications services with numbers from the national numbering plan may request that they retain their numbers, independently of the undertaking providing the service, in accordance with Part C of the Sixth Schedule.

(6) Where an end-user subscribed to a voice communications service terminates a contract, that end-user shall retain the right to request to port a number from the national numbering plan to another provider for a minimum of one month after the date of termination, unless that right is renounced by the aforesaid end-user.

(7) The pricing among providers related to the provision of number portability shall be cost-oriented, and no direct charges shall be applied to end-users.

(8) Subject to eligibility criteria as may be established by the

Authority in line with sub-regulation (11), the porting of numbers and their subsequent activation shall be carried out within the shortest possible time on the date explicitly agreed with the end-user:

Provided that an end-user who has concluded an agreement to port a number to a new provider, shall have that number activated within one working day from the date agreed with that end-user:

Provided further that, in the case of failure of the porting process, the transferring provider shall reactivate the number and related services of the end-user until the porting is successful. The transferring provider shall continue to provide its services on the same terms and conditions until the services of the receiving provider are activated. In any event, the loss of service during the process of provider switching and the porting of numbers shall not exceed one working day.

(9) Operators whose access networks or facilities are used by either the transferring provider or the receiving provider, or both, shall ensure that there is no loss of service that would delay the switching and porting process.

(10) The receiving provider shall lead the switching and porting processes set out in sub-regulations (1) to (4), (8) and (9), and both the receiving and transferring providers shall cooperate in good faith:

Provided that such providers shall not delay or abuse the switching and porting processes, nor shall they port numbers or switch end-users without the explicit consent of the end-users concerned:

Provided further that the contracts of the end-users with the transferring provider shall be terminated automatically upon conclusion of the switching process.

(11) The Authority may establish the details of the switching and porting processes, taking into account national provisions on contracts, technical feasibility and the need to maintain continuity of service to the end-users. In establishing such details the Authority shall include, where technically feasible, a requirement for the porting to be completed through over-the-air provisioning, unless an end-user requests otherwise.

(12) The Authority shall take such appropriate measures as it may consider necessary to ensure that end-users are adequately informed and protected throughout the switching and porting processes and are not switched to another provider without their consent.

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(13) A transferring provider shall refund, upon the request of a consumer using a pre-paid service, any remaining credit to that consumer. Such refund may be subject to a fee only if provided for in the contract between the transferring provider and the consumer:

Provided that any such fee shall be proportionate and commensurate with the actual costs incurred by the transferring provider in offering the refund.

Cap. 418. (14) The Authority shall establish such rules as it may consider appropriate in relation to the sanctions that may be imposed in accordance with Part VI of the Malta Communications Authority Act in the case of the failure of a provider to comply with the obligations laid down in this regulation, including in relation to delays in, or abuses of, porting by or on behalf of a provider.

(15) The Authority shall establish such rules as it may consider appropriate on the award of compensation of end-users by their providers, in an easy and timely manner where such providers fail to comply with the obligations laid down in this regulation, as well as in the case of delays in, or abuses of, porting and switching processes, and missed service and installation appointments.

(16) In addition to the information required under the Eighth Schedule, the Authority shall take such measures as it considers necessary to ensure that providers adequately inform their end-users about their rights to compensation as provided for in subregulations (14) and (15).

Billing. **95.** (1) Providers of publicly available electronic communications services, shall not issue any bill to an end-user unless every amount stated in that bill represents and does not exceed the true extent of any such service actually provided to the end-user in question. Such providers shall retain any records as may be specified by the Authority for the purpose of establishing compliance with this regulation.

(2) The Authority may by decision establish rules to be complied with by providers of publicly available electronic communications services in order to ensure that bills issued are clear, comprehensive and easily accessible. In doing so the Authority shall have regard to the need to reconcile the rights of end-users receiving itemised bills with the right of privacy of calling end-users and called end-users.

Bundled offers. **96.** (1) If a bundle of services, or a bundle of services and terminal equipment offered to a consumer comprises at least an internet access service or a publicly available number-based interpersonal communications service, then regulations 87(3), 88(1),



91, 92 and 94(1) to (4) shall apply to all elements of the bundle including, *mutatis mutandis*, those not otherwise covered by those provisions.

(2) Where the consumer has, under European Union legislation, or national legislation, a right to terminate any element of the bundle as referred to in sub-regulation (1) before the end of the agreed contract term because of a lack of conformity with the contract or a failure to supply, then the consumer may terminate the contract with respect to all elements of the bundle.

(3) Any subscription to additional services or terminal equipment provided or distributed by the same provider of internet access services or of publicly available number-based interpersonal communications services, shall not extend the original duration of the contract to which such services or terminal equipment are added, unless the consumer expressly agrees otherwise when subscribing to the additional services or terminal equipment.

(4) Sub-regulations (1) and (3) shall also apply to end-users that are micro-enterprises, small enterprises, or not-for-profit organisations, unless such end-users have explicitly agreed to waive all or parts of those provisions.

(5) Sub-regulation (1) shall also apply to the regulations under this Part.

**97.** (1) Providers of voice communications services and internet access services provided over public electronic communications networks shall take all necessary measures to ensure the fullest possible availability of such services in the event of catastrophic network breakdown or in cases of *force majeure*.

Availability of services.

(2) Providers of voice communications services shall take all such measures to ensure uninterrupted access to emergency services and uninterrupted transmission of public warnings.

(3) The Authority may specify obligations to be complied with by any such providers referred to in this regulation in ensuring compliance with this regulation.

**98.** (1) The Authority shall specify requirements to be met by providers of publicly available electronic communications services to ensure that end-users with disabilities:

Equivalent access and choice for end-users with disabilities.

(a) have access to electronic communications services, including the related contractual information provided pursuant to regulation 87, equivalent to that enjoyed by the majority of

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end-users; and

(b) benefit from the choice of undertakings and services available to the majority of end-users.

(2) In taking the measures referred to in sub-regulation (1), the Authority shall encourage compliance with the relevant standards or specifications laid down in accordance with regulation 26.

Directory enquiry services.

**99.** (1) All providers of voice communications services which attribute numbers from a numbering plan, shall comply with all reasonable requests to make available, for the purposes of the provision of publicly available directory enquiry services and directories, the relevant information in an agreed format, on terms which are fair, objective, cost oriented and non-discriminatory.

(2) The Authority may impose such obligations and conditions as it considers necessary on undertakings that control access to end-users, for the provision of directory enquiry services, in accordance with regulation 48. Such obligations and conditions shall be objective, equitable, non-discriminatory and transparent.

(3) No regulatory restrictions which prevent end-users in one Member State from accessing directly the directory enquiry service in another Member State by voice call or SMS, shall be maintained. Where necessary the Authority shall take appropriate measures to ensure such access in accordance with regulation 83.

(4) This regulation shall apply subject to the prior approval of the end-user and any other requirements of European Union law on the protection of personal data and privacy.

Interoperability of car radio and consumer radio receivers and consumer digital television equipment.

**100.** (1) The Authority shall ensure the interoperability of car radio receivers and consumer digital television equipment in accordance with the Eleventh Schedule.

(2) The Authority may adopt measures to ensure the interoperability of other consumer radio receivers, while limiting the impact on the market for low-value radio broadcast receivers and ensuring that such measures are not applied to products where a radio receiver is purely ancillary, such as smart phones, and to equipment used by radio amateurs.

(3) The Authority shall encourage providers of digital television services to ensure, where appropriate, that the digital television equipment that they provide to their end-users is interoperable in accordance with the Eleventh Schedule so that, where technically feasible, the digital television equipment is reusable with other

providers of digital television services:

Provided that digital television equipment which complies with harmonised standards the references of which have been published in the Official Journal of the European Union, or with parts thereof, shall be considered to comply with the requirement of interoperability set out in sub-regulation (4) covered by those standards or parts thereof.

(4) Without prejudice to regulation 5(2) of the Waste Management (Electrical and Electronic Equipment) Regulations, the Authority shall ensure that, upon termination of their contract, end-users have the possibility to return the digital television equipment through a free and easy process, unless the provider demonstrates that it is fully interoperable with the digital television services of other providers, including those to which the end-user has switched. S.L. 549.89.

**101.** (1) The Authority may impose reasonable ‘must carry’ obligations for the transmission of specified radio and television broadcast channels and related complementary services, in particular accessibility services to enable appropriate access for end-users with disabilities and data supporting connected television services and EPGs, on undertakings operating in Malta, providing electronic communications networks and services used for the distribution of radio or television broadcast channels to the public, where a significant number of end-users of such networks and services use them as their principal means to receive radio and television broadcast channels: ‘Must carry’ obligations.

Provided that the Authority shall impose such obligations where it considers that this is necessary to meet general interest objectives as are defined in accordance with national legislation and are proportionate and transparent.

(2) The Authority shall review ‘must carry’ obligations by not later than 21 December 2024 and thereafter every five years.

(3) Neither sub-regulation (1) and nor regulation 46(2) shall prejudice the ability of the Authority to determine appropriate remuneration, if any, in respect of measures taken in accordance with this regulation while ensuring that, in similar circumstances, there is no discrimination in the treatment of providers of electronic communications networks and services:

Provided that where the Authority provides for any such remuneration, it shall do so in a proportionate and transparent manner and shall before doing so, determine and make public the criteria for calculating such remuneration.

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Provision of additional facilities.

**102.** (1) Without prejudice to regulation 75(2), the Authority may require all providers of internet access services or publicly available number-based interpersonal communications services to make available free of charge all or part of the additional facilities listed in Part B of the Sixth Schedule, subject to technical feasibility, as well as all or part of the additional facilities listed in Part A of the Sixth Schedule.

(2) When applying sub-regulation (1), the Authority may go beyond the list of additional facilities in Parts A and B of the Sixth Schedule in order to ensure a higher level of consumer protection.

(3) The Authority may waive the application of sub-regulation (1) in all or part of Malta if it considers, after taking into account the views of interested parties, that there is sufficient access to those facilities.

### **PART XIII PROTECTION OF PRIVACY**

Interpretation.  
Cap. 586.  
S.L. 586.01.

**103.** (1) These regulations shall apply without prejudice to Regulation (EU) 2016/679, the Data Protection Act and the Processing of Personal Data (Electronic Communications Sector) Regulations.

Cap. 586.

(2) Unless otherwise stated in this Part, the definitions in the Act and in the Data Protection Act shall apply.

(3) In this Part unless the context otherwise requires:

"the Commissioner" means the Information and Data Protection Commissioner;

"communication" means any information exchanged or transmitted between a finite number of parties by means of a publicly available electronic communications service. This definition does not include any information conveyed as part of a broadcasting service to the public over a public electronic communications network except to the extent that the information can be related to the identifiable subscriber or user receiving the information;

"consent" means the consent by a subscriber or user and corresponds to the consent given by a data subject in accordance with Articles 7 and 8 of Regulation (EU) 2018/679;

"emergency access numbers" means such numbers as are established in accordance with the Act or any regulations made thereunder to ensure the access of all users to emergency

services; and

"location data" means any data processed in a public electronic communications network or by a public electronic communications service, indicating the geographic position of the terminal equipment of a user of a publicly available electronic communications service."

**104.** An undertaking which provides publicly available electronic communications services shall inform subscribers and, if possible, users about the existence of any situations allowing the content of communications to be unintentionally made known to persons who are not party to them.

Obligation to inform.

**105.** (1) Where presentation of calling-line identification is offered, the undertaking which provides publicly available electronic communications services shall ensure that:

Presentation and restriction of calling and connected line identification.

(a) the calling user shall have the possibility, using a simple means and free of charge, of preventing the presentation of the calling-line identification on a per call basis. The calling subscriber shall have this possibility on a per line basis;

(b) the called subscriber shall have the possibility, using a simple means and free of charge for reasonable use of this function, of preventing the presentation of the calling line identification of incoming calls;

(c) where the calling line identification is presented prior to the call being established, the undertaking which provides publicly available electronic communications services shall ensure that the called subscriber shall have the possibility, using a simple means, of rejecting incoming calls where the presentation of the calling line identification has been prevented by the calling user or subscriber.

(2) Where presentation of connected line identification is offered, the undertaking which provides publicly available electronic communications services shall ensure that the called subscriber shall have the possibility, using a simple means and free of charge, of preventing the presentation of the connected line identification to the calling user.

(3) The provisions of sub-regulation (1)(a) shall also apply with regard to calls to other countries, whereas the provisions of sub-regulations (1)(b) and (c) and (2) shall apply to incoming calls originating in other countries.

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(4) Where the presentation of calling or connected line identification is available, the undertaking which provides publicly available electronic communications services or the undertaking which provides a public electronic communications network shall inform subscribers and users of the existence of such services as well as of the possibilities referred in sub-regulations (1) and (2).

(5) Sub-regulations (1) and (3) shall not apply when a law specifically provides for measures to restrict the scope of such rights and obligations where such restrictions constitute a necessary, appropriate and proportionate measure required in the interest of:

(a) national security;

(b) defence;

(c) public security;

(d) the prevention, investigation, detection and prosecution of criminal or administrative offences, or of breach of ethics for regulated professions;

(e) an important economic or financial interest including monetary, budgetary and taxation matters;

(f) a monitoring, inspection or regulatory function connected, even occasionally, with the exercise of official authority referred to in paragraphs (c), (d) and (e); or

(g) the protection of the subscriber or user, or of the rights and freedoms of others.

Exceptions.

**106.** (1) An undertaking which provides a public electronic communications network and, or a publicly available electronic communications service shall override anything done to prevent the presentation of the identity of a calling line where:

(a) a subscriber has requested the tracing of malicious or nuisance calls received on his line, and

(b) such an undertaking is satisfied that such action is necessary and expedient for the purposes of tracing such calls:

Provided that the data containing the identification of the calling subscriber shall be stored and made available by the aforesaid undertaking to the competent authority in accordance with the relevant legislation:

Provided further that the aforesaid undertaking shall abide with any decision that the Authority may, from time to time, issue where the Authority considers that the aforesaid undertaking has not taken adequate measures in accordance with the requirements of this regulation.

(2) The overriding reason for the elimination of the presentation of the calling line identification in accordance with sub-regulation (1) may only be provided for the duration of the period during which the malicious or nuisance calls take place.

(3) A request under this regulation shall be made in writing and shall include such information as may be necessary for the processing of the request. In cases of urgency a verbal request may be made, provided a written request is sent within twenty-four hours of the request that was made verbally.

(4) An undertaking which provides publicly available electronic communications services shall not prevail over the elimination of the presentation of calling line identification and the temporary denial or absence of consent of a subscriber or user for the processing of location data, on a per line basis, for calls made to emergency access numbers for the purpose of responding to such calls.

**107.** (1) An undertaking which provides a public electronic communications network and, or publicly available electronic communications services shall ensure that any subscriber has the possibility, using a simple means and free of charge, of stopping automatic call forwarding by a third party to the terminal of that subscriber without delay.

Termination of unwanted automatic call forwarding.

(2) For the purpose of this regulation, the undertaking providing publicly available electronic communications services to the third party referred to in sub-regulation (1) shall comply with any reasonable requests made by the undertaking referred to in sub-regulation (1).

**108.** Regulations 105, 106 and 107 shall apply to subscriber lines connected to digital exchanges, and where technically possible and if it does not require a disproportionate economic effort, to subscriber lines connected to analogue exchanges.

Application.

**109.** (1) A person who suffers any loss or damage because of any contravention of any regulations under this Part by any other person shall be entitled to take action before the competent court or tribunal, however so described, seeking compensation from that other person for that loss or damage.

Compensation for loss or damages resulting from failure to comply with these regulations.

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Cap. 586. (2) The period of limitation provided for in article 30(4) of the Data Protection Act shall apply to an action under sub-regulation (1).

Advice and request that the Authority exercises its enforcement functions.

**110.** (1) The Authority may request the advice of and where appropriate shall consult with the Commissioner in the exercise of any of its functions under this Part.

(2) Where it is alleged or proven that any of the provisions under this Part have been contravened, the Commissioner or any aggrieved person may request the Authority to investigate and, or exercise its enforcement functions as it may deem necessary in respect of that infringement:

Provided that nothing in this regulation shall be interpreted as a limitation on the discretionary powers of the Authority.

#### **PART XIV MISCELLANEOUS**

Publication of Information.

**111.** (1) The Authority shall ensure that all relevant information on rights, conditions, procedures, charges, fees and decisions concerning general authorisations, rights of use and rights to install facilities is published and kept up to date in an appropriate manner in order to provide easy access to that information for all interested parties.

(2) Where information referred to in sub-regulation (1) is held at different levels of government, including other public authorities, in particular information regarding procedures and conditions on rights to install facilities, the Authority shall make all reasonable efforts, having regard to the costs involved, to create a user-friendly overview of all such information, including information on the relevant levels of government and the responsible public authorities, in order to facilitate applications for rights to install facilities.

(3) The Authority shall ensure that the specific obligations imposed on undertakings under the Act and these regulations are published and that the specific product and service, and geographical markets are identified. Subject to the need to protect commercial confidentiality, the Authority shall ensure that up-to-date information is made publicly available in a manner that guarantees all interested parties easy access to that information.

(4) The Authority shall provide the European Commission with the information published in accordance with this regulation.

Legal interception.

**112.** (1) The Authority shall define the technical and operational requirements necessary to enable legal interception of electronic



communications by the competent authorities in accordance with any law allowing and regulating such legal interception:

Provided that in doing so the Authority shall give its reasons for the technical and operational requirements it defines and shall seek to ensure that any expenses that undertakings may have to incur in order to meet any requirements it establishes are reasonable and justified.

(2) An undertaking shall, at its expense, comply with such requirements as may be defined by the Authority under sub-regulation (1):

Provided that the Authority may introduce a mechanism for the sharing of the cost of interception obligations where the Authority considers this to be appropriate.

(3) A cost sharing mechanism and any associated fund established under sub-regulation (2) may be administered directly by the Authority or a body independent from the contributors and beneficiaries, under the supervision of the Authority:

Provided that any cost sharing mechanism based on a fund shall respect the principles of transparency, non-discrimination and proportionality.

(4) Undertakings which are required to contribute to any fund established under sub-regulation (2) shall do so in accordance with any cost sharing mechanism as may be established by the Authority.

**113.** All regulations made under the Act shall be interpreted in accordance with the provisions of the Act.

Interpretation of regulations made under the Act.

**114.** (1) The Authority shall ensure compliance with the provisions of these regulations and may, for this purpose and for the carrying into effect of any provisions of these regulations, issue any decisions it may consider to be necessary in this regard.

Compliance.

(2) A person shall in all instances comply with any decision of the Authority issued under these regulations notwithstanding any dispute, appeal or any legal proceedings however so described, contemplated or commenced in relation to the said decision.

(3) A person who fails to comply with any decision issued by the Authority under these regulations shall be considered to have acted in breach of these regulations.

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Interest in the event of late payment of amounts due.

**115.** Without prejudice to any enforcement action that the Authority is entitled to take in accordance with the Act and any other law which it is entitled to enforce, if an undertaking fails to pay to the Authority any amount due by or under these regulations, interest at the rate of eight percent per annum shall accrue as from the date when any such amount falls due.

Sanctions.

Cap. 418.

**116.** Unless otherwise prescribed in these regulations, the Authority may, in accordance with the provisions of Part VI of the Malta Communications Authority Act, impose such sanctions and take such enforcement measures, however so described, as it may consider appropriate in accordance with the aforesaid Act, upon any person who acts in breach of any provision of these regulations.

Revocation of L.N. 273 of 2011.

**117.** The Electronic Communications Networks and Services (General) Regulations, 2011 are hereby being revoked.

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**FIRST SCHEDULE**  
**(Regulation 7)**

**LIST OF CONDITIONS WHICH MAY BE ATTACHED TO GENERAL AUTHORISATIONS, RIGHTS OF USE FOR RADIO SPECTRUM AND RIGHTS OF USE FOR NUMBERING RESOURCES**

Note: This Schedule provides the maximum list of conditions which may be attached to general authorisations for electronic communications networks and services, except number-independent communications services (Part A); electronic communications networks (Part B); electronic communications services, except number-independent interpersonal communications services (Part C); rights of use for radio spectrum (Part D); and rights of use of numbering resources (Part E).

**Part A. General conditions which may be attached to a general authorisation**

Cap. 586.  
S.L. 586.01.

- 1.** Administrative charges in accordance with regulation 12.
- 2.** Personal data and privacy protection specific to the electronic communications sector in accordance with the Data Protection Act, the Processing of Personal Data (Electronic Communications Sector) Regulations and Part XIII of these regulations.
- 3.** Information to be provided under a notification procedure in accordance with regulation 5 and for other purposes as specified in

regulation 16.

4. Enabling of legal interception by competent national authorities in accordance with Regulation (EU) 2016/679, the Data Protection Act, the Processing of Personal Data (Electronic Communications Sector) Regulations and Part XIII of these regulations.

5. Terms of use for communications from public authorities to the general public for warning the public of imminent threats and for mitigating the consequences of major catastrophes.

6. Terms of use during major disasters or national emergencies to ensure communications between emergency services and authorities.

7. Access obligations other than those provided for in regulations 7 and 8 applying to undertakings providing electronic communications networks or services.

8. Measures designed to ensure compliance with the standards or specifications referred to in regulation 26.

9. Transparency obligations on providers of public electronic communications networks providing publicly available electronic communications services to ensure end-to-end connectivity, in conformity with the objectives and principles set out in article 4 of the Act, and where necessary and proportionate, access by the Authority to such information needed to verify the accuracy of such disclosure.

**Part B. Specific conditions which may be attached to a general authorisation for the provision of electronic communications networks**

1. Interconnection of networks in accordance with the Act and these regulations.

2. "Must carry" obligations in conformity with the Act and these regulations.

3. Measures for the protection of public health against electromagnetic fields caused by electronic communications networks in accordance with European Union law, taking utmost consideration of Recommendation 1999/519/EC.

4. Maintenance of the integrity of public electronic communications networks in accordance with the Act and these regulations including conditions to prevent electromagnetic

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interference between electronic communications networks and, or services in accordance with Directive 2014/30/EU.

Cap. 586.  
S.L. 586.01.

**5.** Security of public networks against unauthorised access in accordance with the Data Protection Act, the Processing of Personal Data (Electronic Communications Sector) Regulations, and Part XIII of these regulations.

**6.** Conditions for use of radio spectrum in accordance with Article 7(2) of Directive 2014/53/EU where such use is not made subject to the granting of individual rights of use in accordance with article 37(1) and (2) of the Act, and regulation 35.

**Part C. Specific conditions which may be attached to a general authorisation for the provision of electronic communications services, except number-independent interpersonal communications services.**

**1.** Interoperability of services in accordance with the Act and these regulations.

**2.** Accessibility by end-users of numbers from the national numbering plan, numbers from the Universal International Free phone Numbers (UIFN), and, where technically and economically feasible, from numbering plans of other Member States, and conditions in accordance with the Act and these regulations.

**3.** Consumer protection rules specific to the electronic communications sector.

Cap. 426.  
Cap. 350.

**4.** Restrictions in relation to the transmission of illegal content, in accordance with the Electronic Commerce Act, and restrictions in relation to the transmission of harmful content in accordance with Parts IIIB and IIIC of the Broadcasting Act.

**Part D. Conditions which may be attached to rights of use for radio spectrum**

**1.** Obligation to provide a service or to use a type of technology within the limits of Part V of the Act and regulation 32 including where appropriate, coverage and quality of service requirements.

**2.** Effective and efficient use of radio spectrum in accordance with the Act and these regulations.

**3.** Technical and operational conditions necessary for the avoidance of harmful interference and for the protection of public health against electromagnetic fields, taking utmost account of

Recommendation 1999/519/EC where such conditions are different from those included in the general authorisation, of the radiation emission standards adopted and published by ICNIRP or by a public authority which at law is responsible for the adoption of any such standards, or with any other appropriate standard as may be specified at law

4. Maximum duration in conformity with regulation 36, subject to any changes in the Frequency Plan.

5. Transfer or leasing of rights at the initiative of the rights holder and conditions for such transfer in accordance with the Act and these regulations.

6. Fees for rights of use in accordance with regulation 31.

7. Any commitments which the undertaking obtaining the rights of use has made in the framework of an authorisation or authorisation renewal process prior to the authorisation being granted or, where applicable, to the invitation for applications for rights of use.

8. Obligations to pool or share radio spectrum or allow access to radio spectrum for other users in specific regions or at national level.

9. Obligations under relevant international agreements relating to the use of radio spectrum bands.

10. Obligations specific to an experimental use of radio spectrum bands.

#### **Part E. Conditions which may be attached to rights of use for numbering resources**

1. Designation of service for which the number shall be used, including any requirements linked to the provision of that service and, for the avoidance of doubt, tariff principles and maximum prices that can apply in the specific number range for the purposes of ensuring consumer protection in accordance with article 4(1)(d) of the Act.

2. Effective and efficient use of numbering resources in accordance with the Act and these regulations.

3. Number portability requirements in accordance with the Act and these regulations.

4. Obligation to provide public directory end-user information for the purposes of regulation 99.

5. Maximum duration in accordance with regulation 81, subject to any changes in the national numbering plan.
6. Transfer of rights at the initiative of the rights holder and conditions for such transfer in accordance with the Act and these regulations, including any condition that the right of use for a number be binding on all undertakings to which the rights are transferred.
7. Fees for rights of use in accordance with regulation 82.
8. Any commitments which the undertaking obtaining the rights of use has made in the course of a competitive or comparative selection procedure.
9. Obligations under relevant international agreements relating to the use of numbers.
10. Obligations concerning the extraterritorial use of numbers, when permissible by the Authority, to ensure compliance with consumer protection and other number-related rules in other countries.

**SECOND SCHEDULE**  
**[Regulations 50(1) and 48(2)]**

**CONDITIONS FOR ACCESS TO DIGITAL TELEVISION AND  
RADIO SERVICES BROADCAST TO VIEWERS AND  
LISTENERS IN THE EUROPEAN UNION.**

**Part A. Conditions for conditional access systems to be applied  
in accordance with regulation 50(1)**

In relation to conditional access to digital television and radio services broadcast to viewers and listeners in the European Union, irrespective of the means of transmission, the Authority shall, in conjunction with other competent authorities, ensure in accordance with regulation 50 that the following conditions apply:

1. All undertakings providing conditional access services, irrespective of the means of transmission, which provide access services to digital television and radio services and the access services of which broadcasters depend on to reach any group of potential viewers or listeners shall:

1.1 offer to all broadcasters, on a fair, reasonable and non-discriminatory basis compatible with European Union competition law, technical services enabling the digitally-transmitted services of broadcasters to be received by viewers or listeners authorised by means of decoders administered by the service operators, and comply

with European Union competition law; and

1.2 keep separate financial accounts regarding their activity as conditional access providers.

2. When granting licences to manufacturers of consumer equipment, holders of industrial property rights to conditional access products and systems are to ensure that this is done on fair, reasonable and non-discriminatory terms. Taking into account technical and commercial factors, holders of rights are not to subject the granting of licences to conditions prohibiting, deterring or discouraging the inclusion in the same product of:

2.1. a common interface allowing connection with several other access systems, or

2.2. means specific to another access system, provided that the licensee complies with the relevant and reasonable conditions ensuring, as far as that licensee is concerned, the security of transactions of conditional access system operators.

**Part B. Other facilities to which conditions may be applied under regulation 48(2)(c)**

1. Access to application program interfaces (APIs);
2. Access to electronic programme guides (EPGs).

**THIRD SCHEDULE  
(Regulation 62)**

**CRITERIA FOR THE DETERMINATION OF WHOLESALE  
VOICE TERMINATION RATES**

Principles, criteria and parameters for the determination of rates for wholesale voice termination on fixed and mobile markets referred to in Article 75(1) of the Electronic Communications Code:

(a) rates shall be based on the recovery of costs incurred by an efficient operator; the evaluation of efficient costs shall be based on current cost values; the cost methodology to calculate efficient costs shall be based on a bottom-up modelling approach using long-run incremental traffic-related costs of providing the wholesale voice termination service to third parties;

(b) the relevant incremental costs of the wholesale voice termination service shall be determined by the difference between the total long-run costs of an operator providing its full

range of services and the total long-run costs of that operator not providing a wholesale voice termination service to third parties;

(c) only those traffic-related costs which would be avoided in the absence of a wholesale voice termination service being provided shall be allocated to the relevant termination increment;

(d) costs related to additional network capacity shall be included only to the extent that they are driven by the need to increase capacity for the purpose of carrying additional wholesale voice termination traffic;

(e) radio spectrum fees shall be excluded from the mobile voice termination increment;

(f) only those wholesale commercial costs shall be included which are directly related to the provision of the wholesale voice termination service to third parties;

(g) all fixed network operators shall be considered to provide voice termination services at the same unit costs as the efficient operator, regardless of their size;

(h) for mobile network operators, the minimum efficient scale shall be set at a market share not below twenty per cent;

(i) the relevant approach for asset depreciation shall be economic depreciation; and

(j) the technology choice of the modelled networks shall be forward looking, based on an IP core network, taking into account the various technologies likely to be used over the period of validity of the maximum rate; in the case of fixed networks, calls shall be considered to be exclusively packet switched.

#### **FOURTH SCHEDULE**

##### **[Regulation 63(1)]**

#### **CRITERIA FOR ASSESSING CO-INVESTMENT OFFERS**

When assessing a co-investment offer pursuant to regulation 63(1), the Authority shall verify whether the following criteria have been met at a minimum . The Authority may consider additional criteria to the extent they are necessary to ensure accessibility of potential investors to the co-investment, in light of specific local conditions and the market structure:



(a) The co-investment offer shall be open to any undertaking over the lifetime of the network built under a co-investment offer on a non-discriminatory basis. The undertaking designated as having significant market power may include in the offer reasonable conditions regarding the financial capacity of any undertaking, so that for instance potential co-investors need to demonstrate their ability to deliver phased payments on the basis of which the deployment is planned, the acceptance of a strategic plan on the basis of which medium-term deployment plans are prepared, and similar ones.

(b) The co-investment offer shall be transparent:

(i) the offer shall be available and easily identified on the website of the undertaking designated as having significant market power;

(ii) full detailed terms shall be made available without undue delay to any potential bidder that has expressed an interest, including the legal form of the co-investment agreement and, when relevant, the heads of term of the governance rules of the co-investment vehicle; and

(iii) the process, such as the road map for the establishment and development of the co-investment project shall be set in advance, shall be clearly explained in writing to any potential co-investor, and all significant milestones shall be clearly communicated to all undertakings without any discrimination.

(c) The co-investment offer shall include terms to potential co-investors which favour sustainable competition in the long term, in particular:

(i) All undertakings shall be offered fair, reasonable and non-discriminatory terms and conditions for participation in the co-investment agreement relative to the time they join, including in terms of financial consideration required for the acquisition of specific rights, in terms of the protection awarded to the co-investors by those rights both during the building phase and during the exploitation phase, for example by granting infeasible rights of use (IRUs) for the expected lifetime of the co-invested network and in terms of the conditions for joining and potentially terminating the co-investment agreement. Non-discriminatory terms in this context do not entail that all

potential co-investors shall be offered exactly the same terms, including financial terms, but that all variations of the terms offered shall be justified on the basis of the same objective, transparent, non-discriminatory and predictable criteria such as the number of end-user lines committed for.

(ii) The offer shall allow flexibility in terms of the value and timing of the commitment provided by each co-investor, for example by means of an agreed and potentially increasing percentage of the total end-user lines in a given area, to which co-investors have the possibility to commit gradually and which is set at a unit level enabling smaller co-investors with limited resources to enter the co-investment at a reasonably minimum scale and to gradually increase their participation while ensuring adequate levels of initial commitment. The determination of the financial consideration to be provided by each co-investor needs to reflect the fact that early investors accept greater risks and engage capital sooner.

(iii) A premium increasing over time shall be considered to be justified for commitments assumed at later stages and for new co-investors entering the co-investment after the commencement of the project, to reflect diminishing risks and to counteract any incentive to withhold capital in the earlier stages.

(iv) The co-investment agreement shall allow the assignment of acquired rights by co-investors to other co-investors, or to third parties willing to enter into the co-investment agreement subject to the transferee undertaking being obliged to fulfil all original obligations of the transferor under the co-investment agreement.

(v) Co-investors shall grant each other reciprocal rights on fair and reasonable terms and conditions to access the co-invested infrastructure for the purposes of providing services downstream, including to end-users, in accordance with transparent conditions which are to be made transparent in the co-investment offer and subsequent agreement, in particular where co-investors are individually and separately responsible for the deployment of specific parts of the network. If a co-investment vehicle is created, it shall provide access to the network to all co-investors, whether directly or indirectly, on an equivalence of inputs basis and in accordance with fair and reasonable terms and conditions, including financial conditions that reflect the

different levels of risk accepted by the individual co-investors.

(d) The co-investment offer shall ensure a sustainable investment likely to meet future needs, by deploying new network elements that contribute significantly to the deployment of very high capacity networks.

**FIFTH SCHEDULE**  
**[Regulation 71(3)]**

**MINIMUM SET OF SERVICES WHICH THE ADEQUATE  
BROADBAND INTERNET ACCESS SERVICE IN  
ACCORDANCE WITH REGULATION 71(3) SHALL BE  
CAPABLE OF SUPPORTING:**

- (1) electronic address;
- (2) search engines enabling search and finding of all type of information;
- (3) basic training and education online tools;
- (4) online newspapers or news;
- (5) buying or ordering goods or services online;
- (6) job searching and job searching tools;
- (7) professional networking;
- (8) internet banking;
- (9) e-Government service use;
- (10) social media and instant messaging; and
- (11) calls and video calls (standard quality).

**SIXTH SCHEDULE  
(Regulations 75, 102 and 94)**

**DESCRIPTION OF FACILITIES AND SERVICES REFERRED TO IN REGULATION 75 (CONTROL OF EXPENDITURE) REGULATION 102 (ADDITIONAL FACILITIES) AND REGULATION 94 (PROVIDER SWITCHING AND NUMBER PORTABILITY).**

**Part A. Facilities and services referred to in regulations 75 and 102**

When applied on the basis of regulation 75, Part A is applicable to consumers, and such other categories of end-users as the Authority may determine in accordance with the provisions of regulation 75(2).

When applied on the basis of regulation 102, Part A is applicable to the categories of end-users established by the Authority except for points (c), (d) and (g) which are applicable only to consumers.

(a) Itemised billing

1. The Authority may, subject to the requirements of the relevant law on the protection of personal data and privacy, lay down the basic level of itemised bills which are to be offered by providers to end-users free of charge in order that they can:

(i) allow verification and control of the charges incurred in using internet access services or voice communications services, or number-based interpersonal communications services in the case of regulation 102; and

(ii) adequately monitor their usage and expenditure and thereby exercise a reasonable degree of control over their bills.

2. Where appropriate, the Authority may by decision establish additional levels of detail that may be offered to end-users at reasonable tariffs or at no charge.

3. Such itemised bills shall include an explicit mention of the identity of the supplier and of the duration of the services charged by any premium numbers unless the end-user has requested that information not to be mentioned.

4. Calls which are free of charge to the calling end-users, including calls to helplines, shall not be required to be identified in the itemised bill of the calling end-user.

5. The Authority may require operators to provide calling-line identification free of charge.

(b) Selective barring for outgoing calls or premium SMS or MMS, or, where technically feasible, other kinds of similar applications, free of charge

Namely, the facility whereby the end-users can, upon request to the providers of voice communications services, or number-based interpersonal communications services in the case of regulation 102, bar outgoing calls or premium SMS or MMS or other kinds of similar applications of defined types or to defined types of numbers free of charge.

(c) Pre-payment systems.

The Authority may require providers to offer means for consumers to pay for access to the public electronic communications network and use of voice communications services, or internet access services, or number-based interpersonal communications services in the case of regulation 102, on pre-paid terms.

(d) Phased payment of connection fees

The Authority may require providers to allow consumers to pay for connection to the public electronic communications network on the basis of payments phased over time.

(e) Non-payment of bills

1. Without prejudice to the provisions under this paragraph, the Authority shall by decision authorise specified measures, which are to be proportionate, non-discriminatory and published, to cover non-payment of bills issued by providers. These measures are to ensure that due warning of any consequent service interruption or disconnection is given to the end-users beforehand. Except in cases of fraud, persistent late payment or non-payment, those measures shall ensure, as far as is technically feasible, that any service interruption is confined to the service concerned. Disconnection for non-payment of bills shall take place only after due warning is given to the end-users.

2. Any measure taken in accordance with paragraph (1) shall ensure that:

2.1 appropriate notice in writing is given to end-users of any consequent service suspension;

2.2 during the period of suspension, undertakings providing an

electronic communications service for originating national calls to a number or numbers in a national telephone numbering plan shall, subject to any decisions that the Authority may issue, ensure that such measures allow a period of limited service during which only calls that do not incur a charge to the subscriber are permitted, including incoming calls, calls to "112" and other emergency call numbers, and calls to the customer service of the undertaking;

2.3 termination shall take place only after the aforesaid period of suspension has expired and appropriate notice in writing of any consequent termination of service has been given to subscribers;

2.4 these measures are to ensure, as far as is technically feasible, that any suspension or termination of the service is confined to the part of the service or subscription to which the action or omission leading to the suspension or termination relates;

2.5 the notice in writing referred to in sub-paragraphs (2.3) and (2.4) shall specify as a minimum:

2.5.1 the reasons for suspension and, or termination;

2.5.2 the notice period;

2.5.3 any available course of action which should be taken by the subscriber to avoid termination and to have the service restored; and

2.5.4 any charges due on termination.

3. In cases of fraud, wilful damage to the network, illegal use of a service or persistent late payment or persistent non-payment, the provisions of paragraph (2) shall not apply:

Provided that in the case of persistent late payment or of persistent non-payment, the undertaking shall, at least three working days before suspending or terminating the service, in writing notify the end-user that the service shall be suspended or terminated, giving the reasons therefor.

(f) Tariff advice

Namely, the facility whereby end-users may request the provider to offer information regarding alternative lower-cost tariffs, if available.

(g) Cost control

Namely, the facility whereby providers offer other means, if determined to be appropriate by the Authority, to control the costs of

voice communications services or internet access services, or number-based interpersonal communications services in the case of regulation 102, including free-of-charge alerts to consumers in the case of abnormal or excessive consumption patterns.

(h) Facility to deactivate third party billing

Namely, the facility for end-users to deactivate the ability for third party service providers to use the bill of a provider of an internet access service or a provider of a publicly available interpersonal communications service to charge for their products or services.

**Part B. Facilities referred to in regulation 102**

**(a) Calling-line identification:**

1. Namely, the number of the calling party is presented to the called party prior to the call being established.

2. This facility shall be provided in accordance with relevant law on protection of personal data and privacy, in particular the Processing of Personal Data (Electronic Communications Sector) Regulations and Part XIII of these regulations. S.L. 586.01.

3. To the extent that it is technically feasible, operators shall provide data and signals to facilitate the offering of calling-line identity and tone dialling across the borders of the Member State.

**(b) E-mail forwarding or access to e-mails after termination of the contract with a provider of an internet access service:**

This facility shall, on request and free-of-charge, enable end-users who terminate their contract with a provider of an internet access service to either access their e-mails received on the e-mail addresses based on the commercial name or trade mark of the former provider, during a period that the Authority may by decision determine to be necessary and proportionate, or to transfer e-mails sent to those addresses during that period to a new email address specified by the end-user.

**Part C. Implementation of the number portability provisions referred to in regulation 94**

1. The requirement that all end-users subscribed to voice communications services with numbers from the national numbering plan may request that they retain their numbers independently of the undertaking providing the service shall apply:

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(a) in the case of geographic numbers, at a specific location; and

(b) in the case of non-geographic numbers, at any location.

2. This Part does not apply to the porting of numbers between networks providing services at a fixed location and mobile networks.

**SEVENTH SCHEDULE  
(Regulations 76 and 77)**

**CALCULATING THE NET COST, IF ANY, OF UNIVERSAL SERVICE OBLIGATIONS AND ESTABLISHING ANY COMPENSATION OR SHARING MECHANISM IN ACCORDANCE WITH REGULATIONS 76 AND 77**

**Part A. Calculation of net cost**

Universal service obligations refer to those obligations placed upon an undertaking in accordance with the Act and these regulations which concern the provision of universal service as set out in regulations 71 to 74.

The Authority shall consider all means to ensure appropriate incentives for undertakings, whether designated or not, to provide universal service obligations cost efficiently. In undertaking a calculation exercise, the net cost of universal service obligations is to be calculated as the difference between the net cost for any undertaking operating with the universal service obligations and operating without the universal service obligations. Due attention is to be given to correctly assessing the costs that any undertaking would have chosen to avoid had there been no universal service obligations. The net cost calculation shall assess the benefits, including intangible benefits, to the universal service provider.

The calculation is to be based upon the costs attributable to:

(i) elements of the identified services which can only be provided at a loss or provided under cost conditions falling outside normal commercial standards. This category may include service elements such as access to emergency telephone services, provision of certain public pay telephones, provision of certain services or equipment for end-users with disabilities, and so on;

(ii) specific end-users or groups of end-users who, taking into account the cost of providing the specified network and service, the revenue generated and any geographical averaging



of prices imposed, can only be served at a loss or under cost conditions falling outside normal commercial standards. This category includes those end-users or groups of end-users which would not be served by a commercial provider which did not have an obligation to provide universal service.

The calculation of the net cost of specific aspects of universal service obligations is to be made separately in order to avoid the double counting of any direct or indirect benefits and costs. The overall net cost of universal service obligations to any undertaking is to be calculated as the sum of the net costs arising from the specific components of universal service obligations, taking account of any intangible benefits. The Authority shall be responsible for verifying the net cost.

### **Part B. Compensation of net costs of universal service obligations**

The recovery or financing of any net costs of universal service obligations may require undertakings with universal service obligations to be compensated for the services they provide under non-commercial conditions. Because such a compensation involves financial transfers, the Authority shall ensure that these are undertaken in an objective, transparent, non-discriminatory and proportionate manner. This means that the transfers result in the least distortion to competition and to user demand.

In accordance with regulation 77(2) to (5) a sharing mechanism based on a fund shall use a transparent and neutral means for collecting contributions that avoids the danger of a double imposition of contributions falling on both outputs and inputs of undertakings.

The independent body administering such fund is to be responsible for collecting contributions from undertakings which are assessed as liable to contribute to the net cost of universal service obligations and is to oversee the transfer of amounts due and, or administrative payments to the undertakings entitled to receive payments from such fund.

**EIGHTH SCHEDULE  
(Regulation 87)**

**INFORMATION REQUIREMENTS TO BE PROVIDED IN  
ACCORDANCE WITH REGULATION 87 (INFORMATION  
REQUIREMENTS FOR CONTRACTS)**

**Part A. Information requirements for providers of publicly  
available electronic communications services other than  
transmission services used for the provision of machine-to-  
machine services.**

Providers of publicly available electronic communications services other than transmission services used for the provision of machine-to-machine services shall provide the following information:

(1) as part of the main characteristics of each service provided, any minimum levels of quality of service to the extent that those are offered and, for services other than internet access services, the specific quality parameters assured:

Provided that where no minimum levels of quality of service are offered, a statement to this effect shall be made;

(2) as part of the information on price, where and to the extent applicable, the respective prices for activating the electronic communications service and for any recurring or consumption-related charges;

(3) as part of the information on the duration of the contract and the conditions for renewal and termination of the contract, including possible termination fees, to the extent that such conditions apply:

(i) any minimum use or duration required for a person to benefit from promotional terms;

(ii) any charges related to switching and compensation and refund arrangements for delay or abuse of switching, as well as information about the respective procedures;

(iii) information on the right of consumers using pre-paid services to a refund, upon request, of any remaining credit in the event of switching, as set out in regulation 94(10) to (13);

(iv) any fees due on early termination of the contract, including information on unlocking the terminal equipment and any cost recovery with respect to terminal equipment.

(4) any compensation and refund arrangements, including, where applicable, explicit reference to rights of consumers, which apply if contracted levels of quality of service are not met or if the provider responds inadequately to a security incident, threat or vulnerability;

(5) the type of action that might be taken by the provider in reaction to security incidents or threats or vulnerabilities.

**Part B. Information requirements for providers of internet access services and publicly available interpersonal communications services**

**I.** In addition to the requirements set out in Part A, providers of internet access services and publicly available interpersonal communications services shall provide the following information:

(1) as part of the main characteristics of each service provided:

(i) any minimum levels of quality of service to the extent that these are offered, and taking utmost account of the BEREC guidelines adopted in accordance with Article 104(2) of Electronic Communications Code regarding:

- for internet access services: at least latency, jitter, packet loss,
- for publicly available interpersonal communications services; where they exert control over at least some elements of the network or have a service level agreement to that effect with undertakings providing access to the network: at least the time for the initial connection, failure probability, call signalling delays in accordance with the Tenth Schedule, and

(ii) without prejudice to the right of end-users to use terminal equipment of their choice in accordance with Article 3(1) of Regulation (EU) 2015/2120, any conditions, including fees, imposed by the provider on the use of terminal equipment supplied;

(2) as part of the information on the price, where and to the extent applicable, the respective prices for activating the electronic communications service and for any recurring or consumption-related charges:

(i) details of any specific tariff plans under the contract and, for each such tariff plan the types of services offered, including where applicable, the volumes of communications (such as megabytes, minutes, or messages) included for any

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billing period, and the price for additional communication units;

(ii) in the case of any tariff plans with a pre-set volume of communications, the possibility for consumers to defer any unused volume from the preceding billing period to the following billing period, where this option is included in the contract;

(iii) facilities to safeguard bill transparency and monitor the level of consumption;

(iv) tariff information regarding any numbers or services subject to particular pricing conditions; with respect to individual categories of services, competent authorities in coordination, where relevant, with national regulatory authorities may require in addition such information to be provided immediately prior to connecting the call or to the provider of the service;

(v) for bundled services and bundles including both services and terminal equipment, the price of the individual elements of the bundle to the extent they are also marketed separately;

(vi) details and conditions, including fees, of any after-sales service, maintenance, and customer assistance; and

(vii) the means by which up-to-date information on all applicable tariffs and maintenance charges may be obtained;

(3) as part of the information on the duration of the contract for bundled services and the conditions for renewal and termination of the contract, where applicable, the conditions of termination of the bundle or of elements thereof;

(4) without prejudice to Article 13 of Regulation (EU) 2016/679, information on what personal data shall be provided before the performance of the service or collected in the context of the provision of the service;

(5) details on products and services designed for end-users with disabilities and how updates on this information can be obtained;

(6) the means of initiating procedures for the resolution of disputes including national and cross-border disputes in accordance with article 44 of the Malta Communications Authority Act.

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**II.** In addition to the requirements set out in Part A and under

Point I, providers of publicly available number-based interpersonal communications services shall also provide the following information:

(1) any constraints on access to emergency services or caller location information due to a lack of technical feasibility insofar as the service allows end-users to originate calls to a number in a national or international numbering plan;

(2) the right of the end-user to determine whether to include his personal data in a directory, and the types of data concerned, in accordance with regulation 8 of the Processing of Personal Data (Electronic Communications Sector) Regulations; S.L. 586.01.

**III.** In addition to the requirements set out in Part A and under Point I, providers of internet access services shall also provide the information required pursuant to Article 4(1) of Regulation (EU) 2015/2120.

#### **NINTH SCHEDULE (Regulation 88)**

#### **INFORMATION TO BE PUBLISHED IN ACCORDANCE WITH REGULATION 88 (TRANSPARENCY AND PUBLICATION OF INFORMATION)**

The Authority shall ensure that the information stated in this Schedule is published, in accordance with regulation 88. The Authority shall decide which information is relevant to be published by the providers of internet access services or of publicly available interpersonal communications services, and which information is to be published by the Authority in order to ensure that all end-users are able to make informed choices. The Authority may if it considers it to be appropriate, promote self or co-regulatory measures prior to imposing any obligation.

1. Contact details of the undertaking
2. Description of the services offered
  - a. Scope of the services offered and the main characteristics of each service provided, including any minimum levels of quality of service where offered and any restrictions imposed by the provider on the use of terminal equipment supplied.
  - b. Tariffs of the services offered, including information on communications volumes (such as restrictions of data usage, numbers of voice minutes, numbers of messages) of specific

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tariff plans and the applicable tariffs for additional communication units, numbers or services subject to particular pricing conditions, charges for access and maintenance, all types of usage charges, special and targeted tariff schemes and any additional charges, as well as costs with respect to terminal equipment.

c. After-sales, maintenance and customer assistance services offered and their contact details.

d. Standard contract conditions, including contract duration, charges due on early termination of the contract, rights related to the termination of bundled offers or of elements thereof, and procedures and direct charges related to the portability of numbers and other identifiers, if relevant.

e. If the undertaking is a provider of number-based interpersonal communications services, information on access to emergency services and caller location, or any limitation on the latter. If the undertaking is a provider of number-independent interpersonal communications services, information on the degree to which access to emergency services may be supported or otherwise.

f. Details of products and services, including any functions, practices, policies and procedures and alterations in the operation of the service, specifically designed for end-users with disabilities, in accordance with European Union law harmonising accessibility requirements for products and services.

3. Dispute resolution mechanisms, including those developed by the undertaking.

**TENTH SCHEDULE  
(Regulation 89)**

**QUALITY OF SERVICE PARAMETERS**

Quality-of-Service Parameters, Definitions and Measurement Methods referred to in regulation 89

For providers of access to a public electronic communications network

<b>PARAMETER (Note 1)</b>	<b>DEFINITION</b>	<b>MEASUREMENT METHOD</b>
Supply time for initial connection	ETSI EG 202 057	ETSI EG 202 057
Fault rate per access line	ETSI EG 202 057	ETSI EG 202 057
Fault repair time	ETSI EG 202 057	ETSI EG 202 057

For providers of interpersonal communications services who exert control over at least some elements of the network or have a service level agreement to that effect with undertakings providing access to the network

<b>PARAMETER (Note 2)</b>	<b>DEFINITION</b>	<b>MEASUREMENT METHOD</b>
Call set up time	ETSI EG 202 057	ETSI EG 202 057
Bill correctness complaints	ETSI EG 202 057	ETSI EG 202 057
Voice connection quality	ETSI EG 202 057	ETSI EG 202 057
Dropped call ratio	ETSI EG 202 057	ETSI EG 202 057
Unsuccessful call ratio (Note 2)	ETSI EG 202 057	ETSI EG 202 057
Failure probability		
Call signalling delays		

Version number of ETSI EG 202 057-1 is 1.3.1 (July 2008)

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For providers of internet access services

*Note 1*

PARAMETER	DEFINITION	MEASUREMENT METHOD
Latency (delay)	ITU-T Y.2617	ITU-T Y.2617
Jitter	ITU-T Y.2617	ITU-T Y.2617
Packet loss	ITU-T Y.2617	ITU-T Y.2617

Parameters shall allow for performance to be analysed at a regional level (namely, no less than level 2 in the Nomenclature of Territorial Units for Statistics (NUTS) established by Eurostat).

*Note 2*

The Authority may decide not to require up-to-date information concerning the performance for those two parameters to be kept if evidence is available to show that performance in those two areas is satisfactory.

**ELEVENTH SCHEDULE  
(Regulation 100)**

**INTEROPERABILITY OF CAR RADIO RECEIVERS AND  
CONSUMER DIGITAL TELEVISION EQUIPMENT  
REFERRED TO IN REGULATION 100**

**1. Common scrambling algorithm and free-to-air reception**

All consumer equipment intended for the reception of digital television signals (namely, broadcasting *via* terrestrial, cable or satellite transmission), for sale or rent or otherwise made available in Malta, capable of descrambling digital television signals, is to possess the capability to:

(a) allow the descrambling of such signals in accordance with a common European scrambling algorithm as administered by a recognised European standardisation organisation (currently ETSI);

(b) display signals that have been transmitted in the clear, provided that, in the event that such equipment is rented, the renter complies with the relevant rental agreement.

**2. Interoperability for digital television sets**

Any digital television set with an integral screen of visible diagonal



larger than 30 cm which is put on the market for sale or rent in Malta is to be fitted with at least one open interface socket (either standardised by, or conforming to a standard adopted by, a recognised European standardisation organisation, or conforming to an industry-wide specification) permitting simple connection of peripherals, and able to pass all relevant elements of a digital television signal, including information relating to interactive and conditionally accessed services.

**3. Interoperability for car radio receivers**

Any car radio receiver integrated in a new vehicle of category M which is placed on the market for sale or rent in Malta from 21 December 2020 shall comprise a receiver capable of receiving and reproducing at least radio services provided *via* digital terrestrial radio broadcasting:

Provided that such radio services shall include digital terrestrial broadcasting services of type DAB+:

Provided further that receivers which are in accordance with harmonised standards the references of which have been published in the *Official Journal of the European Union* or with parts thereof shall be considered to comply with that requirement covered by those standards or parts thereof.

**TWELFTH SCHEDULE  
(Regulations 12, 31, 33 and 82)  
(Regulation 12)**

**Part A. Administrative charges to be paid on an annual basis**

(a) Public electronic communications networks	€12,000
(b) Voice communications services	€12,000
(c) Internet access services	€2,500
(d) Television and radio distribution services	€12,000
(e) Other electronic communications services	€2,500

Provided that undertakings providing any of the services under category (b), (c), (d) or (e) shall pay to the Authority 1.1% of the total gross revenue generated from electronic communications services. This administrative charge of 1.1% of the total gross revenue is not applicable in the case of revenues generated from publicly

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available telephone directories and, or directory enquiry services by undertakings authorised under category (e).

**(Regulations 31 and 33)**

**Part B. Usage fees for radio spectrum to be paid on an annual basis**

In this part:

"700 MHz band" means the 703-733 MHz and 758-788 MHz bands;

"800 MHz band" means the 791-821 MHz and 832-862 MHz bands;

"900 MHz band" means the 880-915 MHz and 925-960 MHz bands;

"1.5 GHz band" means the 1427-1517 MHz band;

"1800 MHz band" means the 1710-1785 MHz and 1805-1880 MHz bands;

"2 GHz paired band" means the 1920-1980 MHz and 2110-2170 MHz bands;

"2 GHz unpaired band" means the 1900-1920 MHz band;

"2.6 GHz band" means the 2500-2690 MHz band;

"3.6 GHz band" means the 3400-3800 MHz band;

<b>(a) for each paired 5 MHz channel in any of the following frequency bands for terrestrial systems capable of providing wireless broadband electronic communications services:</b>	
i. 700 MHz band	€224,000
ii. 800 MHz band	€224,000
iii. 900 MHz band	€224,000
iv. 1800 MHz band	€224,000
v. 2.6 GHz band	€24,000
<b>(b) for each unpaired 5 MHz channel in any of the following frequency bands for terrestrial systems capable of providing wireless broadband electronic communications services:</b>	
i. 1.5 GHz band	€8,000
ii. 2.6 GHz band	€5,500

iii. 3.6 GHz band	€9,000
<b>(c) for rights of use for a 5 MHz unpaired channel in the 2 GHz unpaired band and for 19.8 MHz spectrum in the 2 GHz paired band, either of the following fees apply:</b>	
i. issued before 23 December 2019 for a term of fifteen (15) years, either of the following fees apply:	
a. one-time upfront fee	€5,823,433.50 or
b. staggered annual payments as defined in the rights of use, which in total amounts to	€8,618,681.57
ii. for extensions to the rights of use referred to in (i) above, per annum fee or part thereof	€344,747.26
<b>(d) for each channel for digital terrestrial television services:</b>	
i. in the 174-230 MHz band	€5,823.43
ii. in the 479-694 MHz band	€5,823.43
<b>(e) for each frequency block of 1.536 MHz in the 174-230 MHz band for terrestrial digital audio broadcasting services</b>	€2,329.37
<b>(f) provisional rights of use for radio spectrum for:</b>	
i. the testing of wireless technologies	€100
ii. the carriage of trials of wireless technologies for a period not exceeding two years:	
(a) for the first year of the rights of use	€600
(b) for the second year of the rights of use	€800
Provided that the fees under sub-paragraphs (i) and (ii) shall be charged on a <i>pro rata</i> basis subject to a minimum fee of €100.	

During the course of an assignment process leading to the grant of right of use for radio spectrum, the Authority may by a decision published on its website, with the written prior consent of the Minister after consultation with the Minister responsible for finance, change a fee for any of the usage fees regulated in this Part excluding the provisional rights of spectrum, if the Authority considers that there are valid reasons to justify such a change which change reflects the need to ensure the optimal use of these resources. In doing so, the Authority shall establish the period during which such revised fees shall apply:

Provided that in so doing the Authority shall act in a transparent manner and give its reasons in writing for such a change which reasons shall be published on its website.

**(Regulation 82)**

**Part C. Usage fees for numbers to be paid on an annual basis**

<p>(a) Numbers in the ‘2’, ‘3’, ‘7’ and ‘9’ number ranges excluding such numbers as the Minister may, after consultation with or on the advice of the Authority, from time to time establish by order in the Gazette</p>	<p>€700 per allocated numbering block of 10,000 numbers or proportionate depending on the size of the allocated block</p>
<p>(b) Carrier select/pre-select codes</p>	<p>€5,000 for each code.</p>
<p>(a) Numbers in the ‘4’ number range excluding such numbers as the Minister may, after consultation with or on the advice of the Authority, from time to time establish by order in the Gazette.</p>	<p>€700 per allocated numbering block of 100,000 numbers.</p>

**THIRTEENTH SCHEDULE**  
**(regulation 8)**

**GENERAL AUTHORISATION FOR ELECTRONIC  
COMMUNICATIONS NETWORKS AND, OR SERVICES**

**PART 1**

**Procedures for Imposition, Maintenance, Amendment or  
Withdrawal of Specific Obligations**

Specific obligations that may be imposed on authorised undertakings by the Authority in accordance with these regulations are legally separate from the obligations set out in Part 2.

Such specific obligations shall be imposed in accordance with the criteria and procedures established in these regulations, and without prejudice to the generality of the foregoing, in particular with regard to specific obligations:

- (a) regarding access and interconnection, in Part IX:
- (b) relating to access remedies on undertakings with significant market power in so far as these relate to the imposition, amendment or withdrawal of obligations in regulations 56 to 61 and 63 to 67;
- (c) regarding retail services in regulation 70; and
- (d) imposed on undertakings designated to provide universal service.

**PART 2 Conditions applicable to authorised undertakings**

Section A - Conditions applicable to authorised undertakings

**1. Scope of general authorisation**

1.1. An authorised undertaking is entitled to provide the electronic communications network and, or services as described in a notification made in its name in accordance with regulation 5.

**2. No special or exclusive rights**

2.1. This general authorisation shall not be construed as granting any special or exclusive right to any person in relation to the provision of electronic communications networks and, or services.

### **3. Applicability of laws, decisions of the Authority, etc.**

3.1. The Act, all national laws and regulations, and decisions of the Authority, and applicable European Union Law, shall form an integral part of this general authorisation except in those cases where the undertaking is specifically exempted by the Authority;

3.2. An authorised undertaking shall comply with the terms and conditions of this general authorisation, as well as any applicable obligations or requirements, however described, emanating from the laws and decisions mentioned in paragraph 3.1 above;

3.3. Nothing in this general authorisation shall exempt any person from the obligation to diligently obtain at his own expense any permit, licence or other approval or authorisation however so described, that may be necessary to construct, operate and maintain the services or any part thereof, or from the obligation of complying with any condition of any such permit, licence or other approval or authorisation.

### **4. Amendment of general authorisation**

4.1. The Authority may amend this general authorisation in objectively justified cases and in a proportionate manner, in accordance with the provisions of the Act and these regulations. The authorised undertaking and all other interested parties, including users and consumers, shall be given notice of the intention of the Authority to amend the general authorisation, and shall be afforded the opportunity to make representations on the proposed amendments.

### **5. Administrative charges**

5.1. The authorised undertaking shall pay to the Authority any charges due in accordance with or under the Act.

### **6. Legal interception and data retention**

a. The authorised undertaking shall comply with all requirements related to legal interception and data retention as may be established under the Act and, or any other law.

### **7. Transfer of general authorisation**

7.1. Any right, interest or entitlement resulting from this authorisation is not transferable and may only be exercised by the person identified in a notification made to the Authority in accordance with regulation 5 in so far as they apply to the electronic communications network and, or services described in that

notification.

## **8. Provision of information**

8.1. The authorised undertaking shall comply with any request for information that the Authority may from time to time make, in accordance with the Act, the Malta Communications Authority Act, or these regulations in the form and at the time specified by the Authority. Cap. 418.

## **9. Dispute resolution**

9.1. The authorised undertaking shall follow the procedures established under the Act, the Malta Communications Authority Act or by the Authority in order to resolve disputes in a fair, transparent and timely manner and shall comply with all requirements or decisions in relation to disputes, made by the Authority in accordance with the Act.

## **10. Annual report**

10.1. When requested by the Authority the authorised undertaking shall submit to the Authority a copy of any existing company annual report.

## **11. Major disasters or national emergencies**

11.1. The authorised undertaking shall comply with any decisions issued by the Authority and make arrangements for the provision or rapid restoration of such communication services as are practicable and may reasonably be required by the Authority in the event of, or during a major disaster or national emergency in order to ensure communications between emergency services and the competent authorities and broadcasts to the general public:

Provided that for the purposes of this condition, "major disaster" or "national emergency" includes any major incident having a significant effect on the general public.

## **12. Standards and specified interfaces**

12.1. The authorised undertaking shall comply with any relevant compulsory standards as may be established from time to time for the provision of services, technical interfaces and, or network functions. Where no compulsory standards have been issued, the authorised undertaking shall give due regard to any notices or guidelines that the Authority may issue with respect to standards, as well as any relevant voluntary standards and, or specifications published by the European Commission in accordance with regulation 26, and, or those that may be adopted by any European standards organisations or internationally recognised standardisation bodies.

**13. Integrity of the network, electro-magnetic radiation and harmful interference**

13.1. The authorised undertaking shall take all necessary measures to ensure that the network does not cause harmful interference with the lawful use or operation of any electronic communications network and, or services;

13.2. The authorised undertakings shall comply with any radiation emission standards adopted and published by the International Commission on Non-Ionising Radiation Protection (ICNIRP) or by a public authority which at law is responsible for the adoption of any such standards, or with any other appropriate standard as may be specified at law;

13.3. The undertaking shall comply with any decisions issued by the Authority in relation to electromagnetic radiation and harmful interference and ensure that the network and all services at all times comply with the technical and performance standards generally accepted by the industry or as may be prescribed in accordance with paragraph 13.2. or as may be accepted by the Authority or by the competent public health authorities as being adequate to ensure the limitation of exposure of the general public to electromagnetic fields.

**Section B - Conditions applicable to Television and, or Radio Distribution Services**

In addition to the general conditions stipulated in Part 2, Section A , authorised undertakings providing television and, or radio distribution services shall also comply with the following conditions:

**1. Broadcasting Rules**

1.1. An authorised undertaking shall comply with all broadcasting and radio content regulations and authorisation requirements as appropriate.

**2. "Must Carry" Rules**

2.1. An authorised undertaking shall distribute those radio and, or television broadcasting services as may be established by the Authority in accordance with its powers at law.



**FOURTEENTH SCHEDULE**

<b>List of competent authorities:</b>		
<b>Competent authority responsible</b>	<b>Provisions for which the competent authority is responsible</b>	<b>Remarks</b>
Planning Authority	Regulation 44(2)	
Department for Health under the Superintendent of Health	Regulation 45	

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# VERŻJONI ELETTRONIKA