

**CHAPTER 399**

**TELECOMMUNICATIONS (REGULATION) ACT**

*To regulate Telecommunications.*

31st December, 1997  
2nd January, 1998

*ACT XXXIII of 1997, as amended by Acts XIX of 1998, XVIII of 2000, VI of 2001 and XXVII of 2002.*

**PART I**

**PRELIMINARY**

**1.** The short title of this Act is Telecommunications (Regulation) Act. Short title.

**2.** In this Act, and in regulations made thereunder, unless the context otherwise requires - Interpretation.  
*Amended by:*  
*XIX. 1998.3;*  
*XVIII. 2000. 31.*

"apparatus" means any equipment, instrument or other apparatus for use in the provision, or in the reception, of telecommunication services, and includes any fittings thereto or accessories thereof;

"authorisation" includes any licence or permit issued under this Act to install or operate a telecommunications system or to provide a telecommunications service and includes general authorisations and individual licences as defined in article 6;

"authorised provider" means any person who holds a valid licence or permit to operate a telecommunications system or provide a telecommunications service under this Act, or is registered under this Act as a person authorised as aforesaid;

"Board" means the Telecommunications Appeals Board established by article 34;

"commercial activities connected with telecommunications" means the provision of telecommunications services or the supply or export of telecommunications apparatus or the production or acquisition of such apparatus for supply or export;

"competent authority" or "Authority" means the person or body designated as the competent authority in article 3 and to the extent of the authority given includes any person authorised by it for any purpose;

"convey" includes transmit and transport and "conveyance" shall be construed accordingly;

"Corporation" means the Telemalta Corporation established by the Telemalta Corporation Act\* ; Cap. 250.

"electro-magnetic system" means any system whereby messages or sound or light or visual images may be transmitted by wire activated by electricity or by radio waves or by any other electro-magnetic energy or by optical energy or by a combination of any

\*Repealed by this Act.

two or more of such systems;

"exclusive privilege" means the privilege whether referred to as a right or authority or otherwise granted to one or more persons through any legal, contractual, regulatory or administrative instrument reserving to such person or persons the privilege to provide a service, to operate a system or to undertake an activity to the exclusion of others;

"frequency" means the number of complete cycles per second of a wave of electromagnetic energy;

"granted" or "issued", in respect of an authorisation, includes deemed to be granted or issued;

"interconnection" means the physical and logical linking of telecommunications systems used by the same or a different organisation in order to allow users of one organisation to communicate with users of the same or another organisation or to access services provided by another organisation. Such services may be provided by the parties involved or by other parties who have access to the system;

"message" includes communication;

"Minister" means the Minister responsible for telecommunications, and includes any other Minister delegated by him for that purpose;

"network termination point" means all physical connections and their technical access specifications which form part of the public telecommunications system and are necessary for access to and efficient communication through that public system;

"number portability" means a facility whereby subscribers who so request can retain their number on a telephony system independent of the organisation providing the service at the network termination point of the subscriber;

"open network provisions" means the harmonised conditions which concern the open and efficient access to public telecommunications systems and public telecommunications services and the efficient use of those systems and services. Without prejudice to their application on a case by case basis, open network provisions may include conditions with regard to -

- (i) technical interfaces including the definition and implementation of network termination points;
- (ii) usage conditions including access to frequencies;
- (iii) tariff principles;

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

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

"private telecommunications system" means a telecom-

munications system utilised by an authorised provider to provide private telecommunications services only;

"private telecommunications service" means a telecommunication service provided by an authorised provider for its own use over a telecommunications system;

"public land" includes any land which is used or intended for use by the general public, as well as the territorial waters of Malta;

"public telecommunications system" means a public telecommunications infrastructure which permits the conveyance of signals between defined network termination points by wire, by microwave, by optical means or by other electromagnetic means;

"public telecommunications service" means a service the supply of which has been entrusted to one or more telecommunications organisations;

"publicly available telecommunications service" means a telecommunications service available to the public;

"publicly available voice telephony services" means a fixed telephony service whether operated by wireless or otherwise or a mobile telephony service, or both, available to the public;

"a dominant market position" shall have the same meaning as may be prescribed by regulations made under this Act;

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

"systemless service provider" means a person who provides publicly available telecommunications services but who does not operate the telecommunications system by means of which such services are provided;

"telecommunications" means the emission, transmission, routing or reception through electric, magnetic, electromagnetic, electro-chemical or electro-mechanical energy of:

- (i) speech, music and other sounds,
- (ii) visual images;
- (iii) signals serving for the impartation (whether as between persons and persons, things and things, or persons and things) of any matter otherwise than in the form of sounds or visual images; or
- (iv) signals serving for the actuation or control of machinery or apparatus;

"telecommunications apparatus" or "apparatus" means apparatus construed or adapted for use in transmitting or receiving anything which is to be or has been conveyed over a telecommunications system;

"telecommunications service" means any one or more of the following:

- (a) a service consisting in the conveyance by means of a telecommunications system, of any form of

telecommunications, without regard to the content of the messages transmitted;

- (b) a directory information service consisting in the provision by means of a telecommunications system of directory information for the purpose of facilitating the use of a service falling within paragraph (a) of this definition and provided by means of that system;
- (c) a service consisting in the installation, maintenance, operation, adjustment, repair, alteration, moving, removal or replacement of a telecommunications system including cable television, video on demand and interactive services, but excluding broadcasting as defined in the Broadcasting Act;

Cap. 350.

"telecommunications system" means a system for the conveyance through the agency of electric, magnetic, electromagnetic, electro-chemical or electro-mechanical energy, of -

- (i) speech, music and other sounds;
- (ii) visual images;
- (iii) signals serving for the impartation (whether as between persons and persons, things and things or persons and things) of any matter otherwise than in the form of sounds or visual images; or
- (iv) signals serving for the actuation or control of machinery or apparatus;

"telecommunications transport provider" means a person who provides a service consisting in the conveyance by means of a telecommunications system of publicly available telecommunications services;

"telegraphy" means the transmission of messages from one place to another by means of an electromagnetic system, but does not include spoken messages;

"telephony" means the commercial provision for the public of direct transport of real-time speech through the public switches network or networks such that any user can use equipment connected to a network termination point to communicate with another user of equipment connected to another termination point;

"transport" includes conveyance and transmission;

"telex" means a system of telegraphy where the message is transmitted directly between the sender and recipient;

"transmission" includes emission, switching and reception;

"universal service obligation" means an obligation to provide telecommunications services that are designated by the Authority as basic services for social reasons at an affordable price or free of charge;

"user" means persons using or requesting publicly available telecommunications services.

## PART II

## REGULATION OF TELECOMMUNICATIONS

## 1. Competent Authority to regulate Telecommunications

3. (1) The Minister shall by order in the Gazette nominate a person or body to be the competent authority for the purposes of this Act to carry out the functions of the competent authority under this Act and to perform such other functions as the Minister may consider appropriate in relation to the operation of this Act. Such person or body shall be nominated for such period as the Minister may determine and the Minister shall have the power at any time to prolong, renew or terminate such nomination by order in the Gazette.

Appointment of Authority.  
Substituted by:  
XVIII. 2000.31.

(2) The power of the Minister to prolong, renew or terminate a nomination made in pursuance of subarticle (1) shall cease to exist from such time as may be specified by the Minister in an order in the Gazette wherein the Malta Communications Authority is nominated to act as the competent authority under this Act on a permanent basis.

4. (1) It shall be the duty of the Authority to exercise the functions assigned to it under this Act in a manner which it considers to be conducive -

Functions of the Authority.  
Substituted by:  
XVIII. 2000.31.

- (a) to the regulation of the telecommunications sector on the basis of the fundamental principles of this Act including the separation of regulatory and operational functions, fair competition, transparency, non-discrimination, open networks, consumer protection, universal service, public service values and respect for fundamental human rights;
- (b) to secure that there are provided in Malta, save in so far as the provision thereof is impracticable, such telecommunications services as satisfy all reasonable demands for them including in particular emergency services, public call services, directory information services, and maritime services; and
- (c) without prejudice to the generality of paragraph (a) above, to secure that any person by whom any such services are to be provided is able to finance the provision of those services.

(2) Subject to subarticle (1) above, the Authority shall have a duty to exercise the functions assigned or transferred to it under this Act in a manner which it considers to be best conducive -

- (a) to promote the interests of consumers, purchasers and other users in Malta (including in particular those who are disabled or of pensionable age) in respect of the prices charged for, and the quality and variety of, telecommunications services provided and telecommunications apparatus supplied;
- (b) to promote open networks and effective competition

- between persons engaged in commercial activities connected with telecommunications in Malta;
- (c) to promote efficiency and economy on the part of such persons;
  - (d) to promote research into and the development and use of new techniques by such persons;
  - (e) to encourage major users of telecommunications services whose places of business are outside Malta to establish places of business in Malta;
  - (f) to promote the provision of international transit services by persons providing telecommunications services in Malta;
  - (g) to enable persons providing telecommunications services in Malta to compete effectively in the provision of such services outside Malta;
  - (h) to encourage persons producing telecommunications apparatus to set up production facilities in Malta and to enable such persons to compete effectively in the supply of such apparatus both inside and outside Malta.

(3) It shall be the duty of the Authority to carry out the functions prescribed in this Act and to ensure compliance with the provisions of this Act, and, without prejudice to the generality of the foregoing, to ensure that persons operating telecommunications systems or providing telecommunications services in Malta comply with this Act, with regulations and directives issued under this Act and with the conditions of their licences.

(4) The Authority may make directives as may be required for the carrying into effect of any of the provisions of this Act and it may also amend or revoke such directives.

(5) Directives issued by the Authority in pursuance of this article and any amendment or revocation thereof shall be communicated by the Authority to persons operating telecommunications systems or providing telecommunications services in Malta and shall also be made public by publication in the Gazette.

(6) The Authority shall also have such other functions, responsibilities and powers as are set out in this Act or as the Minister responsible for telecommunications may by order prescribe or as may be assigned to it by or under any other law.

## **2. Authorisation for telecommunications systems or services**

**5.** (1) No person shall install or operate a telecommunications system or provide a telecommunications service in Malta unless he is an authorised provider.

(2) An authorisation granted to a person under this Act shall not relieve such person from the requirement of any other licence, permit or other authorisation, or from any obligation arising from

any other law:

Provided that, to the extent that it is necessary for the purpose of any installation, operation or provision as aforesaid by an authorised provider, an authorisation granted under this Act may include a licence issued under article 3 of the Wireless Telegraphy Ordinance, and such licence shall be deemed to have been issued under this Act and be regulated accordingly. Cap. 49.

(3) The provisions of this article shall not be contravened by the running of any telecommunications system listed as being exempt from the said provisions in regulations which the Minister may from time to time prescribe.

6. (1) A licence to operate a telecommunications system or to provide a telecommunications service may be granted -

- (i) by the Authority; or
- (ii) in accordance with a general authorisation issued by the Authority and subject to verification by the Authority that the conditions of the general authorisation have been satisfied,

Licences and  
general  
authorisations.  
Added by:  
XVIII. 2000.31.

for the operation of any telecommunications system as is specified in the licence or is of a description so specified.

(2) A licence granted under this article shall be in writing and, unless previously revoked in accordance with any term therein contained, shall continue in force for such period as may be specified in or determined by or under the licence.

(3) A licence granted under this Act may be granted either in the form of a general authorisation to all persons or to persons of a class or in the form of an individual licence to a particular person.

(4) A licence granted under this article may authorise -

- (a) the connection to any telecommunications system to which the licence relates of -
  - (i) any other telecommunications system specified in the licence or of a description so specified; and
  - (ii) any apparatus so specified or of a description so specified; and
- (b) the provision by means of any telecommunications system to which the licence relates of any telecommunications services specified in the licence or of a description so specified.

(5) A licence granted under this Act may include -

- (a) such conditions (whether relating to the telecommunications system to which the licence relates or otherwise) as appear to the Authority to be requisite or expedient having regard to the duties of the Authority and to the international obligations of Malta;
- (b) conditions requiring the payment to the Authority of a

fee on the grant of the licence or of payments during the currency of the licence or both, which fee or payments shall be of such amount or amounts (which may also be determined by reference to the licensee's income, sales or turnover) as may be determined in the licence;

- (c) in the case of a licence granted to all persons or to persons of a class, conditions requiring any person or any person who falls within the class of persons to which the licence relates, to notify the Authority of his intention to run a telecommunications system under that licence;
- (d) conditions requiring the licensee to comply with any directions given by the Authority as to matters stated in the licence;
- (e) conditions requiring the licensee to do or not to do such things as are specified in the licence;
- (f) conditions obliging the licensee to refer for determination by the Authority such questions arising under the licence as are specified in the licence;
- (g) such other conditions as may be prescribed.

Temporary  
licences.  
*Added by:*  
*XVIII. 2000.31.*

**7.** (1) Where the Authority receives an application for a licence to operate a telecommunications system which cannot be operated under the terms of a current licence which has been granted to persons of a class it shall, subject to any time limits specified for the grant of licences under article 14 -

- (a) either grant a temporary licence containing such conditions as the Authority considers appropriate to enable the applicant to commence operating such a system; or
- (b) reject the application.

(2) Where the Authority grants a temporary licence under subarticle (1) it shall as soon as possible either replace such a licence with another licence granted under this article containing such conditions as it considers appropriate or revoke it.

Procedures for  
general  
authorisations.  
*Added by:*  
*XVIII. 2000.31.*

**8.** (1) A person who complies with the applicable conditions under a general authorisation may operate the telecommunications systems and provide the telecommunications services covered by the general authorisation.

(2) Before providing the telecommunications service or operating the telecommunications system covered by a general authorisation a person enjoying a general authorisation shall notify the Authority of his intention to do so and shall communicate to the Authority the prescribed information relating to the system or service concerned which is necessary for the purpose of ensuring compliance with the conditions of the general authorisation.

(3) The Authority may require a person as referred to in subarticle (1) to wait up to four weeks after formal receipt by the



Authority of all the prescribed information required before starting to provide the services or to operate the systems covered by the general authorisation.

(4) Fees imposed on persons as part of the authorisation procedures under a general authorisation shall only seek to cover the administrative costs incurred in the issue, management, control and enforcement of the applicable general authorisation scheme:

Provided that nothing in this subarticle shall be deemed to exonerate any person availing himself of a general authorisation from making financial contributions to the provision of universal services in accordance with any funding mechanism for universal services as may be prescribed.

**9.** (1) Individual licences may be issued for the following purposes only:

- (a) to allow the licensee access to radio frequencies and numbers;
- (b) to give the licensee particular rights with regard to public or private land;
- (c) to impose obligations and requirements on the licensee relating to the mandatory provision of publicly available telecommunications services or public telecommunications systems, including obligations which require the licensee to provide universal services and other obligations resulting from open network provisions prescribed in any law or regulation;
- (d) To impose specific obligations in accordance with competition rules or international obligations where the licensee has a dominant market position in relation to the provision of telecommunications systems or publicly available telecommunications services.

Individual licences.  
Added by:  
XVIII. 2000. 31.

(2) Notwithstanding the provisions of subarticle (1) above the provision of publicly available voice telephony services, the establishment and provision of public telecommunications systems as well as other systems involving the use of radio frequencies may be made subject to individual licences as may be prescribed.

(3) The Minister may by regulations made after consultation with the Authority limit the number of individual licences for any category of telecommunications services or systems to the extent that he may deem necessary to ensure the efficient use of radio frequencies or for the time that he may deem necessary to make available sufficient numbers.

**10.** (1) Where a person enjoying a general authorisation does not comply with a condition attached to a general authorisation the Authority may inform that person that he is not entitled to avail himself of the general authorisation and it may impose on that person in a proportionate manner specific measures aimed at ensuring compliance by him with the conditions of the general authorisation.

Non-compliance with conditions of general authorisations.  
Added by:  
XVIII. 2000.31.

(2) The Authority shall at the same time give such person as referred to in subarticle (1) a reasonable opportunity to state his views on the application of the conditions and to remedy any breaches within one month starting from the intervention of the Authority.

(3) If the person as referred to in subarticle (1) above remedies the breaches, the Authority shall, within two months of its initial intervention, revoke or modify its decision as it may consider appropriate and it shall give the reasons for its decision.

(4) If the person as referred to in subarticle (1) above does not remedy the breaches the Authority shall, within two months of its initial intervention, confirm its decision and give the reasons for its decision. The decision of the Authority shall be communicated within one week of its adoption to the person concerned.

(5) Decisions of the Authority taken in pursuance of subarticles (3) or (4) shall be appealable to the Telecommunications Appeals Board.

Non-compliance  
with conditions of  
individual licences.  
*Added by:*  
*XVIII. 2000.31.*

**11.** (1) Where the beneficiary of an individual licence does not comply with a condition attached to the licence, the Authority may withdraw, amend or suspend the individual licence or impose in a proportionate manner, specific measures aimed at ensuring compliance.

(2) The Authority shall at the same time give the beneficiary concerned a reasonable opportunity to state his views on the application of the condition and, except in the case of repeated breaches by the said beneficiary (in which case the Authority can immediately take the appropriate measures), to remedy any breaches within one month commencing from the date of the intervention of the Authority.

(3) If the beneficiary concerned remedies the breaches the Authority shall within two months from its initial intervention revoke or modify its decision as it deems appropriate and it shall give its reasons for its decision.

(4) If the beneficiary concerned does not remedy the breaches the Authority shall, within two months from its initial intervention, confirm its decision and give the reasons for its decision. The decision shall be communicated within one week from its adoption to the beneficiary concerned.

(5) In the event of harmful interference between a telecommunications system using radio frequencies and other technical systems the Authority may take immediate action, including but not limited to the giving of directives, to remedy the problem. In such a case the licensee concerned shall thereafter be given a reasonable opportunity to state its views and to propose remedies to the harmful interference.

(6) Decisions of the Authority taken in pursuance of subarticles (3) or (4) shall be appealable to the Telecommunications Appeals Board.

**12.** (1) No licence, permit or other authorisation whether it is an individual licence or an entitlement to act under a general authorisation may be transferred or assigned by the authorised provider to another person without the prior consent in writing of the Authority.

Transferability of authorisation.  
*Amended by:*  
*XVIII. 2000.31.*

(2) The Authority may refuse its consent under this article for a good reason only and such refusal shall be communicated in writing.

(3) Where the authorised provider is a body corporate or another body of persons, a change in the control of the ownership or management of that body shall be equivalent to the transfer of the authorisation, and shall be subject to the prior consent of the Authority as aforesaid.

**13.** (1) Any person seeking an authorisation by means of an individual authorisation shall apply to the Authority on such form and in such manner as may be prescribed, or as may be provided or required by the Authority, and shall provide to the Authority all such information as may be prescribed and as the Authority may reasonably require to enable it to assess the application.

Application for authorisation.  
*Amended by:*  
*XVIII. 2000.31;*  
*XXVII. 2002.58.*

(2) The application shall in particular specify the telecommunications system or service or services for which the application is made and shall include such information as maybe prescribed or, in the absence of such prescription, such information as is sufficient to demonstrate that the applicant fulfils the conditions for the grant of the authorisation.

(3) Upon receipt of an application as aforesaid the Authority shall cause the fact that an application has been made to be published in the Gazette, giving such details as it may deem appropriate to enable any person wishing to make representations to object to the application or make any other submission.

(4) The Authority shall consider the application after conducting the necessary investigations and considering any representations or submissions made in respect thereof, and may for this purpose require from any person any further information it may deem necessary.

(5) Anything to be done under this article shall be done in such form and manner and within such time as may be prescribed.

**14.** (1) The Authority shall complete its investigations within a reasonable time or within such time as may be prescribed and shall thereupon make and forward a report to the Minister which shall include a recommendation whether the authorisation applied for is to be granted or not.

Grant or refusal of authorisation.  
*Amended by:*  
*XVIII. 2000.31;*  
*XXVII. 2002.58.*

(2) If the recommendation is that an authorisation is to be granted, and the Minister agrees with the recommendation, the Authority shall approve the application and grant the licence or permit under its signature.

(3) If the Authority is of the opinion that the application should be refused for any of the reasons set out in article 15 it shall inform

the Minister accordingly and refuse the authorisation.

(4) If the Authority recommends that the application should be approved but the Minister disagrees with such recommendation on any of the grounds indicated in article 15, the application shall be refused.

(5) Decisions of the Authority and of the Minister made in pursuance of this article shall include reasons for the decision and shall be published in the Gazette.

(6) The Authority shall inform the applicant of its decision to grant or refuse an authorisation within six weeks from the date when it receives the application in a complete state and drawn up in a manner that complies with the provisions of this Act:

Provided that such period may be extended to up to four months in the following cases:

- (i) where there is disagreement between the decision of the Authority and that of the Minister as to whether an authorisation should be issued; or
- (ii) where an application requires consultation between the Authority and any Government department or other authority relating to the use of frequencies or to the possibility of interference with other telecommunications services.

(7) Where the grant of the authorisation is subject to a comparative bidding procedure the four month period referred to in subarticle (6) above shall also apply:

Provided that in such cases the said four month period may be extended by a further four months.

(8) The time limits provided for in this article shall be without prejudice to any applicable international agreements relating to international frequency and satellite coordination.

Grounds for refusal.  
*Amended by:*  
*XVIII. 2000.31;*  
*XXVII. 2002.58.*

**15. (1)** The Authority may refuse to authorise a person to install or operate a telecommunications system or to provide a telecommunications service, if it is of the opinion that the grant of the authorisation would -

- (a) be against the public interest, or is inconsistent with Government policy, and the Minister agrees;
- (b) be inconsistent with the provisions of this Act or of any other law, or with any international commitment undertaken or in the process of being undertaken by Malta;
- (c) pose a danger or nuisance to the public or damage to any property, or obstruct or interfere with any lawfully operated telecommunications system or network;
- (d) authorise an applicant applying for an individual licence, when he does not demonstrate to the Authority

that he fulfils the conditions for the grant of such a licence.

(2) The Authority may also refuse to grant the authorisation applied for if it has grounds to believe that the applicant is not a fit and proper person to hold the authorisation applied for, or is not in a position, because of the financial and other specific circumstances of the applicant, to comply with the provisions of this Act or of any regulations made thereunder or with the conditions of the licence or permit if granted.

(3) The Authority shall communicate in writing to the applicant the decision to refuse an application and it shall set out briefly in writing the reasons for such a decision.

**16.** (1) There shall be an appeal to the Telecommunications Appeals Board, as provided in article 34, from any decision to grant or refuse an authorisation under the foregoing provisions of this Act.

Appeals for grant or refusal.  
Amended by:  
XVIII. 2000.31.

(2) Where an authorisation as aforesaid is refused, the right of appeal shall be competent to the applicant; where an authorisation is granted the appeal shall be competent to any person who has made representations in writing to the Authority as provided in article 13.

(3) The decision to include a condition in a licence shall also be subject to appeal to the Board.

**17.** A person authorised pursuant to article 6 to operate a public telecommunications system shall, in addition to complying with the provisions of this Act and of any regulations made thereunder, as well as with the terms and conditions of the licence, abide by any directive issued by the Authority for the purpose of -

Special obligations of authorised providers of public telecommunications system.  
Amended by:  
XVIII. 2000.31.

- (a) ensuring that the capacity, quantity and features of the system are sufficient for providing and maintaining an efficient telecommunications system;
- (b) ensuring that the system is sufficient for and compatible with such international telecommunications services as the Authority may specify;
- (c) making provision for the security of the system and of any extension thereof;
- (d) ensuring the implementation of open network provisions.

**18.** A person authorised pursuant to article 6 to provide a public telecommunications service shall -

Special obligations of authorised providers of public telecommunications service.  
Amended by:  
XVIII. 2000.31.

- (a) make available all such services as may reasonably be provided to any person wishing to subscribe to such services;
- (b) ensure that all rates, charges, practices and classifications are just and reasonable;
- (c) provide such services efficiently, complying with the standards for quality generally accepted in the

industry;

- (d) notify the Authority and publish by notice in the media when the services are to be interrupted for the installation or repair or the changing of equipment;
- (e) establish an efficient mechanism for receiving complaints and repairing failures in its network and in the services provided;
- (f) comply with the provisions of this Act and of any regulations made thereunder as well as with the terms and conditions of the authorisation; and shall abide by any directives of the Authority as it may be authorised to issue by or under this Act.

Tariff controls and rate mechanisms.

*Amended by:  
XIX. 1998.3;  
XVIII. 2000.31;  
VI. 2001.29.*

**19. (1)** Tariffs in respect of telecommunications services shall be regulated as follows:

- (i) in markets or market segments which are, in the opinion of the Authority, subject to effective competition, tariffs shall be established by the operation of the market;
- (ii) in markets or market segments which, in the opinion of the Authority, lack effective competition, tariffs shall be subject to such proportionate controls and regulations, which may also grant power to the Authority to issue such proportionate and non-discriminatory directives as it may deem appropriate, as may be prescribed;
- (iii) where no regulations have been issued or are in force in terms of sub-paragraph (ii) and no order has been published in the Gazette by the Authority stating that tariffs in a particular market or market segment are to be regulated in accordance with sub-paragraph (i) above or when no such order is in force, tariffs shall be regulated in accordance with rate mechanisms in terms of subarticles (2) to (7);
- (iv) where an order has been published by the Authority in terms of sub-paragraphs (i) and (iii) above or where regulations are prescribed in terms of sub-paragraph (ii) above any rate mechanism in force at the time of the publication of the said order or of the said regulations shall cease to have effect, without prejudice to its validity in respect of any preceding period, with regard to the market or market segment to which the order or the regulations refer.

(2) Subject to subarticle (1) there shall be rate mechanisms allowing for changes in the charges to be made in respect of telecommunications services and such rate mechanisms shall be such as may be established by the Authority and published in the Gazette. Rate mechanisms may be established for such period as

may be determined by the Authority.

(3) Where a rate has not yet been established, or where an authorised provider wishes to make a change in an existing rate not provided for in an existing rate mechanism, an authorised provider shall submit the rates it proposes to charge in respect of any service it is authorised to provide to the Authority for its approval.

(4) If the Authority approves the proposed rates, it shall communicate such approval to the authorised provider, and those rates shall be the rates the authorised provider may charge.

(5) If the Authority does not approve the proposed rates it shall so notify the authorised provider setting out the reasons for such rejection; and the authorised provider may either appeal from such decision to the Telecommunications Appeals Board, under article 34, or propose other rates acceptable to the Authority:

Provided that if a notice of rejection is not served within sixty days after their submission, the rates submitted shall be deemed to have been approved.

(6) An authorised provider of telecommunications services shall forward to the Authority, and the Authority shall, unless it rejects any of them, register the terms and conditions, including approved tariffs, for the provision of such services; and upon registration, the terms and conditions so registered shall be binding on the authorised provider and on any person accepting the provision of such service:

Provided that such terms and conditions, including approved tariffs, may be changed from time to time, subject to any approval by the Authority required by this article and to their registration by the Authority:

Provided further that any rejection of a term or condition by the Authority as provided in this subarticle shall also be subject to appeal.

(7) The terms and conditions registered by the Authority under this article shall be open to inspection by the public during normal office hours.

(8) A person authorised to provide a telecommunications service may not engage in any cross-subsidisation with respect to such services as such person provides in competition with other authorised providers, or to subsidiaries or affiliated businesses.

(9) Where any of the provisions of subarticle (8) is contravened, such contravention shall be dealt with exclusively by the Authority irrespective of whether it constitutes unfair trading for the purposes of the Competition Act. The Authority may consult the Commission for Fair Trading as to the measures to be taken in the circumstances; and the authorised provider shall comply with any directives the Authority may issue on the matter.

Cap. 379.

(10) The obligations and duties of authorised providers as set out in this Act shall be without prejudice to any term or condition contained in the authorisation adding any obligation or duty on the authorised provider, and any such additional obligation or duty

shall have effect as if it were imposed by this Act.

Modifications of  
licences.  
*Added by:*  
*XVIII. 2000.31.*

**20.** (1) The conditions attached to an authorisation granted under this Act may be modified by the competent authority as follows:

- (a) where the competent authority wishes to make a modification in the conditions of a general authorisation, it shall publish a notice in the Gazette indicating the modifications being proposed and granting a reasonable time to interested parties to make an objection to the proposed changes;
  - (b) where objection is made to any modifications pursuant to paragraph (a) above the competent authority shall decide whether to make the proposed modifications after it has duly considered the said objections and it shall give reasons for its decision;
  - (c) where the competent authority wishes to make modification in the conditions of an individual licence it shall:
    - (i) either give notice to the holder of the individual licence stating the modifications which it proposes to make, setting out their effect, stating the reasons why it proposes to make such modifications and specifying the time, not being less than 28 days from the date of publication of the notice within which representations or objections may be made by the holder of the licence, and seeking the consent of the holder of the licence; and/or
    - (ii) make a reference to the Office for Fair Competition requiring it to investigate and report on whether or not any matters specified in the reference operate or may be expected to operate against the public interest and, if so, whether the effects adverse to the public interest could be prevented by the modification of the conditions of the licence;
  - (d) where the holder of the individual licence does not give his consent requested in terms of paragraph (c)(i) above it shall not be permissible for the authority to effect a modification in the individual licence other than after a reference to the Office for Fair Competition in terms of paragraph (c)(ii) above;
  - (e) when the Office for Fair Competition reports on any matter referred to it under paragraph (c)(ii), its conclusions shall be definitive and binding and when the Office decides that a modification to an individual licence shall be carried out, that modification shall be implemented from such date as may be established by the Authority.
- (2) The Minister shall be informed of any modifications



proposed to be made in pursuance of this article and he may, if it appears requisite or expedient for him to do so in the interests of national security or of the foreign affairs of Malta, direct that the modifications not be made.

**21.** Any authorisation granted under this Act shall terminate, and cease to be valid, in whole or in part as the case may require, upon -

Termination of  
authorisation.  
Amended by:  
XVIII. 2000.31.

- (a) the expiration of the term specified in the authorisation;
- (b) the happening of an event or circumstance which according to the authorisation causes the termination thereof;
- (c) a renunciation thereto by the holder of the authorisation;
- (d) the revocation thereof by the Authority;
- (e) the insolvency, liquidation or bankruptcy of the authorised provider, or a composition with the creditors of such provider.

**22.** (1) An authorisation granted under this Act may be revoked by the Authority with the approval of the Minister, either in whole or in part, for any of the following reasons:

Revocation of  
authorisation.  
Amended by:  
XVIII. 2000.31.

- (a) if the authorisation has been granted on the basis of information which was incomplete, misleading or incorrect in any material respect;
- (b) if the authorised provider fails to act on the authorisation by failing to provide an authorised telecommunications service for a period exceeding 180 days from the date of issue of the authorisation, or suspends such activity for a period exceeding 180 days:

Provided that the Authority may extend the period aforesaid for a good and valid reason;

- (c) if the authorised provider is in breach of an obligation imposed by or under this Act or contained in the authorisation which in the opinion of the Regulator which shall be stated in writing, which shall include reasons and which shall respect the principle of proportionality is important enough to justify the revocation of the authorisation, and, where the breach is capable of remedy, the authorised provider has failed to remedy the breach within such reasonable time as the Regulator may have given him for that purpose;
- (d) the happening of any event or circumstance which, in accordance with the authorisation or with any regulations made under this Act, authorises the Authority to revoke it;

and upon revocation, in whole or in part, the authorisation shall

cease to be a valid authorisation.

(2) The revocation of an authorisation shall not relieve the authorised provider of any liability arising from anything done prior to the revocation.

### **3. General Provisions Applicable to Authorised Providers**

Frequencies.  
*Amended by:*  
*XVIII. 2000.31.*  
Cap. 49.

**23.** (1) Every authorised provider requiring the allocation of a frequency shall apply for such licence or other authorisation as may be required for that purpose under the Wireless Telegraphy Ordinance.

(2) Any obligation, condition or limitation imposed by or under the said Ordinance in connection with the allocation or the management of a frequency for the provision of a telecommunications service in accordance with this Act shall, without prejudice to anything contained in the said Ordinance, be deemed to be obligations, conditions and limitations imposed by this Act.

Numbering plan.  
*Amended by:*  
*XVIII. 2000. 31.*

**24.** (1) The Authority shall establish a numbering plan for telecommunications services and allocate numbers and numbering ranges to authorised providers according to procedures that are transparent, equitable, non-discriminatory and timely.

(2) The numbering plan may be changed or modified by the Authority as it may from time to time deem necessary or appropriate and the numbers allocated may be withdrawn and re-allocated to give effect to any such change or modification:

Provided that the Authority shall ensure that as much as possible no undue prejudice shall be caused thereby to authorised providers.

(3) The main elements of the national numbering plan and of all subsequent amendments shall, subject only to limitations on grounds of national security, be published by the Authority.

(4) No authorised provider shall use any numbering system for the provision of telecommunications services otherwise than in accordance with an allocation made under this article.

Interconnection.  
*Amended by:*  
*XIX. 1998.3.*  
*Substituted by:*  
*XVIII. 2000.31.*

**25.** (1) The competent authority shall encourage and secure adequate interconnection in the interests of all users and shall exercise its responsibility in a way that provides maximum economic efficiency and gives maximum benefit to users. In particular, the competent authority shall take into account -

- (i) the need to ensure satisfactory end-to-end communication for users;
- (ii) the need to stimulate a competitive market;
- (iii) the need to promote co-operation with counterparts in other States;
- (iv) the principles of non-discrimination (including equal access) and proportionality;
- (v) the need to maintain and develop universal service.

For this purpose the competent authority shall issue regulations which shall provide for:

- (a) the circumstances in which the right to interconnection may be exercised and the objective, transparent and non-discriminatory conditions and limitations upon the exercise of such right;
- (b) the technical and financial conditions of interconnection and the legal nature of interconnection agreements;
- (c) the obligation to notify interconnection agreements to the authority and the conditions under which such notification is to be made, including any matter related to the publicity or confidentiality of such agreements or of parts thereof;
- (d) the exercise of power by the authority to modify interconnection agreements in the public interest;
- (e) the principles upon which charges for interconnection should be based and the method of accounting to be used;
- (f) the obligation of authorised providers or of particular classes thereof to publish an interconnection offer and the principles upon which the conditions of such offer shall be based;
- (g) the way in which disputes related to interconnection shall be resolved.

**26.** (1) Every authorised provider shall allow the Authority, and every person authorised by it for the purpose, such access to any premises, installation, files, accounting records and any information under the control of the provider as may be reasonably required by the Authority and as may be requested to take place during normal business hours for the purpose of investigating any matter relevant to compliance with this Act, any regulations made thereunder, any terms and conditions of the licence or any directive issued or given by the Authority or in order to ensure such compliance.

Inspection and supervision.  
*Amended by:*  
*XVIII. 2000.31;*  
*XXVII. 2002.58.*

(2) The Authority shall give fifteen days notice to the authorised provider of any intention to act under subarticle (1), giving reasons for the request:

Provided that this subarticle shall not apply where the access to an installation is urgently necessary to prevent or remove an interference with a telecommunications service or damage to persons or property.

(3) Where an authorised provider wishes to have any information provided by him to be treated as confidential by the Authority on the grounds that it contains information revealing the commercial strategy of the authorised provider or other information the disclosure of which would unduly interfere with the right to privacy of third parties, it shall submit such information under seal and request the Authority to treat it as such. The Authority shall

comply with such a request unless it considers the confidentiality requested to be impracticable in the light of the requirements and the fundamental principles of this Act or of any regulations made thereunder or of any other law.

Resolution of disputes by Authority.  
*Amended by: XVIII. 2000.31; XXVII. 2002.58.*

**27.** (1) Where a dispute arises between an authorised provider and another authorised provider or any other person relating to a telecommunications system or service, the matter may be referred to the Authority by any of such persons.

(2) Upon receipt of any reference as aforesaid, or upon otherwise becoming aware of any such dispute which it believes ought to be investigated, the Authority shall notify the parties concerned that the matter is under investigation allowing them a reasonable time within which to produce the relevant information and make their representations.

(3) Having duly examined and considered the facts placed before it and such other information as it may require, the Authority may issue such directives as are within its powers and as it may deem appropriate.

#### **4. Interests of Users and Subscribers**

Reference of complaints to Authority.  
*Amended by: XVIII. 2000.31.*

**28.** (1) It shall be the duty of the Authority to protect the interests of the subscribers and users of a telecommunications service.

(2) Every person who subscribes, or wishes to subscribe to or is a user of a telecommunications service provided by an authorised provider may, by application in writing, request the Authority to investigate any complaint made by him and contained in the said application, concerning the quality of the service provided by the authorised provider, or the terms and conditions under which such service is provided or with respect to any apparatus provided or made available to him or acquired by him in connection with the said service.

(3) The complaint shall be addressed to the Authority and shall contain a brief statement containing all the relevant facts.

(4) The complaint shall be communicated to the authorised provider complained against, who shall be given an opportunity to make representations within a reasonable time as may be appropriate in the circumstances.

(5) The Authority shall then examine the complaint, and such other facts as it may deem necessary for reaching a conclusion and may take such measures and issue such directives as are within its powers as it may deem appropriate.

Suspension of service to subscribers.  
*Amended by: XVIII. 2000.31.*

**29.** (1) Except as provided by or under this Act, a subscriber or other user of a telecommunications service may not be denied a service provided by an authorised provider, or have any such service discontinued.

(2) A service as aforesaid may be denied or discontinued for a reason allowed by regulations made under this Act or contained in

the terms and conditions of service submitted to and approved by the Authority and the right of an authorised provider to discontinue a service shall in all cases be exercised in a proportionate manner.

**30.** A term or condition for the provision of a telecommunications service, even if agreed to by a subscriber or user, shall be null and without effect to the extent that it is inconsistent with any provision of this Act or of any regulations made thereunder or with the terms and conditions of the authorisation on the strength of which the service is provided.

Nullity of certain conditions.  
*Amended by:*  
*XVIII. 2000.31.*

### 5. Further Functions of the Authority

**31.** (1) No apparatus may be offered for sale, provided, installed or used by any person unless it conforms to such technical standards and specifications as may be prescribed.

Standards and testing of apparatus.  
*Amended by:*  
*XVIII. 2000.31.*

(2) The Authority may at any time require an apparatus to be tested at such place and time and in such manner as it may direct.

**32.** (1) No person shall carry out any works or perform any other act, or be entrusted to carry out such works or perform such act, for the construction, repair, maintenance, alteration or control of any telecommunications system or apparatus unless he possesses such qualifications to carry out such works or perform such act as may be prescribed.

Qualifications.  
*Amended by:*  
*XVIII. 2000.31.*

(2) Regulations prescribing the qualifications aforesaid may also specify the tests to be employed for ascertaining whether a person possesses the necessary qualifications.

**33.** (1) The Authority shall carry out such research, studies and consultations as may be necessary for any one or more of the following purposes:

Monitoring of telecommunications development.  
*Amended by:*  
*XVIII. 2000.31.*

- (a) monitoring local and international developments in the field of telecommunications;
- (b) identifying means of improving efficiency, standards and market competition in telecommunications;
- (c) co-operating with foreign telecommunications authorities;
- (d) advising the Minister in the formulation of policies in the field of telecommunications and in respect of training in telecommunications.

(2) With the concurrence of the Minister, the Authority may do all such things as he may deem necessary or appropriate to ensure adequate and efficient telecommunications services in Malta.

### 6. Appeals

**34.** (1) There shall be a Telecommunications Appeals Board, consisting of three members, of whom one, who shall be the chairperson, shall be a person who has practised as an advocate for not less than seven years.

Telecommunications Appeals Board.  
*Amended by:*  
*XVIII. 2000.31;*  
*XXVII. 2002.58.*

(2) The members of the Board shall be appointed by the

Minister for a period indicated in their letter of appointment, and may be so appointed for further periods as the Minister may deem appropriate.

Cap. 12.

(3) A member of the Board may be challenged or abstain for any of the reasons for which a judge may be challenged or abstain in accordance with article 734 of the Code of Organization and Civil Procedure. In any such case the Minister shall appoint a person, having the qualifications of the member challenged or abstaining, to sit as a member of the Board in substitution of the said member.

(4) A member of the House of Representatives or of a Local Council shall be disqualified from being appointed or continuing to be a member of the Board for so long as he holds that office.

(5) A member of the Appeals Board may only be removed from office by the Minister on the grounds of gross negligence, conflict of interest, incompetence, or acts or omissions unbecoming a member of the Appeals Board.

(6) A member of the Board shall for a period of one year following the termination of his appointment not engage in any activity which would have been incompatible with the exercise of his functions as a member of the Board.

(7) The Minister shall also designate a person to serve as secretary to the Board and such person serve in such capacity in accordance with ethical standards which form part of public service values.

Appeals.  
Amended by:  
*XIX. 1998.3;*  
*XVIII. 2000. 31;*  
*XXVII. 2002.58.*

**35.** (1) An appeal shall lie to the Telecommunications Appeals Board -

- (a) in accordance with article 16;
- (b) against any rejection or refusal of an application for an authorisation;
- (c) against any decision revoking an authorisation under article 22;
- (d) against any decision given by the Authority in any dispute between authorised providers under article 25;
- (e) against any decision given by the Authority on the complaint of a subscriber under article 28;
- (f) in such cases as may be prescribed.

(2) The right to appeal shall be competent to any person aggrieved by the decision, or as provided in article 16:

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

(3) An appeal to the Board may be filed on any of the following grounds -

- (a) that a material error as to the facts has been made;
- (b) that there was a material procedural error;

- (c) that an error of law has been made;
- (d) that there was some material illegality, including unreasonableness or lack of proportionality.

(4) The Board shall give reasons for its decision and shall cause such decisions to be made public omitting, if it deems it appropriate for reasons of commercial confidentiality, the names of the persons involved.

- (5) In determining an appeal under this article the Board may:
- (i) dismiss the appeal;
  - (ii) annul the decision,

and where the Board annuls the decision it may refer the matter to the Authority or the Minister (as the case may be) with a direction to reconsider it and reach a decision in accordance with the findings of the Board.

(6) The effect of a decision to which an appeal relates shall not except where the Board or the Court of Appeal, as the case may be, so orders, be suspended in consequence of the bringing of the appeal.

**36.** (1) The Board shall be competent to hear and decide any appeal made to it in accordance with the provisions of this Act and any regulations made thereunder; and subject to article 37, the decisions of the Board shall be final and binding.

Powers and procedure of the Board.  
Amended by:  
XVIII. 2000.31.

(2) For the exercise of its functions, the Board may summon any person to appear before it and give evidence and produce documents; and the chairperson shall have the power to administer the oath. The Board may also appoint experts to advise the Board on any technical issue that may be relevant to its decision.

(3) For the purposes aforesaid the Board shall have the same powers as are competent to the First Hall, Civil Court according to law.

(4) The procedure to be followed before the Board, the time within which and the manner in which an appeal to the Board is to be made shall be such as may be prescribed; and subject thereto, and to any other applicable provision of this Act, the Board may establish its own procedure.

**37.** (1) Any party to an appeal to the Board who feels aggrieved by a decision of the Board, or the Authority if it feels dissatisfied with any such decision, may on a question of law appeal to the Court of Appeal (Inferior Jurisdiction) as constituted in accordance with article 41(6) of the Code of Organization and Civil Procedure by means of an application filed in the registry of that court, in the case of an appeal by the Authority within thirty days from the date of the Board's decision, and in the case of any other person within thirty days from the date on which that decision has been notified to him.

Appeal to the Court of Appeal.  
Amended by:  
XVIII. 2000.31;  
VI. 2001.29;  
XXVII. 2002.58.  
Cap. 12.

(2) The Minister responsible for justice may by regulations under this subarticle establish the fees payable in the registry of the

court in relation to the filing of judicial acts in connection with appeals under this article:

Cap. 12. Provided that until such fees are so established, the fees contained in Schedule A to the Code of Organization and Civil Procedure shall apply.

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

## **7. Regulations**

Power to make regulations.  
Amended by:  
*XIX. 1998.3;*  
*XVIII. 2000.31;*  
*XXVII. 2002.58.*

**38.** (1) The Minister may, either on the recommendation of the Authority or on his own initiative after consultation with the Authority, or if the said Authority is not constituted, on his own initiative make regulations to give better effect to any of the provisions of this Act and in particular, but without prejudice to the generality of the above to the principles of fair competition and to open network provisions and to provide for -

- (a) the manner in which a telecommunications infrastructure or apparatus is to be installed, operated, maintained, protected or controlled;
- (b) the technical standards or specifications to be observed with respect to telecommunications infrastructure or apparatus;
- (c) the measures to be taken to ensure compliance with international and other standards or equipment used in the telecommunications industry, in particular those established by the European standardization bodies including the European Telecommunications Standards Institute (ETSI) and the European Committee for Standardization/European Committee for Electrotechnical Standardization (CEN/Cenelec) and with international standards and recommendations adopted by the International Telecommunication Union (ITU), the International Organisation for Standardization (ISO) or the International Electrotechnical Committee (IEC);
- (d) the means to be used and the measures to be adopted, whether by prohibition or otherwise, in order to ensure public and private safety and to prevent danger, damage or nuisance;
- (e) the quality and standard of telecommunications services to be provided by an authorised provider and quality of service targets;
- (f) the establishment and maintenance of an efficient assistance service for subscribers and users;
- (g) the complaint processing procedure to be adopted and implemented by authorised providers of a telecommunications service;
- (h) any matter related to the interconnection of telecommunications systems, or to collocation of



facilities between and facility or equipment sharing between authorised providers, to carrier pre-selection, to access to networks by users, subscribers or by operators of other networks, to leased lines, to access to international data networks, and to rights of way and any matter related to compensation payable in respect thereof;

- (i) any matter concerning or related to number portability, numbering plans, allocation of numbers, competition rules in the field of telecommunications, billing procedures and billing accuracy, emergency services, directory services, tariff controls, use of frequency spectrum, ownership of authorised providers, universal service obligations, licence fees payable to the competent authority, transfer, renewal and termination of licences, the conditions under which licences shall be issued, and returns and reports to be made to the competent authority;
  - (j) the regulation of telecommunications systems for the transmission or reception of satellite signals;
  - (k) the obligations of an authorised provider having a dominant market position;
  - (l) the obligations of systemless service providers;
  - (m) the regulation of cable television and cable services including the introduction of must carry rules, the obligation to make available channel capacity for public, Governmental or educational use, the setting of rates for leased access to cable networks, rate regulation, cross-ownership of cable networks and of other networks or services and the implementation of effective competition in the field of cable services;
  - (n) any matters that may be required for the purpose of complying with any international obligation of Malta;
  - (o) any matter related to the resolution of disputes arising in connection with the operation of telecommunications systems or the provision of telecommunications services including appeals from any decision.
- (2) Regulations made under this article may also -
- (a) require authorised providers to adopt cost accounting systems as may be prescribed and to keep such operational, accounting, financial, statistical and technical records as may be specified in the regulations, and to furnish to the Authority such statements, returns and other information including information about any company in which an authorised provider has a controlling interest as the Authority may require for the carrying out of its functions under this Act or as may be specified in the regulations;
  - (b) prescribe measures to be taken by authorised providers

for the purpose of ensuring the inviolability of the telecommunications transmitted and their confidentiality and the protection of privacy in relation to any telecommunications service including data protection measures and matters related to the use of information obtainable in the telecommunications sector for the purpose of direct marketing;

- (c) prescribe the measures to be taken by authorised providers as may be required to be taken by any international commitment taken, or intended to be taken by the Government;
- (d) prescribe the fees to be paid by an authorised provider for or in respect of any authorisation under this Act and the fees to be paid to the Authority for services rendered by it;
- (e) require an authorised provider to publish or cause to be published a directory of subscribers and provide for any matter relating to such directories;
- (f) provide for any matter that is to be or may be prescribed, or in respect of which regulations are to be or may be made, under any of the provisions of this Act;
- (g) authorise the Authority to impose administrative fines or sanctions upon any authorised provider acting in contravention of any provisions of this Act or of any regulations made thereunder and provide for the procedure for the imposition and enforcement of such fines which enforcement procedures may include provisions to the effect that any such fines shall constitute an executive title for the effects and purposes of Title VII of Part I of Book Second of the Code of Organisation and Civil Procedure:

Cap. 12.

Provided that any administrative fines provided for by regulations made under this article shall not exceed the sum of ten thousand liri for each offence and one thousand liri for each day during which failure to observe the provisions of this Act or of any regulations made thereunder or of any authorisation persists:

Provided further that the administrative fines stipulated in this paragraph may be increased by regulation up to a maximum of fifty thousand liri and five thousand liri for each day during which any contravention persists, respectively.

(3) Regulations made under this article may authorise the Authority to designate the services which are to be provided as universal service obligations, and to require any one or more authorised providers to provide such services.

(4) Where regulations are made under subarticle (3), the Authority shall have power to issue directives designating the

universal service obligations and requiring any one or more authorised providers to provide such services, or any one or more of them, in accordance with such terms and conditions as may be therein specified, including terms and conditions under which any one or more of such services are to be provided at no profit or at a reasonable loss to the authorised provider.

(5) Where the Authority issues a directive under subarticle (4), it may at its discretion either in the same directive or by a further directive, make provision for such funding mechanism as it may deem necessary and appropriate to ensure that, where the additional cost for the provision of universal service obligations by any one or more authorised providers is higher than the additional revenue derived therefrom by such provider or providers, the burdens resulting from the obligations aforesaid are shared fairly by all authorised providers specified as contributors in the regulations.

- (6) (a) Regulations made under this article may also delegate to the Authority the power to issue directives as it deems fit for the purpose of the implementation of any matter provided for in the said regulations.
- (b) Any directive issued by the Authority under any delegation made to it as described in paragraph (a) shall be published in the Gazette.

#### 8. Offences and Penalties

39. (1) Any person who -

- (a) provides any telecommunications service or installs or operates any telecommunications system installation or apparatus without authorisation under and in accordance with any of the provisions of this Act or in violation or breach of any condition, restriction or limitation imposed by or under this Act or in the instrument containing the authorisation; or
- (b) sells or offers for sale or provides or installs or uses any installation or apparatus which does not conform with such technical standards or specifications as are required or established by or under this Act, or which he knows, or has reasonable cause to believe, to be defective or incompatible with the services for which it was sold, provided, installed or used; or
- (c) constructs, repairs, maintains, alters or controls any apparatus or installation without having the qualifications required for that purpose by or under this Act; or
- (d) uses any telecommunications system or apparatus supplied by an authorised provider for a purpose other than that for which it was supplied, or neglects to observe instructions which are issued by an authorised provider for the proper use of the telecommunications system or apparatus or makes any improper use thereof,

Offences and penalties.

*Amended by:*  
*XVIII. 2000.31;*  
*XXVII. 2002.58.*

shall be guilty of an offence under this Act and shall be liable to a fine (*multa*) not exceeding five thousand liri and in the case of a continuing offence to a further fine (*multa*) not exceeding five hundred liri for each day during which the offence continues.

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

(3) Any person who, being a person employed or detailed for duty with or attached to any authorised provider -

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

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

(4) Any person who assaults or obstructs or impedes any officer, employee or agent of an authorised provider in the exercise of his duties with such authorised provider shall be guilty of an offence under this Act, and shall, on conviction, be liable to a fine (*multa*) not exceeding one thousand liri or to imprisonment for a period not exceeding one month, or to both such fine and imprisonment.

(5) Without prejudice to the foregoing provisions of this article, any person who contravenes or fails to comply with any provision of this Act or of any regulations made or direction given thereunder shall be guilty of an offence against this Act, and shall, on conviction, be liable to a fine (*multa*) not exceeding one thousand liri and in case of a continuing offence to a further fine (*multa*) not exceeding two hundred liri for every day during which the offence continues.

**40.** (1) No proceedings for any offence under this Act other than offences under article 39(1)(d) shall be instituted without the consent of the Authority or at its request.

Proceedings for an offence.  
Amended by:  
XVIII. 2000.31  
XXVII. 2002.58.  
Cap. 9.

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

### PART III

#### Savings and Transitory Provisions

**41.** (1) All regulations and other subsidiary legislation made under the Telemalta Corporation Act\* shall remain in force and shall have effect as if made under this Act and shall for all effects and purposes be treated accordingly.

Savings.  
Amended by:  
XIX. 1998.3;  
XVIII. 2000.31.  
Cap. 250.

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

Cap. 250.

**42.** (1) No person shall use or permit the use or suffer to be used any public telecommunications system or apparatus in connection with the provision of a call-back service or do anything so as to facilitate or promote the use of any public telecommunications system or apparatus in connection with the provision, operation or use of a call-back service.

Prohibition of call-back service.  
Added by:  
XIX. 1998.3.  
Amended by:  
XVIII. 2000.31.

(2) For the purpose of this article, "call-back service" means a service offered by any person who is not an authorised provider which secures for any person in Malta access to that service, by means of conveyance over a public telecommunications system, to the equivalent of the public telecommunications system or a public telecommunications service in another country or territory, by whatever technical means, and which enables that person to make use of that system or service as if established in that country or territory; and includes any service, whether automated or not, by which the access aforesaid is obtained.

(3) Subarticle (1) shall not apply to anything done by an

---

\*Repealed by this Act.

authorised provider permitted by or in accordance with an authorisation or regulation under this Act.

(4) The provisions of this article shall cease to have effect in whole or in part or in respect of any specified type of call-back service as from such day as the Minister may establish by order in the Gazette.

Licences issued under Telemalta Corporation Act. Cap. 250.  
*Amended by: XVIII. 2000.31.*

**43.** (1) Any licence or authorisation lawfully issued or granted before the 2 January, 1998, under the Telemalta Corporation Act<sup>†</sup> and in force on the said date, shall, until such date continue to have effect as is provided by or under the said Act and, thereafter, shall continue to remain in force and to have effect in respect of anything that requires authorisation under this Act, as if they had been issued or granted under this Act, with such modification, adaptations and limitations as may be necessary or appropriate for that purpose, and shall be subject to the provisions of this Act as if they had been so issued or granted.

(2) Without prejudice to the foregoing provisions of this article, with effect from the 2 January, 1998 -

- (a) the Authority, as successor to Telemalta Corporation, shall acquire all rights, including rights of action, and assume all obligations and liabilities of the said Corporation arising from or related to any licence or authorisation, and relative agreements, kept in force under this article; and
- (b) all fees due under or in respect of any such licence or authorisation, and falling due on or after the 2 January, 1998, shall become due and be payable to the Authority.

(3) Any licence or authorisation lawfully issued, granted or kept in force between the 2 January 1998 and the 30 June 2000 under this Act shall after the 30 June 2000 continue to have effect as is provided by or under this Act subject to the provisions of this Act as amended from time to time and with such modifications, adaptations, and limitations a may be necessary or appropriate for the purpose.

Exclusive privilege not to remain permissible.  
*Added by: XVIII. 2000.31.*

**44.** (1) An authorisation to install or operate a telecommunications system or to provide a telecommunications service may, only until the 31st December, 2002 and subject to the following provisions of this article, be granted with exclusive privilege.

(2) No exclusive privilege may be granted or shall have effect beyond the 31st December of the year 2002.

(3) As from the day when the Minister may by order appoint the exclusive privilege of operating any telecommunications system or of providing any telecommunications services as may have been granted in or under any law, licence, authorisation, contract or other instrument whether before or after the coming into force of this article shall cease to exist and different dates may be appointed in respect of different categories of telecommunications

services or systems.

(4) The provisions of this article shall have effect notwithstanding the provisions of any law, licence, authorisation, contract, agreement or other instrument and in the case of conflict between the provisions of this article and any other law or anything done thereunder the provisions of this article shall prevail.

(5) The coming into effect of the provisions of subarticle (3) or of anything done in pursuance thereof under this article and the variation of any licence or contract in pursuance of article 38 -

- (i) shall not be construed as constituting the taking or deprivation of property or of possessions or an interference with the peaceful enjoyment of possessions for the purposes of any law passed prior to this Act;
- (ii) shall not be construed as constituting the termination of a licence;
- (iii) shall not be interpreted as constituting a tort, a breach of contract or as giving rise to any action for damages or other payment to the person who ceases to hold an exclusive privilege:

Provided that nothing in this subarticle shall be construed as implying that had it not been for the provisions of this subarticle any person would have had a right of action based on the taking or deprivation of property or possessions or on an interference with the peaceful enjoyment of possessions, or on tort or breach of contract or would have had a right of action for any payment in respect of the termination of any exclusive privilege or that such termination would have amounted to the termination of a licence.

(6) In any event, any person who loses any exclusive privilege in pursuance of this article shall be deemed, even for the purposes of the proviso to subarticle (1) of article 37 of the Constitution if the said article 37 were applicable, to have been adequately compensated for any such loss by the acquisition of the opportunity to provide telecommunications services and operate telecommunications systems under the conditions as are provided for in this Act and as described in the Schedule to this Act and that Parliament has deemed this to be a special case where it is appropriate in the national interest to determine the above criteria in the determination of the compensation, if any, that is payable were the said article 37 of the Constitution applicable to the case.

**45.** (1) Notwithstanding the provisions of any other law, it shall be the duty of the competent authority to make in a proportionate manner and, after consulting the authorised provider or providers concerned such variations of each licence to an authorised provider issued before the 1st March, 2000 and to each contract between it and an authorised provider or between authorised providers entered into before the 1st March, 2000 as appears to the competent authority to be necessary and appropriate for the purpose of implementing the principles of competition and open network provisions in telecommunications and for the

Duty of competent authority to make variations to licences and contracts.  
Added by:  
XVIII. 2000.31.

purpose of ensuring compliance with the purposes of this Act and any regulations made thereunder.

(2) When the competent authority makes variations to a contract or licence in pursuance of subarticle (1) it may also make such other variations to that contract or licence of a supplemental, incidental, consequential or transitional nature as it considers appropriate.

(3) Any variation to a licence or contract made in pursuance of subarticle (1) may be made with retrospective effect as from the date of the coming into force of this article.

(4) Any variation to a licence or contract made under this article shall be made by means of notice served on the authorised provider or providers concerned and shall be published in such a manner as the competent authority may deem appropriate.

(5) The decision of the competent authority to make a variation to a licence or contract in pursuance of this article shall state the reasons upon which the decision is based.

Temporary power  
of the Minister to  
exercise functions  
of the Authority.  
Added by:  
XVIII. 2000.31.

**46.** (1) Notwithstanding any other provision of this Act, upon the coming into force of this article and for a period of six months thereafter, the Minister may issue to a designated company an authorization under Part II of this Act including terms and conditions conforming to the provisions of this Act, modify any authorization, contract or other instrument in respect of the operation of a telecommunications system or the provision of a telecommunications service, whether between Government or any public authority and a designated company or between designated companies, in force on the date of the coming into force of this article, for the purpose of implementing the provisions of this Act, and provide for all such matters as he may deem appropriate for the purpose of providing for the implementation of the provisions of this Act; and any instrument containing such authorization, modification and other matters referred to above shall have full force, effect and validity.

(2) In this subarticle "designated company" means one or more companies holding an authorization to provide a telecommunications service or to operate a telecommunications system designated as such by the Minister for the purposes of this article by notice published in the Gazette.

(3) Nothing in this article shall be construed as preventing the Authority from exercising the powers and functions granted to it by this Act during the period when the same powers and functions may also be exercised by the Minister.

(4) Any authorization, modification or other instrument made by the Minister in pursuance of subarticle (1) above shall, as soon as possible, be laid on the Table of the House.

Transitory  
provisions.  
Added by:  
XVIII. 2000.31.

**47.** The repeal of articles 39, 40, 41 and 42 shall be without prejudice to the validity and enforcement of any transfer of any rights, duties, obligations, assets, property of any description as well as any ancillary right, including hypothecs, privileges,



pledges, suretyships and other rights securing any other right or obligation that have been transferred or acquired before the coming into force of this article.

**48.** (1) Telecommunications systems and installations of the State established to satisfy the exigencies of defence or public security are exempt from the provisions of this Act.

Exemption from the provisions of this Act.  
Added by:  
XVIII. 2000.31.

(2) The Prime Minister may by order published in the Gazette exempt from the provisions of this Act any installation or telecommunications system belonging to a Government Department or to a body established by law and used for its own purposes and in issuing such an exemption the Prime Minister may also impose conditions thereto as he deems fit.

## SCHEDULE

(Article 44)

Added by:  
XVIII. 2000.31.

### **National Plan for the Reform of the Telecommunications Sector**

#### **I. Background**

In the first part of the year 2000 Government held discussions and had exchanges of correspondence with the three main operators in the telecommunications sector on the liberalisation of the telecommunications market in Malta.

Government intends to take the necessary measures to ensure that existing monopolies are removed within a realistic timeframe. It is aware of the fact that in certain instances monopolies were used to create hurdles for investors who wanted to develop new services. It considers that this was greatly detrimental to Malta's economy and has dampened the rate of development in this area which in other countries has experienced exponential growth in recent years.

In other instances monopolies resulted in an unfair treatment of the user not only through the limiting of services and the provision of lower quality services, but also through a pricing regime which generated very high profits to the detriment of the consumer and of the development of the economy in general.

Such profits and the absence of competition in the telecommunications market increase the costs of production in Malta, cause loss of opportunity and decrease competitiveness in the international market.

Government intends to create an environment which not only redresses the above but which will also be conducive to investment. The Administration feels that this is required to build the communications structure which is today a vital element for economic growth.

After due consideration, Government has therefore decided to proceed with legislative measures intended to reform the telecommunications market in a manner based on a balance between liberalisation, efficiency and service to the public.

Government considers that the reform package is advantageous both to the public and to the three current operators who will enjoy many opportunities to enter new markets as a result of liberalisation.

## **II. The Reform Package**

Government is intent to enact a legislative framework to make the proposed reform possible and to put in place an effective regulatory regime that would have the capability and clout to ensure the maintenance of a healthy and competitive environment in the telecommunications market.

Government has given due consideration to all proposals communicated to it by the three operators of networks and services in the sector and it is now in a position to determine the following liberalisation time frame:

1. All telecommunications services, other than fixed telephony, mobile telephony, international gateway and cable television, will be liberalised from the date when this Schedule comes into force.

2. The present monopoly in mobile telephony will end immediately when Maltacom will be licensed to enter the mobile telephony market. No additional mobile licences will be issued during the period ending 31 December 2002. The government will consider the issue of a third operator in 2003 and a third licensee would therefore not be expected to be in place before 1 January 2005.

3. The cable television market is to be liberalised on 1 June 2001.

4. International gateway services, including those for data services, will be liberalised on 1 January 2003.

5. Fixed telephony services will be liberalised on 1 January 2003.

## **III. Measures concerning Maltacom p.l.c.**

As envisaged when the Competition Act was enacted some years ago, Government intends to lift the temporary transitional measures by which Maltacom was exempted from the provisions of the Competition Act.

Between the date when this Schedule comes into force and 31 December 2002, and subject to the liberalisation time scale provided for above, Maltacom or any of its subsidiaries will be licensed to provide, on a non-exclusive basis, all telecommunications services which Maltacom currently provides and which are covered by Maltacom's existing licence, provided these are not limited by any other current licence or agreement.

Maltacom or its subsidiaries will immediately be guaranteed a licence to provide the following telecommunications service:

- Public fixed telecommunications systems and services;
- Fixed wireless telecommunications systems and services;

- Public mobile telecommunications systems and services;
- Radio paging systems and services.

Because of the change in the public mobile operating scenario, Maltacom will be required to dispose of its shares in Vodafone Malta Limited within six months from the date when its subsidiary first provides mobile telephony services.

Given that in this competitive scenario, Maltacom will need to operate in the most efficient manner, Government will enter into discussions with Maltacom with a view to providing for and assisting it in the carrying, retraining, redeployment or early retirement of any staff complement surplus beyond that envisaged in the IPO document of the 8 June 1998.

Government considers that although some aspects of the introduction of a liberalised telecommunications scenario will not benefit Maltacom, in other areas the company will be a clear beneficiary whilst the situation will not change significantly in some other areas. The Government is convinced that Maltacom will be a net beneficiary from liberalisation.

The areas in which the Government considers that Maltacom will lose are the following:

- a. The monopoly on fixed telephony services which at present runs until 2010 will be replaced by one lasting until the 31 December, 2002;
- b. International gateway services, where again a monopoly until 2010 will be substituted by one lasting until the 31 December 2002;
- c. The introduction of the possibility of having more than the present three companies providing data services.

In this regard one should also bear in mind that had Malta continued with the present scenario, Government would have had to ensure that monopolistic positions will not be used to retain price levels for any services that are not internationally comparable.

Government considers that Maltacom stands to gain from the new regime in the following ways:

- a. The immediate acquisition of an effective mobile telephony licence in replacement of the non-effective one enjoyed at present, thus launching the company into this telecommunications sector, that provides far greater opportunities for growth, well before the termination of the existing Vodafone monopoly in 2009;
- b. The possibility to provide cable television services before the termination of the existing Melita Cable monopoly in 2006;
- c. An expanded market as a liberalised regime generates new services and new users;
- d. The substitution of an unclear regulatory regime with a

strengthened regulatory framework.

It is considered that of the above, the immediate entry into the mobile telephony market and the possibility of entry into the cable television market in the very near future are huge advantages which will be beneficial both in the short and in the long term and which will enable Maltacom to become a total telecommunications company instead of being restricted to the fixed telephony technology whose growth is expected to be limited.

In any case one should also not overlook the fact that changes in the telecommunications licensing regime in Malta were envisaged in the Initial Public Offering (IPO) document issued to launch the partial privatisation of Maltacom in 1998. In particular, it was stated in that document that:

"The Regulator and Maltacom have entered into a licence agreement on the 2nd January 1998 (the "Licence") which grants Maltacom the exclusive right to provide, *inter alia*, fixed line national and international voice telephony until 31st December 2010" (p 49 para 1, IPO).

"Under the Licence, Maltacom has the exclusive right until 31st December, 2010 to provide national and international voice telephony and related value added services; national and international non-voice services; resale of telecommunications services; public and private phone card services; ISDN; broadband telecommunications services over a public network; and services rendered through all types of public cordless terminal mobility technology and wireless local loop technology including DECT. Such services can be provided over fixed lines or by any other non-mobile means" (p 51 para 4, IPO).

#### **"World Trade Organisation**

On the 15th February 1997, 69 WTO member countries (the "signatories") agreed to open their markets to competition in basic telecommunications services from dates specified with respect to each signatory. Since then the total number of signatories has increased to a present total of 72. The agreement which the signatories were required to ratify by the 30th November 1997 and which has come into effect on 5th February 1998 requires that the signatories allow foreign telecommunications service providers to offer their services in the signatories' countries, as well as to purchase shares in telecommunications companies operating in that country, in accordance with specific commitments to be implemented within the agreed timetable. Although Malta is not a signatory to this agreement, as a WTO member it has the right to participate in future rounds of negotiations regarding trade liberalisation in this sector, which negotiations are stipulated in the WTO Agreement to start by 1st January 2000" (p 52 para 7, IPO)

#### **"European Union**

On the 1st January 1998 the European telecommunications market was largely opened to competition as a result of the successive adoption by the European Union ("EU") of legal measures requiring the 15 European member countries

progressively to open up their national telecommunications markets to competition. Competition covers all telecommunications market sectors, with specific measures being adopted for value-added services, satellite services, mobile services and cable television services, culminating with the requirement on the European member countries to remove any exclusive rights granted for voice telephony services by 1st January 1998. In addition, regulatory rules on areas such as interconnection, licensing and customer related issues such as contracts and billing have also been adopted. Certain countries were permitted to apply to the European Commission for a derogation for specified time for certain of the market-opening requirements.

Accession to the EU would require applicant countries to adopt all EU rules, including those on telecommunications, prior to or within a specified time from legal accession to the EU. In addition, closer relations can be sought which do not constitute accession. Malta may choose to negotiate an accession or other bilateral agreement with the EU under which it may be required to adopt certain EU rules such as those in relation to telecommunications. In either case the maintenance of Maltacom's exclusivity may be called into question. See Business-Competition" (p 53 paras 2 and 3, IPO)

"In addition, any requirement imposed on Malta to lift the exclusivity period granted to the Company as a result of the adoption by Malta of specific provisions of European Union law on telecommunications in accordance with any accession or other bilateral agreement prior to 2010 may adversely affect the Company's competitive position. See "Regulation - International Regulation - European Union" and Annex A - "The Republic of Malta". Although the Company believes that any such shortening of its exclusivity period will require Government compensation the effect of any such action could adversely affect the Company's results of operations and further prospects" (p.33 para 5, IPO).

#### **IV. Measures concerning Melita Cable p.l.c.**

Melita or one of its subsidiaries will immediately be guaranteed a licence to provide the following telecommunications services:

- Cable television services;
- Telecommunications transport in respect of data services;
- Leased line data services;
- Data services over a cable television system;

Furthermore Melita or one of its subsidiaries will also be immediately authorised to provide public fixed telecommunications systems and services (including international gateway services) as from 1 January 2003.

The Internet and Other Data Networks (Service Providers) Regulations, 1999 will be modified in order to provide that the open access obligations will only apply to companies having a

dominant market position in the provision of telecommunications transport related to Internet access services.

Government considers that although Melita Cable p.l.c. will lose the privilege of exclusivity in cable television services on the 1 June 2001 it will be a beneficiary from liberalisation for the following reasons:

- a. Melita's present licence expires on the 2 July 2006 whilst under the new regulatory framework Melita will be guaranteed a renewable 10 year licence;
- b. The company's licence at present specifically prohibits the use of the cable system for the provision of telephony services. Under the new scenario the company will be given a licence to provide public fixed telecommunications services over its system as from the 1 January 2003;
- c. The company's right to provide data services, as distinct from the transmission of data signals, over its network is currently being contested. Under the new scenario this issue will be resolved;
- d. The company's right to use ducts passing under public ways is also subject to judicial determination. Under a new liberalised regime this issue will also be resolved;
- e. Under the transitional arrangements for the introduction of the new legal regime the company will be allowed to retain its monopoly in the cable television field until the 1 June 2001;
- f. Melita may not at present operate an international gateway. Melita will however be given a licence to provide these services as from 1 January 2003;
- g. The present monopolistic scenario in the telecommunications sector restricts the commercial freedom of market players to choose their fields of operation. The liberalised regime opens opportunities to provide new telecommunications services;
- h. Under current licences new services may not be introduced unless they are specifically provided for in the licence whilst the proposed licences will be sufficiently technology neutral to enable licensees to implement services compatible with next generation standards;
- i. The current unclear regulatory regime will be replaced by a strengthened regulatory structure which will have adequate resources to ensure fair competition on a level playing field between all market players;
- j. Under the current regulations on Internet access all Internet Service Providers are granted a right of open access to Melita's network. The new market regulation will provide that open access rights will become operative only when a company achieves significant market power in the field of telecommunications

transport related to Internet access;

- k. Maltacom is at present exempt from the Competition Act. This exemption will cease on the coming into force of this Schedule and all market players will be made subject to the rules of competition law;
1. Under the current regulatory regime licences tend to be viewed as sensitive commercial documents to which others may not have access. The proposed model would introduce regulatory transparency and make all licences public in the interests of regulatory certainty and non-discrimination.

**V. Measures concerning Vodafone (Malta) Limited**

Vodafone or one of its subsidiaries will be immediately guaranteed a licence to provide the following telecommunications services:

- Public mobile telecommunications systems and services;
- Data services over a mobile telephony network.

Vodafone or one of its subsidiaries will also be immediately authorised to provide international gateway services from 1 January 2003.

Because of the change in the public mobile operating scenario, Maltacom will be required to dispose of its shares in Vodafone Malta Limited within six months from the date its subsidiary first provides mobile telephony services.

Government considers that the introduction of a liberalised telecommunications scenario will result in Vodafone (Malta) Limited losing the monopoly which it enjoys in the provision of TACS and ETACS mobile services. The monopoly in other fields of cellular telephony services is currently being contested by Maltacom before the Telecommunications Appeals Board and although the Telecommunications Regulator has held that Vodafone's licence grants it the right to exclude others from the cellular mobile telephony market this question is ultimately for the Appeals Board to decide.

Government also considers that Vodafone (Malta) Limited stands to gain from the new regulatory regime in the following ways:

- a. Maltacom will be required to sell its Vodafone shares within six months from the date its subsidiary first provides mobile telephony services. This will bring to an end the very important right which Maltacom enjoys at present to acquire the majority shareholding of the company. It will also terminate the extensive rights which Maltacom as a minority shareholder has with regard to Vodafone's pricing policies and with regard to the running of key aspects of the company's business;
- b. Whilst Vodafone's present licence expires on the 10

- August 2009 and the company cannot provide services beyond that date, under the new framework the company will be granted a new 10 year licence which will be renewable for other 10 year periods;
- c. At present Vodafone is obliged to use the Maltacom infrastructure for international gateway services. The company will be licensed to provide international gateway services as from 1 January 2003;
  - d. Vodafone Malta Limited will still benefit from a duopoly situation in the mobile telephony market until the 31 December 2002 with a possibility of an extension of this situation beyond that date;
  - e. Vodafone Malta Limited's present licence only authorises the use of TACS, ETACS and GSM standards whilst the new licence will apply to any European standard. This will grant Vodafone permission to implement services compatible with next generation standards, including UMTS;
  - f. The present monopolistic scenario in the telecommunications sector restricts the commercial freedom of market players to choose their fields of operation. The liberalised regime opens opportunities to provide new telecommunications services;
  - g. The current unclear regulatory regime will be replaced by a strengthened regulatory structure which will have adequate resources to ensure fair competition on a level playing field between all market players;
  - h. Maltacom is at present exempt from the Competition Act. This exemption will cease on the coming into force of this Schedule and all market players will be made subject to the rules of competition law;
  - i. Under the current regulatory regime licences tend to be viewed as sensitive commercial documents to which others may not have access. The proposed model would introduce regulatory transparency and make all licences public in the interests of regulatory certainty and non-discrimination.

#### **VI. The way forward**

Government trusts that all operators would view the programme of change outlined above as positive. It is certain that in this new scenario all operators will recognise new opportunities to expand their operations and to continue as major players in this economic sector.

---