

Regulations made under s.9.

COMMUNICATIONS (ACCESS) REGULATIONS 2006

(LN. 2006/076)

5.6.2006

Amending enactments	Relevant current provisions	Commencement date
LN. 2011/068	rr. 5(1)(b), 6(1)(b) & (bb), (2)(a)(ii), (ab), (b)(ii)(aa), (bb) & (cc), (3), (4), (5), (6), 8, 9(3)(a), 10(2)(a) & (7), 13(2)(a), (f), (h), (i) & (j), (4), (5), (6), 14(5), 14A, 14B & Sch.	26.5.2011

EU Legislation/International Agreements involved:

Directive 2002/19/EC

Directive 2009/140/EC

ARRANGEMENT OF REGULATIONS.

Regulation

1. Title.
2. Interpretation.
3. Confidentiality of information.
4. General framework for access or interconnection.
5. Rights and obligations for access or interconnection.
6. Functions of the Authority with regard to access or interconnection.
7. Conditional access systems and other facilities.
8. *Repealed.*
9. Imposition, amendment or withdrawal of SMP obligations.
10. Transparency.
11. Non-Discrimination.
12. Accounting Separation.
13. Obligations of access to and use of specific network facilities.
14. Price control and cost accounting obligations.
- 14A. Functional Separation.
- 14B. Voluntary separation by a vertically integrated operator.
15. Publication of notice of obligations and access to information.
16. Notification to the European Commission.
17. Enforcement and Compliance.
18. Penalty for offences.

SCHEDULE

Minimum List of items to be Included in a Reference Offer for Wholesale Network Infrastructure Access, Including Shared or Fully, Unbundled Access to the Local Loop at a Fixed Location to be Published by Notified Operators With SMP

COMMUNICATIONS (ACCESS) REGULATIONS 2006

In exercise of the powers conferred on me by section 9 of the Communications Act 2006 and of all other enabling powers and in order to transpose into the law of Gibraltar Directive 2002/19/EC of 7 March 2002 of the European Parliament and of the Council on access to, and interconnection of, electronic communication networks and associated facilities, I hereby make the following Regulations.

**Subsidiary
2006/076**

Title.

1. These Regulations may be cited as the Communications (Access) Regulations 2006.

Interpretation.

2.(1) In these Regulations, except where the context otherwise requires—

“Authorisation Regulations” means the Communications (Authorisation and Licensing) Regulations 2006;

“operator” means a person providing or authorised to provide a public electronic communications network or an associated facility or both;

“Schedule” means the Schedule to these Regulations;

“SMP obligation” means an obligation imposed on a person pursuant to regulations 10, 11, 12, 13 or 14;

“SMP operator” means a person who has been found to have significant market power in a relevant market in accordance with section 38 of the Act;

“the Act” means the Communications Act 2006;

“Universal Service Regulations” means the Communications (Universal Service and Users’ Rights) Regulations 2006;

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

(2) In these Regulations the expression “access or interconnection” shall be construed as also meaning access and interconnection.

Confidentiality of information.

COMMUNICATIONS (ACCESS) REGULATIONS 2006**Subsidiary
2006/076**

3. Where the Authority is required to publish or otherwise disclose information pursuant to these Regulations, it shall act in accordance with section 6 of the Act and with any other laws on the protection of privacy and confidential business information applicable in Gibraltar.

General framework for access or interconnection.

4. Without prejudice to regulation 27 of the Universal Service Regulations and to the conditions specified in the Schedule to the Authorisation Regulations, legislative or administrative measures which oblige operators, when granting access or interconnection, to—

- (a) offer different terms and conditions to different persons for equivalent services; or
- (b) impose obligations that are not related to the actual access or interconnection services provided,

are hereby abolished.

Rights and obligations for access or interconnection.

5.(1) An operator shall have—

- (a) the right to negotiate interconnection with another operator for the purpose of providing publicly available electronic communications services;
- (b) an obligation to negotiate interconnection with another operator for the purpose of providing publicly available electronic communications services when requested to do so by another operator whether authorised in Gibraltar pursuant to the Authorisation Regulations or in a Member State pursuant to Article 4 of the Authorisation Directive.

(2) An operator shall offer access or interconnection on terms and conditions which are consistent with any obligations imposed by the Authority pursuant to Regulations 6, 7, 8 and 9.

(3) An operator who has established a public electronic communications network for the purpose of the distribution of digital television services shall have an obligation to ensure that the network is capable of distributing wide-screen television services and television programmes.

(4) An operator to whom sub-regulation (3) applies who receives and redistributes television services or television programmes to the public shall have an obligation to redistribute in wide-screen format all television services and television programmes he receives in that format.

(5) Without prejudice to regulation 19 of the Authorisation Regulations, a person who acquires information from another person before, during or after the process of negotiating access or interconnection arrangements shall—

- (a) use that information solely for the purpose for which it was supplied; and
- (b) respect at all times the confidentiality of information transmitted or stored.

(6) A person shall not pass on any information referred to in sub-regulation (5) to any other person, in particular, to any of its departments, subsidiaries or partners for whom such information could provide a competitive advantage.

(7) A person who fails to comply with sub-regulations (5) or (6) is guilty of an offence.

Functions of the Authority with regard to access or interconnection.

6.(1) The Authority shall, having regard to these Regulations and to its objectives as set out in section 19 of the Act, encourage and, where appropriate, ensure adequate access, interconnection and interoperability of services in such a way as to secure—

- (a) efficiency on the part of persons operating in electronic communications markets;
- (b) sustainable competition between such persons;
- (bb) efficient investment and innovation; and
- (c) the greatest possible benefit for end-users of public electronic communications services.

(2) Without prejudice to any SMP obligations that it may impose pursuant to regulation 9, the conditions which the Authority may set pursuant to sub-regulation (1) include conditions which—

- (a) for the purpose of securing end-to-end connectivity for the end-users of public electronic communications services provided by means of a series of electronic communications networks—
 - (i) impose obligations on a person controlling network access to any of those networks; and

COMMUNICATIONS (ACCESS) REGULATIONS 2006

- (ii) require the interconnection of the networks;
- (ab) in justified cases, and to the extent that is necessary, impose obligations on a person who controls access to end-users, to make the services interoperable; and
- (b) impose obligations on a person providing facilities for the use of application programme interfaces or electronic programme guides as the Authority considers to be necessary for securing–
 - (i) that persons are able to have access to such programme services provided in digital form as the Authority may determine; and
 - (ii) that the facility for using those interfaces or guides is provided on terms which–
 - (aa) are fair and reasonable;
 - (bb) do not involve, or tend to give rise to, any undue discrimination against any person or description of persons; and
 - (cc) that providers of digital television services and equipment co-operate in the provision of interoperable television services for disabled end-users.
- (3) *Deleted.*
- (4) *Deleted.*
- (5) Any obligation or condition imposed by the Authority pursuant to sub-regulations (1) or (2) and any modification to any such obligation or condition, shall be–
 - (a) objectively justifiable in relation to the access, interconnection or interoperability of services to which it relates;
 - (b) not such as to discriminate unduly against particular persons or against a particular description of persons;
 - (c) proportionate to what it is intended to achieve;
 - (d) in relation to what it is intended to achieve, transparent; and
 - (e) applied in accordance with the public consultation procedure and with sections 22 and 24A of the Act.

COMMUNICATIONS (ACCESS) REGULATIONS 2006**Subsidiary
2006/076**

(6) The Authority may, subject to these Regulations and to sections 13, 22 and 92 or 96 of the Act, exercise its powers on any matter concerning access or interconnection, referred to in sub-regulation (1) on its own initiative, where it appears to the Authority that a question with regard to access or interconnection has arisen and needs to be determined.

(7) The Authority shall, when exercising its powers pursuant to sub-regulation (6), seek to secure the achievement of the objectives set out in section 19 of the Act.

(8) In sub-regulation (2)–

“application programme interface” means a facility for allowing software to make use, in connection with any of the matters mentioned in sub-regulation (9), of facilities contained in other software;

“electronic programme guide” means a facility by means of which a person has access to any service which consists of–

- (a) the listing or promotion, or both the listing and the promotion, of some or all of the programmes included in any one or more programme services; and
- (b) a facility for obtaining access, in whole or in part, to the programme service or services listed or promoted in the guide;

“end-to-end connectivity” means the facility–

- (a) for different end-users of the same public electronic communications service to be able to communicate with each other; and
- (b) for the end-users of different such services to be able, each using the service of which he is the end-user, to communicate with each other.

(9) The matters mentioned in sub-regulation (8), in the definition of “application programme interface”, are–

- (a) allowing a person to have access to programme services;
- (b) allowing a person, other than a person authorised to provide an electronic communications service or an electronic communications network or a person who makes associated facilities available, to make use of an electronic communications network by means of which a programme service is broadcast or otherwise transmitted;

- (c) allowing a person to become the end-user of a description of public electronic communications service.

Conditional access systems and other facilities.

7.(1) It shall be a duty of the Authority to ensure that—

- (a) access-related conditions are applied to every person who provides a conditional access system in relation to a protected programme service; and
- (b) that those conditions make all such provision as is necessary in order to ensure compliance with the requirements contained from time to time in Part I of Annex I to the Access Directive (conditions relating to access to digital programme services).

(2) The Authority shall, by notice issued under section 12 of the Act and published on its website, set out the requirements contained from time to time in Part I of Annex I to the Access Directive.

(3) The Authority may review any conditions applied in accordance with sub-regulation (1) for the purpose of determining whether to maintain, amend or withdraw any such conditions and for these purposes it shall act in accordance with the public consultation procedure and with section 22 of the Act.

(4) The Authority shall not give effect to a proposal to amend or withdraw any of the conditions unless—

- (a) it has carried out a market analysis under section 40 of the Act for the purpose of determining whether an operator (whether individually or jointly with others) has significant market power in the relevant market;
- (b) it has determined, in consequence of that analysis, that no operator (whether individually or jointly with others) has significant market power in the relevant market; and
- (c) it is satisfied that the amendment or withdrawal will not have an adverse effect on any or all of the matters mentioned in sub-regulation (5).

(5) Those matters are—

- (a) the accessibility for end-users to radio and television broadcasts and broadcasting channels and services in respect of which the Authority has set must-carry obligations in

COMMUNICATIONS (ACCESS) REGULATIONS 2006

accordance with regulation 27 of the Universal Service Regulations;

**Subsidiary
2006/076**

- (b) the prospects for effective competition in the market for programme services provided by being broadcast or otherwise transmitted in digital form; and
- (c) the prospects for effective competition in the markets for conditional access systems and other associated facilities.

(6) The Authority shall give such notice as it considers reasonable to any person affected by any amendment or withdrawal of conditions carried out in accordance with this regulation.

(7) Conditions applied by the Authority in accordance with this regulation shall be without prejudice to any obligations which may be imposed on any person in relation to the presentation of electronic programme guides and other similar listing and navigation facilities.

(8) In this regulation “protected programme service” means a programme service the programmes included in which cannot be viewed or listened to in an intelligible form except by the use of a conditional access system.

8. *Repealed.*

Imposition, amendment or withdrawal of SMP obligations.

9.(1) Where, as a result of a market analysis carried out under section 40 of the Act, an operator is designated as having significant market power in a relevant market (an “SMP operator”) the Authority shall impose on such an operator such of the obligations set out in Regulations 10 to 14 (an “SMP obligation”) as the Authority considers appropriate.

(2) Without prejudice to sub-regulation (3), the Authority shall not impose an SMP obligation on an operator who is not an SMP operator.

(3) The Authority may, where it considers it appropriate, impose obligations for access or interconnection pursuant to—

- (a) Regulation 6(1) and (2);
- (b) regulation 7 (1);
- (c) section 31 of the Act;
- (d) section 52 of the Act;

COMMUNICATIONS (ACCESS) REGULATIONS 2006

- (e) Condition 6 in Part B of the Schedule to the Authorisation Regulations as applied by virtue of regulation 17 of those Regulations;
- (f) Regulations 23, 24 or 26 of the Universal Service Regulations;
- (g) Gibraltar laws on the processing of personal data and the protection of privacy in the electronic communications sector which place obligations on persons other than SMP operators; and
- (h) the need to ensure that Gibraltar can comply with an international agreement which is applicable to Gibraltar,

on any person, or any number or class of persons.

(4) The Authority shall, acting in accordance with section 22 of the Act, notify to the European Commission any decision to impose, amend or withdraw the obligation referred to in sub-regulation (3)(h).

(5) For the purposes of sub-regulation (4), the Authority shall not be required to notify the national regulatory authorities in the Member States pursuant to the procedure set out in section 22 of the Act.

(6) The Authority may, in exceptional circumstances, impose on an SMP operator obligations for access or interconnection other than those set out in regulations 10 to 14.

(7) The Authority shall impose such additional obligations as are referred to in sub-regulation (6) only if—

- (a) it has submitted the additional obligations to the European Commission for approval; and
- (b) the European Commission has approved the imposition of those additional obligations.

(8) An obligation imposed in accordance with the provisions of this regulation shall be—

- (a) based on the nature of the problem identified;
- (b) proportionate to what the obligation is intended to achieve;
- (c) objectively justified in the light of the objectives laid down in section 19 of the Act; and

COMMUNICATIONS (ACCESS) REGULATIONS 2006

Subsidiary
2006/076

- (d) imposed only after a public consultation procedure and a consultation under section 22 of the Act have been carried out.

Transparency.

10.(1) The Authority may impose on an SMP operator an obligation to publish, in such manner as the Authority may from time to time direct, all such information as it may direct for the purpose of securing transparency in matters related to interconnection or access.

(2) Without prejudice to the generality of sub-regulation (1), an obligation imposed by the Authority pursuant to sub-regulation (1) may require the SMP operator to publish information concerning–

- (a) the terms and conditions for access or interconnection, including any conditions limiting access to and/or use of services and applications where such conditions are allowed by Gibraltar or European Community law, including prices;
- (b) his accounting system in relation to interconnection or access;
- (c) the characteristics of his network; and
- (d) the technical specifications and interfaces necessary to ensure interoperability.

(3) An SMP operator who has an obligation to comply with this regulation shall–

- (a) provide to the Authority a copy of each of such agreements for interconnection or access as he may have entered into; and
- (b) make available a copy of any such agreement, save for such parts as may contain information on the commercial strategy of any of the parties to the agreement, to an interested party upon the request of any such party.

The Authority shall, should it be requested so to do by an interested party or should it consider it appropriate to do so, determine which parts of the agreement contain the information on the commercial strategy referred to in paragraph (b).

(4) The Authority may, in particular where it imposes obligations of non-discrimination on an SMP operator pursuant to regulation 11, require an SMP operator to publish a reference offer that is sufficiently unbundled to ensure that no person is required to pay for facilities which are not necessary for the service requested and such offer shall include–

COMMUNICATIONS (ACCESS) REGULATIONS 2006**Subsidiary
2006/076**

- (a) a description of the relevant offerings broken down into components according to market needs; and
 - (b) a description of the associated terms and conditions, including prices.
- (5) The Authority may issue a direction requiring an SMP operator to whom this regulation applies to–
- (a) make changes to a reference offer to give effect to obligations imposed pursuant to these Regulations; and
 - (b) publish the reference offer with such changes.
- (6) The Authority may specify in an SMP obligation referred to in sub-regulations (1) and (4)–
- (a) the precise information to be made available; and
 - (b) the level of detail required, including such changes to the information provided which the SMP operator intends to implement within a period of six months from the date on which the information was provided.
- (7) Notwithstanding sub-regulation (6), where, pursuant to regulation 13, the Authority has imposed an obligation on an SMP operator concerning wholesale network infrastructure access, the Authority shall require such operator to publish a reference offer containing at least the elements set out in the Schedule.

Non-Discrimination.

11.(1) The Authority may impose on an SMP operator an obligation not to discriminate unduly against particular persons, or against a particular description of persons, in matters related to interconnection or access.

(2) Without prejudice to the generality of sub-regulation (1), an obligation imposed by the Authority pursuant to sub-regulation (1) shall ensure that the SMP operator–

- (a) applies equivalent conditions in equivalent circumstances to other persons providing equivalent services; and
- (b) provides services and information to others under the same conditions and of the same quality as he provides for the purposes of his own services or for those of his subsidiaries or partners.

Accounting Separation.

12.(1) The Authority may impose on an SMP operator an obligation to maintain a separation for accounting purposes between such different matters relating to interconnection or access as the Authority may from time to time direct.

(2) The Authority may require an SMP operator to use a specific format and accounting method for the purpose of maintaining the separation referred to in sub-regulation (1).

(3) Without prejudice to the generality of sub-regulations (1) and (2), the Authority shall require an SMP operator to—

- (a) draw up accounts regarding his business activities in relation to interconnection or access;
- (b) ensure that such accounts—
 - (i) identify all elements of cost and revenue,
 - (ii) demonstrate how such cost and revenue have been calculated,
 - (iii) establish how such cost and revenue have been attributed to such activities, and
 - (iv) include an itemised breakdown of fixed assets and structural costs;
- (c) have those accounts audited by an independent auditor; and
- (d) publish such accounts.

(4) The Authority may, pursuant to sub-regulation (1), require a vertically integrated SMP operator to make transparent his wholesale prices and his internal transfer prices.

(5) Without prejudice to its general powers to require the provision of information pursuant to section 4 (1)-(3) of the Act, the Authority may require an SMP operator to provide to it such accounting records, including data on revenues received from third parties, as would, in the Authority's opinion, facilitate its task of verifying that the SMP operator concerned has complied with any obligations imposed upon him pursuant to regulations 10 or 11.

COMMUNICATIONS (ACCESS) REGULATIONS 2006**Subsidiary
2006/076**

(6) Subject to regulation 3, the Authority may publish any information that it has obtained pursuant to this regulation where it considers that the publication of such information would contribute to an open and competitive market.

Obligations of access to and use of specific network facilities.

13.(1) The Authority may impose on an SMP operator an obligation to meet reasonable requests for access to, and use of, specific network elements and associated facilities in particular where the Authority considers that the denial of such access, or the imposition by an SMP operator of unreasonable terms and conditions having a similar effect, would–

- (a) hinder the emergence of a sustainable competitive market at the retail level;
- (b) not be in the interests of end-users; or
- (c) otherwise hinder the achievement of the objectives set out in section 19 of the Act.

(2) Without prejudice to the generality of sub-regulation (1), the obligations which the Authority may impose pursuant to sub-regulation (1) may include obligations requiring the SMP operator to–

- (a) give third parties access to specified network elements, facilities or both such elements and facilities, including access to network elements which are not active and/or unbundled access to the local loop, in order, in particular, to allow carrier selection and/or pre-selection and/or subscriber line resale offer;
- (b) negotiate in good faith with persons requesting access;
- (c) maintain access to facilities already granted;
- (d) provide specified services on a wholesale basis for resale by third parties;
- (e) grant open access to technical interfaces, protocols or other key technologies that are indispensable for the interoperability of services or virtual network services;
- (f) provide co-location or other forms for the sharing of associated facilities;

COMMUNICATIONS (ACCESS) REGULATIONS 2006

**Subsidiary
2006/076**

- (g) provide specified services needed to ensure interoperability of end-to end services to users, including facilities for intelligent network services or roaming on mobile networks;
- (h) provide access to operational support systems or similar software systems necessary to ensure fair competition in the provision of services;
- (i) interconnect networks or network facilities; or
- (j) provide access to associated services, such as identity, location and presence service.

(3) The Authority may attach conditions to any obligation imposed pursuant to sub-regulation (1) for the purpose of securing–

- (a) fairness and reasonableness in the way in which requests for access are made and responded to; and
- (b) that the obligations imposed under sub-regulation (1) are complied with within the periods and at the times required by or under the conditions.

(4) When considering the obligations referred to in sub-regulation (1) and, in particular, when assessing how such obligations could be imposed in a manner which is proportionate to the objectives set out in section 19 of the Act, the Authority shall take into account, in particular, the following factors–

- (a) the technical and economic viability of using or installing competing facilities, having regard to the state of market development, taking into account the nature and type of interconnection and/or access involved, including the viability of other upstream access products, such as access to ducts;
- (b) the feasibility of the provision of the proposed access;
- (c) the initial investment made by the facility owner, taking account of any public investment made and the risks involved in making the investment ;
- (d) the need to secure effective competition in the long-term, with particular attention to economically efficient infrastructure-based competition;
- (e) any rights to intellectual property that are relevant to the proposed access; and

COMMUNICATIONS (ACCESS) REGULATIONS 2006

- (f) the desirability of securing that electronic communications services are provided that are available throughout the European Community.

(5) When imposing obligations on an operator to provide access in accordance with the provisions of this regulation, the Authority may lay down technical or operational conditions to be met by the provider and/or beneficiaries of such access, where necessary to ensure normal operation of the network.

(6) An obligation to follow specific technical standards or specifications shall be in compliance with the standards and specifications referred to in section 20 of the Act.

Price control and cost accounting obligations.

14.(1) The Authority may impose on an SMP operator an obligation relating to—

- (a) such price controls as the Authority may direct in relation to matters connected with the provision of specific types of access or interconnection to the relevant network, or with the availability of the relevant facilities;
- (b) such rules as the Authority may make in relation to those matters about the recovery of costs and cost orientation;
- (c) such rules as the Authority may make for those purposes about the use of cost accounting systems; and
- (d) the adjustment of prices in accordance with such directions given by the Authority as it may consider appropriate.

(2) The Authority shall not set an obligation falling within sub-regulation (1) except where—

- (a) it appears to it, from the market analysis carried out for the purpose of imposing that obligation, that the absence of effective competition in the relevant market means that there is a relevant risk of adverse effects arising from price distortion; and
- (b) it also appears to it that the imposition of the obligation is appropriate for the purposes of—
 - (i) promoting efficiency;
 - (ii) promoting sustainable competition; and

COMMUNICATIONS (ACCESS) REGULATIONS 2006**Subsidiary
2006/076**

- (iii) conferring the greatest possible benefits on the end-users of public electronic communications services.

(3) In considering the matters mentioned in sub-regulation (2)(b), the Authority may have regard to the prices at which services are available in comparable competitive markets.

(4) For the purposes of this regulation, there is a relevant risk of adverse effects arising from price distortion if the SMP operator might—

- (a) so fix and maintain some or all of his prices at an excessively high level; or
- (b) so impose a price squeeze,

as to have adverse consequences for end-users of public electronic communications services.

(5) When considering the imposition of an obligation under sub-regulation (1) and in order to encourage investment by the SMP operator, including in next generation networks, the Authority shall take into account any relevant investment made by the SMP operator in the matters to which the obligation relates and allow him a reasonable rate of return on adequate capital employed, taking into account any risks specific to a particular new investment network project.

(6) Where an SMP operator has an obligation under this regulation regarding the cost orientation of his prices, the burden of proof that charges are derived from costs, including a reasonable rate of return on investment, shall lie with the SMP operator concerned. For the purpose of calculating the cost of efficient provision of services, the Authority may use such cost accounting methods as it thinks fit. The Authority may issue a direction requiring an SMP operator to provide full justification for his prices, and may, where appropriate, require prices to be adjusted.

(7) Where the Authority imposes an obligation under this regulation which imposes rules on an SMP operator about the use of cost accounting systems in order to support price controls, the Authority shall also set, and apply to such an operator, an obligation to—

- (a) make arrangements for a description to be made available to the public of the cost accounting system used pursuant to that obligation; and
- (b) include in that description details of—

COMMUNICATIONS (ACCESS) REGULATIONS 2006

- (i) the main categories under which costs are brought into account for the purposes of that system; and
 - (ii) the rules applied for the purposes of that system with respect to the allocation of costs.
- (8) The Authority, or such a body as the Authority may designate which is–
- (a) suitably qualified for the purpose;
 - (b) independent of the operator concerned; and
 - (c) approved by the Authority for the purpose,

shall verify whether an SMP operator has complied with any cost accounting system imposed on him under this regulation.

(9) The Authority shall cause to be published annually a statement concerning compliance by an SMP operator with any cost accounting system imposed on him under this regulation.

(10) In sub-regulation (1)–

“the relevant facilities”, in relation to an SMP operator to whom this regulation applies, means the associated facilities made available by that operator in relation to a public electronic communications network; and

“the relevant network”, in relation to such an operator, means the public electronic communications network provided by that operator.

14A. Functional Separation.

(1) Where the Authority concludes that the appropriate obligations imposed under regulations 10 to 14 have failed to achieve effective competition and that there are important and persisting competition problems and/or market failures, identified in relation to the wholesale provision of certain access product markets, the Authority may, as an exceptional measure, and in accordance with the provisions of regulation 9, impose an obligation on vertically integrated operators to place activities related to the wholesale provision of relevant access products in an independently operating business entity.

(2) The business entity referred to sub-regulation (1) shall supply access products and services to all operators, including to other business entities within the parent company–

COMMUNICATIONS (ACCESS) REGULATIONS 2006

Subsidiary
2006/076

- (a) on the same timescales, terms and conditions, including those relating to price and service levels; and
 - (b) by means of the same systems and processes.
- (3) When the Authority intends to impose an obligation for functional separation, it shall submit a proposal to the European Commission that includes–
- (a) evidence justifying the conclusions of the Authority as referred to in sub-regulation (1);
 - (b) a reasoned assessment that there is no or little prospect of effective and sustainable infrastructure-based competition within a reasonable timeframe;
 - (c) an analysis of the expected impact on–
 - (i) the Authority;
 - (ii) the operator, in particular on the workforce of the separated undertaking;
 - (iii) the electronic communications sector as a whole;
 - (iv) incentives to invest in a sector as a whole, particularly with regard to the need to ensure social and territorial cohesion;
 - (v) other stakeholders including, in particular, the expected impact on competition and any potential entailing effects on consumers; and
 - (d) an analysis of the reasons justifying that this obligation would be the most efficient means to enforce remedies aimed at addressing the competition problems and/or markets failures identified.
- (4) The proposed measure referred to in sub-regulation (2) shall include information on the following matters–
- (a) the precise nature and level of separation, specifying in particular the legal status of the separate business entity;
 - (b) an identification of the assets of the separate business entity, and the products or services to be supplied by that entity;

COMMUNICATIONS (ACCESS) REGULATIONS 2006

- (c) the governance arrangements to ensure the independence of the staff employed by the separate business entity, and the corresponding incentive structure;
- (d) rules for ensuring compliance with the obligations;
- (e) rules for ensuring transparency of operational procedures, in particular towards other stakeholders; and
- (f) a monitoring programme to ensure compliance, including the publication of an annual report.

(5) Following the European Commission's decision on the proposed measure taken in accordance with Article 8 (3) of the Access Directive, the Authority shall conduct a co-ordinated analysis of the different markets related to the access network in accordance with the procedure set out in section 40 of the Act. On the basis of its assessment, the Authority shall impose, maintain, amend or withdraw obligations, in accordance with the provisions of the Act.

(6) An operator on which functional separation has been imposed pursuant to this regulation may be subject to—

- (a) any of the obligations identified in regulations 10 to 14 in any specific market where it has been designated as having significant market power in accordance with section 40 of the Act;
- (b) any other obligation authorised by the European Commission in a decision it has taken pursuant to Article 8 (3) of the Access Directive.

14B. Voluntary separation by a vertically integrated operator.

(1) Operators which have been designated as having significant market power in one or several relevant markets in accordance with section 40 of the Act, shall notify the Authority of their intention to transfer their local access network assets or a substantial part thereof to a separate legal entity under different ownership, or to establish a separate business entity in order to provide to all retail providers, including its own retail divisions, fully equivalent access products.

(2) The notification referred to in sub-regulation (1) shall be made in advance and with sufficient time to allow the Authority to assess the effect of the intended transaction.

COMMUNICATIONS (ACCESS) REGULATIONS 2006

Subsidiary
2006/076

(3) Operators shall also inform the Authority of any change in the intended transaction referred to in sub-regulation (1) as well as of the final outcome of the process of separation.

(4) The Authority shall assess the effect of the intended transaction on existing regulatory obligations.

(5) For the purpose referred to in sub-regulation (3), the Authority shall conduct a co-ordinated analysis of the different markets related to the access network in accordance with the procedure set out in section 40 of the Act.

(6) On the basis of its assessment, the Authority shall impose, maintain, amend or withdraw obligations in accordance with the provisions of the Act.

(7) The legally and/or operationally separate business entity may be subject to—

- (a) any of the obligations identified in regulations 10 to 14 in any specific market where it has been designated as having significant market power in accordance with section 40 of the Act;
- (b) any other obligation authorised by the European Commission in a decision it has taken pursuant to Article 8 (3) of the Access Directive.

Publication of notice of obligations and access to information.

15.(1) The Authority shall ensure the publication of a notice setting out the obligations which have been imposed pursuant to these Regulations and such notice shall include information on where copies of a statement of the obligations can be obtained.

(2) When the Authority amends or revokes any obligations imposed by it, sub-regulation (1) shall apply accordingly.

(3) The notice referred to in sub-regulation (1) shall identify the specific product, service and geographical markets in respect of which the specific obligations are imposed.

(4) Subject to regulation 3, the Authority shall ensure that up-to-date information in relation to the application of these Regulations is made publicly available in a manner that guarantees all interested parties easy access to that information.

(5) The Authority shall send to the European Commission a copy of any information published in accordance with this regulation.

Notification to the European Commission.

16.(1) The Authority shall notify to the European Commission–

- (a) the name of every operator who has been designated as an SMP operator pursuant to these Regulations; and
- (b) the obligations imposed upon such operators pursuant to these Regulations.

(2) The Authority shall notify to the European Commission any changes made to any of the matters set out in sub-regulation (1).

(3) The Authority shall make the notification referred to in sub-regulation (2) as soon as is practicable after the change is made.

Enforcement and Compliance.

17.(1) The Authority shall monitor compliance with these Regulations.

(2) Where the Authority finds that a person has contravened an obligation, condition or requirement imposed on him under or pursuant to regulations 5 (1) (b), (2), (3) or (4), 6 (1), (2) or (3), 7 (1), 9, 10, 11, 12, 13, or 14, the Authority shall seek compliance with any such obligation, condition or requirement in accordance with the procedure set out in regulations 19 to 30 of the Authorisation Regulations.

(3) Where an obligation, condition or requirement set out in, or imposed on a person pursuant to, these Regulations forms part of general, numbering or licence condition within the meaning of regulation 17 of the Authorisation Regulations applicable to that person, a contravention of such an obligation, condition or requirement shall constitute a contravention of a condition within the meaning of regulation 17 of the Authorisation Regulations to which the procedure set out in regulations 19 to 30 of the Authorisation Regulations applies.

Penalty for offences.

18. A person guilty of an offence under any provision of these Regulations shall be liable–

- (a) on summary conviction, to a fine not exceeding level 5 on the standard scale; and
- (b) on conviction on indictment, to a fine.

SCHEDULE

Regulation 10

MINIMUM LIST OF ITEMS TO BE INCLUDED IN A REFERENCE OFFER FOR WHOLESALE NETWORK INFRASTRUCTURE ACCESS, INCLUDING SHARED OR FULLY, UNBUNDLED ACCESS TO THE LOCAL LOOP AT A FIXED LOCATION TO BE PUBLISHED BY NOTIFIED OPERATORS WITH SMP

For the purposes of this Schedule the following definitions apply:

- (a) “local sub-loop” means a partial local loop connecting the network termination point to a concentration point or a specified intermediate access point in the fixed public electronic communications network;
- (b) “unbundled access to the local loop” means full unbundled access to the local loop and shared access to the local loop; it does not entail a change in ownership of the local loop;
- (c) “full unbundled access to the local loop” means the provision to a beneficiary of access to the local loop or local sub-loop of the SMP operator allowing the use of the full capacity of the network infrastructure;
- (d) “shared access to the local loop” means the provision to a beneficiary of access to the local loop or local sub-loop of the SMP operator, allowing the use of a specified part of the capacity of the network infrastructure, such as a part of the frequency or an equivalent.

A. Conditions for unbundled access to the local loop.

1. Network elements to which access is offered covering in particular the following elements together with appropriate associated facilities:

- (a) unbundled access to local loops (full and shared);
- (b) unbundled access to local sub-loops (full and shared), including, when relevant, access to network elements which are not active for the purpose of roll-out of backhaul networks; and
- (c) where relevant, duct access enabling the roll-out of access networks.

COMMUNICATIONS (ACCESS) REGULATIONS 2006**Subsidiary
2006/076**

2. Information concerning the locations of physical access sites, including cabinets and distribution frames, availability of local loops, sub-loops and backhaul in specific parts of the access network and, when relevant, information concerning the location of ducts and the availability within ducts.
3. Technical conditions related to access and use of local loops and sub-loops, including the technical characteristics of the twisted pair and/or optical fibre and/or equivalent, cable distributors, and associated facilities and, when relevant, technical conditions related to access to ducts.
4. Ordering and provisioning procedures, usage restrictions.

B. Co-location services.

1. Information on the SMP operator's existing relevant sites or equipment locations and planned update thereof.¹
2. Co-location options at the sites indicated under point 1 (including physical co-location and, as appropriate, distant co-location and virtual co-location).
3. Equipment characteristics: restrictions, if any, on equipment that can be co-located.
4. Security issues: measures put in place by notified operators to ensure the security of their locations.
5. Access conditions for staff of competitive operators.
6. Safety standards.
7. Rules for the allocation of space where co-location space is limited.
8. Conditions for beneficiaries to inspect the locations at which physical co-location is available, or sites where co-location has been refused on grounds of lack of capacity.

C. Information systems.

Conditions for access to notified operator's operational support systems, information systems or databases for pre-ordering, provisioning, ordering, maintenance and repair requests and billing.

D. Supply conditions.

¹ Availability of this information may be restricted to interested parties only, in order to avoid public security concerns.

COMMUNICATIONS (ACCESS) REGULATIONS 2006

**Subsidiary
2006/076**

1. Lead time for responding to requests for supply of services and facilities; service level agreements, fault resolution, procedures to return to a normal level of service and quality of service parameters.
2. Standard contract terms, including, where appropriate, compensation provided for failure to meet lead times.
3. Prices or pricing formulae for each feature, function and facility listed above.