

**SECOND SUPPLEMENT TO THE GIBRALTAR
GAZETTE**
No. 3851 of 26 May, 2011

LEGAL NOTICE NO. 70 OF 2011.

INTERPRETATION AND GENERAL CLAUSES ACT

**COMMUNICATIONS ACT 2006 (AMENDMENT) REGULATIONS
2011**

In exercise of the powers conferred upon it by section 23(g)(ii) of the Interpretation and General Clauses Act, and all other enabling powers, and for the purpose of transposing into the law of Gibraltar Article 1 of Directive 2009/140/EC of the European Parliament and of the Council of 25 November 2009 amending Directive 2002/21/EC of the European Parliament and of the Council of 7 March 2002 on a common regulatory framework for electronic communications networks and services, the Government has made the following Regulations—

Title and commencement.

1. These Regulations may be cited as the Communications Act 2006 (Amendment) Regulations 2011 and come into operation on the day of publication.

Amendment of the Act.

2. The Communications Act 2006 (hereinafter referred to as “the Act”) is amended in accordance with regulations 3 to 25.

Amendments to section 2.

3. Section 2 of the Act is amended—

(a) in the definition of “access”, by inserting—

(i) the words “, including when they are used for the delivery of information society services or broadcast content services,” after the words “electronic communications services” where they appear for the first time;

(ii) the following paragraph after paragraph (c)–

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

(b) by inserting the words “ , as the same may be amended from time to time” at the end of the definition of “Access Directive”;

(c) by inserting the following definition after the definition of “Access Directive”–

“Access Regulations” means the Communications (Access) Regulations 2006;

(d) by substituting the following definition for the definition of “associated facility”–

““associated facility” means an associated service, physical infrastructure and other facility or element associated with an electronic communications network and/or an electronic communications service which enable and/or support the provision of services via that network and/or service, or have the potential to do so, and include–

(a) buildings or entries to buildings;

(b) building wiring;

(c) antennae;

(d) towers and other supporting constructions;

(e) ducts, conduits, masts, manholes and cabinets;”;

(e) by inserting the following definition after the definition of “associated facility”–

““associated service” means those services associated with an electronic communications network and/or

electronic communications service which enable and/or support the provision of services via that network and/or service, or have the potential to do so, and include–

- (a) number translation or systems offering equivalent functionality;
 - (b) conditional access systems;
 - (c) electronic programme guides;
 - (d) other services such as identity location and presence service;”;
- (f) by inserting the words “ , as the same may be amended from time to time” at the end of the definition of “Authorisation Directive”;
- (g) by inserting the following definition after the definition of “Authorisation Directive”–

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

- (h) by inserting the following definitions after the definition of “Authority”–

““BEREC” means the Body of European Regulators for Electronic Communications established under Regulation (EC) No 1211/2009 of the European Parliament and the Council of 25 November 2009 establishing the Body of European Regulators for Electronic Communications (BEREC) and the Office, as the same may be amended from time to time;

“call” means a connection established by means of a publicly available electronic communications service allowing two-way voice communication;”;

(i) by inserting the words “, including network elements which are not active” after the words “routing of the signals” in paragraph (b)(ii) of the definition of “electronic communications network”;

(j) by inserting the words “ as the same may be amended from time to time” at the end of the definition of “Framework Directive”;

(k) by inserting the following definition after the definition of “general authorisation”–

““harmful interference” means interference which endangers the functioning of a radio navigation service or of other safety services or which otherwise seriously degrades, obstructs or repeatedly interrupts a radiocommunications service operating in accordance with applicable international, European Union or Gibraltar regulations;”;

(l) by inserting the words “ as the same may be amended from time to time” at the end of the definition of “Privacy Directive”;

(m) by inserting the following definition after the definition of “Privacy Directive”–

“Privacy Regulations” means the Communications (Personal Data and Privacy) Regulations 2006;”

(n) by substituting the words “electronic communications services available to the public which support the transfer of information between network termination points” for the words “publicly available electronic communications services” in the definition of “public electronic communications network”;

(o) by substituting the following definition for the definition of “local loop”–

““local loop” means the physical circuit connecting the network termination point to a distribution frame

or equivalent facility in the fixed public electronic communications network;”;

- (p) by substituting the following definition for the definition of “publicly available telephone service”–

““publicly available telephone service” means a service available to the public for originating and receiving, directly or indirectly, domestic and/or international calls through a number or numbers in Gibraltar’s Numbering Plan or in an international telephone numbering plan;”;

- (q) by substituting the following definition for the definition of “Specific Directives”–

““Specific Directives” means the Access Directive, the Authorisation Directive, the Universal Service Directive and the Privacy Directive as the same may be amended from time to time;”;

- (r) by inserting the following definition after the definition of “Specific Directives”–

““spectrum allocation” means the designation of a given frequency band for use by one or more types of radiocommunications services, where appropriate, under specified conditions;”;

- (s) by inserting the words “, located in Gibraltar and in a Member State or in more than one Member State” at the end of the definition of “transnational market”;

- (t) by inserting the words “as the same may be amended from time to time” at the end of the definition of “Universal Service Directive”;

- (u) by inserting the following definition after the definition of “Universal Service Directive”–

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

Amendment to section 4.

4. Section 4 of the Act is amended by inserting the following subsection after subsection (1)–

“(1A) The information that the Authority may require a person to produce under subsection (1) shall include–

- (a) information concerning future network or service developments that could have an impact on the wholesale services that such a person makes available to competitors;
- (b) where the person is a person with significant market power on a wholesale market, information on accounting data on the retail markets that are associated with that wholesale market.”.

Amendments to section 18.

5. Section 18 of the Act is amended–

(a) by inserting the following paragraph after paragraph (a) in subsection (3)–

“(aa) act in an independent, impartial, transparent and timely manner;”;

(b) by inserting the following paragraph after paragraph (c) in subsection (3)–

“(cc) support goals, opinions and common positions adopted by BEREC when adopting its own decisions;”;

(c) by inserting “without prejudice to any provisions regarding the allocation of radio frequencies,” at the beginning of paragraph (e) in subsection (3); and

(d) by inserting the following subsection after subsection (3)–

“(3A) The Government shall ensure that the Authority is provided with sufficient financial and human resources, in the reasonable opinion of the Government, to enable the Authority to perform its functions under this Act and to do all things necessary for, or ancillary or reasonably incidental to, the performance of such functions.”.

Amendments to section 19.

6. Section 19 of the Act is amended–

(a) in subsection 2(a)(i) by inserting “elderly users and users with special social needs” after the words “disabled users”;

(b) in subsection 2(a)(ii) by inserting “, including the transmission of contents; and” after the words “communications sector”;

(c) by deleting subsection 2(a)(iii);

(d) in subsection 2(b) by substituting the following sub-paragraph for sub-paragraph “(b)(iii)”–

“(iii) working with the regulatory authorities in the Member States, the European Commission and BEREC to ensure the development of consistent regulatory practice and the consistent application of European Community law in the electronic communications sector with a view, notably, to identifying the types of instruments and remedies best suited to address particular types of situations in the marketplace; and”;

(e) in subsection 2(c)(vi) by inserting “elderly users, and users with special social needs” after the words “disabled users”;

- (f) by substituting “; and” for the full-stop at the end of subsection 2(c)(vii); and
- (g) by inserting the following sub-paragraph and subsections after subsection 2(c)(vii)–
 - “(viii) promoting the ability of end users to access and distribute information or applications and services of their choice.
- (3) The Authority shall in, pursuit of the policy objectives set out in subsections (1) and (2), apply objective, transparent, non-discriminatory and proportionate regulatory principles by–
 - (a) promoting regulatory predictability by ensuring a consistent regulatory approach over appropriate review periods;
 - (b) ensuring that, in similar circumstances, there is no discrimination in the treatment of persons providing electronic communications networks and electronic communications services;
 - (c) safeguarding competition to the benefit of consumers and promoting, where appropriate, infrastructure-based competition;
 - (d) promoting efficient investment and innovation in new and enhanced infrastructure, including by ensuring that any access obligation takes appropriate account of the risk incurred by the person investing and by permitting various co-operative arrangements between investors and parties seeking access to diversify the risk of investment, while ensuring that competition in the market and the principle of non-discrimination are preserved;
 - (e) taking due account of the variety of conditions relating to competition and consumers that exist in Gibraltar; and

- (f) imposing ex-ante regulatory obligations only where there is no effective and sustainable competition and relaxing or lifting such obligations as soon as that condition is achieved.
- (4) Where it appears to the Authority that any of its objectives conflict with each other, it must secure that the conflict is resolved in the manner it thinks best in the public interest.”.

Amendment to section 20.

7. Section 20(5) of the Act is amended in the definition of “International Standards Organisations” by inserting the words “the European Conference of Postal and Telecommunications Administrations (CEPT),” after the words “(ITU),”.

Amendments to section 22.

8. Section 22 of the Act is amended–

- (a) in subsection (1) by substituting “Except where otherwise provided in a recommendation or guideline adopted by the European Commission pursuant to Article 7b of the Framework Directive and subject” for the word “Subject”.
- (b) in subsections (2) and (3) by inserting “, BEREC” after the words “European Commission” where they appear twice; and
- (c) in subsection (4) by inserting “, BEREC” after the words “Member States” ;
- (d) by inserting the following subsection after subsection (5)–
 - “(6) The Authority shall inform the European Commission and BEREC of all the final measures adopted which are subject to the provisions of this section.”.

Amendments to section 23.

9. Section 23 of the Act is amended–

- (a) in subsection (3) by substituting–
 - (i) “Article 7 (5)(a)” for “Article 7 (4)”;
 - (ii) “or” for “and” after paragraph (a); and
 - (iii) the following for paragraph (b)–
 - “(b) must amend it,

within a period of six months from the decision by the European Commission and shall not be entitled to give effect to it.”;
- (b) by inserting the following subsection after subsection (3)–
 - “(4) Where the proposed measure is amended, the Authority shall undertake a public consultation in accordance with section 13 and re-notify the amended proposed measure to the European Commission in accordance with the provisions of section 22.”.

Amendments to section 24.

- 10. Section 24(3) of the Act is amended–
 - (a) by deleting the word “and” at the end of paragraph (b); and
 - (b) by inserting the following paragraph after paragraph (b)–
 - “(bb) BEREC; and”.

Insertion of section 24A.

- 11. The Act is amended by inserting the following section after section 24–

“Procedure for the consistent application of remedies.

24A.(1) This section applies where a proposed measure is in relation to a matter covered by section 22(1) and the measure seeks to impose, amend or withdraw an obligation on a person

in application of section 40 in conjunction with regulations 6 and 10 to 14 of the Access Regulations and regulation 14 of the Universal Service Regulations.

- (2) Where, within the period of one month referred to in section 22(2)(b), the Authority receives a reasoned notification from the European Commission that the proposed measure would create a barrier to the single market or expressing that the Commission has serious doubts as to the compatibility of the measure with European Community law, the Authority shall not adopt the proposed measure for a further period of three months following the Commission's notification.
- (3) In the absence of the notification referred to in subsection (2), the Authority may adopt the proposed measure, taking utmost account of any comments made by the European Commission, BEREC and the regulatory authorities in the Member States.
- (4) The Authority shall, within the three-month period referred to in subsection (2), co-operate closely with the European Commission and BEREC to identify the most appropriate and effective measure in the light of the objectives set out in sections 18 and 19, whilst taking due account of the views of market participants and the need to ensure the development of consistent regulatory practice.
- (5) If, within the three-month period referred to in subsection (2), the Authority receives a notification from BEREC that it shares the serious doubts expressed by the European Commission, the Authority shall co-operate with BEREC to identify the most appropriate and effective measure.
- (6) The Authority may, before the end of the three-month period referred to in subsection (2)–
 - (a) amend or withdraw the proposed measure, taking utmost account of any notification made by the European Commission and of the opinion and advice of BEREC; or
 - (b) maintain the proposed measure.

- (7) Where the Authority receives a recommendation from the European Commission pursuant to Article 7a (5) of the Framework Directive, the Authority shall, within the period of one month from receiving that recommendation, inform the European Commission and BEREC of the adopted final measure.
- (8) The period referred to in subsection (7) may be extended to allow the Authority to undertake a public consultation in accordance with the provisions of section 13.
- (9) Where the Authority decides not to amend or withdraw the proposed measure on the basis of a recommendation from the European Commission pursuant to Article 7a (5) of the Framework Directive, the Authority shall provide a reasoned opinion.
- (10) The Authority may withdraw a proposed measure at any stage of the procedure.”.

Insertion of sections 34A and 34B.

12. The Act is amended by inserting the following sections after section 34–

“Security and integrity of networks and services.

Security and integrity.

- 34A.(1) A person providing a public communications network and/or a publicly available electronic communications service shall take appropriate technical and organisational measures to appropriately manage the risks posed to security of networks and services.
- (2) The measures referred to in subsection (1) shall, taking account of the state of the art, ensure a level of security appropriate to the risk presented and, in particular, prevent and minimise the impact of security incidents on users and interconnected networks.
- (3) A person providing a public communications network shall take all appropriate steps to guarantee the integrity of its

network and thereby ensure the continuity of supply of services provided over that network.

- (4) A person providing a public communications network and/or a publicly available electronic communications service shall notify the Authority of a breach of security or loss of integrity that has had a significant impact on the operation of the network or service.
- (5) The Authority shall, where appropriate, inform the national regulatory authorities in Member States and the European Network and Information Security Agency (ENISA) of any notification it has received pursuant to subsection (4).
- (6) The Authority may inform the public, or may require the person that has made a notification to it pursuant to subsection (4) to do inform the public, where the Authority determines that disclosure of the breach is in the public interest.
- (7) The Authority shall, on annual basis, submit a summary report to the European Commission and to ENISA on the notifications received and the action taken in accordance with this section.

Implementation and enforcement.

- 34B.(1) In order to give effect to section 34A, the Authority shall have the power to issue a direction, including in relation to time limits for implementation, to persons providing public communications networks and/or publicly available electronic communications services.
- (2) The Authority shall have the power to require persons providing public communications networks and/or publicly available electronic communications services to—
 - (a) provide information needed to assess the security and/or integrity of their services and networks, including documented security policies; and
 - (b) submit to a security audit carried out by a qualified independent body or a competent authority in

Gibraltar and make the results of the audit available to the Authority. The cost of the audit shall be paid by the person audited.

- (3) The Authority shall have all the powers necessary to investigate cases of non-compliance and the effects of non-compliance on the security and integrity of the networks.
- (4) A person who refuses or, without reasonable excuse, fails to do anything duly required of him by a direction or other binding instruction issued under or for the purposes of subsections (1) to (3) is guilty of an offence.
- (5) A person guilty of an offence under subsection (4) is 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.”.

Amendment to section 35.

13. Section 35 of the Act is amended by substituting the following subsection for subsection (11)–

“(11) The Minister shall, in so far as is practicable, support the harmonisation of specific numbers or numbering ranges within the European Community where such harmonisation promotes the functioning of the internal market and/or the development of pan-European services.”.

Amendment to section 38.

14. Section 38 of the Act is amended by substituting the following subsections for subsection (4)–

“(4) A person or combination of persons with significant market power in a specific market (the first market), may also be designated as having significant market power on a closely related market (the second market), where the links between the two markets are such as to allow the market power held in the first market to be leveraged into the second market, thereby

strengthening the market power of that person or combination of persons.

- (4A) In the circumstances referred to in subsection (4), the Authority may apply remedies aimed at preventing such leverage in the second market pursuant to the Access Regulations, and where such remedies prove to be insufficient, remedies pursuant to Universal Service Regulations.”.

Amendments to section 40.

15. Section 40 of the Act is amended—

- (a) by substituting the following subsection for subsection (9)—

“(9) The Authority shall carry out an analysis of the relevant market and notify the corresponding proposed measure in accordance with section 22—

- (a) within three years from the adoption of a previous measure relating to that market, which period may, in exceptional circumstances, be extended for up to three additional years, where the Authority has notified a reasoned proposed extension to the European Commission and the European Commission has not objected to that extension within a period of one month of having received the notification; or
- (b) within two years from the adoption of a revised recommendation on relevant markets, for markets not previously notified to the European Commission.”;

- (b) by inserting the following subsections after subsection (9)—

“(10) Where the Authority has not completed its analysis of a relevant market identified in a recommendation within the time limit laid down in subsection (9), it may request BEREC to provide assistance in completing the analysis of the specific market and the specific obligations to be imposed.

- (11) When it acts pursuant to subsection (10), the Authority shall notify the proposed measure to the European Commission, in accordance with section 22, within six months from the date on which it sought assistance from BEREC.
- (12) The references in subsections (9) and (10) to a recommendation shall have the same meaning as in section 39(2).”.

Amendments to section 49.

16. Section 49 of the Act is amended—

- (a) by substituting the following subsection for subsection (5)—

“(5) The procedures referred to in subsection (3) shall be simple, efficient, transparent, non-discriminatory and publicly available, shall be applied without delay and, in any event, will lead to a determination within six months of the application being made, except in cases of expropriation.”; and

- (b) by substituting the following subsection for subsection (10)—

“(10) Where the person applying for the grant of rights of way is a legal person owned or controlled by the Government, and that person is providing a public electronic communications network and/or a publicly available electronic communications service, the Minister shall, when establishing the procedures referred to in subsection (3), ensure an effective structural separation between the department responsible for granting the rights referred to in subsections (1) and (2) and the department responsible for the ownership or control of that legal person.”.

Amendment to section 50.

17. The Act is amended by substituting the following subsections for subsections (2) and (3) in section 50–

- “(2) Except where the proposed modification is minor and has been agreed with the holders of rights to the install facilities concerned, whenever the Minister intends to make a modification referred to in subsection (1) he shall comply with the public consultation procedure.
- (3) A right to install facilities granted pursuant to section 49 shall not be restricted or withdrawn before the expiry of the period for which it was granted except where such restriction or modification is–
 - (a) objectively justified;
 - (b) carried out in a manner which is in accordance with the laws of Gibraltar regarding compensation for the withdrawal of rights ; and
 - (c) in conformity with the Schedule to the Authorisation Regulations.”.

Substitution of section 52.

18. The Act is amended by substituting the following section for section 52–

“Co-location and sharing of network elements and associated facilities for providers of electronic communications networks.

- 52.(1) The Authority shall, where a person providing an electronic communications network–
- (a) has the statutory right to install facilities on, over or under public or private land;
 - (b) may take advantage of a procedure for the expropriation or use of property; or

- (c) has the right referred to in paragraph (a) and may take advantage of the procedure referred to in paragraph (b),

be able to impose on that person, taking full account of the principle of proportionality, an obligation to share such facilities or property, including associated facilities.

- (2) The Authority may require persons who hold rights referred to in subsection (1) to share facilities or property (including physical co-location) and to take measures to facilitate the co-ordination of public works in order to protect the environment, public health, public security or to meet town planning objectives and only after an appropriate period of public consultation has been undertaken, during which all interested parties shall be given an opportunity to express their views.
- (3) Without prejudice to the Authority's powers under this section, the terms and conditions, which may include commercial and technical terms and conditions, subject to which—
 - (a) the facilities referred to in subsections (1) and (2) are to be co-located;
 - (b) the facilities or property or facilities and property referred to in subsections (1) and (2) are to be shared; or
 - (c) the co-location referred to in paragraph (a) and the sharing referred to in paragraph (b) are to take place,

shall, in the first instance, be a matter for negotiation between the parties concerned.

- (4) The Authority may impose obligations in relation to the sharing of wiring inside buildings, or up to the first concentration or distribution point where this is located outside the building, on the person holding the rights referred to in subsection (1) and/or on the owner of such wiring, where this is justified on the grounds that duplication of such infrastructure would be economically inefficient or physically impracticable.

- (5) Any obligations imposed by the Authority on sharing or co-ordination may include rules for apportioning the costs of facility or property sharing, adjusted for risk where appropriate.
- (6) When the Authority intends to impose obligations referred to in subsection (4) it shall carry out a public consultation in accordance with section 13.
- (7) Persons who hold rights referred to in subsection (1) shall, if requested by the relevant competent authority, provide that authority such information as that authority may consider necessary to allow it, in conjunction with the Authority, to establish a detailed inventory of the nature, availability and geographical location of the facilities referred to in subsection (1) and to make that inventory available to interested parties.
- (8) Measures taken by the Authority in accordance with this section shall be objective, transparent, non-discriminatory and proportionate and, where relevant, shall be carried out in co-ordination with any relevant competent authority in Gibraltar.”.

Substitution of section 59.

19. The Act is amended by substituting the following section for section 59–

“Allocation and assignment of frequencies.

- 59.(1) The Minister may, after consultation with the Authority, allocate bands of frequencies for such use as the Minister may consider appropriate, taking due account of the fact that radio frequencies are a public good that has an important social, cultural and economic value.
- (2) It shall be the duty of the Minister to ensure that spectrum and radio frequencies for electronic communications services are allocated and assigned in accordance with procedures which–
 - (a) are objective, transparent, non-discriminatory and proportionate;

- (b) respect relevant international agreements, including ITU Radio Regulations applicable to Gibraltar;
 - (c) do not prevent the Minister from taking public policy considerations into account.
- (3) The Minister shall, in so far as is practicable, promote the harmonisation of use of radio frequencies within the European Community where that is necessary to ensure the effective and efficient use of such frequencies and in pursuit of benefits for consumers, such as economies of scale and interoperability of services, in accordance with such European Community instruments on radio spectrum policy as may, from time to time, be in force.
- (4) Without prejudice to subsection (5), the Minister shall ensure that all types of technology used for electronic communications services may be used in the radio frequency bands declared available for electronic communications services in the Gibraltar Frequency Allocation Table in accordance with European Community law.
- (5) The Minister may provide for proportionate and non-discriminatory restrictions to the types of radio network or wireless access technology used for electronic communications services where this is necessary to—
- (a) avoid harmful interference;
 - (b) protect public health against electromagnetic fields;
 - (c) ensure technical quality of service;
 - (d) ensure maximisation of radio frequency sharing;
 - (e) safeguard efficient use of spectrum; or
 - (f) ensure the fulfilment of a general interest objective in accordance with subsections (6) to (9).
- (6) Without prejudice to subsections (7) and (8), the Minister shall ensure that all types of electronic communications services

may be provided in the radio frequency bands declared available for electronic communications services in the Gibraltar Frequency Allocation Table in accordance with European Community law.

- (7) The Minister may provide for proportionate and non-discriminatory restrictions to the types of electronic communications services to be provided, including, where necessary, to fulfil a requirement under the ITU Radio Regulations.
- (8) Measures that require an electronic communications service to be provided in a specific band available for electronic communications services shall be justified in order to ensure the fulfilment of a general interest objective as defined by the Minister in conformity with European Community law, such as, but not limited to—
 - (a) safety of life;
 - (b) the promotion of social, regional or territorial cohesion;
 - (c) the avoidance of inefficient use of radio frequencies; or
 - (d) the promotion of cultural and linguistic diversity and media pluralism, for example by the provision of radio and television broadcasting services.
- (9) A measure which prohibits the provision of any other electronic communications service in a specific band may only be provided for where justified by the need to protect safety of life services and the Minister may, exceptionally, also extend such a measure in order to fulfil other general interest objectives in accordance with European Community law.
- (10) The Minister shall regularly review the necessity of the restrictions referred to in subsections (4) to (9), and shall make the results of these reviews public.

- (11) Subsections (4) to (9) shall apply to spectrum allocated to be used for electronic communications services, general authorisations issued and individual rights of use of radio frequencies granted after 25 May 2011.
- (12) Spectrum allocations, general authorisations and individual rights of use which existed prior to 25 May 2011 shall be subject to section 59A.
- (13) Without prejudice to the provisions of the Specific Directives and taking into account the relevant circumstances in Gibraltar, the Minister may lay down rules in order to prevent spectrum hoarding, in particular by setting out strict deadlines for the effective exploitation of rights of use by the holder of the rights and by applying penalties, including financial penalties or the withdrawal of the rights of use, in case of non-compliance with the deadlines.
- (14) The rules referred to in subsection (13) shall be established and applied in a proportionate, non-discriminatory and transparent manner.
- (15) The Minister shall comply with subsection (16) where the—
 - (a) usage of the radio frequencies which are relevant to the grant of a particular licence has been harmonised;
 - (b) access conditions and procedures which are relevant to that licence have been agreed; and
 - (c) selection procedures which are relevant to that licence have been established,

under international agreements and European Community rules.

- (16) In the circumstances referred to in subsection (15), and provided that all conditions which may be specified by the Minister to be complied with by the holder of the licence in Gibraltar have been satisfied, the Minister shall not impose any conditions, additional criteria or procedures which would restrict, alter or delay the grant of the licence concerned other than those set out in those agreements or rules.

- (17) Where the Minister intends to apply restrictions pursuant to subsections (4) to (9) which have a significant impact on the relevant market, he shall act in accordance with the public consultation procedure.”.

Insertion of section 59A.

20. The Act is amended by inserting the following sections after section 59–

“Review of restrictions on existing rights

- 59A.(1) Where, by virtue of a licence granted before 25 May 2011, a licensee has been granted rights to use radio frequencies for a period that runs until 25 May 2016 or beyond, that licensee may submit an application to the Minister for a reassessment of the restrictions on their rights contained in the licence in accordance with section 59(4) to (9).
- (2) An application under subsection (1) must be made before 25 May 2016.
- (3) Before adopting a decision on such an application, the Minister shall notify the licensee of his reassessment of the restrictions, indicating the extent of the licensee’s rights after reassessment, and allowing him a reasonable time limit to withdraw his application.
- (4) If the licensee withdraws his application, his rights shall remain unchanged until the expiry of the licence or until 25 May 2016, whichever is the earlier date.
- (5) On 25 May 2016, the Minister shall take all appropriate measures to ensure that section 59(4) to (9) apply to all remaining–
- (a) general authorisations;
 - (b) licences containing rights to use radio frequencies;
and
 - (c) spectrum allocations,

used for electronic communications services which existed on 25 May 2011.

- (6) In applying this section, the Minister shall take appropriate measures to promote fair competition.
- (7) For the avoidance of doubt, measures adopted by the Minister in applying this section do not constitute the grant of a licence and are not therefore subject to the requirement of section 61(1).

Transfer or lease of individual rights to use radio frequencies.

- 59B.(1) A licensee shall be entitled to transfer or lease individual rights to use radio frequencies in the bands for which such transfers or leasing is permitted by implementing measures adopted by the European Commission pursuant to Article 9b (3) of the Framework Directive.
- (2) The transfers and leases referred to in subsection (1) shall be carried out in accordance with—
 - (a) the conditions attached to the licences being transferred or leased; and
 - (b) such procedures as are established by the Minister for that purpose.
 - (3) The Minister may authorise the transfer or lease of individual rights to use radio frequencies in bands other than those referred to in subsection (1).
 - (4) The transfers and leases referred to in subsection (3) shall be carried out in accordance with such procedures as are established by the Minister for that purpose.
 - (5) Conditions attached to licences for the use of radio frequencies shall continue to apply after the transfer or lease, unless otherwise specified by the Minister.

- (6) The Minister may determine, by notice published on the Authority's website, that subsections (1) to (5) shall not apply where the individual right to use radio frequencies was initially obtained free of charge by the licensee.
- (7) The licensee shall notify the Minister of his intention to transfer an individual right to use radio frequencies, as well as the effective transfer of that right, and that notification shall—
 - (a) be made in accordance with such procedures as are established by the Minister for that purpose; and
 - (b) be made public.
- (8) Where radio frequency use has been harmonised through the application of such European Community instruments on radio spectrum policy as may, from time to time, be in force, any such transfer shall comply with such harmonised use.
- (9) The Minister shall ensure that competition is not distorted by any transfer or accumulation of licences and, for this purpose, may mandate the sale or lease of licences.”.

Amendments to section 61.

21. The Act is amended by substituting the following subsections for subsection (10) of section 61—

- “(10) The procedures to be adopted pursuant to subsection (9) shall be—
 - (a) open, objective, transparent, non-discriminatory and proportionate; and
 - (b) consistent with the provisions of sections 57 and 59.
- (11) The requirements set out in subsection (10) shall be without prejudice to specific criteria and procedures for the grant of a licence in relation to apparatus for radiocommunications imposed under any enactment in force in Gibraltar to providers of radio or television broadcast content services

with a view to pursuing general interest objectives in accordance with European Community law.

- (12) The requirement set out in subsection (10)(a) for open procedures shall not apply in the cases referred to in subsection (11).”.

Amendment to section 62.

22. The Act is amended by substituting the following subsection for subsection (4) of section 62–

“(4) The Minister shall, by notice, set out the steps that he shall take for the purpose of facilitating the use of radio frequencies under general authorisations only, with the aim of limiting the requirement for a licence to only those cases where a licence is necessary in order to–

- (a) avoid harmful interference;
- (b) ensure technical quality of service;
- (c) safeguard the efficient use of the spectrum; or
- (d) fulfil other objectives of general interest in as defined in the laws of Gibraltar or under European Community law.”.

Amendments to section 91.

23. Section 91 of the Act is amended–

- (a) by inserting the following after the words “following grounds–

“in subsection (2)–

“(a) that a material error as to the facts has been made;

(b) that there was a material procedural error;

- (c) that a material error of law has been made;
 - (d) that there was some other material illegality.”.
- (b) by inserting the words “unless the Supreme Court grants interim measures” after the words “appealed against” in subsection (7); and
- (c) by inserting the following subsection after subsection (11)–
- “(12) The Authority shall collect information on appeals, the number of requests for appeal, the duration of the appeal proceedings and the number of decisions to grant interim measures, and this information shall be provided to the European Commission and BEREC where such bodies make a written and reasoned request for any such information to the Authority.”.

Amendments to section 92.

24. Section 92(1) of the Act is amended–

- (a) by inserting the word “existing” after the word “to” in paragraph (a); and
- (b) by substituting the following paragraph for paragraph (b)–
 - “(b) it is a dispute between–
 - (i) persons authorised pursuant to this Act to provide electronic communications services, electronic communications networks or to make associated facilities available in Gibraltar; or
 - (ii) persons referred to in subparagraph (i) and persons in a Member State who benefit from obligations on access and/or interconnection in Gibraltar pursuant to this Act; and”.

Amendments to section 96.

25. Section 96 of the Act is amended by inserting the following subsections after subsection (5)–

“(5A) The Authority shall have the right to–

- (a) consult BEREC;
- (b) request BEREC to adopt an opinion,

in order to bring about a consistent resolution of the dispute in accordance with the Framework and Specific Directives.

(5B) If the Authority, or the other regulatory authority within whose jurisdiction the matter falls, has requested BEREC to adopt an opinion, the Authority shall await that opinion before taking action to resolve the dispute and take the utmost account of that opinion.

(5C) Subsection (5B) is without prejudice to the Authority being able to take urgent measures where it considers it necessary to do so.”.

Dated 26th May, 2011.

F J VINET,
Minister with responsibility for communications.
