

[Consolidated Version]

## **Directive on the Modalities of Payment for General Authorisations and Rights of Use under the Electronic Communications (Regulation) Act.**

*Directive No 1 of 2004 as amended by Directive No 1 of 2007, Amendments to the Modalities of Payment for General Authorisations and Rights of Use under the Electronic Communications (Regulation) Act.*

The Malta Communications Authority, in accordance with its powers given under article 4 of the Malta Communications Authority Act, has made the following Directive.

### **Part I**

#### **PURPOSE AND DEFINITIONS**

1. The title of this directive is the Directive on the Modalities of Payment for General Authorisations and Rights of Use under the Electronic Communications (Regulation) Act.

2. The purpose for this Directive is to regulate the manner in which the charges and fees established in the Eleventh Schedule of the Electronic Communications Networks and Services (General) Regulations, 2004 are paid to the Malta Communications Authority and to ensure compliance with article 18(2) and (3) of the Electronic Communications (Regulation) Act and with regulations 59(6), 64(4) and 67(4) of the Regulations.

3. In this Directive unless the context otherwise requires:

“the Act” means the Electronic Communications (Regulation) Act;

“undertaking” means an undertaking deemed to be authorised in accordance with article 41 of the Act and, or regulation 55 of the Electronic Communications Networks and Services (General) Regulations, 2004;

“the Authority” means the Malta Communications Authority;

“quarter” means any period of three months ending on the 31<sup>st</sup> March, 30<sup>th</sup> June, 30<sup>th</sup> September, and 31<sup>st</sup> December of any year;

“the Regulations” means the Electronic Communications Networks and Services (General) Regulations, 2004;

“relevant year” means any year during which charges are to be paid to the Authority;

“total gross revenues” means the total gross turnover generated by an undertaking authorised under the Act, less unregulated activities;

“unregulated activities” means those activities which do not require to be authorised under paragraphs (b), (c), (d) or (e) of Part A in the Eleventh Schedule to the Electronic Communications Networks and Services (General) Regulations.

## **Part II**

### **ADMINISTRATIVE CHARGES TO BE PAID ON AN ANNUAL BASIS UNDER PART A OF THE ELEVENTH SCHEDULE TO THE REGULATIONS**

4. Fixed administrative charges established in paragraphs (a) to (f) of Part A of the Eleventh Schedule, excluding charges to be paid on a subscriber basis:

The fixed administrative charges applicable to the networks and, or services which an undertaking is authorised to provide, shall be payable to the Authority in equal quarterly instalments on the first day of every quarter during which an undertaking is authorised to provide such networks and, or services:

Provided that a pro-rated proportion of the fixed administrative charge due for the first quarter, or part thereof, for which the undertaking is authorised to provide networks and, or services shall be paid to the Authority immediately upon notification of the intention to provide networks and, or services in accordance with article 19 of the Act and regulation 55 of the Regulations.

5. Variable administrative charges established in paragraphs (i) to (iii) of Part A of the Eleventh Schedule:

The variable administrative charges based on total gross revenue shall be payable to the Authority in equal quarterly instalments on the first day of every quarter during which an undertaking is authorised to provide networks and, or services:

Provided that the charges due for the first three quarters during which an undertaking is authorised to provide networks and, or services shall be paid on the first day of the third quarter following notification in accordance with article 19 of the Act and regulation 55 of the Regulations.

6. Variable administrative charges established in paragraph (c) of Part A of the Eleventh Schedule:

The administrative charges established on a subscriber basis due in any particular year shall be calculated with reference to the number of subscribers as on the 30<sup>th</sup> September of the previous year and shall be payable to the Authority in equal quarterly instalments on the first day of every quarter.

### **Part III**

#### **FEES FOR RADIO SPECTRUM TO BE PAID UNDER PART B OF THE ELEVENTH SCHEDULE TO THE REGULATIONS**

7. Fees on the basis of radio spectrum channels established in paragraphs (a) and (b) of Part B of the Eleventh Schedule:

The fees for radio spectrum which are based on the number of GSM channels shall be paid to the Authority in equal quarterly instalments on the first day of every quarter:

Provided that a pro-rated proportion of the applicable fees due for the first quarter, or part thereof, for which the undertaking enjoys a right of use shall be paid to the Authority upon grant of the right of use of every channel.

8. Fees based on revenue as established under paragraph (a) of Part B of the Eleventh Schedule:

The variable fees on the basis of total gross revenues shall be payable to the Authority in equal quarterly instalments on the first day of every quarter during which an undertaking enjoys the right of use:

Provided that the charges due for the first three quarters during which an undertaking enjoys such right of use shall be paid on the first day of the third quarter following the grant of right of use.

## **Part IV**

### **FEES FOR NUMBERS TO BE PAID UNDER PART C OF THE ELEVENTH SCHEDULE TO THE REGULATIONS**

9. Fees based on individual numbers established under paragraph (a) of Part C of the Eleventh Schedule:

The fees due for individual numbers in any particular year shall be calculated with reference to the number of individual numbers allocated as on the 30<sup>th</sup> September of the previous year and shall be payable to the Authority in equal quarterly instalments on the first day of every quarter.

10. Fees based on blocks of 10,000 numbers and carrier select or pre-select codes established under paragraph (a) of Part C of the Eleventh Schedule:

The fees due for blocks of 10,000 numbers and, or carrier selection or pre-selection codes shall be payable to the Authority in advance in equal quarterly instalments on the first day of every quarter:

Provided that a pro-rated proportion of the applicable fees due for the first quarter, or part thereof, for which the undertaking enjoys a right of use shall be paid to the Authority upon grant of the right of use.

## **Part V**

### **UNPAID LICENCE FEES AND CHARGES UNDER THE ACT AND THE RADIOCOMMUNICATIONS ACT PRIOR TO THE 14<sup>TH</sup> SEPTEMBER, 2004**

11. Any undertaking which, on the day immediately preceding the 14<sup>th</sup> September, 2004 held any authorisation under the Act and, or a right of use of radio spectrum under the Radiocommunications Act, shall pay by the 7<sup>th</sup> December, 2004 to the Authority on a pro-rated basis any unpaid charges and fees, whether fixed or variable, established under those Acts:

Provided that for this purpose, the Authority shall issue a statement to each undertaking listing all outstanding pro-rated charges or fees and the pro-rated amounts due.

## **Part VI**

### **PROVISIONAL PAYMENTS, VERIFICATION AND ADJUSTMENTS**

#### **Statement of projected revenues**

12. For the purpose of calculating variable charges and fees to be determined on the basis of total gross revenue, each undertaking shall submit to the Authority, by not later than the 30<sup>th</sup> September of the previous year, a statement of projected revenues for the relevant year (GR1):

Provided that the first statement of projected revenues for the relevant year or part thereof, to be submitted by an undertaking following notification of its intention to provide networks or services under the general authorisation regime, shall be submitted by not later than the end of the first quarter in which such notification is made:

Provided further that the Authority shall have the right to revise such projections should these appear to be unreasonable. Prior to making such revisions, the Authority shall grant to the relevant undertaking an opportunity to comment on its proposed decision and course of action.

#### **Reconciliation with actual revenues**

13.1 The Authority shall reconcile charges and fees paid on the basis of projected revenues, against the charges and fees, which should have been paid, on the basis of actual revenues. For this purpose, each undertaking shall submit to the Authority in respect of every relevant year, within a maximum period of 12 months after the 31<sup>st</sup> December of the relevant year, an audited statement of actual quarterly revenues (GR2).

13.2 The audited statement of actual quarterly revenues shall indicate separately the total gross turnover as represented in the undertaking's financial statements less turnover from unregulated activities. Authorised Undertakings shall provide the authority with a list describing the nature of activities classified as unregulated. Such list shall be submitted to the authority with the audited statement of actual revenues (GR2).

Provided that an undertaking whose financial year coincides with the calendar year may submit a statement of actual revenues (GR2) for the entire year and shall not be required to provide a quarterly analysis.

Provided further that an undertaking whose financial year coincides with the calendar year, and whose actual revenues agrees with the total gross turnover as represented in the undertaking's financial statements without deduction for unregulated activities, may attach to the statement of actual

revenues (GR2) an unabridged copy of the audited financial statements and shall not be required to submit to the authority a separate report by the undertaking's auditors.

13.3 Where an authorised undertaking does not submit to the Authority, within the specified period of 12 months after the 31<sup>st</sup> December of the relevant year, the audited statement of actual quarterly revenues (GR2) as prescribed in article 13.1, the Authority may determine the final charges and fees which should have been paid in such manner and by such method as the Authority deems fit without prejudice to any liability or to further administrative penalties otherwise incurred by that undertaking by reason of its failure or neglect to deliver the audited statement of actual quarterly revenues (GR2).

An authorised undertaking, on whom a final determination has been notified in accordance with this article, may remedy its failure to deliver the audited statement of actual quarterly revenues (GR2) within 30 days of being served with such a determination. If the remedy is received by the authority before the lapse of 30 days, the MCA final determination will be withdrawn.

Provided further that this sub-article shall also be applicable in respect of any relevant year in respect of which an audited statement of actual quarterly revenues (GR2) should have been submitted to the Authority before the date of coming into force of this Directive.

#### **Undercharging and overcharging**

14.1. Where the amount paid by an undertaking in accordance with article 12 is less than the amount payable in accordance with article 13, the undertaking concerned shall, within such time as may be specified by the Authority in a request in writing, pay to the Authority the balance of the charges and, or fees so payable.

14.2. Where the amount paid by an undertaking in accordance with article 12 is more than the amount payable in accordance with article 13, the Authority shall, as soon as may be after the receipt of all the audited statements referred to in article 13 of this Directive repay to the undertaking concerned the excess amount so paid by way of a credit note against fees payable in the following year.

## **Part VII**

### **RECONCILIATION OF ADMINISTRATIVE CHARGES**

#### **Overview of administrative charges and administrative costs**

15.1. The Authority in accordance with the requirements under article 18 (2) of the Act to publish an annual overview of its administrative costs and of the total sum of charges collected, shall publish such an overview by not later than six months following the 31<sup>st</sup> December of each relevant year:

15.2. For the purposes of transparency in the conduct of its affairs, the Authority shall also publish its business plan including projected revenues and expenditure for any financial year during the preceding year.

#### **Repayments or compensations**

16.1. The Authority shall in the case of administrative charges imposed on an annual basis, make appropriate repayments or compensations in the case of overcharging, as referred to in article 14.2, or impose additional charges in the case of undercharging of an undertaking to whom a charge is imposed in the light of any difference between the total sum of administrative charges collected and the administrative costs incurred:

Provided that the Authority shall carry out this exercise by not later than six months after it has received all the statements of actual quarterly revenues (GR2) of all the undertakings required to pay administrative charges.

16.2. Any surplus of income from authorisation charges collected by the Authority under Part A of the Eleventh Schedule to the Regulations over the expenses incurred by the Authority in the discharge of its functions in a particular relevant year shall:

16.2.1. where appropriate, be retained by the Authority to be offset against authorisation charges due for the subsequent year, or

16.2.2. Within 30 days after the publication of the annual overview, be refunded proportionately to the providers of electronic communications services or networks on whom the charges were imposed.