



STATUTORY INSTRUMENTS.

S.I. No. 444 of 2022



EUROPEAN UNION (ELECTRONIC COMMUNICATIONS CODE)
REGULATIONS 2022

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REGULATIONS 2022

I, Eamon Ryan, Minister for the Environment, Climate and Communications, in exercise of the powers conferred on me by section 3 of the European Communities Act 1972 (No. 27 of 1972) and for the purpose of giving effect to Directive (EU) 2018/1972 of the European Parliament and of the Council of 11 December 2018¹ and giving full effect to Commission Implementing Regulation (EU) 2019/2243 of 17 December 2019², Commission Delegated Regulation (EU) 2021/654 of 18 December 2020³, hereby make the following regulations:

Part 1

PRELIMINARY AND GENERAL

Citation and commencement

1. (1) These Regulations may be cited as the European Union (Electronic Communications Code) Regulations 2022.

(2) These Regulations come into operation on such day as the Minister appoints and publishes in *Iris Oifigiúil*.

Interpretation

2. (1) In these Regulations –

“access” means the making available of facilities or services to another undertaking, under defined conditions, either on an exclusive or a non-exclusive basis, for the purpose of providing electronic communications services, including when they are used for the delivery of information society services or broadcast content services. Among other things, it covers:

- (a) access to network elements and associated facilities, which may involve the connection of equipment, by fixed or non-fixed means (in particular this includes access to the local loop and to facilities and services necessary to provide services over the local loop);
- (b) access to physical infrastructure including buildings, ducts and masts;

¹ OJ L 321, 17.12.2018, p.36.

² OJ L 336, 30.12.2019, p. 274.

³ OJ L 137, 22.4.2021, p.1.

- (c) access to relevant software systems including operational support systems;
- (d) access to information systems or databases for pre-ordering, provisioning, ordering, maintaining and repair requests, and billing;
- (e) access to number translation or systems offering equivalent functionality;
- (f) access to fixed and mobile networks, in particular for roaming;
- (g) access to conditional access systems for digital television services and access to virtual network services;

“Access Regulations” means European Communities (Electronic Communications Networks and Services)(Access) Regulations 2011 (S.I. No. 334 of 2011);

“Act of 1926” means Wireless Telegraphy Act 1926 (No. 45 of 1926);

“Act of 1983” means Postal and Telecommunications Services Act 1983 (No. 24 of 1983);

“Act of 2000” means Planning and Development Act 2000 (No. 30 of 2000);

“Act of 2002” means Communications Regulation Act 2002 (No. 20 of 2002);

“Act of 2009” means Broadcasting Act 2009 (No. 18 of 2009);

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

“associated facilities” means associated services, physical infrastructures and other facilities or elements associated with an electronic communications network or an electronic communications service which enable or support the provision of services via that network or service, or have the potential to do so, and include buildings or entries to buildings, building wiring, antennae, towers and other supporting constructions, ducts, conduits, masts, manholes, and cabinets;

“associated service” means a service associated with an electronic communications network or an electronic communications service which enables or supports the provision, self-provision or automated-provision of services via that network or service, or has the potential to do so, and includes number translation or systems offering equivalent functionality, conditional access systems and electronic programme guides (EPGs), as well as other services such as identity, location and presence service;

“Authorisation Regulations” means European Communities (Electronic Communications Networks and Services)(Authorisation) Regulations 2011 (S.I. No. 335 of 2011);

“authorised undertaking” means an undertaking deemed to be authorised under Regulation 6;

“BEREC” means the Body of European Regulators for Electronic Communications;

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

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

“CEPT” means the European Conference of Postal and Telecommunications Administrations;

“conditional access system” means any technical measure, authentication system or arrangement whereby access to a protected radio or television broadcasting service in intelligible form is made conditional upon subscription or another form of prior individual authorisation;

“consumer” means any individual who uses or requests a publicly available electronic communications service for purposes which are outside his or her trade, business, craft or profession;

“data protection law” means the requirements of the Data Protection Act 2018 (No. 7 of 2018) and Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016⁴;

“Directive” means Directive 2018/1972 of the European Parliament and of the Council of 11 December 2018¹ establishing the European Electronic Communications Code;

“durable medium” has the same meaning as in Regulation 2 of the European Union (Consumer Information, Cancellation and Other Rights) Regulations 2013 (S.I. No. 484 of 2013);

“ECAS operator” means the person who operates an emergency call answering service in accordance with a contract entered into under section 58B of the Act of 2002;

“electronic communications service” means a service normally provided for remuneration via electronic communications networks, which encompasses, with the exception of services providing, or exercising editorial control over, content transmitted using electronic communications networks and services, the following types of services:

- (a) ‘internet access service’ within the meaning of Article 2 of Regulation (EU) 2015/2120⁵;
- (b) interpersonal communications service; and

⁴ OJ L 119, 4.5.2016, p.1.

⁵ OJ L 310, 26.11.2015, p.1.

- (c) services consisting wholly or mainly in the conveyance of signals such as transmission services used for the provision of machine-to-machine services and for broadcasting;

“electronic communications network” means transmission systems, whether or not based on a permanent infrastructure or centralised administration capacity, and, where applicable, switching or routing equipment and other resources, including network elements which are not active, which permit the conveyance of signals by wire, radio, optical or other electromagnetic means, including satellite networks, fixed (circuit- and packet-switched, including internet) and mobile networks, electricity cable systems, to the extent that they are used for the purpose of transmitting signals, networks used for radio and television broadcasting, and cable television networks, irrespective of the type of information conveyed;

“electronic programme guide” means any electronic means of providing information to members of the public in relation to the schedule of programme material the subject of any broadcasting service and which electronic means is an integral part of the distribution and reception system by which the broadcasting service is provided;

“emergency communication” means communication by means of interpersonal communications services between an end-user and the PSAP with the goal to request and receive emergency relief from emergency services;

“emergency service” means the Garda Síochána, a fire brigade, ambulance service, the Irish Coast Guard or a civil emergency service;

“end-user” means a user not providing public electronic communications networks or publicly available electronic communications services;

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

“European Commission” means the Commission of the European Union;

“Framework Regulations” means European Communities (Electronic Communications Networks and Services)(Framework) Regulations 2011 (S.I. No. 333 of 2011);

“general authorisation” means an authorisation for an undertaking to provide an electronic communications network or service under and in accordance with Regulation 6;

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

“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 radio communications service operating in accordance with the applicable international, Union or national regulations;

“harmonised radio spectrum” means radio spectrum for which harmonised conditions relating to its availability and efficient use have been established by

way of technical implementing measures in accordance with Article 4 of the Radio Spectrum Decision;

“hybrid offence” means an offence punishable under Regulation 108;

“interconnection” means a specific type of access implemented between public network operators by means of the physical and logical linking of public electronic communications networks used by the same or a different undertaking in order to allow the users of one undertaking to communicate with users of the same or another undertaking, or to access services provided by another undertaking where such services are provided by the parties involved or other parties who have access to the network;

“International Telecommunication Union Radio Regulations” means the decisions of the World Radiocommunication Conferences, including all appendices, resolutions, recommendations and International Telecommunication Union Radiocommunication Sector recommendations incorporated by reference;

“interpersonal communications service” means a service normally provided for remuneration that enables direct interpersonal and interactive exchange of information via electronic communications networks between a finite number of persons, whereby the persons initiating or participating in the communication determine its recipient(s) and does not include services which enable interpersonal and interactive communication merely as a minor ancillary feature that is intrinsically linked to another service;

“ITU” means the International Telecommunications Union;

“licence”, unless it is otherwise indicated, means a licence granted under section 5 of the Act of 1926 to keep and have possession of apparatus for wireless telegraphy for the provision of an electronic communications network or service and which grants a right of use for radio spectrum;

“local loop” means the physical path used by electronic communications signals connecting the network termination point to a distribution frame or equivalent facility in the fixed public electronic communications network;

“medium-sized enterprise” means a company that is not a microenterprise or small enterprise, that has fewer than 250 employees and an annual turnover below €50 million or balance sheet below €43 million;

“microenterprise” means a company with fewer than 10 employees and an annual turnover or balance sheet below €2 million;

“Minister” means the Minister for the Environment, Climate and Communications;

“MMS” means a Multimedia Messaging Service which sends messages that include multimedia content between mobile or fixed numbers assigned in accordance with a national numbering plan;

“most appropriate PSAP” means a PSAP designated as such by the Minister to cover emergency communications from a certain area or for emergency communications of a certain type, but in the absence of such a designation means the ‘ECAS operator’ as referred to in section 58A of the Act of 2002;

“national numbering plan” means the national numbering plan administered by the Regulator under section 12 of the Act of 2002;

“national regulatory authority” in relation to another Member State, means the body or bodies charged by the other Member State with any of the regulatory tasks assigned in the Directive;

“network termination point” means the physical point at which an end-user is provided with access to a public electronic communications network, and which, in the case of networks involving switching or routing, is identified by means of a specific network address, which may be linked to an end-user’s number or name;

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

“not-for-profit organisation” means a body, organisation or association —

- (a) that provides its services on a not-for-profit basis,
- (b) that has been properly constituted in accordance with the law of the State or another Member State, and
- (c) whose objectives, as specified in the documents establishing the body, organisation or association concerned, are in the public interest;

“NRA” means National Roads Authority;

“number” includes a character and a combination of numbers or characters or both;

“number-based interpersonal communications service” means an interpersonal communications service which connects with publicly assigned numbering resources, namely, a number or numbers in a national or international numbering plan, or which enables communication with a number or numbers in a national or international numbering plan;

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

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

“other competent authority”, in relation to another competent authority in the State means a local authority, the NRA, a road authority, the Competition and Consumer Protection Commission or the Minister, as the case may be;

“Privacy and Electronic Communications Regulations” means European Communities (Electronic Communications Networks and Services)(Privacy and Electronic Communications) Regulations 2011 (S.I. No. 336 of 2011);

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

“public authority” has the meaning assigned to it in the Local Government Act 2001 (No. 37 of 2001);

“public electronic communications network” means an electronic communications network used wholly or mainly for the provision of publicly available electronic communications services which support the transfer of information between network termination points;

“public pay telephone” means a telephone available to the general public for the use of which the means of payment may include coins, credit cards, debit cards or prepayment cards, including cards for use with dialling codes;

“public safety answering point” or “PSAP” means a physical location where an emergency communication is first received under the responsibility of a public authority or a private organisation recognised by the Member State;

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

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

“Radio Spectrum Decision” means Decision No. 676/2002/EC of the European Parliament and of the Council of 7 March 2002⁶;

“Recommendation 1999/519/EC” means Council Recommendation 1999/519/EC of 12 July 1999⁷;

“Regulation (EU) 2015/2120” means Regulation (EU) 2015/2120 of the European Parliament and of the Council of 25 November 2015⁵;

“Regulator” means Commission for Communications Regulation;

“regulatory decision” means a decision of the Regulator that requires a person to do, or refrain from doing something, including the making of a requirement, the giving of a direction, the making of a determination, designation or specification;

“rights to install facilities” means –

- (a) a consent under section 53 of the Act of 2002, or
- (b) a licence under section 254(1) of the Act of 2000 for the establishment of overground electronic communications infrastructure and any associated physical infrastructure;

“road authority” has the meaning assigned to it by section 2 (as amended by section 11 of the Roads Act 2007 (No. 34 of 2007)) of the Roads Act 1993 (No. 14 of 1993);

⁶ OJ L 108, 24.04.2002, p.1.

⁷ OJ L 199, 30.7.1999, p. 59.

“RSC” means the Radio Spectrum Committee established pursuant to Article 3(1) of the Radio Spectrum Decision;

“RSPG” means the Radio Spectrum Policy Group established by Commission Decision No. 622/2002/EC of 26 July 2002⁸;

“security of networks and services” means the ability of electronic communications networks and services to resist, at a given level of confidence, any action that compromises the availability, authenticity, integrity or confidentiality of those networks and services, of stored or transmitted or processed data, or of the related services offered by, or accessible via, those electronic communications networks or services;

“shared use of radio spectrum” means access by two or more users to use the same radio spectrum bands under a defined sharing arrangement, authorised on the basis of a general authorisation, individual rights of use for radio spectrum or a combination thereof, including regulatory approaches such as licensed shared access aiming to facilitate the shared use of a radio spectrum band, subject to a binding agreement of all parties involved, in accordance with sharing rules as included in their rights of use for radio spectrum in order to guarantee to all users predictable and reliable sharing arrangements, and without prejudice to the application of competition law;

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

“small enterprise” means a company that is not a microenterprise and that has fewer than 50 employees and an annual turnover or balance sheet below €10 million;

“SMS” means a Short Message Service text message, composed principally of alphabetical or numerical characters, capable of being sent between mobile or fixed numbers assigned in accordance with national numbering plans;

“specific obligations” means obligations that may be imposed by the Regulator on an undertaking providing electronic communications networks and services under Regulation 42(1), (14) and (15) and Regulations 43, 50 and 64 or on those designated to provide universal service under these Regulations;

“subscriber” means any natural person or legal entity who or which is party to a contract with a provider of publicly available electronic communications services for the supply of such services;

“terminal equipment” means:

- (a) equipment directly or indirectly connected to the interface of a public telecommunications network to send, process or receive information; in either case (direct or indirect), the connection

⁸ OJ L 198, 27.07.2002, p.49.

may be made by wire, optical fibre or electromagnetically; a connection is indirect if equipment is placed between the terminal and the interface of the network;

(b) satellite earth station equipment;

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

“transnational markets” means markets identified by the European Commission in accordance with Article 65 of the Directive, which cover the European Union or a substantial part thereof located in more than one Member State;

“undertaking” means a person engaged or intending to engage in the provision of electronic communications networks or services or associated facilities;

“Universal Service Obligation” means an obligation imposed on an undertaking designated under Regulation 71(5), 72(3) or 73(2), or a measure imposed under Regulation 71(3);

“Universal Service Regulations” means European Communities (Electronic Communications Networks and Services)(Universal Service and Users’ Rights) Regulations 2011 (S.I. No. 337 of 2011);

“user” means a natural or legal person using or requesting a publicly available electronic communications service;

“very-high-capacity network” means either an electronic communications network which consists wholly of optical fibre elements at least up to the distribution point at the serving location, or an electronic communications network which is capable of delivering, under usual peak-time conditions, similar network performance in terms of available downlink and uplink bandwidth, resilience, error-related parameters, and latency and its variation; network performance can be considered similar regardless of whether the end-user experience varies due to the inherently different characteristics of the medium by which the network ultimately connects with the network termination point;

“voice communications service” means a publicly available electronic communications service for originating and receiving, directly or indirectly, national or national and international calls through a number or numbers in a national or international numbering plan;

“wireless broadband networks and services” means wireless broadband electronic communications networks and services.

(2) A word or expression that is used in these Regulations and that is also used in the Directive has, unless the context otherwise requires, the same meaning in these Regulations that it has in the Directive.

(3) A reference in any enactment or Regulations to the Framework Regulations, the Access Regulations, the Authorisation Regulations or to the Universal Service Regulations, is to be construed as a reference to these Regulations.

Regulatory authority

3. The Regulator is the national regulatory authority in the State for the purposes of these Regulations and the Directive.

Part 2

TASKS AND OBJECTIVES OF REGULATOR AND OTHER COMPETENT AUTHORITIES

Objectives of Regulator, etc.

4. (1) The Regulator and other competent authorities, in carrying out their regulatory tasks specified in these Regulations insofar as it gives effect to the Directive, shall take all reasonable measures which are necessary and proportionate for achieving the objectives set out in paragraph (3).

(2) The Regulator and other competent authorities shall contribute within their competences to ensuring the implementation of policies aimed at the promotion of freedom of expression and information, cultural and linguistic diversity, as well as media pluralism.

(3) In the context of its tasks, the Regulator and other competent authorities shall pursue each of the following general objectives which are not listed in order of priority —

- (a) promote connectivity and access to, and take-up of, very-high-capacity networks, including fixed, mobile and wireless networks, by all consumers and businesses in the State;
- (b) promote competition in the provision of electronic communications networks and associated facilities, including efficient infrastructure-based competition, and in the provision of electronic communications services and associated services;
- (c) contribute to the development of the internal market by removing remaining obstacles to, and facilitating convergent conditions for, investment in, and the provision of, electronic communications networks, electronic communications services, associated facilities and associated services, throughout the European Union, by developing common rules and predictable regulatory approaches, by favouring the effective, efficient and coordinated use of radio spectrum, open innovation, the establishment and development of trans-European networks, the provision, availability and interoperability of pan-European services, and end-to-end connectivity;
- (d) promote the interests of the consumers and businesses in the State, by ensuring connectivity and the widespread availability and take-up of very-high-capacity networks, including fixed, mobile and wireless networks, and of electronic communications services, by enabling maximum benefits in terms of choice, price and quality on the basis of effective

competition, by maintaining the security of networks and services, by ensuring a high and common level of protection for end-users through the necessary sector-specific rules and by addressing the needs, such as affordable prices, of specific social groups, in particular end-users with disabilities, elderly end-users and end-users with special social needs, and choice and equivalent access for end-users with disabilities.

(4) The Regulator shall —

- (a) having regard to its objectives under section 12 of the Act of 2002 and its tasks under these Regulations, actively support the goals of BEREC of promoting greater regulatory coordination and consistency,
- (b) take the utmost account of guidelines, opinions, recommendations, common positions, best practices and methodologies adopted by BEREC when adopting decisions for markets in the State,
- (c) provide assistance to and cooperate with the European Commission upon its request, in accordance with Article 3(3) of the Directive, and
- (d) engage and cooperate with the national regulatory and competent authorities of other Member States, the ITU, the RSPG, the RSC and the European Commission and Council upon their request, in the strategic planning, coordination and harmonisation of the use of radio spectrum in the European Union and in accordance with the aims and considerations referred to in Article 4(1), (2) and (3) of the Directive.

(5) The Regulator and other competent authorities, in pursuit of the policy objectives referred to in paragraph (3), shall apply impartial, objective, transparent, non-discriminatory and proportionate regulatory principles by, *inter alia* —

- (a) promoting regulatory predictability by ensuring a consistent regulatory approach over appropriate review periods and through cooperation with each other, with BEREC, with the RSPG and with the European Commission,
- (b) ensuring that, in similar circumstances, there is no discrimination in the treatment of providers of electronic communications networks and services,
- (c) applying European Union law in a technologically neutral fashion, to the extent that this is consistent with the achievement of the objectives set out in paragraph (3),
- (d) promoting efficient investment and innovation in new and enhanced infrastructures, including by ensuring that any access obligation takes appropriate account of the risk incurred by the investing undertakings and by permitting various cooperative 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 infrastructure, competition, the circumstances of end-users and, in particular, consumers that exist in the various geographic areas within the State, including local infrastructure managed by individuals on a not-for-profit basis, and
- (f) imposing *ex-ante* regulatory obligations only to the extent necessary to secure effective and sustainable competition in the interest of end-users where there is no effective and sustainable competition and relaxing or lifting such obligations as soon as that condition is fulfilled.

National regulatory and other competent authorities

5. (1) The Regulator shall be responsible for the following specific tasks —

- (a) implementing *ex ante* market regulation, including the imposition of access and interconnection obligations;
- (b) ensuring the resolution of disputes between undertakings;
- (c) carrying out radio spectrum management and decisions;
- (d) contributing to the protection of end-user rights in the electronic communications sector, in coordination, where relevant, with other competent authorities;
- (e) assessing and monitoring closely market-shaping and competition issues regarding open internet access;
- (f) assessing the unfair burden and calculating the net cost of the provision of universal service;
- (g) ensuring number portability between providers;
- (h) performing any other tasks reserved to the Regulator in accordance with these Regulations.

(2) The Regulator and other competent authorities shall —

- (a) where appropriate, consult and cooperate with each other and with relevant national and competent authorities in other Member States entrusted with the implementation of competition law or consumer law, on matters of common interest, and
- (b) where necessary, enter into cooperative arrangements with each other and with relevant national regulatory and competent authorities in other Member States, to foster regulatory cooperation.

(3) The Regulator and other competent authorities, shall exercise their powers under these Regulations and the Directive impartially, transparently and in a timely manner.

(4) For the purposes of contributing to BEREC's tasks, the Regulator shall be entitled to collect necessary data and other information from market participants.

(5) The Regulator and other competent authorities shall provide each other with the information necessary for the application of these Regulations.

(6) Subject to the Freedom of Information Act 2014, in respect of the information exchanged under paragraph (5), the receiving authority shall ensure the same level of confidentiality as that of the originating authority.

(7) The Regulator and other competent authorities shall ensure compliance of their processing of personal data with data protection law.

Part 3

GENERAL AUTHORISATION AND RIGHTS OF USE

CHAPTER 1

General part

General authorisation of electronic communications networks and services

6. (1) Subject to paragraph (4), any undertaking that intends to provide an electronic communications network or an electronic communications service other than a number-independent interpersonal communications service shall, before doing so, notify the Regulator of its intention to provide such a network or service.

(2) (a) Upon receipt by the Regulator of a notification under paragraph (1), the undertaking concerned is deemed to be authorised to provide an electronic communications network or electronic communications service or, as appropriate, both, subject to such conditions as may be specified by the Regulator under Regulation 8, 9 or 10 or rights of use referred to in Regulations 28 and 80.

(b) The Regulator may decide to prevent an undertaking from providing electronic communications networks or services only where this is necessary for the reasons set out in Article 52(1) TFEU. Such a decision shall be by way of direction to the undertaking concerned. Any such limitation to the freedom to provide electronic communications networks and services shall be duly reasoned and shall be notified to the European Commission.

(3) The Regulator may make a determination specifying an electronic communications network or electronic communications service of a particular

class or description as being a network or service in relation to which an undertaking is not subject to the requirements of paragraph (1).

(4) Where the Regulator determines under paragraph (3) that an undertaking is not required to notify under paragraph (1), that undertaking is deemed to be authorised under this Regulation.

(5) A notification under paragraph (1) shall be in such form as the Regulator may, from time to time, determine and shall contain the following information —

- (a) the name of the provider concerned,
- (b) the provider's legal status, including in the case of a body corporate, the company form and registration number,
- (c) the geographical address of the provider's main establishment in the Union, if any, and, where applicable, if different, its registered office in the State, and the geographical address of any secondary branch of the provider in a Member State,
- (d) the provider's website address, where applicable, associated with the provision of electronic communications networks or services,
- (e) names, addresses and contact numbers of relevant contact persons,
- (f) a short description of the network or services intended to be provided,
- (g) the Member State concerned, and
- (h) the estimated date of commencement of the relevant activity.

(6) The Regulator shall, by electronic means, forward each notification received in accordance with paragraph (1) to BEREC without undue delay.

(7) An undertaking shall notify the Regulator of any changes to the information supplied under paragraph (1) in relation to the matters referred to in paragraph (5)(a) to (e) within 14 days of such change and in relation to the matters referred to in paragraph (5)(f) and (g) before the commencement of the implementation of the change related to the relevant activity.

(8) An undertaking that fails to notify the Regulator in accordance with paragraph (1) or (7) commits a hybrid offence.

(9) An undertaking that fails to comply with a direction under paragraph (2)(b) commits an offence and is liable on summary conviction to a class A fine.

(10) A reference in any enactment to a person licensed under section 111 of the Act of 1983 is to be construed as a reference to an undertaking deemed to be authorised under these Regulations.

Register of authorised undertakings

7. (1) The register of authorised undertakings established under Regulation 6 of the Authorisation Regulations continues in being and information contained in any notification under Regulation 6 as the Regulator considers appropriate, other than information which the Regulator reasonably considers confidential, shall be entered in the register established and maintained under this paragraph.

(2) The Regulator may, as occasion requires, amend or delete an entry in the register.

(3) Members of the public may inspect the register free of charge at all reasonable times and may take copies of, or extracts from, entries in the register.

(4) In any proceedings a certificate bearing the seal of the Regulator, stating that the register shows that on the date or during the period specified in the certificate the name of the undertaking identified by the certificate was not entered in the register, is admissible as evidence of the fact that an undertaking identified by the certificate did not notify the Regulator in accordance with Regulation 6(1) of its intention to provide a network or service before that date or during that period.

(5) A document purporting to be a certificate under paragraph (4) is deemed to be such a certificate unless the contrary is shown.

Conditions attached to general authorisation and specific obligations

8. (1) The Regulator shall specify conditions to be attached to a general authorisation for the provision of electronic communications networks or services only as are listed in Parts A, B and C of Schedule 1. The Regulator may specify that certain conditions do not apply to undertakings of such class or type as may be specified by the Regulator.

(2) Any attachment of conditions to the general authorisation or non-application of conditions to undertakings of such class or type as may be specified by the Regulator under paragraph (1) shall be non-discriminatory, proportionate and transparent.

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

(4) The Regulator shall not attach as a condition to the general authorisation any specific obligations that it may impose on an undertaking nor any conditions which are applicable to undertakings by virtue of other law. Specific obligations which may be imposed on undertakings providing electronic communications networks and services under Regulation 42(1), (14) or (15) or Regulation 43, 50 or 64 or on those designated to provide universal service under these Regulations, shall be legally separate from the rights and obligations under the general authorisation.

(5) The criteria and procedures for imposing any specific obligations referred to in paragraph (4) shall be referred to by the Regulator in the specification of conditions referred to in paragraph (1).

(6) The Regulator shall ensure that where a requirement is specified as a condition of a licence such a requirement shall not be specified as a condition of a general authorisation in respect of the networks or services concerned.

(7) An undertaking that fails to comply with any conditions attached to its general authorisation commits a hybrid offence.

(8) In proceedings for an offence under paragraph (7) it is a defence for the person charged to show that he or she took all reasonable steps and exercised all due diligence to avoid committing the offence.

Conditions attached to rights of use for radio spectrum

9. (1) Notwithstanding section 5 of the Act of 1926 but subject to any regulations made under section 6 of that Act, where the Regulator specifies conditions to be attached to rights of use for radio spectrum, it may only attach such conditions as are listed in Part D of Schedule 1. The Regulator may specify that certain conditions do not apply to undertakings of such class or type as may be determined by the Regulator from time to time.

(2) Any —

(a) attachment of conditions under paragraph (1), or

(b) non-application under paragraph (1) of conditions to undertakings of a class or type as may be determined by the Regulator,

to rights of use for radio spectrum shall be non-discriminatory, proportionate and transparent and shall be in accordance with Regulation 27.

(3) An undertaking shall comply with the conditions attaching to rights of use for radio spectrum applicable to it.

(4) The Regulator shall ensure that where a requirement is specified as a condition of a right of use for radio spectrum such a requirement shall not be specified as a condition of the general authorisation in respect of the right of use concerned.

(5) Conditions attached by the Regulator to rights of use for radio spectrum shall ensure the effective and efficient use of such rights and be in accordance with Regulations 27 and 33.

(6) An undertaking that fails to comply with a condition that the Regulator has attached to rights of use for radio spectrum in accordance with paragraph (1) commits a hybrid offence.

(7) In proceedings for an offence under paragraph (6) it is a defence for the undertaking charged to show that it took all reasonable steps and exercised all due diligence to avoid committing the offence.

Conditions attached to rights of use for numbering resources

10. (1) The Regulator shall specify conditions to be attached to a right of use for numbering resources, only as are listed in Part E of Schedule 1. The

Regulator may decide that certain conditions do not apply to undertakings of such class or type as may be determined by the Regulator.

(2) Any attachment or non-application of conditions under paragraph (1) to a right of use for numbering resources shall be non-discriminatory, proportionate and transparent.

(3) An undertaking shall comply with the conditions attaching to rights of use for numbering resources applicable to it.

(4) The Regulator shall ensure that where a requirement is specified as a condition of a right of use for numbering resources such a requirement shall not be specified as a condition of the general authorisation in respect of the right of use concerned.

(5) An undertaking that fails to comply with a condition that the Regulator has attached to the undertaking's rights of use for numbering resources in accordance with paragraph (1) commits a hybrid offence.

(6) In proceedings for an offence under paragraph (5) it is a defence for the undertaking charged to show that it took all reasonable steps and exercised all due diligence to avoid committing the offence.

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

11. (1) The Regulator shall, within one week of the receipt by it of a request from any authorised undertaking, issue to that undertaking, in such form as the Regulator may from time to time determine, a standardised declaration —

- (a) confirming, where applicable, that the undertaking has submitted a notification under Regulation 6(1), and
- (b) detailing under what circumstances any undertaking has the right to—
 - (i) apply for rights to install facilities,
 - (ii) negotiate interconnection, and
 - (iii) obtain access or interconnection, in order to facilitate the exercise of those rights.

(2) Where it considers it appropriate to do so, the Regulator may issue such declaration as an automatic reply upon receipt of a notification under Regulation 6(1).

CHAPTER 2

General authorisation rights and obligations

Minimum list of rights derived from general authorisation

12. (1) An authorised undertaking may —

- (a) subject to Regulations 8, 9 and 10, provide the electronic communications networks or services as described in a notification under Regulation 6(1) or (7) or where a notification is not required as described in a determination referred to in Regulation 6(3),
- (b) apply for rights to install facilities,
- (c) use, subject to Regulations 8 and 9, 28 and 36, radio spectrum in relation to electronic communications networks and services, and
- (d) have their application for the necessary rights of use for numbering resources considered in accordance with Regulation 80.

(2) Where an authorised undertaking is providing an electronic communications network or service to the public, it has the right —

- (a) under the conditions of and in accordance with these Regulations and the Directive, to negotiate interconnection with and, where applicable, obtain access to or interconnection from another undertaking deemed to be authorised in the State or in another Member State to provide a publicly available electronic communications network or service, and
- (b) to be given an opportunity by the Regulator to be designated under Regulation 72(3) or 73(2) to carry out obligations referred to in those Regulations.

Accounting separation and financial reports

13. (1) An undertaking providing a public electronic communications network or a publicly available electronic communications service that is also engaged in an activity other than the provision of such network or service on the basis of special or exclusive rights for the provision of that activity, whether in the State or in another Member State, shall —

- (a) keep separate accounts audited in accordance with generally accepted auditing practices for the activities associated with the provision of that network or service, to the extent that would be required if those activities were carried out by one or more legally independent entities in order to identify all elements of cost and revenue, with the basis of their calculation and the detailed attribution methods used, related to such activities including an itemised breakdown of fixed assets and structural costs, or
- (b) have structural separation for the activities associated with the provision of electronic communications networks or services.

(2) Where an undertaking providing a public electronic communications network or a publicly available electronic communications service is not subject to the Companies Act 2014 and does not satisfy the small and medium

sized enterprise criteria of European Union law accounting rules, it shall ensure that —

- (a) annual accounts are drawn up, submitted to independent audit and published, and
 - (b) such audit is carried out in accordance with generally accepted auditing practices.
- (3) Paragraph (2) shall also apply to the separate accounts required under subparagraph (a) of paragraph (1).
- (4) An undertaking that fails to comply with the requirements of paragraph (1) or (2) commits a hybrid offence.

CHAPTER 3

Amendment and withdrawal

Amendment of rights and obligations

14. (1) The Regulator may amend the rights, conditions and procedures concerning the general authorisation, rights of use for radio spectrum or rights of use for numbering resources provided that any such amendment may only be made in objectively justified cases and in a proportionate manner, taking into consideration, where appropriate, the specific conditions applicable to transferable rights of use for radio spectrum or for numbering resources. The Regulator shall notify the holder of the authorisation or the rights of use of any decision to make the amendment.

(2) The NRA or a road authority may amend the conditions of a consent under section 53 of the Act of 2002 provided that such amendments may only be made in objectively justified cases and in a proportionate manner.

(3) A local authority may amend the conditions of a licence under section 254 of the Act of 2000 for the establishment of overground electronic communications infrastructure and any associated physical infrastructure provided that such amendment may only be made in objectively justified cases and in a proportionate manner.

(4) Except where the proposed amendments are minor in nature and have been agreed with the holder of a general authorisation, a right of use for radio spectrum, a right of use for numbering resources, a consent referred to in paragraph (2) or a licence referred to in paragraph (3), before making any amendment under this Regulation, the Regulator, the NRA, a road authority or a local authority, as the case may be, shall —

- (a) give notice, in such manner as it considers appropriate, of its intention to make the amendment and invite interested parties, including users and consumers, to make representations on the proposed amendment within such period as may be specified in the notice but not being, except in exceptional circumstances, less than 28 days from the date of the notice, and

- (b) have regard to any representations made to it under subparagraph (a).

(5) Amendments made in accordance with this Regulation shall be published by the Regulator, the NRA, a road authority or a local authority as appropriate, together with the reasons therefor.

Restriction or withdrawal of rights

15. (1) The Regulator shall not restrict or withdraw rights of use for radio spectrum or for numbering resources before the expiry of the period for which they were granted, except where justified, and, where applicable, in accordance with Schedule 1, and to relevant national provisions regarding compensation for the withdrawal of rights. The Regulator shall notify the holder of the rights of use of any decision to restrict or withdraw the rights.

(2) In line with the need to ensure the effective and efficient use of radio spectrum, or the implementation of the technical implementing measures adopted under Article 4 of the Radio Spectrum Decision, the Regulator may restrict or withdraw rights of use for radio spectrum, including the rights referred to in Regulation 31.

(3) The Regulator shall establish clearly defined procedures in advance for the restriction or withdrawal of rights of use in accordance with this Regulation and any restriction or withdrawal of rights shall follow the established procedures and be in accordance with the principles of proportionality and non-discrimination.

(4) Where the Regulator restricts or withdraws rights of use in accordance with this Regulation, the holders of the rights may, where appropriate, be compensated in accordance with law.

(5) A modification in the use of radio spectrum as a result of the application of any of the obligations under Regulation 27(3) to (8) shall not alone constitute grounds to justify the withdrawal of a right of use for radio spectrum.

(6) Where the Regulator intends to restrict or withdraw rights under the general authorisation or individual rights of use for radio spectrum or for numbering resources without the consent of the holder of the rights, it shall consult with interested parties in accordance with Regulation 101.

Part 4

INTERNAL MARKET PROCEDURES AND COORDINATION

CHAPTER 1

Radio spectrum coordination

Radio spectrum coordination among Member States

16. (1) Without prejudice to obligations under international law and relevant international agreements such as the International Telecommunications Union Radio Regulations and the ITU Radio Regional Agreements, the Regulator shall take all necessary measures, in accordance with these Regulations, to ensure that the use of radio spectrum is organised in a way that no other Member State is prevented from allowing on its territory the use of harmonised radio spectrum in accordance with European Union law, especially due to cross-border harmful interference between Member States.

(2) The Regulator, in carrying out the tasks assigned to it under these Regulations, shall cooperate with national regulatory authorities in other Member States and, where appropriate, through the RSPG, in the cross-border coordination of the use of radio spectrum in order to —

- (a) ensure compliance with paragraph (1), and
- (b) resolve any problem or dispute in relation to cross-border coordination or cross-border harmful interference between Member States, as well as with third countries, which prevent Member States from using the harmonised radio spectrum in their territory.

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

(4) Where the actions referred to in paragraph (2) or (3) have not resolved the problem or dispute, the Regulator may, having notified the Minister, request the European Commission to adopt a decision in accordance with Article 28(4) of the Directive to resolve cross-border harmful interference which prevents use of the harmonised radio spectrum in the State.

(5) This Regulation is without prejudice to the Act of 1926.

CHAPTER 2

Consolidating internal market for electronic communications

17. (1) In this Regulation, “measure” means a decision, designation, determination, requirement, specification or other act of an equivalent effect made by the Regulator under these Regulations, other than a determination under Regulation 67 or 68, and a case falling within paragraph (9).

(2) In carrying out its tasks under these Regulations the Regulator shall, taking the utmost account of its objectives under section 12 of the Act of 2002 and Regulation 4, contribute to the development of the internal market by working with national regulatory authorities in other Member States, BEREC and the European Commission in a transparent manner to ensure the consistent application of the Directive.

(3) For the purpose of paragraph (2), the Regulator shall, in particular, work with the European Commission and BEREC to identify the types of instruments and remedies best suited to address particular types of situations in the market.

(4) Except where otherwise provided in recommendations or guidelines adopted by the European Commission under Article 34 of the Directive, upon completion of the public consultation, if required under Regulation 101, where the Regulator intends to take a measure which —

- (a) falls within the scope of Regulation 42, 46, 49, 50 or 64, and
- (b) would affect trade between Member States,

the Regulator shall publish the draft measure and communicate it to the European Commission, BEREC and the national regulatory authorities in other Member States at the same time, stating the reasons for the measure, in accordance with Regulation 98(12) to (14).

(5) Where a draft measure referred to in paragraph (4) aims to —

- (a) define a relevant market which is different from any defined in a Recommendation adopted in accordance with Article 64(1) of the Directive, or
- (b) designate an undertaking as having, either individually or jointly with others, significant market power under Regulation 49(6), (7) or (8),

and it would affect trade between Member States, and the European Commission has indicated to the Regulator that it considers the draft measure would create a barrier to the internal market or that it has serious doubts as to its compatibility with European Union law and, in particular, the objectives referred to in Regulation 4, the draft measure shall not be adopted for a further 2 months.

(6) Where the European Commission has adopted a decision in accordance with point (a) of the first subparagraph of Article 32(6) of the Directive requiring the Regulator to withdraw a draft measure, the Regulator shall, within 6 months of the date of the decision of the European Commission —

- (a) withdraw the draft measure, or
- (b) amend it, undertake a public consultation in accordance with the procedures referred to in Regulation 101, and notify the amended draft measure to the European Commission in accordance with the procedure set out in paragraph (4).

(7) The Regulator shall take the utmost account of any comments of the European Commission, BEREC and a national regulatory authority in another Member State and may, except in cases covered by paragraph (5) and subparagraph (a) of paragraph (6), adopt the resulting draft measure and, where it does so adopt the draft measure, shall communicate it to the European Commission.

(8) The Regulator shall communicate to the European Commission and BEREC all adopted final measures which fall within the scope of subparagraphs (a) and (b) of paragraph (4).

(9) Where the Regulator considers that there are exceptional circumstances justifying an urgent need to act in order to safeguard competition and protect the interests of users it may, notwithstanding the procedures set out in paragraphs (4) and (5), immediately adopt proportionate measures on a provisional basis.

(10) Where the Regulator acts in accordance with paragraph (9), it shall without delay communicate the measures concerned, with full reasons for their adoption, to the European Commission, to BEREC and to the national regulatory authorities in other Member States.

(11) A decision by the Regulator to render a measure referred to in paragraph (9) permanent or extend the time for which it is applicable is subject to paragraphs (4) and (5).

(12) The Regulator may withdraw a draft measure at any time.

Procedure for consistent application of remedies

18. (1) Where —

- (a) a draft measure referred to in Regulation 17(4) aims to impose, amend or withdraw an obligation on an undertaking in application of Regulation 42 or 49 in conjunction with Regulations 51 to 58 and Regulation 64, and
- (b) the European Commission has, within the period of one month specified in Article 32(3) of the Directive, notified the Regulator that it considers that the draft measure would create a barrier to the internal market or that it has serious doubts as to its compatibility with European Union law,

then the draft measure shall not be adopted by the Regulator for a further three months following the notification referred to in subparagraph (b) from the European Commission.

(2) In the absence of a notification referred to in paragraph (1)(b), the Regulator may adopt the draft measure taking the utmost account of any comments made by the European Commission, BEREC or a national regulatory authority in another Member State.

(3) Within the three-month period referred to in paragraph (1), the Regulator shall cooperate closely with the European Commission and BEREC to identify the most appropriate and effective measure, having regard to its objectives under section 12 of the Act of 2002 and Regulation 4, whilst taking due account of the views of market participants and the need to ensure the development of consistent regulatory practice.

(4) Before the end of the three-month period referred to in paragraph (1), the Regulator may —

- (a) amend or withdraw its draft measure taking the utmost account of the notification from the European Commission referred to in

paragraph (1) and the opinion of BEREC issued in accordance with Article 33(3) and (4) of the Directive, or

(b) maintain its draft measure.

(5) Within one month of the European Commission issuing a recommendation in accordance with point (a) of Article 33(5) of the Directive or such extended period allowed by the European Commission, lifting its reservations in accordance with point (b) of Article 33(5), the Regulator shall communicate to the European Commission and BEREC the adopted final measure.

(6) Where the Regulator decides not to amend or withdraw the draft measure on the basis of the recommendation of the European Commission issued in accordance with point (a) of Article 33(5) of the Directive, the Regulator shall provide reasons.

(7) The Regulator shall withdraw a draft measure where the European Commission takes a decision under Article 33(5)(c) requiring it to withdraw such measure.

(8) The Regulator may withdraw the proposed draft measure at any stage of the procedure set out in this Regulation.

CHAPTER 3

Consistent radio spectrum assignment

Peer review process

19. (1) Where the Regulator intends to undertake a selection procedure in accordance with Regulation 36(2) and (3) in relation to radio spectrum for which harmonised conditions have been set by technical implementing measures in accordance with the Radio Spectrum Decision in order to enable its use for wireless broadband networks and services, it shall, pursuant to Regulation 101, inform the RSPG about any draft measure which falls within the scope of the comparative or competitive selection procedure pursuant to Regulation 36(2) and (3) and indicate whether and when it is to request the RSPG to convene a Peer Review Forum in accordance with Article 35 of the Directive.

(2) For the purposes of paragraph (1), the Regulator shall inform the RSPG about a draft measure at the moment of its publication.

(3) During a Peer Review Forum convened, or reconvened by the RSPG, whether on its own initiative or following a request from the Regulator, the Regulator shall provide an explanation on how the draft measure —

(a) promotes the development of the internal market, the cross-border provision of services, as well as competition, and maximises the benefits for the consumer, and overall achieves the objectives set in Regulations 4, 27, 28 and 29, as well as in

the Radio Spectrum Decision and Decision No. 243/2012/EU of the European Parliament and of the Council of 14 March 2012⁹,

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

(4) The Regulator may request the RSPG to adopt a report on how a draft measure achieves the objectives provided for in paragraph (3), reflecting the views exchanged in the Peer Review Forum.

(5) Following a Peer Review Forum, the Regulator may request the RSPG to adopt an opinion on the draft measure.

Harmonised assignment of radio spectrum

20. (1) When granting a right of use for radio spectrum in relation to which —

- (a) the harmonised usage of the radio spectrum involved in accordance with any international agreements or European Union rules,
- (b) any relevant access conditions and procedures under any international agreements or European Union rules, or
- (c) any selection procedure in accordance with international agreements or European Union rules,

apply, the Regulator shall grant the right of use for such radio spectrum in accordance therewith and shall not impose any further conditions, additional criteria or procedures which would restrict, alter or delay the grant of the right of use concerned provided that all conditions which may be specified by the Regulator to be complied with by the holder of the right of use in the State have been satisfied.

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

21. (1) The Regulator may, taking into account any interest expressed by market participants, cooperate with the competent authorities of two or several Member States, and with the RSPG, by jointly establishing the common aspects of an authorisation process and, where appropriate, also jointly conducting the selection process to grant individual rights of use for radio spectrum.

(2) When designing the joint authorisation process in accordance with paragraph (1), the Regulator shall take into consideration the following criteria:

⁹ OJ L 81, 21.3.2012, p.7.

- (a) the individual national authorisation processes shall be initiated and implemented by the competent authorities or national regulatory authorities in accordance with a jointly agreed schedule;
- (b) it shall provide, where appropriate, for common conditions and procedures for the selection and granting of individual rights of use for radio spectrum among the Member States concerned;
- (c) it shall provide, where appropriate, for common or comparable conditions to be attached to the individual rights of use for radio spectrum among the Member States concerned, *inter alia* allowing users to be assigned similar radio spectrum blocks;
- (d) it shall be open at any time to other Member States until the joint authorisation process has been conducted.

(3) Where, in spite of the interest expressed by market participants, the Regulator does not act jointly to establish the common aspects of an authorisation process, it shall inform those market participants of the reasons for not doing so.

CHAPTER 4

Harmonisation procedures

Harmonisation procedures

22. (1) The Regulator and other competent authorities shall, in carrying out their tasks under these Regulations, take the utmost account of any recommendations of the European Commission adopted under Article 38(1) of the Directive.

(2) Where the Regulator or other competent authority chooses not to follow any such recommendation, it shall inform the European Commission giving the reasons for its position and shall so inform the Minister.

Standardisation

23. (1) A provider of electronic communications networks, electronic communications services, associated facilities or associated services is encouraged to use the non-compulsory standards or specifications drawn up and published by the European Commission in accordance with Article 39 of the Directive for the provision of any or all of the following —

- (a) services,
- (b) technical interfaces, or
- (c) network functions,

to the extent strictly necessary to ensure interoperability of services, end-to-end connectivity, facilitation of provider switching and portability of numbers and identifiers, and to improve freedom of choice for users.

(2) In the absence of publication of standards or specifications in accordance with Article 39(1) of the Directive, a provider is encouraged to implement standards or specifications adopted by the European standardisation organisations.

(3) In the absence of such standards or specifications, the Regulator shall encourage the implementation of international standards or recommendations adopted by the ITU, CEPT, the International Organisation for Standardisation (ISO) and the International Electrotechnical Commission (IEC).

(4) Any standards or specifications referred to in this Regulation shall not prevent access as may be required under the Directive, where feasible.

(5) The Regulator may publish such guidance or advice as it considers appropriate for the purposes of this Regulation.

(6) This Regulation does not apply in respect of any of the essential requirements, interface specifications or harmonised standards to which the European Union (Radio Equipment) Regulations 2017 (S.I. No. 248 of 2017) apply.

Part 5

MARKET ENTRY AND DEPLOYMENT

CHAPTER 1

Fees

Fees for rights of use for radio spectrum and rights to install facilities

24. (1) The Regulator may, subject to sections 13 and 37 of the Act of 2002, impose fees for rights of use for radio spectrum, which reflect the need to ensure the optimal use of that radio spectrum. Where the Regulator intends to impose such fees, the Regulator shall publish on the website of the Regulator the proposal and allow any person affected by the proposal 28 days to make comments. The Regulator shall consider the comments and, if it considers it appropriate, consult with the person making them.

(2) The Regulator shall ensure that any such fees referred to in paragraph (1) are objectively justified, transparent, non-discriminatory and proportionate in relation to their intended purpose and shall take into account the objectives of the Regulator as set out in section 12 of the Act of 2002 and the general objectives of the Directive and these Regulations.

(3) With respect to rights of use for radio spectrum, the Regulator shall seek to ensure that applicable fees are set at a level which ensures efficient assignment and use of radio spectrum by:

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

- (b) taking into account costs entailed by conditions attached to those rights; and
- (c) applying, to the extent possible, payment arrangements linked to the actual availability for use of the radio spectrum.

(4) When establishing fees for rights of use for radio spectrum, the Regulator shall take account of the mechanism provided for under paragraphs (2) to (9) of Regulation 31.

(5) A charge imposed by the NRA or a road authority for a consent under section 53 of the Act of 2002 —

- (a) may reflect the need to ensure the optimal use of the relevant road, but
- (b) shall be objectively justified, transparent, non-discriminatory and proportionate in relation to its intended purpose and shall take into account, the general objectives of the Directive and of these Regulations.

(6) Any fees imposed under this Regulation by the Regulator, the NRA or by a road authority shall be published on the website of the Regulator and in such other manner as the Regulator may decide.

CHAPTER 2

Access to land

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

25. (1) Following a request to do so by an operator, the Regulator shall, subject to paragraph (7), make a decision whether or not to impose obligations on an operator who holds rights to install facilities, in relation to co-location or sharing of the network elements or associated facilities installed on that basis, where it is necessary to do so in order to —

- (a) protect the environment,
- (b) protect public health,
- (c) protect public security, or
- (d) meet objectives of the statutory planning system in the State.

(2) Obligations imposed under paragraph (1) shall be limited to the specific areas where co-location or sharing is necessary for the purpose of the objectives referred to in that paragraph and may include obligations to share network elements or associated facilities installed and sharing of property, including land, buildings, entries to buildings, building wiring, masts, antennae, towers and other supporting constructions, ducts, conduits, manholes, cabinets or measures facilitating the coordination of public works.

(3) An operator may only make a request under paragraph (1) having taken reasonable steps to reach an agreement on co-location or sharing of the

network elements and associated facilities with the operator who holds the right mentioned in paragraph (1).

(4) Before making a request for the purpose of paragraph (1), the operator shall —

- (a) in the case of a consent under section 53 of the Act of 2002, obtain and furnish to the Regulator an opinion from a road authority or the NRA that the proposed obligations of co-location or sharing of the network elements or associated facilities would protect the environment, public health or public security or meet town and country planning objectives, or
- (b) in the case of a licence under section 254 of the Act of 2000, provide the Regulator with —
 - (i) a copy of the relevant licence, which must include a condition permitting the co-location or sharing of network elements or facilities sought to be imposed, or
 - (ii) in the absence of such a copy, a statement from the local authority which granted the licence, that the condition referred to in subparagraph (i) is satisfied.

The Regulator may also consult with such other authority as it considers appropriate.

(5) An opinion required to be obtained under paragraph (4)(a) shall be provided by the authority concerned without undue delay.

(6) A decision under paragraph (1) may be made by the Regulator only after an appropriate period of public consultation as may be specified by the Regulator during which all interested parties shall be given an opportunity to express their views. The decision shall be notified to the interested parties that expressed views and the road authority, local authority or the NRA, as appropriate.

(7) With regard to any request made to the Regulator for a decision in accordance with paragraph (1), the Regulator may, having carried out a preliminary examination of the matter, decline to do so, giving reasons for the decision to the parties concerned, where it considers that —

- (a) the request for a decision is trivial or vexatious, or
- (b) the person making the request has not taken reasonable steps to reach an agreement on co-location or sharing of the network elements and associated facilities in accordance with paragraph (3).

(8) The Regulator shall make a decision regarding whether or not to impose co-location or sharing of the network elements or associated facilities on an operator who holds rights mentioned in paragraph (1) in accordance with procedures established and maintained by it and the procedures shall be made available, on a request being made for that purpose, to interested parties free of charge.

(9) In making a decision under paragraph (1) the Regulator may impose conditions including, without limitation —

- (a) conformity with the relevant standards relating to establishment, operation, maintenance and repair of electronic communications infrastructure and physical infrastructure,
- (b) compliance with essential requirements or the maintenance of the quality of electronic communications services or both, or
- (c) the apportionment of the costs of facility or property sharing and of civil works coordination,

and the Regulator shall notify, in writing, the parties concerned of the reasons for such conditions.

(10) The Regulator shall, for the purposes of this Regulation —

- (a) coordinate the process provided for,
- (b) act as a single information point, and
- (c) set down rules for the apportioning of the costs of facility or property sharing and of civil works coordination.

(11) A decision imposing an obligation in accordance with this Regulation shall be made in an objective, transparent, non-discriminatory and proportionate manner.

(12) The Regulator and the authorities referred to in paragraph (4) shall consult as appropriate and cooperate with each other for the purposes of this regulation.

Publication of information

26. (1) The Regulator shall ensure that all relevant information on rights, conditions, procedures, charges, fees and decisions concerning general authorisations, rights of use and rights to install facilities is published and kept up to date in an appropriate manner in order to provide easy access to that information for all interested parties.

(2) The Regulator shall make all reasonable efforts, having regard to the costs involved, to create a user-friendly overview of information regarding procedures and conditions relating to rights to install facilities in order to facilitate applications for such rights.

Part 6

ACCESS TO RADIO SPECTRUM AND RELATED PROVISIONS

CHAPTER 1

Authorisations

Management of radio spectrum

27. (1) The Regulator shall, subject to any directions issued by the Minister under section 13 of the Act of 2002 and having regard to its objectives under section 12 of the Act of 2002, Regulation 4 and Article 4 of the Directive, ensure —

- (a) the effective management of radio spectrum for electronic communications networks and services,
- (b) that the allocation of, the issuing of general authorisations in respect of, and the granting of individual rights of use for radio spectrum for electronic communications networks and services are based on objective, transparent, pro-competitive, non-discriminatory and proportionate criteria, and
- (c) that harmonisation of the use of radio spectrum by electronic communications networks and services across the European Union is promoted, consistent with the need to ensure its effective and efficient use and in pursuit of benefits for the consumer such as competition, economies of scale and interoperability of networks and services, having regard to all decisions and measures adopted by the European Commission in accordance with the Radio Spectrum Decision, *inter alia*, by:
 - (i) pursuing wireless broadband coverage of the State and its population at high quality and speed, as well as coverage of major national and European transport paths, including trans-European transport network as referred to in Regulation (EU) No. 1315/2013 of the European Parliament and of the Council of 11 December 2013¹⁰;
 - (ii) facilitating the rapid development in the Union of new wireless communications technologies and applications, including, where appropriate, in a cross-sectoral approach;
 - (iii) ensuring predictability and consistency in the granting, renewal, amendment, restriction and withdrawal of rights of use for radio spectrum in order to promote long-term investments;
 - (iv) ensuring the prevention of cross-border or national harmful interference in accordance with Regulations 16 and 28 respectively, and taking appropriate pre-emptive and remedial measures to that end;
 - (v) promoting the shared use of radio spectrum between similar or different uses of radio spectrum in accordance with competition law;
 - (vi) applying the most appropriate and least onerous authorisation system possible in accordance with

¹⁰ OJ L 348, 20.12.2013, p. 1.

Regulation 28 in such a way as to maximise flexibility, sharing and efficiency in the use of radio spectrum;

- (vii) applying rules for the granting, transfer, renewal, modification and withdrawal of rights of use for radio spectrum that are clearly and transparently laid down in order to guarantee regulatory certainty, consistency and predictability;
- (viii) pursuing consistency and predictability throughout the Union regarding the way the use of radio spectrum is authorised in protecting public health taking into account Recommendation 1999/519/EC.

(2) In the case of a national or regional lack of market demand for the use of a band in the harmonised radio spectrum, the Regulator in consultation with the Minister, may allow an alternative use of all or part of that band, including the existing use, in accordance with paragraphs (3) to (8), provided that:

- (a) the finding of a lack of market demand for the use of such a band is based on a public consultation in accordance with Regulation 101, including a forward-looking assessment of market demand;
- (b) such alternative use does not prevent or hinder the availability or the use of such a band in other Member States; and
- (c) the Regulator takes due account of the long-term availability or use of such a band in the European Union and the economies of scale for equipment resulting from using the harmonised radio spectrum in the European Union.

Any decision to allow alternative use on an exceptional basis shall be subject to a regular review by the Regulator and shall in any event be reviewed promptly upon a duly justified request by a prospective user to the Regulator for use of the band in accordance with the technical implementing measure. The Regulator, having notified the Minister, shall inform the European Commission and the other Member States of the decision taken, together with the reasons therefor, as well as of the outcome of any review.

(3) Without prejudice to paragraph (4), the Regulator shall ensure that all types of technology used for the provision of electronic communications networks or services may be used in the radio spectrum declared available for electronic communications services in the Radio Frequency Plan published under section 35 of the Act of 2002 in accordance with European Union law.

(4) Notwithstanding paragraph (3), the Regulator may, through licence conditions or otherwise, 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 taking utmost account of Recommendation 1999/519/EC,
- (c) ensure technical quality of service,

- (d) ensure maximisation of radio spectrum sharing,
- (e) safeguard the efficient use of radio spectrum, or
- (f) ensure the fulfilment of a general interest objective as defined by or on behalf of the Government or a Minister of the Government in accordance with paragraph (7).

(5) Without prejudice to paragraph (7), the Regulator shall ensure that all types of electronic communications services may be provided in the radio spectrum, declared available for electronic communications services in the Radio Frequency Plan published under section 35 of the Act of 2002 in accordance with European Union law.

(6) Notwithstanding paragraph (5), the Regulator 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 International Telecommunication Union Radio Regulations.

(7) 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 laid down by or on behalf of the Government or a Minister of the Government in accordance with European Union law including, but not limited to —

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

(8) The Regulator may only prohibit the provision of any other electronic communications service in a specific radio spectrum frequency band where such a prohibition is justified by the need to protect safety of life services. The Regulator may, on an exceptional basis, extend such a measure in order to fulfil other general interest objectives as laid down by or on behalf of the Government or a Minister of the Government in accordance with European Union law.

(9) The Regulator shall regularly review the necessity of any restrictions imposed under this Regulation and shall make the results of such reviews publicly available.

(10) In the fulfilment of its obligations under this Regulation, the Regulator shall respect relevant international agreements including the International Telecommunication Union Radio Regulations and other agreements adopted in the framework of the ITU applicable to radio spectrum, such as the agreement reached at the Regional Radiocommunications Conference of 2006, and any public policy considerations brought to its attention by the Minister.

Authorisation of use of radio spectrum

28. (1) The Regulator shall facilitate the use of radio spectrum, including shared use, under a general authorisation under these Regulations and limit the granting of individual rights of use for radio spectrum to situations where such rights are necessary to maximise efficient use in light of demand and taking into account the criteria set out in paragraph (2). In all other cases, the Regulator shall set out the conditions for the use of radio spectrum in a general authorisation.

(2) The Regulator may decide to grant individual rights of use for radio spectrum by way of licence taking account of:

- (a) the specific characteristics of the radio spectrum concerned;
- (b) the need to protect against harmful interference;
- (c) the development of reliable conditions for radio spectrum sharing, where appropriate;
- (d) the need to ensure technical quality of communications or service;
- (e) objectives of general interest as laid down by or on behalf of the Government or a Minister of the Government in accordance with European Union law;
- (f) the need to safeguard efficient use of radio spectrum.

(3) When considering whether to issue general authorisations or to grant individual rights of use for the harmonised radio spectrum, taking into account technical implementing measures adopted in accordance with Article 4 of the Radio Spectrum Decision, the Regulator shall seek to minimise problems of harmful interference, including in cases of shared use of radio spectrum on the basis of a combination of general authorisation and individual rights of use.

(4) Where appropriate, the Regulator shall consider the possibility to authorise the use of radio spectrum based on a combination of general authorisation and individual rights of use, taking into account the likely effects of different combinations of general authorisations and individual rights of use and of gradual transfers from one category to the other on competition, innovation and market entry.

(5) The Regulator shall seek to minimise restrictions on the use of radio spectrum by taking appropriate account of technological solutions for managing harmful interference in order to impose the least onerous authorisation regime possible.

(6) When taking a decision in accordance with this Regulation, with a view to facilitating the shared use of radio spectrum, the Regulator shall ensure that the conditions for the shared use of radio spectrum are clearly set out. Such conditions shall facilitate the efficient use of radio spectrum, competition and innovation.

Conditions attached to individual rights of use for radio spectrum

29. (1) The Regulator shall attach conditions to individual rights of use for radio spectrum in accordance with Regulation 9(1) in such a way as to ensure optimal and the most effective and efficient use of radio spectrum.

(2) The Regulator shall, before the assignment or renewal of individual rights of use, clearly establish any conditions attached to those rights, including the level of use required and the possibility to fulfil that requirement through trading or leasing, in order to ensure the implementation of those conditions. Conditions attached to renewals of right of use for radio spectrum shall not provide undue advantages to existing holders of those rights.

(3) Such conditions attached to individual rights of use shall specify the applicable parameters, including any deadline for exercising the rights of use, the non-fulfilment of which would entitle the Regulator to withdraw the right of use or impose other measures.

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

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

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

(6) The Regulator shall not prevent the sharing of radio spectrum in the conditions attached to the rights of use for radio spectrum. Implementation by undertakings of conditions attached pursuant to this paragraph shall remain subject to competition law.

(7) This Regulation is without prejudice to the Act of 1926.

CHAPTER 2

Rights of use

Granting of individual rights of use for radio spectrum

30. (1) Where it is necessary to grant individual rights of use for radio spectrum, the Regulator shall grant such rights, upon request, to any undertaking for the provision of electronic communications networks or services under the general authorisation referred to in Regulation 6, subject to —

- (a) Regulations 9, 36 and 99(1)(c),

- (b) any applicable provisions of the Act of 1926 or any relevant regulations made under that Act, and
 - (c) any other rules ensuring the efficient use of those resources in accordance with the Directive and these Regulations.
- (2) (a) The Regulator shall, having regard to Regulation 27 establish open, objective, transparent, non-discriminatory and proportionate procedures for the granting of individual rights of use for radio spectrum and shall cause any such procedures to be made publicly available. Such procedures shall be without prejudice to specific criteria and procedures for the granting of rights of use for radio spectrum to the providers of radio or television broadcast content services with a view to pursuing general interest objectives as defined by or on behalf of the Government or a Minister of the Government in accordance with European Union law.
- (b) The Regulator may determine that the procedures referred to in subparagraph (a) will not apply in cases where the granting of rights of use for radio spectrum to the providers of radio or television broadcast content services is necessary to achieve a general interest objective as defined by or on behalf of the Government or a Minister of the Government in conformity with European Union law.
- (3) (a) The Regulator shall consider applications for individual rights of use for radio spectrum in the context of selection procedures pursuant to objective, transparent, proportionate and non-discriminatory eligibility criteria that are set out in advance and reflect the conditions to be attached to such rights.
- (b) The Regulator shall be able to request all necessary information from applicants in order to assess, on the basis of those criteria, their ability to comply with those conditions.
- (c) Where the Regulator concludes that an applicant does not possess the required ability, it shall provide a duly reasoned decision to that effect.
- (4) When granting rights of use for radio spectrum, the Regulator shall, having regard to Regulations 27 and 33, specify whether such rights may be transferred or leased by the holder of the rights and under what conditions such a transfer may take place.
- (5) The Regulator shall make any decision on the grant of individual rights of use for radio spectrum as soon as possible after receipt by it of the complete application and in the case of radio spectrum that has been allocated to be used by electronic communications services within the Frequency Plan published under section 35 of the Act of 2002 within 6 weeks after such receipt. That time limit shall be without prejudice to Regulation 36(8) and to any applicable international agreements relating to the use of radio spectrum or of orbital positions.

(6) The Regulator shall communicate a decision referred to in paragraph (5) to an applicant for a right of use referred to in that paragraph as soon as possible after the decision is made and, subject to any restrictions which the Regulator considers appropriate in order to protect the confidentiality of any information which the Regulator considers confidential, make public such a decision as soon as possible after informing the applicant.

(7) For the purpose of this Regulation a general authorisation for the use of radio spectrum shall be facilitated by way of an order made by the Regulator under section 3(6) of the Act of 1926 declaring that a particular class or description of apparatus for wireless telegraphy is one to which the licence requirements of section 3 of the Act of 1926 do not apply.

Duration of rights

31. (1) Rights of use for radio spectrum shall be in force for such period as the Regulator considers appropriate in light of the objectives pursued in accordance with Regulation 36(2) and (3), taking due account of the need to ensure competition, as well as, in particular, effective and efficient use of radio spectrum, and to promote innovation and efficient investments, including by allowing for an appropriate period for investment amortisation.

(2) Where the Regulator decides to grant individual rights of use for radio spectrum for which harmonised conditions have been set by technical implementing measures in accordance with the Radio Spectrum Decision in order to enable its use for wireless broadband electronic communications services (“wireless broadband services”) for a limited period, it shall ensure regulatory predictability for the holders of the rights over a period of at least 20 years regarding conditions for investment in infrastructure which relies on the use of such radio spectrum, taking account of the requirements referred to in paragraph (1). This Regulation is subject, where relevant, to any modification of the conditions attached to those rights of use in accordance with Regulation 14.

(3) The Regulator shall ensure that the rights of use referred to in paragraph (2) are valid for a duration of at least 15 years and include, where necessary to comply with that paragraph, provision for an adequate extension and under the conditions laid down in paragraphs (4) to (8).

(4) The Regulator shall make available the general criteria for an extension of the duration of rights of use, in a transparent manner, to all interested parties in advance of granting rights of use, as part of the conditions laid down under Regulation 36(4) and (7). Such general criteria shall relate to:

- (a) the need to ensure the effective and efficient use of the radio spectrum concerned, the objectives pursued in Regulation 27(1)(c)(i) and (ii), or the need to fulfil general interest objectives related to ensuring safety of life, public order, public security or defence; and
- (b) the need to ensure undistorted competition.

(5) At the latest two years before the expiry of the initial duration of an individual right of use, the Regulator shall conduct an objective and forward-

looking assessment of the general criteria laid down for extension of the duration of that right of use in light of Regulation 27(1)(c)(iii). Provided that the Regulator has not initiated an investigation for non-compliance with the conditions of the rights of use, it shall grant the extension of the duration of the right of use unless it concludes that such an extension would not comply with the general criteria laid down in subparagraph (a) or (b) of paragraph (4).

(6) On the basis of the assessment referred to in paragraph (5), the Regulator shall notify the holder of the right as to whether the extension of the duration of the right of use is to be granted. If such an extension is not to be granted, the Regulator shall apply Regulation 30 for granting rights of use for that specific radio spectrum band.

(7) Any measure taken by the Regulator in accordance with paragraphs (2) to (6) shall be proportionate, non-discriminatory, transparent and reasoned.

(8) Notwithstanding Regulation 101, interested parties shall have the opportunity to comment on any draft measure taken by the Regulator in accordance with paragraphs (2) to (7) for a period of at least three months.

(9) The Regulator may derogate from the provisions of paragraphs (2) to (8) where duly justified, in the following cases:

- (a) in limited geographical areas, where access to high-speed networks is severely deficient or absent and this is necessary to ensure achievement of the objectives of Regulation 27(1);
- (b) for specific short-term projects;
- (c) for experimental use;
- (d) for uses of radio spectrum which, in accordance with Regulation 27(3) to (8), can coexist with wireless broadband services; or
- (e) for alternative use of radio spectrum in accordance with Regulation 27(2).

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

Renewal of individual rights of use for harmonised radio spectrum

32. (1) (a) The Regulator may renew individual rights of use for harmonised radio spectrum except where at the time of assignment, the possibility of renewal has been explicitly excluded.

- (b) A decision by the Regulator in accordance with subparagraph (a) shall be taken in a timely manner, before the duration of the rights expires.

(2) The Regulator shall assess the need for a renewal at its own initiative or upon request by the holder of the right, in the latter case not earlier than five

years prior to expiry of the duration of the rights concerned. This shall be without prejudice to renewal clauses applicable to existing rights.

(3) In taking a decision pursuant to paragraph (1) the Regulator shall consider, *inter alia*:

- (a) the fulfilment of the objectives set out in Regulations 4, 27(1)(c) and 30(2)(a), as well as public policy objectives under law;
 - (b) the implementation of a technical implementing measure adopted in accordance with Article 4 of the Radio Spectrum Decision;
 - (c) the review of the appropriate implementation of the conditions attached to the right concerned;
 - (d) the need to promote, or avoid any distortion of, competition in line with Regulation 34;
 - (e) the need to render the use of radio spectrum more efficient in light of technological or market evolution;
 - (f) the need to avoid severe service disruption.
- (4) (a) When considering possible renewal of individual rights of use for harmonised radio spectrum for which the number of rights of use is limited pursuant to paragraph (3), the Regulator shall conduct an open, transparent and non-discriminatory procedure, and shall, *inter alia*:
- (i) give all interested parties the opportunity to express their views through a public consultation in accordance with Regulation 101; and
 - (ii) clearly state the reasons for such possible renewal.
- (b) The Regulator shall take into account any evidence arising from the consultation pursuant to subparagraph (a) of market demand from undertakings other than those holding rights of use for radio spectrum in the band concerned when deciding whether to renew the rights of use or to organise a new selection procedure in order to grant the rights of use pursuant to Regulation 36.

(5) A decision by the Regulator to renew the individual rights of use for harmonised radio spectrum may be accompanied by a review of the fees as well as of the other terms and conditions attached thereto. Where appropriate, the Regulator may adjust the fees for the rights of use in accordance with Regulation 24.

Transfer or lease of individual rights of use for radio spectrum

33. (1) The Regulator shall ensure that undertakings may transfer or lease to other undertakings, individual rights of use for radio spectrum.

(2) Where an individual right of use for radio spectrum was initially obtained by an undertaking free of charge or assigned for broadcasting, the

Regulator may, with the consent of the Minister, determine that paragraph (1) does not apply.

(3) An undertaking intending to transfer or lease rights of use for radio spectrum shall notify the Regulator of its intention to do so and of the effective transfer of the rights. The notification shall be in accordance with procedures specified by the Regulator. The Regulator shall ensure that such notifications are made public. In the case of harmonised radio spectrum, any such transfer shall comply with such harmonised use.

(4) Where the original conditions attached to the rights of use for radio spectrum are maintained, the Regulator shall allow the transfer or lease of those rights. Without prejudice to the need to ensure the absence of a distortion of competition, in particular in accordance with Regulation 34, the Regulator shall:

- (a) submit transfers and leases to the least onerous procedure possible;
- (b) not refuse the lease of rights of use for radio spectrum where the lessor undertakes to remain liable for meeting the original conditions attached to the rights of use;
- (c) not refuse the transfer of rights of use for radio spectrum unless there is a clear risk that the new holder is unable to meet the original conditions for the right of use.

(5) Any administrative charge imposed by the Regulator on undertakings in connection with processing an application for the transfer or lease of rights of use for radio spectrum shall comply with Article 16 of the Directive.

(6) Subparagraphs (a), (b) and (c) of paragraph (4) are without prejudice to the Regulator's competence to enforce compliance with the conditions attached to the rights of use at any time, both with regard to the lessor and the lessee, in accordance with law.

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

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

(9) Where radio spectrum use has been harmonised through the application of the Radio Spectrum Decision or other European Union measures, a transfer of rights to use radio spectrum shall comply with such harmonised use.

Competition

34. (1) The Regulator shall promote effective competition and avoid distortions of competition in the internal market when deciding to grant, amend

or renew rights of use for radio spectrum for electronic communications networks and services in accordance with these Regulations.

(2) When the Regulator decides to grant, amend or renew rights of use for radio spectrum, it may take appropriate measures such as:

- (a) limiting the amount of radio spectrum bands for which rights of use are granted to any undertaking, or, in justified circumstances, attaching conditions to such rights of use, such as the provision of wholesale access, national or regional roaming, in certain bands or in certain groups of bands with similar characteristics;
- (b) reserving, if appropriate and justified with regard to a specific situation in the national market, a certain part of a radio spectrum band or group of bands for assignment to new entrants;
- (c) refusing to grant new rights of use for radio spectrum or to allow new radio spectrum uses in certain bands, or attaching conditions to the grant of new rights of use for radio spectrum or to the authorisation of new uses of radio spectrum, in order to avoid the distortion of competition by any assignment, transfer or accumulation of rights of use;
- (d) including conditions prohibiting, or imposing conditions on, transfers of rights of use for radio spectrum, not subject to European Union or national merger control, where such transfers are likely to result in significant harm to competition;
- (e) amending the existing rights in accordance with the Directive where this is necessary to remedy *ex post* a distortion of competition by any transfer or accumulation of rights of use for radio spectrum.

(3) When taking any measure referred to in paragraph (2) the Regulator shall, taking into account market conditions and available benchmarks, base its decisions on an objective and forward-looking assessment of:

- (a) the market competitive conditions,
- (b) whether such measures are necessary to maintain or achieve effective competition, and,
- (c) the likely effects of such measures on existing and future investments by market participants in particular for network roll-out.

In doing so, it shall take into account the approach to market analysis as set out in Regulation 49(5).

(4) When taking any decision or measure referred to in paragraph (2) the Regulator shall act in accordance with the procedures provided for in Regulations 14, 15, 19 and 101.

(5) For the purpose of this Regulation a general authorisation for the use of radio spectrum shall be facilitated by way of an order made by the Regulator

under section 3(6) of the Act of 1926 declaring that a particular class or description of apparatus for wireless telegraphy is one to which the licence requirements of section 3 of the Act of 1926 do not apply.

CHAPTER 3

Procedures

Coordinated timing of assignments

35. (1) The Regulator, having regard to its objectives under section 12 of the Act of 2002 and Regulation 4, and having notified the Minister, shall cooperate with the relevant authority in another Member State as appropriate in order to coordinate the use of harmonised radio spectrum for electronic communications networks and services in the Union taking due account of the different national market situations.

(2) The coordinated use of harmonised radio spectrum referred to in paragraph (1) may include identifying one, or, where appropriate, several common dates by which the use of specific harmonised radio spectrum is to be authorised.

(3) Where harmonised conditions have been set by technical implementing measures in accordance with the Radio Spectrum Decision in order to enable the radio spectrum use for wireless broadband networks and services, the Regulator shall allow the use of that radio spectrum, as soon as possible and at the latest 30 months after the adoption of the measure, or as soon as possible after the lifting of any decision to allow alternative use on an exceptional basis pursuant to Regulation 27(2).

(4) The Regulator may delay the deadline provided for in paragraph (3) for a specific band under the following circumstances:

- (a) to the extent justified by a restriction to the use of that band based on the general interest objective provided in point (a) or (d) of Regulation 27(7);
- (b) in the case of unresolved cross-border coordination issues resulting in harmful interference with third countries, provided the affected Member State has, where appropriate, requested European Union assistance pursuant to Article 28(5) of the Directive;
- (c) safeguarding national security and defence; or
- (d) *force majeure*.

Any delay in accordance with this paragraph shall be reviewed by the Regulator at least every two years.

(5) The Regulator may delay the deadline provided for in paragraph (3) for a specific band to the extent necessary and up to 30 months in the case of:

- (a) unresolved cross-border coordination issues resulting in harmful interference between the State and another Member State,

provided that the affected Member State takes all necessary measures in a timely manner pursuant to Regulation 16(3) and (4);

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

(6) In the event of a delay under paragraph (4) or (5), the Regulator shall notify the Minister.

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

36. (1) Without prejudice to Regulation 35, where the Regulator concludes that a right to use radio spectrum cannot be subject to a general authorisation and where it considers whether to limit the number of rights of use to be granted for radio spectrum, it shall, *inter alia*, without prejudice to sections 13 and 37 of the Act of 2002:

- (a) clearly state the reasons for limiting the rights of use, in particular by giving due weight to the need to maximise benefits for users and to facilitate the development of competition and review the limitation at intervals which it considers reasonable or at the reasonable request of any undertaking affected as appropriate;
 - (b) give all interested parties, including users and consumers, the opportunity to express their views on any limitation in accordance with Regulation 101.
- (2) (a) The Regulator may decide, having taken into account the matters referred to in paragraph (1)(a) and (b), that the number of rights of use for radio spectrum referred to in that paragraph ought to be limited and, where the Regulator so decides, it shall clearly establish, and give reasons for, the objectives pursued by means of a competitive or comparative selection procedure under this Regulation, and where possible quantify them, giving due weight to the need to fulfil national and internal market objectives.
- (b) The objectives that the Regulator may set out with a view to designing the specific selection procedure shall, in addition to promoting competition, be limited to one or more of the following:
 - (i) promoting coverage;
 - (ii) ensuring the required quality of service;
 - (iii) promoting efficient use of radio spectrum, including by taking into account the conditions attached to the rights of use and the level of fees;
 - (iv) promoting innovation and business development.

(3) The Regulator shall clearly define and justify the choice of the selection procedure, including any preliminary phase to access the selection procedure. It

shall also clearly state the outcome of any related assessment of the competitive, technical and economic situation of the market and provide reasons for the possible use and choice of measures pursuant to Regulation 19.

(4) The Regulator shall cause to be published in such form as the Regulator may determine:

- (a) any decision on the selection procedure chosen and the related rules, clearly stating the reasons therefor, and
- (b) the conditions that are to be attached to the rights of use.

(5) Following the determination of the selection procedure, the Regulator shall invite applications for rights of use.

(6) Without prejudice to sections 13 and 37 of the Act of 2002, where the Regulator concludes that additional rights of use for radio spectrum or a combination of general authorisation and individual rights of use can be granted, it shall publish that conclusion, in such form as it may determine, and invite applications for the of granting of such rights of use.

(7) Where the granting of rights of use for radio spectrum needs to be limited, the Regulator shall grant such rights on the basis of selection criteria and a selection procedure which are objective, transparent, non-discriminatory and proportionate. Any such selection criteria shall give due weight to the achievement of the objectives and requirements of section 12 of the Act of 2002 and Regulations 4, 16 and 27.

(8) Where the Regulator decides to use a competitive or comparative selection procedure for the purpose of granting rights of use for radio spectrum, the Regulator may extend the maximum period of 6 weeks referred to in Regulation 30(5) for as long as is necessary to ensure that such procedures are fair, reasonable, open and transparent to all interested parties, but by no longer than 8 months, subject to any specific timetable established pursuant to Regulation 35.

(9) The time limits referred to in paragraph (8) shall be without prejudice to any applicable international agreements relating to the use of radio spectrum and satellite coordination.

(10) This Regulation is without prejudice to the transfer of rights of use for radio spectrum in accordance with Regulation 33.

Publication of specification of conditions

37. (1) Subject to the need to protect commercial confidentiality, the Regulator shall cause to be published in *Iris Oifigiúil* and on its website, notice of the specification of conditions under Regulations 8, 9 and 10 and a determination under Regulation 6(3), 9(1) or 10(1). The notice shall include information on where copies of the specification of conditions or determination can be obtained.

(2) Where the Regulator amends or revokes any such specification of conditions or determinations in accordance with Regulation 14 or any such determination, paragraph (1) applies accordingly.

Part 7

DEPLOYMENT AND USE OF WIRELESS NETWORK EQUIPMENT

Access to radio local area networks

38. (1) The Regulator shall allow the provision of access through RLANs to a public electronic communications network and the use of harmonised radio spectrum for that provision, subject only to applicable general authorisation conditions relating to radio spectrum use as referred to in Regulation 28(1).

(2) Where the provision of access referred to in paragraph (1) is not part of an economic activity or is ancillary to an economic activity or a public service which is not dependent on the conveyance of signals on those networks, any undertaking, public authority or end-user providing such access shall not be subject to any general authorisation for the provision of electronic communications networks or services pursuant to Regulation 6, to obligations regarding end-users rights pursuant to Part 10, or to obligations to interconnect their networks pursuant to Regulation 42(1). Regulation 16 of the European Communities (Directive 2000/31/EC) Regulations 2003 (S.I. No. 68 of 2003) shall apply.

(3) Providers of public electronic communications networks or publicly available electronic communications services shall not be prevented by the Regulator or any other person from allowing access to their networks to the public through RLANs which may be located at the end-user's premises, subject to compliance with the applicable general authorisation conditions and the prior informed agreement of the end-user.

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

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

(5) End-users shall not be limited or prevented by the Regulator or by a local authority from allowing access, reciprocally or otherwise, to their RLANs by other end-users, including on the basis of third party initiatives which aggregate and make the RLANs of different end-users publicly accessible.

(6) The Regulator and local authorities shall not unduly restrict the provision of access to RLANs to the public:

- (a) by public authorities or in public spaces close to premises occupied by such public authorities, when that provision is ancillary to the public services provided on those premises;
- (b) by initiatives of non-governmental organisations or public authorities to aggregate and make reciprocally or more generally

accessible the RLANs of different end-users, including, where applicable, the RLANs to which public access is provided in accordance with subparagraph (a).

(7) A provider that fails to comply with an obligation under paragraph (4) commits an offence and is liable on summary conviction to a class A fine.

Deployment and operation of small-area wireless access points

39. (1) A local authority shall not unduly restrict the deployment of small-area wireless access points.

(2) Local authorities shall not subject the deployment of small-area wireless access points complying with the characteristics laid down pursuant to Commission Implementing Regulation (EU) 2020/1070 of 20 July 2020¹¹, to any individual town planning permit or other individual prior permits.

(3) Notwithstanding paragraph (2), a local authority may require statutory permits (within the meaning of the European Union (Reduction of Cost of Deploying High-Speed Public Communications Networks) Regulations 2016 (S.I. No. 391 of 2016)) for the deployment of small-area wireless access points on buildings or sites of architectural, historical or natural value protected in accordance with law or where necessary for public safety reasons.

(4) This Regulation is without prejudice to the essential requirements laid down in the European Union (Radio Equipment) Regulations 2017 (S.I. No. 248 of 2017) and to the authorisation regime applicable for the use of the relevant radio spectrum.

(5) (a) An operator has the right to access any physical infrastructure controlled by a local authority or public authority which is technically suitable to host small-area wireless access points or which is necessary to connect such access points to a backbone network, including street furniture, such as light poles, street signs, traffic lights, billboards, bus and tramway stops and metro stations.

(b) Where an operator requests such access, the authority requested shall meet all reasonable requests for access on fair, reasonable, transparent and non-discriminatory terms and conditions, which shall be made public at a single information point operated by the Regulator.

(6) Without prejudice to any commercial agreements, the deployment of small-area wireless access points shall not be subject to any fees or charges going beyond the administrative charges in accordance with Article 16 of the Directive.

Part 8

¹¹ OJ L 234, 21.7.2020, p. 11.

ACCESS AND INTERCONNECTION - RIGHTS, OBLIGATIONS AND REMEDIES

CHAPTER 1

General provisions, access principles

General framework for access and interconnection

40. (1) Subject to these Regulations, an undertaking, whether established in the State or in another Member State, shall not be prevented from negotiating with any other such undertaking an agreement on technical and commercial arrangements for access or interconnection in accordance with European Union law.

(2) An undertaking requesting access or interconnection in the State does not need to be authorised to operate in the State if it is not providing services and does not operate a network in the State.

(3) The Regulator shall not maintain or impose measures which require undertakings, when granting access or interconnection, to offer different terms and conditions to different undertakings for equivalent services or measures imposing obligations that are not related to the actual access and interconnection services provided without prejudice to the conditions specified in Schedule 1.

Rights and obligations of undertakings

41. (1) An operator of a public electronic communications network has the right to negotiate interconnection with another operator so authorised in accordance with Regulation 12 for the purpose of providing publicly available electronic communications services in order to ensure provision and interoperability of services throughout the European Union.

(2) An operator of a public electronic communications network shall negotiate interconnection for the purpose of providing publicly available electronic communications services when requested to do so by another undertaking, authorised in accordance with Regulation 12, in order to ensure the provision and interoperability of services.

(3) An operator shall offer access and interconnection to other undertakings on terms and conditions consistent with any obligations imposed by the Regulator under Regulation 42, 43 or 50.

(4) Without prejudice to Regulation 99, an undertaking that acquires information from another undertaking before, during or after the process of negotiating access or interconnection arrangements shall not use that information for a purpose other than that for which it was supplied and shall respect at all times the confidentiality of information transmitted or stored.

(5) An undertaking shall not pass any information referred to in paragraph (4) on to any other party, in particular, other departments, subsidiaries or

partners of the undertaking for whom such information could provide a competitive advantage.

(6) When the Regulator determines that the conditions of competition so require, it may direct that negotiations are to be conducted through neutral intermediaries. The direction is not limited to but may include a timeframe for negotiations to be concluded and the scope of the negotiations.

(7) An operator that fails to comply with the requirements of paragraph (2) or (3) commits a hybrid offence.

(8) An undertaking that fails to comply with the requirements of paragraph (4) or (5) commits a hybrid offence.

(9) An operator or an undertaking that fails to comply with a direction under paragraph (6) commits an offence and is liable on summary conviction to a class A fine.

(10) In proceedings for an offence under paragraph (7) in respect of a breach of paragraph (3) it is a defence for the operator charged to show that it took all reasonable steps and exercised all due diligence to avoid committing the offence.

CHAPTER 2

Access and interconnection

Powers and responsibilities with regard to access and interconnection

42. (1) The Regulator shall, acting in pursuit of its objectives set out in section 12 of the Act of 2002 and Regulation 4, encourage and, where appropriate, ensure, in accordance with these Regulations, adequate access, interconnection and the interoperability of services in such a way as to —

- (a) promote efficiency,
- (b) promote sustainable competition,
- (c) promote the deployment of very-high-capacity networks,
- (d) promote efficient investment and innovation, and
- (e) give the maximum benefit to end-users.

(2) The Regulator shall provide guidelines and make publicly available the procedures applicable to gain access and interconnection to ensure that small and medium-sized enterprises and operators with a limited geographical reach can benefit from the obligations imposed.

(3) Without prejudice to any measures that may be taken in accordance with Regulation 50 in respect of undertakings designated by the Regulator as having significant market power, the Regulator may —

- (a) to the extent that is necessary to ensure end-to-end connectivity, impose obligations on undertakings subject to the general authorisation that control access to end-users including, in

justified cases, the obligation to interconnect their networks where this is not already the case,

- (b) in justified cases and to the extent that is necessary, impose obligations on undertakings subject to the general authorisation that control access to end-users to make their services interoperable,
- (c) in justified cases, where end-to-end connectivity between end-users is endangered due to a lack of interoperability between interpersonal communications services, and to the extent necessary to ensure end-to-end connectivity between end-users, impose obligations on relevant providers of number-independent interpersonal communications services which reach a significant level of coverage and user uptake, to make their services interoperable,
- (d) after consultation with the Broadcasting Authority of Ireland, impose obligations set out in Regulation 43, to the extent that it is necessary to ensure accessibility for end-users to such digital radio and television broadcasting services and related complementary services as may be specified by the Broadcasting Authority of Ireland, on operators to provide access to application program interfaces (APIs) and electronic programme guides (EPGs) on fair, reasonable and non-discriminatory terms.

(4) The obligations referred to in paragraph (3)(c) shall be imposed only:

- (a) to the extent necessary to ensure interoperability of interpersonal communications services and may include proportionate obligations on providers of those services to publish and allow the use, modification and redistribution of relevant information by the Regulator and other providers, or to use and implement standards or specifications laid down in accordance with Regulation 23 or of any other relevant European or international standards; and
- (b) where the European Commission has adopted implementing measures specifying the nature and scope of any obligations that may be imposed in accordance with Article 61(2) of the Directive.

(5) In particular, and without prejudice to paragraphs (1), (2), (3) and (4), the Regulator may impose obligations, upon reasonable request, to grant access to wiring and cables and associated facilities inside buildings or up to the first concentration or distribution point as determined by the Regulator, where that point is located outside the building.

(6) Where it is justified on the grounds that replication of such network elements would be economically inefficient or physically impracticable, the obligations referred to in paragraph (5) may be imposed on providers of electronic communications networks or on the owners of such wiring and cables and associated facilities, where those owners are not providers of

electronic communications networks. The access conditions imposed may include specific rules on access to such network elements and to associated facilities and associated services, on transparency and non-discrimination and on apportioning the costs of access, which, where appropriate, are adjusted to take into account risk factors.

(7) Where the Regulator concludes, having regard, where applicable, to the obligations resulting from any relevant market analysis, that the obligations imposed in accordance with paragraph (5) or (6) do not sufficiently address high and non-transitory economic or physical barriers to replication which underlie an existing or emerging market situation significantly limiting competitive outcomes for end-users, it may extend the imposition of such access obligations, on fair and reasonable terms and conditions, beyond the first concentration or distribution point, to a point that it determines to be the closest to end-users, capable of hosting a sufficient number of end-user connections to be commercially viable for efficient access seekers. In determining the extent of the extension beyond the first concentration or distribution point, the Regulator shall take utmost account of relevant BEREC guidelines. If justified on technical or economic grounds, the Regulator may impose, by notifying the provider or owner concerned, active or virtual access obligations.

(8) The Regulator shall not impose obligations in accordance with paragraph (7) on providers of electronic communications networks where it determines that—

- (a) the provider has the characteristics listed in Regulation 62(1) and makes available a viable and similar alternative means of reaching end-users by providing access to a very-high-capacity network to any undertaking, on fair, non-discriminatory and reasonable terms and conditions; the Regulator may extend this exemption to other providers offering, on fair, non-discriminatory and reasonable terms and conditions, access to a very-high-capacity network, or
- (b) the imposition of obligations would compromise the economic or financial viability of a new network deployment, in particular by small local projects.

(9) Notwithstanding subparagraph (a) of paragraph (8), the Regulator may impose obligations on providers of electronic communications networks fulfilling the criteria laid down in that subparagraph where the network concerned is publicly funded.

- (10) (a) Without prejudice to paragraphs (1), (2), (3) and (4), the Regulator may impose obligations in relation to the sharing of passive infrastructure or obligations to conclude localised roaming access agreements, on undertakings providing or authorised to provide electronic communications networks, in both cases if:
 - (i) the imposition of such obligations is directly necessary for the local provision of services which rely on the use of

radio spectrum, in accordance with European Union law, and

- (ii) no viable and similar alternative means of access to end-users is made available to any undertaking on fair and reasonable terms and conditions.
- (b) The Regulator may impose such obligations only:
- (i) where the possibility of imposing the obligations is clearly provided for when granting the rights of use for radio spectrum, and
 - (ii) where justified on the grounds that, in the area subject to such obligations, the market-driven deployment of infrastructure for the provision of networks or services which rely on the use of radio spectrum is subject to insurmountable economic or physical obstacles and therefore access to networks or services by end-users is severely deficient or absent.

(11) Where access and sharing of passive infrastructure alone does not suffice to address the situations referred to in paragraph (10), the Regulator may impose obligations on sharing of active infrastructure.

(12) When imposing obligations in accordance with paragraph (10) or (11) the Regulator shall have regard to:

- (a) the need to maximise connectivity throughout the European Union, along major transport paths and in particular territorial areas, and to the possibility to significantly increase choice and higher quality of service for end-users;
- (b) the efficient use of radio spectrum;
- (c) the technical feasibility of sharing and associated conditions;
- (d) the state of infrastructure-based as well as service-based competition;
- (e) technological innovation;
- (f) the overriding need to support the incentive of the host to roll out the infrastructure in the first place.

(13) In the event of dispute resolution, the Regulator may, *inter alia*, impose on the beneficiary of the sharing or access obligation, the obligation to share radio spectrum with the infrastructure host in the relevant area.

(14) Any obligations imposed by the Regulator under this Regulation shall be objective, transparent, proportionate and non-discriminatory and shall be applied in accordance with the procedures referred to in Regulations 17, 18 and 101.

(15) The Regulator shall assess the results of any obligations or conditions imposed in accordance with this Regulation within a period of 5 years from the adoption of the previous measure adopted in relation to the same undertaking and assess whether it would be appropriate to withdraw or amend them in light

of evolving conditions. The Regulator shall notify the outcome of its assessment in accordance with the procedures referred to in Regulations 17, 18 and 101.

(16) With regard to access, interconnection and interoperability referred to in paragraph (1), (3) or (4) the Regulator may exercise its powers under these Regulations on its own initiative where justified in order to secure the policy objectives and regulatory principles set out in section 12 of the Act of 2002 and Regulation 4 in accordance with these Regulations and the procedures referred to in Regulations 17 and 101.

(17) When defining the location of network termination points the Regulator shall take utmost account of any guidelines adopted by BEREC in accordance with Article 61(7) of the Directive.

(18) A person who fails to comply with an obligation imposed by the Regulator under this Regulation commits an offence and is liable on summary conviction to a class A fine.

Conditional access systems and other facilities

43. (1) In relation to conditional access to digital television and radio services broadcast to viewers and listeners in the State, irrespective of the means of transmission, the following conditions shall apply:

- (a) an undertaking providing conditional access services, irrespective of the means of transmission, which provide access services to digital television and radio services and the access services upon which broadcasters depend to reach any group of potential viewers or listeners shall —
 - (i) offer to all broadcasters on a fair, reasonable and non-discriminatory basis, compatible with European Union competition law, technical services enabling the broadcasters' digitally-transmitted services to be received by viewers or listeners authorised by means of decoders administered by the service operators, and
 - (ii) keep separate financial accounts regarding his or her activity as a provider of such a service;
- (b) when granting a licence to a manufacturer of consumer equipment, a holder of industrial property rights to conditional access products and systems shall ensure that this is done on fair, reasonable and non-discriminatory terms. Taking into account technical and commercial factors, a holder of such rights shall not subject the granting of licences to conditions prohibiting, deterring or discouraging the inclusion in the same product of —
 - (i) a common interface allowing connection with several other conditional access systems, or
 - (ii) means specific to another conditional access system, provided that the licensee complies with the relevant and

reasonable conditions ensuring, as far as he or she is concerned, the security of transactions of conditional access system operators.

(2) Each duty referred to in paragraph (1) is a duty owed to any person who may be affected by a breach of it and without prejudice to any other cause of action which may arise from the duty —

- (a) any breach of such duty which causes that person to sustain loss or damage is actionable in tort, and
- (b) any condition included in a licence in contravention of the duty referred to in paragraph (1) is void.

(3) Where, as a result of a market analysis in accordance with Regulation 49, the Regulator determines that one or more undertakings do not have significant market power on the relevant market, the Regulator may amend or withdraw the conditions with respect to those undertakings in accordance with the procedures referred to in Regulations 17 and 101 but only to the extent that —

- (a) accessibility for end-users to radio and television broadcasts and broadcasting channels and services, specified in accordance with the Act of 2009, would not be adversely affected by such amendment or withdrawal, and
- (b) the prospects for effective competition in the following markets would not be adversely affected by such amendment or withdrawal—
 - (i) retail digital television and radio broadcasting services, and
 - (ii) conditional access systems and other associated facilities.

(4) The Regulator shall give such notice as it considers reasonable to any party affected by any such amendment or withdrawal of conditions.

(5) Nothing in this Regulation shall prejudice the application of section 74 of the Act of 2009.

(6) An undertaking providing conditional access services that fails to comply with the requirements of paragraph (1)(a) commits an offence and is liable on summary conviction to a class A fine.

(7) A holder of industrial property rights to conditional access products and systems who fails to comply with the requirements of paragraph (1)(b) commits an offence and is liable on summary conviction to a class A fine.

CHAPTER 3

Market analysis and significant market power

Definitions – Chapter 3

44. In this Chapter —

“Recommendation” means a Recommendation on Relevant Product and Service markets adopted in accordance with Article 64(1) of the Directive;

“SMP guidelines” means guidelines for market analysis and the assessment of significant market power published in accordance with Article 64(2) of the Directive.

Undertakings with significant market power

45. (1) A reference in these Regulations to an undertaking with significant market power is a reference to an undertaking designated as such by the Regulator under Regulation 49 where the Regulator is satisfied, acting in accordance with European Union law and taking the utmost account of the SMP guidelines, that in relation to any relevant market, such undertaking (whether individually or jointly with others) enjoys a position which is equivalent to dominance, namely a position of economic strength affording it the power to behave to an appreciable extent, independently of competitors, customers and, ultimately, consumers.

(2) Where an undertaking has significant market power on a specific market it may also be designated as having significant market power on a closely related market where the links between those two markets allow the market power held on the specific market to be leveraged into the closely related market, thereby strengthening the market power of the undertaking. Consequently, remedies aiming to prevent such leverage may be applied in the closely related market under Regulations 51, 52, 53 and 56 or any of them.

Procedure for identification and definition of markets

46. (1) The Regulator shall, taking the utmost account of the Recommendation and the SMP guidelines, define relevant markets appropriate to national circumstances, in particular the relevant geographic markets within the State by taking into account, *inter alia*, the degree of infrastructure competition in those areas, in accordance with the principles of competition law.

(2) The Regulator shall, where relevant, also take into account the results of the geographical survey conducted in accordance with Regulation 100 and it shall follow the procedures referred to in Regulations 17 and 101 before defining markets that differ from those identified in the Recommendation.

Procedure for identification of transnational markets

47. (1) The Regulator may submit a reasoned request with supporting evidence to BEREC to conduct an analysis of a potential transnational market in accordance with Article 65(1) of the Directive.

(2) Where a decision has been adopted by the European Commission in accordance with Article 65(1) of the Directive identifying a transnational market that covers all or part of the State, the Regulator shall, acting with such other national regulatory authorities concerned:

- (a) jointly conduct the market analysis taking the utmost account of the SMP guidelines,
- (b) in a concerted fashion, decide on any imposition, maintenance, amendment or withdrawal of regulatory obligations referred to in Regulation 49(8), and
- (c) notify the draft measures regarding the market analysis and any regulatory obligations pursuant to Regulations 17 and 18.

(3) In the absence of transnational markets, where two or more national regulatory authorities, one of which is the Regulator, consider that the market conditions in their respective jurisdictions are sufficiently homogeneous, the Regulator may, jointly with such other national regulatory authorities concerned, notify their draft measures regarding the market analysis and any regulatory obligations pursuant to Regulations 17 and 18.

Procedure for identification of transnational demand

48. (1) The Regulator may request BEREC to conduct an analysis of transnational end-user demand in accordance with Article 66(1) of the Directive, for products and services that are provided within the State and in one or more of the markets listed in the Recommendation, where the Regulator considers there is a serious demand problem to be addressed. The request shall be reasoned and include supporting evidence.

(2) The Regulator shall take into utmost account any guidelines issued by BEREC pursuant to Article 66(2) of the Directive on common approaches to meet identified transnational demand, when performing their regulatory tasks including, where appropriate, when imposing any remedies in accordance with Regulation 50.

Market analysis procedure

49. (1) The Regulator shall carry out an analysis of a relevant market defined in accordance with Regulation 46, and determine whether that relevant market is such as to justify the imposition of the regulatory obligations set out in the Directive. This analysis shall be carried out, where appropriate, in collaboration with the Competition and Consumer Protection Commission.

(2) The Regulator shall take utmost account of the SMP guidelines and shall follow the procedures referred to in Regulations 17 and 101 when making its determination in accordance with paragraph (1).

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

- (a) high and non-transitory structural, legal or regulatory barriers to entry are present;
- (b) there is a market structure which does not tend towards effective competition within the relevant time horizon, having regard to the state of infrastructure-based competition and other sources of competition behind the barriers to entry;

- (c) competition law alone is insufficient to adequately address the identified market failure.

(4) Where the Regulator conducts an analysis of a market that is included in the Recommendation, it shall consider that subparagraphs (a), (b) and (c) of paragraph (3) have been met, unless it determines that one or more of such criteria is not met in the specific national circumstances.

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

- (a) market developments affecting the likelihood of the relevant market tending towards effective competition;
- (b) all relevant competitive constraints, at the wholesale and retail levels, irrespective of whether the sources of such constraints are considered to be electronic communications networks, electronic communications services, or other types of services or applications which are comparable from the perspective of the end-user, and irrespective of whether such constraints are part of the relevant market;
- (c) other types of regulation or measures imposed and affecting the relevant market or related retail market or markets throughout the relevant period, including, without limitation, obligations imposed in accordance with Regulations 25, 41 and 42 or any of them;
- (d) regulation imposed on other relevant markets on the basis of this Regulation.

(6) Where the Regulator concludes that a relevant market does not justify the imposition of regulatory obligations in accordance with the procedures referred to in paragraphs (1) to (5), or where the conditions set out in paragraph (8) are not met, it shall not impose or maintain any specific regulatory obligations in accordance with Regulation 50. Where there already are sector specific regulatory obligations imposed in accordance with Regulation 50, it shall withdraw such obligations placed on undertakings in that relevant market.

(7) The Regulator shall ensure parties affected by a withdrawal of obligations in accordance with paragraph (6) receive an appropriate notice period and in setting such a notice period the Regulator shall balance the need to ensure:

- (a) a sustainable transition for the beneficiaries of those obligations and end-users,
- (b) end-user choice, and
- (c) that regulation does not continue for longer than necessary.

When setting such a notice period the Regulator may determine specific conditions and notice periods in relation to existing access agreements.

(8) Where the Regulator determines that in a relevant market the imposition of regulatory obligations in accordance with paragraphs (1) to (5) of this Regulation is justified it shall designate undertakings which individually or jointly have a significant market power on that relevant market in accordance with Regulation 45 and it shall impose on such undertakings appropriate specific regulatory obligations in accordance with Regulation 50 or maintain or amend such obligations where they already exist if it considers that the outcome for end-users would not be effectively competitive in the absence of those obligations.

(9) Measures taken in accordance with paragraphs (6) to (8) shall be subject to the procedures referred to in Regulations 17 and 101. The Regulator shall carry out an analysis of the relevant market and notify the corresponding draft measure in accordance with Regulation 17 —

- (a) within 5 years from the adoption of a previous measure where the Regulator has defined the relevant market and determined which undertakings have significant market power; that 5 year period may, on an exceptional basis, be extended for up to one year where the Regulator has notified a reasoned proposal for an extension to the European Commission no later than 4 months before the expiry of the 5 year period, and the European Commission has not objected within one month of the notified extension, or
- (b) within 3 years from the adoption of a revised Recommendation on relevant markets, for markets not previously notified to the European Commission.

(10) Where the Regulator considers that it may not complete or has not completed its analysis of a relevant market identified in the Recommendation within the time limit laid down in paragraph (9), it may request the assistance of BEREC in completing the analysis of the specific market and the specific obligations to be imposed. With this assistance, the Regulator shall, within 6 months of the time limit laid down in paragraph (9), notify the draft measure to the European Commission in accordance with Regulation 17.

CHAPTER 4

Access remedies imposed on undertakings with significant market power

Imposition, amendment or withdrawal of obligations

50. (1) Where an undertaking is designated as having significant market power on a specific market as a result of a market analysis carried out in accordance with Regulation 49, the Regulator, acting proportionately and using the least intrusive way shall, as appropriate, impose by notification on such undertaking such of the obligations set out in Regulations 51 to 56, 58 and 62 as the Regulator considers appropriate.

(2) The Regulator shall impose such of the obligations set out in Regulations 51 to 56, 58 and 62 only on those undertakings that have been

designated with significant market power in accordance with paragraph (1) without prejudice to—

- (a) Regulations 42 and 43,
- (b) Regulations 13 and 25,
- (c) Condition 7 in Part D of Schedule 1 as applied by virtue of Regulations 8 and 9,
- (d) Regulations 83 and 90,
- (e) the relevant provisions of the Privacy and Electronic Communications Regulations containing obligations on undertakings other than those designated as having significant market power, or
- (f) the need to comply with international commitments.

(3) In relation to paragraph (2), the Regulator shall notify any decision to impose, amend or withdraw obligations on undertakings to the European Commission in accordance with Regulation 17.

(4) Where, in exceptional circumstances, the Regulator intends to impose on undertakings designated as having significant market power obligations for access or interconnection other than those set out in Regulations 51 to 56, 58 or 62, the Regulator shall submit to the European Commission a request for authorisation to impose such other obligations. Without prejudice to Regulation 17(9), the Regulator shall not impose such other obligations pending the decision of the European Commission in accordance with Article 68(3) of the Directive to authorise or prevent the Regulator from taking such measures.

(5) Any obligations imposed in accordance with this Regulation shall —

- (a) be based on the nature of the problem identified by the Regulator in its market analysis, where appropriate taking into account the identification of transnational demand pursuant to Regulation 48,
- (b) be proportionate, having regard where possible, to the costs and benefits, and justified in the light of the objectives laid down in section 12 of the Act of 2002 and Regulation 4, and
- (c) only be imposed following consultation in accordance with Regulations 17 and 101.

(6) The Regulator may impose any of the obligations set out in Regulations 51 to 56, and 58 and 62, on undertakings to ensure that the State can comply with any international commitments referred to in paragraph (2) and where it does so it shall notify decisions to impose, amend or withdraw obligations on undertakings to the European Commission, in accordance with the procedure referred to in Regulation 17.

(7) The Regulator shall monitor the impact of new market developments, such as in relation to commercial agreements, including co-investment agreements, influencing competitive dynamics. If the Regulator considers that those developments are not sufficiently important to require a new market analysis in accordance with Regulation 49, the Regulator shall assess without

delay whether it is necessary to review the obligations imposed on undertakings designated as having significant market power and amend any previous decision, including by withdrawing obligations or imposing new obligations, in order to ensure that such obligations continue to meet the conditions set out in paragraph (5). Such amendments shall be imposed only after consultations in accordance with Regulations 17 and 101.

Obligation of transparency

51. (1) The Regulator may in accordance with Regulation 50 impose on an undertaking obligations to ensure transparency in relation to access or interconnection requiring such undertaking to make public specific information such as accounting information, prices, technical specifications, network characteristics and expected developments thereof, as well as terms and conditions for supply and use, including any conditions altering access to or use of services and applications, in particular with regard to migration from legacy infrastructure, where such conditions are permitted by law.

(2) The Regulator may, in particular where obligations under Regulation 52 are imposed on an undertaking, require such undertaking to publish a reference offer that is sufficiently unbundled to ensure that undertakings are not required to pay for facilities which are not necessary for the service requested and such offer shall include —

- (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.

(3) The Regulator may issue a direction requiring an undertaking to which this Regulation applies to make changes to a reference offer to give effect to obligations imposed under these Regulations and to publish the reference offer with such changes.

(4) The Regulator may specify in an obligation referred to in paragraph (1) or (2) or in a direction referred to in paragraph (3) the precise information to be made available, the level of detail required and the manner of publication.

(5) Notwithstanding paragraph (4), where an undertaking has obligations under Regulation 54 or 55 concerning wholesale access to network infrastructure, the Regulator shall require such undertaking to publish a reference offer taking utmost account of the BEREC guidelines on the minimum criteria for a reference offer issued in accordance with Article 69(4) of the Directive, shall ensure that key performance indicators are specified, where relevant, as well as corresponding service levels, and closely monitor and ensure compliance with them.

(6) An undertaking that fails to comply with —

- (a) an obligation imposed under paragraph (1),
- (b) a requirement imposed under paragraph (2) or (5), or
- (c) a direction issued under paragraph (3),

commits a hybrid offence.

(7) In proceedings for an offence under paragraph (6) it is a defence for the undertaking charged to show that it took all reasonable steps and exercised all due diligence to avoid committing the offence.

Obligations of non-discrimination

52. (1) The Regulator may in accordance with Regulation 50 impose on an undertaking obligations of non-discrimination in relation to access or interconnection.

(2) Any obligations referred to in paragraph (1) shall ensure, in particular, that the undertaking —

- (a) applies equivalent conditions in equivalent circumstances to other providers of equivalent services, and
- (b) provides services and information to others under the same conditions and of the same quality as it provides for its own services or those of its subsidiaries or partners.

(3) The Regulator may impose on an undertaking obligations to supply access products and services to all undertakings, including to itself, on the same timescales, terms and conditions, including those relating to price and service levels, and by means of the same systems and processes, in order to ensure equivalence of access.

(4) An undertaking that fails to comply with an obligation imposed under paragraph (1) or (3) commits a hybrid offence.

(5) In proceedings for an offence under paragraph (4) it is a defence for the undertaking charged to show that it took all reasonable steps and exercised all due diligence to avoid committing the offence.

Obligation of accounting separation

53. (1) The Regulator may in accordance with Regulation 50 impose on an undertaking obligations for accounting separation in relation to specified activities related to interconnection or access. In particular, the Regulator may require an undertaking which is vertically integrated to make transparent its wholesale prices and its internal transfer prices, *inter alia*, to ensure compliance with any obligation imposed under Regulation 52 or, where necessary, to prevent unfair cross-subsidy.

(2) For the purpose of paragraph (1) the Regulator may specify the format and accounting methodology to be used.

(3) A requirement upon an undertaking under Regulation 98 may, in order to facilitate the verification of compliance by an undertaking with any obligations of transparency under Regulation 51, and non-discrimination under Regulation 52, include a requirement that accounting records, including data on revenue records received from third parties, are provided by any such undertaking to the Regulator on request.

(4) Subject to the protection of the confidentiality of any information which the Regulator considers confidential, the Regulator may publish any information obtained by it under paragraph (3) to the extent that the Regulator considers that such information would contribute to an open and competitive market.

(5) An undertaking that fails to comply with an obligation or requirement imposed under paragraph (1) commits a hybrid offence.

(6) In proceedings for an offence under paragraph (5) it is a defence for the undertaking to show that it took all reasonable steps and exercised all due diligence to avoid committing the offence.

Access to civil engineering

54. (1) Where, as a result of a market analysis carried out in accordance with Regulation 49, the Regulator concludes that denial of access or access given under unreasonable terms and conditions having a similar effect, would hinder the emergence of a sustainable competitive market and would not be in the end-user's interest, the Regulator may, in accordance with Regulation 50, impose obligations on an undertaking to meet reasonable requests for access to, and use of, civil engineering including, but not limited to, buildings or entries to buildings, building cables, including wiring, antennae, towers and other supporting constructions, poles, masts, ducts, conduits, inspection chambers, manholes, and cabinets.

(2) The Regulator may impose obligations on an undertaking to provide access in accordance with paragraph (1), irrespective of whether the assets that are affected by the obligation are part of the relevant market in accordance with the market analysis, provided that the obligation is necessary and proportionate to meet the objectives of Regulation 4.

(3) An undertaking that fails to comply with an obligation imposed under paragraph (1) commits a hybrid offence.

(4) In proceedings for an offence under paragraph (3) it is a defence for the undertaking charged to show that it took all reasonable steps and exercised all due diligence to avoid committing the offence.

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

55. (1) The Regulator may in accordance with Regulation 50 impose on an undertaking obligations to meet reasonable requests for access to, and use of, specific network elements and associated facilities in situations where the Regulator considers that the denial of such access or the imposition by undertakings of unreasonable terms and conditions having a similar effect would hinder the emergence of a sustainable competitive market at the retail level, and would not be in the interests of end-users.

(2) The Regulator may require an undertaking, *inter alia* —

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

(3) The Regulator may subject an obligation imposed under paragraph (1) or a requirement imposed under paragraph (2) to conditions covering fairness, reasonableness and timeliness.

(4) Where the Regulator considers the appropriateness of imposing an obligation under paragraph (1) or a requirement under paragraph (2) and, in particular, where it assesses, in accordance with the principle of proportionality, whether and how such obligations are to be imposed, the Regulator shall analyse whether other forms of access to wholesale inputs, either on the same or on a related wholesale market, would be sufficient to address the identified problem in the end-user's interest. That assessment shall include commercial access offers, regulated access pursuant to Regulation 42, or existing or planned regulated access to other wholesale inputs pursuant to this Regulation. The Regulator shall take account in particular of the following factors —

- (a) the technical and economic viability of using or installing competing facilities, in light of the rate of market development, taking into account the nature and type of access or interconnection involved, including the viability of other upstream access products such as access to ducts,
- (b) the expected technological evolution affecting network design and management,

- (c) the need to ensure technology neutrality enabling the parties to design and manage their own networks,
- (d) the feasibility of providing the access offered in relation to the capacity available,
- (e) the initial investment by the facility owner taking account of any public investment made and the risks involved in making the investment, with particular regard to investments in, and risk levels associated with, very-high-capacity networks,
- (f) the need to safeguard competition in the long term, with particular attention to economically efficient infrastructure-based competition and innovative business models that support sustainable competition, such as those based on co-investment in networks,
- (g) where appropriate, any relevant intellectual property rights, and
- (h) the provision of pan-European services.

(5) Where the Regulator considers in accordance with Regulation 50, imposing obligations on the basis of Regulation 54 or this Regulation, it shall examine whether the imposition of obligations in accordance with Regulation 54 alone would be a proportionate means by which to promote competition and the end-user's interest.

(6) When imposing obligations on an undertaking to provide access in accordance with this Regulation the Regulator may lay down technical or operational conditions to be met by the provider or beneficiaries of such access where necessary to ensure normal operation of the network. Obligations to follow specific technical standards or specifications shall be in compliance with the standards and specifications as laid down in accordance with Regulation 23.

(7) An undertaking that fails to comply with —

- (a) an obligation imposed under paragraph (1),
- (b) a requirement imposed under paragraph (2), or
- (c) a condition attached to an obligation under paragraph (3),

commits a hybrid offence.

(8) In proceedings for an offence under paragraph (7) it is a defence for the undertaking charged to show that it took all reasonable steps and exercised all due diligence to avoid committing the offence.

Price control and cost accounting obligations

56. (1) The Regulator may in accordance with Regulation 50 impose on an undertaking obligations relating to cost recovery and price controls, including obligations for cost orientation of prices and obligations concerning cost accounting systems, for the provision of specific types of interconnection or access, in situations where a market analysis indicates that a lack of effective competition means that the undertaking concerned may sustain prices at an

excessively high level, or may apply a price squeeze, to the detriment of end-users.

(2) In determining whether price control obligations would be appropriate, the Regulator shall take into account the need to promote competition and long-term end-user interests related to the deployment and take-up of next-generation networks, and in particular of very-high-capacity networks. In particular, to encourage investments by the undertaking, including in next generation networks, the Regulator shall, when considering the imposition of obligations under paragraph (1), take into account the investment made by the undertaking which the Regulator considers relevant. Where the Regulator considers price control obligations to be appropriate, it shall allow the undertaking a reasonable rate of return on adequate capital employed, taking into account any risks involved specific to a particular new investment network project.

(3) The Regulator shall consider not imposing or maintaining obligations pursuant to this Regulation, where it establishes that a demonstrable retail price constraint is present and that any obligations imposed in accordance with Regulations 51 to 55, including, in particular, any economic replicability test imposed in accordance with Regulation 52, ensures effective and non-discriminatory access.

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

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

(6) Where an undertaking has an obligation under this Regulation regarding the cost orientation of its prices, the burden of proof that charges are derived from costs, including a reasonable rate of return on investment shall lie with the undertaking concerned. For the purpose of calculating the cost of efficient provision of services, the Regulator may use cost accounting methods independent of those used by the undertaking. The Regulator may issue a direction requiring an undertaking to provide full justification for its prices and may, where appropriate, require prices to be adjusted.

(7) The Regulator shall ensure that, where implementation of a cost accounting system is imposed under this Regulation in order to support price control, a description of the cost accounting system is made publicly available showing at least the main categories under which costs are grouped and the rules used for the allocation of costs. Compliance with the cost accounting system shall, at the choice of the Regulator, be verified by the Regulator or by a suitably qualified independent body.

(8) The Regulator shall cause to be published annually a statement concerning compliance with any cost accounting system imposed under this Regulation.

(9) An undertaking that fails to comply with —

- (a) an obligation imposed under paragraph (1), or
- (b) a direction issued under paragraph (6),

commits a hybrid offence.

(10) In proceedings for an offence under paragraph (9) it is a defence for the undertaking charged to show that it took all reasonable steps and exercised all due diligence to avoid committing the offence.

Termination rates

57. (1) Where the European Commission decides, following a review in accordance with Article 75(2) of the Directive, not to impose a maximum mobile voice termination rate or a maximum fixed voice termination rate, or neither, the Regulator may conduct market analyses of voice termination markets in accordance with Regulation 49, to assess whether the imposition of regulatory obligations is necessary.

(2) If the Regulator imposes cost-oriented termination rates as a result of a market analysis referred to in paragraph (1), it shall follow the principles, criteria and parameters set out in Schedule 2 and its draft measure shall be subject to the procedures referred to in Regulations 17, 18 and 101.

(3) The Regulator shall closely monitor, and ensure compliance by providers of voice termination services, with the application of the European Union-wide voice termination rates set in accordance with Article 75(1) of the Directive.

(4) A provider of mobile or fixed voice termination services shall comply with Article 3 of Commission Delegated Regulation (EU) 2021/654 of 18 December 2020³.

(5) A provider of mobile or fixed voice termination services who contravenes paragraph (4) commits a hybrid offence.

(6) The Regulator shall annually report to the Commission and to BEREC with regard to the application of this Regulation.

Regulatory treatment of new very-high-capacity network elements

58. (1) An undertaking which has been designated as having significant market power in one or several relevant markets in accordance with Regulation 49 may offer commitments to the Regulator, in accordance with the procedure set out in Regulation 61 and subject to paragraph (2), to open the deployment of a new very-high-capacity network that consists of optical fibre elements up to the end-user premises or base station to co-investment, for example by offering co-ownership or long-term risk sharing through co-financing or through purchase agreements giving rise to specific rights of a structural

character by other providers of electronic communications networks or services.

(2) When the Regulator assesses commitments offered by an undertaking in accordance with paragraph (1), it shall determine, in particular, whether the offer to co-invest complies with all of the following conditions:

- (a) it is open at any moment during the lifetime of the network to any provider of electronic communications networks or services;
- (b) it would allow other co-investors which are providers of electronic communications networks or services to compete effectively and sustainably in the long term in downstream markets in which the undertaking designated as having significant market power is active, on terms which include:
 - (i) fair, reasonable and non-discriminatory terms allowing access to the full capacity of the network to the extent that it is subject to co-investment;
 - (ii) flexibility in terms of the value and timing of the participation of each co-investor;
 - (iii) the possibility to increase such participation in the future; and
 - (iv) reciprocal rights awarded by the co-investors after the deployment of the co-invested infrastructure;
- (c) it is made public by the undertaking in a timely manner and, if the undertaking does not have the characteristics listed in Regulation 62(1), at least six months before the start of the deployment of the new network; that period may be prolonged by the Regulator based on relevant circumstances;
- (d) access seekers not participating in the co-investment can benefit from the outset from the same quality, speed, conditions and end-user reach as were available before the deployment, accompanied by a mechanism of adaptation over time confirmed by the Regulator in light of developments on the related retail markets, that maintains the incentives to participate in the co-investment; such mechanism shall ensure that access seekers have access to the very-high-capacity elements of the network at a time, and on the basis of transparent and non-discriminatory terms, which reflect appropriately the degrees of risk incurred by the respective co-investors at different stages of the deployment and take into account the competitive situation in retail markets;
- (e) it complies at a minimum with the criteria set out in Schedule 3 and is made in good faith.

In carrying out its assessment and making its determination in accordance with this paragraph, the Regulator shall also take utmost account of guidelines published by BEREC in accordance with Article 76(4) of the Directive.

(3) If the Regulator concludes, taking into account the results of the market test conducted in accordance with Regulation 61(3) to (6), that the co-investment commitment offered complies with the conditions set out in paragraph (2), it shall make that commitment binding pursuant to Regulation 61(7) to (11), and shall not impose any additional obligations pursuant to Regulation 50 as regards the elements of the new very-high-capacity network that are subject to the commitments, if at least one potential co-investor has entered into a co-investment agreement with the undertaking designated as having significant market power.

(4) Paragraph (3) shall be without prejudice to the regulatory treatment of circumstances that do not comply with the conditions set out in paragraph (2) of this Regulation, taking into account the results of any market test conducted in accordance with Regulation 61(3) to (6), but that have an impact on competition and are taken into account for the purposes of Regulations 49 and 50.

(5) Notwithstanding paragraph (3), the Regulator may, in duly justified circumstances, impose, maintain or adapt remedies in accordance with Regulations 50 to 56 as regards new very-high-capacity networks in order to address significant competition problems on specific markets, where the Regulator establishes that, given the specific characteristics of these markets, those competition problems would not otherwise be addressed.

(6) The Regulator shall, on an ongoing basis, monitor compliance with the conditions set out in paragraph (2) and may require the undertaking designated as having significant market power to provide it with annual compliance statements.

(7) This Regulation is without prejudice to the power of the Regulator to take decisions pursuant to Regulation 67(2) in the event of a dispute arising between undertakings in connection with a co-investment agreement considered by it to comply with the conditions set out in paragraph (2).

(8) When carrying out its tasks under these Regulations relating to very-high-capacity networks, the Regulator shall take into utmost account any guidelines issued by BEREC in accordance with Article 82 of the Directive.

Functional separation

59. (1) Where the Regulator concludes —

- (a) that the appropriate obligations imposed under Regulations 51 to 56 have failed to achieve effective competition, and
- (b) that there are important and persisting competition problems or market failures identified in relation to the wholesale provision of certain access product markets,

it may, on an exceptional basis, in accordance with Regulation 50(4), impose an obligation on vertically integrated undertakings to place activities related to the wholesale provision of relevant access products in a business entity operating independently.

(2) The independently operating business entity referred to in paragraph (1) shall supply access products and services to all undertakings, including to other business entities within the parent company, on the same timescales, terms and conditions, including those relating to price and service levels, and by means of the same systems and processes.

(3) Where the Regulator intends to impose an obligation of functional separation under this Regulation, it shall submit a request to the European Commission that includes —

- (a) evidence justifying the conclusions of the Regulator as referred to in paragraph (1),
- (b) a reasoned assessment concluding 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 —
 - (i) on the Regulator,
 - (ii) on the undertaking concerned, in particular on the workforce of the separated undertaking,
 - (iii) on the electronic communications sector as a whole, and on incentives to invest therein, in particular with regard to the need to ensure social and territorial cohesion, and
 - (iv) on other stakeholders including, in particular, the expected impact on competition and any potential resulting 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 or the market failures identified.

(4) The draft measure shall include the following elements —

- (a) the precise nature and level of separation specifying, in particular, the legal status of the separate business entity,
- (b) an identification of the assets of the separate business entity and the products or services to be supplied by that entity,
- (c) the governance arrangements to ensure the independence of the staff employed by the separate business entity, and the corresponding incentive structure,
- (d) rules for ensuring compliance with the obligations,
- (e) rules for ensuring transparency of operational procedures, in particular, towards other stakeholders, and
- (f) a monitoring programme to ensure compliance, including the publication of an annual report.

(5) Following the European Commission's decision taken in accordance with Article 68(3) of the Directive on that draft measure, the Regulator shall

conduct a coordinated analysis of the different markets related to the access network in accordance with the procedure set out in Regulation 49. On the basis of that analysis, the Regulator shall impose, maintain, amend or withdraw obligations, in accordance with the procedures set out in Regulations 17 and 101.

(6) Where the Regulator has imposed an obligation under paragraph (1) on an undertaking, it may also impose on the undertaking any of the obligations referred to in Regulations 51 to 56, in any specific market where the undertaking has been designated as having significant market power in accordance with Regulation 49, or any other obligations authorised by the European Commission under Article 68(3).

(7) An undertaking that fails to comply with an obligation imposed under paragraph (1) commits a hybrid offence.

(8) In proceedings for an offence under paragraph (7) it is a defence for the undertaking charged to show that it took all reasonable steps and exercised all due diligence to avoid committing the offence.

Voluntary separation by vertically integrated undertaking

60. (1) An undertaking which has been designated as having significant market power in one or several relevant markets in accordance with Regulation 49 shall notify the Regulator at least three months before any intended transfer of their local access network assets or substantial part thereof to a separate legal entity under different ownership, or establishment of a separate business entity in order to provide all retail providers, including its own retail divisions, with fully equivalent access products.

(2) An undertaking referred to in paragraph (1) shall also inform the Regulator of any change of intent notified under that paragraph within 6 weeks of the change of intent, as well as the final outcome of the process of separation within 6 weeks of the separation.

(3) An undertaking referred to in paragraph (1) may also offer commitments regarding access conditions that are to apply to their network during an implementation period after the proposed form of separation is implemented, with a view to ensuring effective and non-discriminatory access by third parties. The offer of commitments shall include sufficient details, including in terms of timing of implementation and duration, in order to allow the Regulator to conduct its tasks in accordance with paragraph (4). Such commitments may extend beyond the maximum period for market reviews set out in Regulation 49(9).

- (4) (a) The Regulator shall assess the effect of the intended transaction, together with the commitments offered, where applicable, on existing regulatory obligations under these Regulations. For that purpose, the Regulator shall conduct an analysis of the different markets related to the access network in accordance with the procedure set out in Regulation 49.
- (b) The Regulator shall take into account any commitments offered by the undertaking, having regard in particular to the objectives

set out in Regulation 4. In so doing, the Regulator shall consult third parties in accordance with Regulation 101, and shall address, in particular, those third parties which are directly affected by the intended transaction.

- (c) On the basis of its analysis, the Regulator shall impose, maintain, amend or withdraw obligations in accordance with the procedures set out in Regulations 17 and 101, applying, if appropriate, Regulation 62. In its decision, the Regulator may make the commitments binding, wholly or in part. Notwithstanding Regulation 49(9), the Regulator may make the commitments binding, wholly or in part, for the entire period for which they are offered.

(5) Without prejudice to Regulation 62, the Regulator may impose on the legally or operationally separate business entity any of the obligations referred to in Regulations 51 to 56 in any specific market where it has been designated as having significant market power in accordance with Regulation 49, or any other obligations authorised by the European Commission under Article 68(3) of the Directive where any commitments offered are insufficient to meet the objectives set out in Regulation 4 and section 12 of the Act.

(6) The Regulator shall monitor the implementation of the commitments offered by the undertakings that it has made binding in accordance with paragraph (4) and shall consider their extension before the period for which they are initially offered has expired.

(7) An undertaking that fails to comply with a requirement of paragraph (1) or (2) commits an offence and is liable on summary conviction to a class A fine.

(8) In proceedings for an offence under paragraph (7) it is a defence for the undertaking charged to show that it took all reasonable steps and exercised all due diligence to avoid committing the offence.

Commitments procedure

61. (1) An undertaking designated as having significant market power in one or several relevant markets in accordance with Regulation 49, may offer commitments to the Regulator regarding conditions for access, co-investment, or both, applicable to its networks in relation, *inter alia*, to —

- (a) cooperative arrangements relevant to the assessment of appropriate and proportionate obligations pursuant to Regulation 50,
- (b) co-investment in very-high-capacity networks pursuant to Regulation 58, or
- (c) effective and non-discriminatory access by third parties pursuant to Regulation 60, both during an implementation period of voluntary separation by a vertically integrated undertaking and after the proposed form of separation is implemented.

(2) The offer for commitments referred to in paragraph (1) shall be sufficiently detailed including as to the timing and scope of their implementation and their duration, to allow the Regulator to undertake its assessment pursuant to paragraph (3). Such commitments may extend beyond the periods for carrying out market analysis provided in Regulation 49(9).

(3) In order to assess any commitments offered by an undertaking pursuant to paragraph (1), the Regulator shall, except where such commitments clearly do not fulfil one or more relevant conditions or criteria, perform a market test, in particular on the offered terms, by conducting a public consultation of interested parties, in particular third parties which are directly affected. Potential co-investors or access seekers may provide views on the compliance of the commitments offered with the conditions provided, as applicable, in Regulation 50, 58 or 60 and may propose changes.

(4) As regards the commitments offered under this Regulation, the Regulator shall, when assessing obligations pursuant to Regulation 50(5), have particular regard to:

- (a) evidence regarding the fair and reasonable character of the commitments offered;
- (b) the openness of the commitments to all market participants;
- (c) the timely availability of access under fair, reasonable and non-discriminatory conditions, including to very-high-capacity networks, before the launch of related retail services; and
- (d) the overall adequacy of the commitments offered to enable sustainable competition on downstream markets and to facilitate cooperative deployment and take-up of very-high-capacity networks in the interest of end-users.

(5) Taking into account all the views expressed in the consultation referred to in paragraph (3), and the extent to which such views are representative of different stakeholders, the Regulator shall communicate to the undertaking designated as having significant market power its preliminary conclusions whether the commitments offered in accordance with paragraph (1) comply with the objectives, criteria and procedures set out in this Regulation and, as applicable, in Regulation 50, 58 or 60, and under which conditions it may consider making the commitments binding.

(6) Following the communication referred to in paragraph (5), the undertaking may revise its initial offer to take account of the preliminary conclusions of the Regulator and with a view to satisfying the criteria set out in this Regulation and, as applicable, in Regulation 50, 58 or 60.

(7) Without prejudice to Regulation 58(3), the Regulator may issue a decision to make the commitments binding, wholly or in part.

(8) Notwithstanding Regulation 49(9), the Regulator may make some or all commitments binding for a specific period, which may be the entire period for which they are offered, and in the case of co-investment commitments made binding pursuant to Regulation 58(3), it shall make them binding for a minimum period of seven years.

(9) Subject to Regulation 58, this Regulation is without prejudice to the application of the market analysis procedure pursuant to Regulation 49 and the imposition of obligations pursuant to Regulation 50.

(10) Where the Regulator makes commitments binding pursuant to this Regulation, it shall assess under Regulation 50 the consequences of that decision for market development and the appropriateness of any obligation that it has imposed or would, absent those commitments, have considered imposing pursuant to Regulations 50 to 56.

(11) When notifying the relevant draft measure under Regulation 50 in accordance with Regulation 17, the Regulator shall accompany the notified draft measure with the commitments decision.

(12) The Regulator shall monitor, supervise and ensure compliance with the commitments that it has made binding in accordance with paragraph (7) in the same way in which it monitors, supervises and ensures compliance with obligations imposed under Regulation 50 and shall consider the extension of the period for which they have been made binding before the initial period expires.

(13) An undertaking shall comply with commitments that have been made binding in accordance with paragraph (7).

(14) Without prejudice to paragraph (13), the Regulator may reassess the obligations imposed in accordance with Regulation 50(7).

(15) An undertaking that fails to comply with a commitment made binding in accordance with paragraph (7) commits a hybrid offence.

Wholesale-only undertakings

62. (1) Where the Regulator designates an undertaking which is absent from any retail markets for electronic communications services as having significant market power in one or several wholesale markets in accordance with Regulation 49, it shall consider whether that undertaking has the following characteristics:

- (a) all companies and business units within the undertaking, all companies that are controlled but not necessarily wholly owned by the same ultimate owner, and any shareholder capable of exercising control over the undertaking, only have activities, current and planned for the future, in wholesale markets for electronic communications services and therefore do not have activities in any retail market for electronic communications services provided to end-users in the European Union;
- (b) the undertaking is not bound to deal with a single and separate undertaking operating downstream that is active in any retail market for electronic communications services provided to end-users, because of an exclusive agreement, or an agreement which *de facto* amounts to an exclusive agreement.

(2) If the Regulator concludes that the conditions laid down in paragraph (1) of this Regulation are fulfilled, it may impose on that undertaking only

obligations pursuant to Regulations 52 and 55 or relative to fair and reasonable pricing if justified on the basis of a market analysis including a prospective assessment of the likely behaviour of the undertaking designated as having significant market power.

(3) The Regulator shall review obligations imposed on the undertaking in accordance with this Regulation at any time if it concludes that the conditions laid down in paragraph (1) of this Regulation are no longer met and it shall, as appropriate, apply Regulations 49 to 56.

(4) The Regulator shall also review obligations imposed on the undertaking in accordance with this Regulation if, on the basis of evidence of terms and conditions offered by the undertaking to its downstream customers, it concludes that competition problems have arisen or are likely to arise to the detriment of end-users which require the imposition of one or more obligations provided in Regulation 51, 53, 54 or 56, or the amendment of the obligations imposed in accordance with paragraph (2).

(5) The imposition of obligations and their review in accordance with this Regulation shall be implemented in accordance with the procedures referred to in Regulations 17, 18 and 101.

(6) Undertakings shall, without undue delay, inform the Regulator of any change of circumstances relevant to subparagraphs (a) and (b) of paragraph (1).

Migration from legacy infrastructure

63. (1) An undertaking which has been designated by the Regulator as having significant market power in one or several relevant markets in accordance with Regulation 49 (“an SMP undertaking”) shall notify the Regulator in advance and in a timely manner of when it plans to decommission or replace with a new infrastructure parts of the network, including legacy infrastructure necessary to operate a copper network, which are subject to obligations pursuant to Regulations 50 to 62.

(2) The SMP undertaking referred to in paragraph (1) shall, prior to any decommissioning or replacement of legacy infrastructure, submit a decommissioning or replacement process, as appropriate, to the Regulator, which the Regulator shall ensure —

- (a) includes a transparent timetable and conditions, including an appropriate notice period for transition, and
- (b) establishes the availability of alternative products of at least comparable quality providing access to the upgraded network infrastructure substituting the replaced elements, that in the opinion of the Regulator, are necessary to safeguard competition and the rights of end-users.

(3) The Regulator may specify the requirements to be complied with by an SMP undertaking for the purposes of paragraphs (1) and (2).

(4) With regard to assets which are proposed for decommissioning or replacement, the Regulator may withdraw the obligations after having ascertained that the SMP undertaking:

- (a) has established the appropriate conditions for migration, including making available an alternative access product of at least comparable quality as was available using the legacy infrastructure enabling access seekers to reach the same end-users; and
- (b) has complied with the conditions and process notified to the Regulator in accordance with this Regulation.

Such withdrawal shall be implemented in accordance with the procedures referred to in Regulations 17, 18 and 101.

(5) This Regulation shall be without prejudice to the availability of regulated products imposed by the Regulator on the upgraded network infrastructure in accordance with the procedures set out in Regulations 49 and 50.

- (6) An undertaking that fails to —
 - (a) provide notification in accordance with paragraph (1), or
 - (b) comply with a requirement specified by the Regulator under paragraph (3),

commits an offence and is liable on summary conviction to a class A fine.

CHAPTER 5

Regulatory control of retail services

Regulatory control of retail services

64. (1) Where the Regulator —
- (a) determines, as a result of market analysis carried out by it in accordance with Regulation 49 that a given retail market identified in accordance with Regulation 46(1) is not effectively competitive, and
 - (b) concludes that the obligations imposed under Regulations 51 to 56 would not result in the achievement of the objectives set out in section 12 of the Act of 2002 and Regulation 4,

the Regulator shall impose such obligations, as it considers appropriate to achieve those objectives, on undertakings identified by the Regulator under Regulation 49(9), as having significant market power on a given retail market.

(2) Any obligations imposed by the Regulator under paragraph (1) shall be based on the nature of the problem identified under the market analysis and be proportionate and justified in the light of the objectives set out in section 12 of the Act of 2002 and Regulation 4, and may include requirements to ensure that the undertaking concerned does not —

- (a) charge excessive prices,
- (b) inhibit market entry or restrict competition by setting predatory prices,

- (c) show undue preference to specific end-users, or
- (d) unreasonably bundle services.

(3) The Regulator may require an undertaking to which paragraph (1) applies to comply with —

- (a) measures to control individual tariffs,
- (b) retail price cap measures, or
- (c) measures to orient tariffs towards costs or prices on comparable markets,

in order to protect end-users' interests whilst promoting effective competition.

(4) An undertaking that is subject to retail tariff regulation or other relevant retail controls shall operate and maintain a cost accounting system that is—

- (a) based on generally accepted accounting practices,
- (b) suitable for ensuring compliance with this Regulation, and
- (c) capable of verification by the Regulator or a suitably qualified independent person nominated by the Regulator.

(5) The Regulator may specify the format and accounting methodology to be used by an undertaking to which paragraph (4) applies.

(6) Compliance by an undertaking with a cost accounting system referred to in paragraph (4) shall be verified by a qualified independent person.

(7) An undertaking to which paragraph (4) applies shall publish in its annual accounts a statement concerning compliance by it with a cost accounting system referred to in that paragraph.

(8) Without prejudice to Regulations 71 and 74, the Regulator shall not apply retail control mechanisms under paragraph (1) in a relevant market in relation to which the Regulator is satisfied that effective competition exists.

(9) An undertaking that fails to comply with

- (a) an obligation imposed under paragraph (1), or
- (b) a requirement imposed under paragraph (3),

commits an offence and is liable on summary conviction to a class A fine.

(10) An undertaking that fails to comply with the requirements of paragraph (4) or (7) commits an offence and is liable on summary conviction to a class A fine.

(11) In proceedings for an offence under paragraph (9) it is a defence for the undertaking charged to show that it took all reasonable steps and exercised all due diligence to avoid committing the offence.

CHAPTER 6

*Publication of information – access obligations**Publication of notice of obligations and access to information*

65. (1) The Regulator shall cause to be published on its website notice of the imposition of the obligations imposed under this Part. Such notice shall include information on where copies of a statement of the obligations imposed can be obtained.

(2) Where the Regulator amends or revokes an obligation imposed under this Part, it shall publish a notice referred to in paragraph (1).

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

(4) The Regulator shall ensure, subject to the need to protect commercial confidentiality, that the information published under paragraph (1) is up to date and is made publicly available in a manner that guarantees all interested parties easy access to that information.

(5) The Regulator shall provide the European Commission with information published in accordance with this Regulation.

CHAPTER 7

*Notification and monitoring – undertakings with significant market power**Notification of undertakings designated as having significant market power*

66. (1) The Regulator shall notify the European Commission of the names of undertakings deemed to have significant market power for the purpose of these Regulations and the obligations imposed upon them under these Regulations.

(2) The Regulator shall notify the European Commission of any changes affecting these obligations imposed upon undertakings referred to in paragraph (1) by or under these Regulations and of any changes to such undertakings affected as soon as practicable after any such change.

CHAPTER 8

*Dispute resolution between undertakings**Dispute resolution between undertakings*

67. (1) This Regulation applies to disputes —

- (a) arising between providers of electronic communications networks or services in the State, in connection with existing obligations under these Regulations,
- (b) between such undertakings and other undertakings benefiting from obligations of access or interconnection arising under the Directive and under these Regulations, or
- (c) between providers of electronic communications networks or services and providers of associated facilities in connection with existing obligations under the Directive and under these Regulations.

(2) Where a dispute is referred to the Regulator in accordance with paragraph (1) and the Regulator has decided that it is appropriate for it to handle the dispute, the Regulator shall, subject to paragraph (4), at the request of either party, initiate an investigation of the dispute and as soon as possible but, except in circumstances which the Regulator considers exceptional, within 4 months from the date of the decision of the Regulator that it is appropriate for it to handle the dispute, make a binding determination to resolve the dispute. The Regulator shall provide the parties concerned with a full statement of the reasons on which its determination is based.

(3) The Regulator shall publish clear and efficient dispute resolution procedures and shall ensure that all investigations and determinations are handled in accordance with those procedures.

(4) The Regulator may decide not to initiate an investigation referred to in paragraph (2) where it is satisfied that other mechanisms, including mediation, are available to the parties that would better contribute to resolution of the dispute in a timely manner in accordance with the objectives set out in Regulation 4, or if legal proceedings in relation to the dispute have been initiated by either party.

(5) Where the Regulator decides, under paragraph (4), not to initiate an investigation it shall inform the parties of such decision as soon as possible thereafter and the notification shall include the reasons for its decision.

(6) If after the expiry of 4 months from the date of a decision referred to in paragraph (4) the dispute is not resolved and legal proceedings by either party in relation to the dispute are not in progress, the Regulator shall at the request of either party initiate an investigation and make a determination in accordance with paragraph (2).

(7) In making a determination under this Regulation the Regulator shall have regard to its objectives under section 12 of the Act of 2002 and Regulation 4.

(8) An undertaking to which a determination under this Regulation applies shall comply with the determination applicable to it.

(9) An undertaking that —

- (a) fails to cooperate with an investigation under this Regulation, or
- (b) fails to comply with a determination made under this Regulation,

commits an offence and is liable on summary conviction to a class A fine.

(10) Any obligations imposed on an undertaking by the Regulator in resolving a dispute shall respect the Directive, these Regulations and the relevant provisions of the Act of 2002.

(11) The Regulator, having regard to the requirements of commercial confidentiality, shall publish a notice of a determination under this Regulation and the notice shall indicate where copies of, or information regarding, the determination may be obtained.

(12) The procedure referred to in this Regulation does not preclude either party from bringing an action before the courts and is without prejudice to the right to bring an appeal.

Resolution of cross-border disputes

68. (1) In the event of a dispute arising under these Regulations, or under the Directive between undertakings in different Member States, paragraphs (2) to (4) shall apply. Those provisions shall not apply to disputes relating to radio spectrum coordination covered by Regulation 16.

(2) Any party may refer such a dispute to the Regulator or to the other national regulatory authority or authorities concerned. Where the dispute affects trade between Member States the Regulator shall notify the dispute to BEREC in order to bring about a consistent resolution of the dispute in accordance with the objectives set out in Regulation 4.

(3) Where a notification is made by the Regulator in accordance with paragraph (2), the Regulator shall await the opinion of BEREC before taking any action to resolve the dispute. In exceptional circumstances, where there is an urgent need to act, in order to safeguard competition or protect the interests of end-users, the Regulator may, either at the request of the parties or on its own initiative, adopt interim measures. Any interim measures adopted shall cease where the Regulator is satisfied that the dispute is resolved.

(4) Any obligations imposed by the Regulator on an undertaking as part of the resolution of a dispute shall comply with the provisions of the Directive, take the utmost account of the opinion adopted by BEREC and be adopted within one month of such opinion. Where the Regulator makes a determination for the purpose of resolving a dispute under this Regulation paragraphs (8) to (12) of Regulation 67 shall apply.

Part 9

UNIVERSAL SERVICE OBLIGATIONS

Definition (Part 9)

69. In this Part “adequate broadband” means the adequate broadband internet access service defined by the Minister under Regulation 70(2).

*Affordable universal service**Designation*

70. (1) An undertaking designated as having a universal service obligation in accordance with Regulation 72(3) shall, as appropriate to the specific obligation for which it has been designated, satisfy any reasonable request by a consumer, microenterprise, small enterprise, medium-sized enterprise or not-for-profit organisation for access, in the case of the service the subject of the designation, to either or both —

- (a) adequate broadband, in accordance with paragraph (2), made available to the consumer, or
- (b) a voice communications service at the quality specified by the Regulator,

including the underlying connection, at a fixed location.

Definition of adequate broadband

- (2) (a) The Minister shall —
 - (i) define adequate broadband for the purpose of these Regulations in accordance with Article 84(3) of the Directive and shall publish any such definition in *Iris Oifigiúil* and in any other manner as he or she may think fit, and
 - (ii) specify the quality standards applicable to adequate broadband.

Before making a definition of adequate broadband or specifying the quality standards applicable to it, the Minister may consult with the Regulator.

- (b) The Minister shall review the quality not later than 5 years after defining adequate broadband and in each 5 year period thereafter.

Quality of service (voice), terms and conditions, reasonableness

- (3) The Regulator may —
 - (a) specify requirements to be complied with by an undertaking providing voice communication services in accordance with paragraph (1), including the quality standards to be provided and the terms and conditions upon which the connection at a fixed location is to be provided, and
 - (b) with the consent of the Minister, specify requirements to be complied with by an undertaking providing —
 - (i) adequate broadband in accordance with paragraph (1), regarding the terms and conditions upon which the connection at a fixed location is to be provided, and

- (ii) adequate broadband or voice communications service in accordance with paragraph (1) in relation to the reasonableness of requests for connection at a fixed location to these services.

Voice only connection

(4) Where a consumer, enterprise or organisation so requests, the connection referred to in paragraph (1)(b) shall be limited to support voice communications services.

Denial of access to universal service

(5) Where an undertaking designated in accordance with Regulation 72(3) denies any request for access made under paragraph (1) on the basis that it is an unreasonable request, it shall inform the person making the request of the reasons the request was unreasonable in its view and the person's right to pursue dispute resolution procedures.

Enforcement

(6) An undertaking providing a service referred to in paragraph (1) that fails to comply with —

- (a) a request under paragraph (1) or (4),
- (b) a requirement imposed by the Regulator in accordance with paragraph (3), or
- (c) an obligation under paragraph (5),

commits an offence and is liable on summary conviction to a class A fine.

(7) In proceedings for an offence under paragraph (6)(b) it is a defence for the undertaking charged to show that it took all reasonable steps and exercised due diligence to avoid committing the offence.

Provision of affordable universal service

71. (1) The Regulator shall regularly monitor the evolution and level of retail prices of adequate broadband and of voice communications services, in particular in relation to national consumer prices and income (including affordability for consumers), and shall report to the Minister on a regular basis on these matters or when requested by the Minister to do so.

(2) Where the Minister considers that retail prices for adequate broadband or for voice communications services are not affordable or are likely to become unaffordable, because consumers with a low income or special social needs may be prevented from accessing such services, the Minister may require the Regulator, in light of conditions in the State, to impose measures to be complied with by relevant undertakings to ensure affordability for such

consumers of adequate broadband or voice communications services at least at a fixed location.

(3) The Regulator may, where required by the Minister under paragraph (2), impose measures requiring relevant undertakings to —

- (a) offer to consumers with a low income or special social needs tariff options or packages different from those provided under normal commercial conditions, or
- (b) apply common tariffs including geographical averaging throughout the State, in the light of national conditions.

(4) Where the Regulator considers that any of the services referred to in paragraph (2) have become affordable it may request the Minister to allow it to withdraw any requirement under that paragraph.

(5) In exceptional circumstances, where the Regulator considers that the imposition of measures referred to in paragraph (2) on all providers would result in a demonstrated excessive administrative or financial burden for providers of the service, the Regulator may decide to impose the obligation to offer those specific tariff options or packages to consumers with a low income or special social needs, only on such undertakings designated by the Regulator. Regulation 72 shall apply to such designations *mutatis mutandis*.

(6) Where the Regulator designates undertakings in accordance with paragraph (5), it shall ensure that all consumers with a low-income or special social needs benefit from a choice of undertakings offering tariff options addressing their needs, unless ensuring such choice is impossible or would create an excessive additional organisational or financial burden.

(7) Consumers entitled to the tariff options or packages referred to in paragraph (3) or (5) have a right to conclude a contract either with a provider of adequate broadband or a provider of voice communications services or with an undertaking designated in accordance with paragraph (5), and such providers and undertakings shall ensure that consumers' numbers remain available to them for an adequate period and unwarranted disconnection of their service is avoided.

(8) Undertakings which provide tariff options or packages to consumers with a low income or special social needs pursuant to paragraph (3) or (5) shall keep the Regulator informed of the details of such offers. The Regulator may specify requirements with regard to the timing and format of the provision of information to it in accordance with this paragraph.

(9) The conditions of any scheme to provide special tariff options or packages, common tariffs, including geographical averaging, shall be fully transparent and shall be published and applied in accordance with the principle of non-discrimination. The Regulator may require, where it considers a scheme does not comply with this paragraph, that the scheme be modified or withdrawn.

(10) The Regulator shall, with regard to consumers with disabilities and in consultation with the Minister, take appropriate measures with a view to ensuring that related terminal equipment, and specific equipment and specific

services that enhance equivalent access, including where necessary total conversation services and relay services, are available and affordable.

(11) The Minister and the Regulator shall seek to minimise market distortions when acting pursuant to this Regulation.

(12) An undertaking that fails to comply with —

- (a) a measure referred to in paragraph (2) or (10), or
- (b) an obligation or requirement imposed under paragraph (5), (8) or (9),

commits an offence and is liable on summary conviction to a class A fine.

(13) In proceedings for an offence under paragraph (12) it is a defence for the undertaking charged to show that it took all reasonable steps and exercised due diligence to avoid committing the offence.

Availability of universal service and designation

72. (1) Where the Regulator establishes, taking into account the results, where available, of the geographical survey conducted in accordance with Regulation 100 and any additional evidence it deems necessary, that the availability at a fixed location of adequate broadband or of voice communications services cannot be ensured under normal commercial circumstances in the State or different parts of it, and the Minister is of the opinion that other potential public policy tools cannot ensure access to adequate broadband or to voice communications services in the State or any part of it as identified by the Regulator, then the Regulator may make a designation under paragraph (3) to impose appropriate universal service obligations to meet all reasonable requests by those end-users for accessing such services.

(2) The Minister, in forming his or her opinion under paragraph (1) shall have regard to Article 86(2) of the Directive.

(3) The Regulator may designate for such period as it may determine —

- (a) one or more undertakings to guarantee the availability at a fixed location of either or both of the services referred to in paragraph (1), at the quality specified in Regulation 70, throughout the State, or
- (b) different undertakings or sets of undertakings, to ensure the availability of such services at a fixed location or to cover different parts of the State.

(4) In designating an undertaking under paragraph (3), the Regulator shall use an efficient, objective, transparent and non-discriminatory designation mechanism whereby no undertaking is in principle excluded from being designated. The designation methods adopted shall ensure that the services referred to in paragraph (1) are provided in a cost-effective manner and may be used as a means of determining the net cost of the universal service obligation in accordance with Regulation 75.

(5) Where an undertaking designated in accordance with paragraph (3) intends to dispose of a substantial part or all of its local access network assets to a separate legal entity under different ownership, it shall inform the Regulator at the time of the decision to dispose or 6 months prior to the transaction whichever is the earlier date in order to allow the Regulator to assess the effect of the intended transaction on the provision at a fixed location of the services referred to in paragraph (1). Such notification shall include details as to the effect of the intended transaction on either or both of the services referred to in paragraph (1). The Regulator may impose, amend or withdraw specific obligations on the separate legal entity.

(6) An undertaking that fails to inform the Regulator in accordance with paragraph (5) commits an offence and is liable on summary conviction to a class A fine.

(7) In proceedings for an offence under paragraph (6) it is a defence for the undertaking charged to show that it took all reasonable steps and exercised due diligence to avoid committing the offence.

Status of existing universal service

73. (1) The Regulator may continue to ensure the availability or affordability of services other than the adequate broadband internet access service as defined in accordance with Regulation 70(2) or voice communications services at a fixed location that were in force on 20 December 2018, if the need for such services is established in light of circumstances in the State.

(2) The Regulator, with the consent of the Minister, may designate an undertaking to provide the services referred to in paragraph (1) in the State or part of the State.

(3) Any designation made by the Regulator for the purposes of paragraph (2) shall comply with Regulation 72. Financing of those obligations shall comply with Regulation 76.

(4) The Regulator shall review the status of universal service obligations referred to in paragraph (1) within three months after the commencement of these Regulations and every three years thereafter.

Control of expenditure

74. (1) An undertaking designated in accordance with Regulation 72(3) or 73(2) shall, where it provides facilities and services additional to adequate broadband or voice communications services as set out in Regulations 70, 71 and 72 or the continuation of the existing universal service as set out in Regulation 73, establish terms and conditions for the provision of such additional facilities and services in such a way that the end-user is not obliged to pay for facilities or services which are not necessary or not required for the service requested.

(2) An undertaking designated in accordance with Regulation 72(3) shall —

- (a) for the purpose of ensuring that consumers can monitor and control expenditure, provide the specific facilities and services set out in Part A of Schedule 5 as applicable, and
- (b) put in place a system to avoid unwarranted disconnection of voice communications services or of adequate broadband with regard to consumers referred to in Regulation 71, including an appropriate mechanism to check continued interest in using the service.

(3) Without prejudice to Regulation 97(1), the Regulator may specify the requirements of the specific facilities and services referred to in paragraph (2)(a) and the system and mechanism referred to in paragraph (2)(b).

(4) Paragraph (1) shall also apply to end-users that are microenterprises and small and medium-sized enterprises and not-for-profit organisations.

(5) The Regulator may waive any requirement imposed under paragraph (2) in relation to all or any part of the State if it is satisfied that the relevant facility or service is widely available in, or in any part of, the State.

(6) A designated undertaking that fails to comply with the requirements of paragraph (1) or (2) commits an offence and is liable on summary conviction to a class A fine.

(7) In proceedings for an offence under paragraph (6) it is a defence for the undertaking charged to show that it took all reasonable steps and exercised due diligence to avoid committing the offence.

Cost of universal service obligations

75. (1) Where, following a request for compensation from a provider, the Regulator considers that the provision of a universal service obligation may represent an unfair burden on the provider, the Regulator shall, in accordance with paragraph (3), calculate the net costs of such provision.

(2) A request under paragraph (1) shall be accompanied by such supporting information as may be reasonably required by the Regulator for the purpose of paragraph (3). The data may be based on such period as may be specified by the Regulator.

- (3) The Regulator shall calculate the net costs of its provision based on —
 - (a) the net costs, taking into account any market benefit which accrues to a provider designated for —
 - (i) the provision of a universal service obligation, or
 - (ii) the continuation of the existing universal service as set out in Regulation 73, in accordance with Schedule 6, or
 - (b) where applicable, the net costs identified by a designation method in accordance with Regulation 72(4).

(4) The Regulator shall, on the basis of such information, including information supplied under paragraph (2), as it considers sufficient to enable a determination under this Regulation to be made, determine whether an

obligation referred to in paragraph (1) represents an unfair burden on the undertaking concerned.

(5) The Regulator shall ensure that the principles for net cost calculation, including the details of methodology to be used are publicly available.

(6) Where the Regulator makes a determination under this Regulation it shall notify the undertaking concerned of that determination together with the reasons for the determination as soon as reasonably practicable after the determination is made.

(7) The accuracy of the accounts or other information, serving as the basis for the calculation of the net cost of an obligation, shall be audited or verified, as appropriate, by the Regulator or by a body approved of by the Regulator and independent of the undertaking concerned.

(8) The Regulator shall make publicly available the results of the cost calculations and the conclusions of any audit or verification undertaken under this Regulation.

(9) A designated undertaking that fails to comply with the requirements of paragraph (2) commits an offence and is liable on summary conviction to a class A fine.

(10) In proceedings for an offence under paragraph (9) it is a defence for the undertaking charged to show that it took all reasonable steps and exercised due diligence to avoid committing the offence.

Financing of universal service obligations and transparency

76. (1) Where the Regulator, on the basis of the net cost calculation referred to in Regulation 75, finds that the net cost of meeting an obligation under Regulations 70 to 73 represents an unfair burden on an undertaking it shall, unless the Minister intends to introduce a mechanism to compensate the undertaking for the determined net costs under transparent conditions from public funds, establish a sharing mechanism administered by it or by a body independent from the designated undertakings, which body shall be under the supervision of the Regulator. Only the net cost, as determined in accordance with Regulation 75, of the obligations provided for in Regulations 70 to 73 may be financed.

(2) Any sharing mechanism established under paragraph (1) shall respect the principles of transparency, least market distortion, non-discrimination and proportionality in accordance with the principles of Part B of Schedule 6. The Regulator may decide not to require contributions from undertakings whose audited national turnover is less than such amount as may, from time to time, be specified by the Regulator, having regard to any views expressed to it under any consultations carried out in accordance with Regulations 101 and 102, as appropriate.

(3) Any charges related to the sharing of the cost of a universal service obligation shall be unbundled and identified separately for each undertaking.

(4) The Regulator shall not under this Regulation, impose on, or collect from, an undertaking that is not providing services within the State, any charge.

(5) The Regulator shall notify each undertaking required to share the cost of a universal service obligation of that undertaking's obligation to contribute to such cost including the amount, manner and timing of payments to be made.

(6) An undertaking which has been notified of its obligation to contribute an amount specified by the Regulator under paragraph (5) shall pay that amount in the time and manner specified by the Regulator.

(7) Any amount payable to the Regulator under this Regulation that remains unpaid may be recovered by the Regulator as a simple contract debt in any court of competent jurisdiction and any such amount shall include interest at the rate per annum standing specified for the time being in section 26 of the Debtors (Ireland) Act 1840 on the amount or part of it remaining unpaid in respect of the period between the date when such amount or part of it fell due and the date of payment of such amount or part.

(8) The Regulator shall, subject to the protection of the confidentiality of any information which it considers confidential, publish an annual report setting out the calculated net cost of universal service obligations, identifying the contributions made by all the undertakings involved and identifying any market benefits that may have accrued to any undertaking designated by the Regulator under Regulation 71, 72 or 73.

(9) The Regulator shall, subject to the Freedom of Information Act 2014, accept as confidential any information provided under these Regulations by an undertaking providing electronic communications networks or services expressed by it to be confidential, except where the Regulator has good reason to consider otherwise.

(10) The Regulator shall publish and make publicly available all information in relation to the principles used for cost sharing, including the details of the mechanism used.

(11) An undertaking that fails to comply with the requirements of paragraph (6) commits an offence and is liable on summary conviction to a class A fine.

Additional mandatory services

77. (1) Where the Minister considers that a service additional to those included in the universal service obligations referred to in Regulations 70 to 73 should be made publicly available in, or in any part of, the State, the Minister may request the Regulator to carry out a consultation in accordance with Regulations 101 and 102, as appropriate, on the imposition of an obligation to provide the service.

(2) Upon conclusion of the consultation in accordance with paragraph (1), the Regulator may, with the consent of the Minister, designate an undertaking or sets of undertakings to provide the service referred to in paragraph (1) in all or part of the State. The Regulator may attach conditions or obligations to any such designation.

(3) In designating an undertaking under paragraph (2), the Regulator shall adopt an efficient, objective, transparent and non-discriminatory designation

mechanism whereby no undertaking is in principle excluded from being designated.

(4) No compensation mechanism involving specific undertakings shall be imposed in respect of services provided in accordance with this Regulation.

Notification of universal service obligations

78. The Regulator shall notify to the European Commission, and immediately following any change, the names of undertakings designated as having universal service obligations under Regulation 71(3) or (5), 72(3) or 73(2) and of the universal service obligations imposed.

Part 10

ACCESS TO NUMBERS AND SERVICES, AND RELATED PROVISIONS

Numbering resources

79. (1) The Regulator shall, subject to ensuring the proper management of the national numbering plan in accordance with its objectives under section 12 of the Act of 2002 and Regulation 4, grant rights of use for all national numbering resources for all publicly available electronic communications services.

(2) The Regulator shall establish objective, transparent and non-discriminatory procedures for granting rights of use for national numbering resources.

(3) The Regulator shall ensure that adequate numbering resources are provided for the provision of publicly available electronic communications services.

(4) A person who assigns to locations, terminals, other persons or functions on public electronic communications networks numbers from the national numbering plan that the Regulator has not specifically allocated to the person in connection with the provision of publicly available electronic communications services commits a hybrid offence.

- (5) (a) The Regulator may also grant rights of use for numbering resources from the national numbering plan for the provision of specific services to a person who is not the provider of electronic communications networks or services, provided that adequate numbering resources are made available to satisfy current and foreseeable future demand.
- (b) In order to be granted such rights of use such a person shall demonstrate their ability to manage the numbering resources and to comply with any relevant requirements set out pursuant to Regulation 80.
- (c) The Regulator may suspend the further granting of rights of use for numbering resources to such persons if it is demonstrated that there is a risk of exhaustion of numbering resources.

- (d) In assessing the ability of a person to manage numbering resources in accordance with subparagraph (b) or the risk of exhaustion of numbering resources in accordance with subparagraph (c), the Regulator shall have regard to the guidelines adopted by BEREC in accordance with Article 93(2) of the Directive.

(6) The Regulator shall, subject to ensuring the proper management of the national numbering plan, grant rights of use for numbering resources and number ranges for all publicly available electronic communications services in a manner that gives equal treatment to all providers of publicly available electronic communications services and the persons eligible in accordance with paragraph (5).

(7) The Regulator may, without prejudice to the generality of Regulation 10, attach conditions to rights of use for numbering resources —

- (a) to ensure efficient and effective management of all numbering resources, and
- (b) to ensure that a person to which the right of use for numbering resources has been granted under this Regulation does not discriminate against a provider of publicly available electronic communications services as regards the numbering resources used to give access to its services.

(8) The Regulator shall make available a range of non-geographic numbers which may be used for the provision of electronic communications services other than interpersonal communications services, throughout the territory of the European Union, without prejudice to Regulation (EU) No. 531/2012 of the European Parliament and of the Council of 13 June 2012¹² and Regulation 83(2).

(9) Where rights of use for numbering resources have been granted in accordance with paragraph (5) to persons other than providers of electronic communications networks or services, paragraphs (8), (10) and (11) shall apply to the specific services for the provision of which the rights of use have been granted.

(10) The Regulator shall ensure that —

- (a) the conditions listed in Part E of Schedule 1 that may be attached to the rights of use for numbering resources used for the provision of services outside the State, and their enforcement, are as stringent as the conditions and enforcement applicable to services provided within the State, in accordance with the Directive;
- (b) in accordance with Regulation 80(9) and (10), and without prejudice to the enforcement powers of the competent authorities in other Member States, that providers using numbering resources of their country code in the State comply

¹² OJ L 172, 30.6.2012, p. 10.

with consumer protection and other national rules related to the use of numbering resources applicable in those Member States where the numbering resources are used.

(11) The Regulator shall, upon request, provide to BEREC such information relating to persons as is relevant to BEREC's role in establishing and maintaining a database on the numbering resources with a right of extraterritorial use within the European Union as referred to in Article 93(4) of the Directive.

(12) The Regulator shall ensure that the '00' code is the standard international access code.

(13) The Regulator may specify requirements for compliance by persons for the purpose of ensuring that special arrangements for the use of number-based interpersonal communications services between locations adjacent to one another across borders between the State and another Member State may be established, and any such arrangements in place at the date of the making of these Regulations may be continued.

(14) The Regulator may agree to share a common numbering plan for all or specific categories of numbers.

(15) End-users affected by an arrangement or agreement referred to in paragraph (13) or (14) shall be fully informed by the Regulator.

(16) Without prejudice to Regulation 90, the Regulator shall promote over-the-air provisioning, where technically feasible, to facilitate switching of providers of electronic communications networks or services by end-users, in particular providers and end-users of machine-to-machine services.

(17) The Regulator shall, subject only to limitations which may be specified by the Minister on the grounds of national security, from time to time publish the details of the national numbering plan and significant subsequent additions or amendments to it.

(18) The Regulator shall, in so far as is practicable, having regard to its objectives under section 12 of the Act of 2002 and Regulation 4 and to its tasks under these Regulations, support the harmonisation of specific numbers or numbering ranges within the European Union where it promotes both the functioning of the internal market and the development of pan-European services.

(19) A person that fails to comply with a requirement specified under paragraph (13) commits an offence and is liable on summary conviction to a class A fine.

(20) In proceedings for an offence under paragraph (19) it is a defence for the person charged to show that it took all reasonable steps and exercised all due diligence to avoid committing the offence.

Procedure for granting rights of use for numbering resources

80. (1) Where it is necessary to grant individual rights of use for numbering resources, the Regulator shall, on receipt of an application in such

form as it may from time to time determine, grant a right of use for any class or description of number to any undertaking for the provision of electronic communications networks or services covered by a general authorisation referred to in Regulation 6 as the Regulator considers appropriate, subject to Regulation 10 and to Regulation 99(1)(c) and to any other rules ensuring the efficient use of those numbering resources in accordance with the Directive.

(2) The rights of use for numbering resources shall be granted through open, objective, transparent, non-discriminatory and proportionate procedures and shall be made publicly available.

(3) When granting a right of use in accordance with paragraph (1), the Regulator shall specify whether such right may be transferred by the holder and under what conditions such a transfer may take place.

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

(5) Subject to paragraph (7), the Regulator shall make any decision on the grant of a right to use numbering resources as soon as possible after receipt by it of a complete application and in the case of numbering resources that have been allocated for a specific purpose within the national numbering plan, within 3 weeks after such receipt.

(6) The Regulator shall communicate a decision referred to in paragraph (5) to an applicant for a right of use referred to in that paragraph as soon as is reasonably practicable after the decision is made and, subject to any restrictions which the Regulator considers appropriate in order to protect the confidentiality of any information which the Regulator considers confidential, make public such a decision as soon as is reasonably practicable after informing the applicant.

(7) Where the Regulator decides, after consultation in accordance with Regulation 101 that rights of use for numbering resources of exceptional economic value are to be granted through competitive or comparative selection procedures, the Regulator may extend the maximum period of three weeks referred to in paragraph (5) by up to a further 3 weeks.

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

(9) Where the rights of use for numbering resources include their extraterritorial use within the European Union in accordance with Regulation 79(8) to (11), the Regulator shall attach to those rights of use specific conditions in order to ensure compliance with all the relevant national consumer protection rules and national law related to the use of numbering resources applicable in the Member States where the numbering resources are used.

(10) Upon request from a national regulatory authority or other competent authority of another Member State where the numbering resources are used, demonstrating a breach of relevant consumer protection rules or national laws

related to the use of numbering resources of that Member State, the Regulator shall enforce the conditions attached under paragraph (9), including, in serious cases, by withdrawing the rights of extraterritorial use for the numbering resources granted to the person concerned.

(11) This Regulation shall apply where the Regulator grants rights of use for numbering resources to persons other than providers of electronic communications networks or services in accordance with Regulation 79(5).

Fees for rights of use for numbering resources

81. (1) The Regulator may, subject to section 13 of the Act of 2002, impose fees for rights of use for numbering resources which reflect the need to ensure the optimal use of those resources.

(2) The Regulator shall ensure that any such fees referred to in paragraph (1) shall be objectively justified, transparent, non-discriminatory and proportionate in relation to their intended purpose and shall take into account the objectives of the Regulator as set out in section 12 of the Act of 2002 and Regulation 4.

(3) Any fees imposed under this Regulation by the Regulator shall be published on the website of the Regulator and in such other manner as the Regulator may decide.

Missing children and child helpline hotlines

82. (1) End-users shall have the right to access free of charge a service operating a hotline to report cases of missing children. The hotline shall be available on the number ‘116000’.

(2) The Regulator shall ensure that end-users are adequately informed of the existence and use of services provided under the numbers “116000” and, where appropriate, ‘116111’.

(3) The Regulator shall, in accordance with Regulation 80, specify conditions applicable to the use of services provided under the number “116000” for the purpose of ensuring that end-users with disabilities are able to access such services to the greatest extent possible. Any conditions so specified that facilitate access by end-users with disabilities to such services whilst travelling in other Member States shall be based on compliance with relevant standards or specifications laid down in accordance with Regulation 23.

Access to numbers and services

83. (1) The Regulator may, where economically feasible, except where a called end-user has chosen for commercial reasons to limit access by calling parties located in specific geographical areas, specify requirements for compliance by an undertaking operating a public telephone network or providing voice communication services for the purpose of ensuring that end-users are able to —

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

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

Part 11

END-USER RIGHTS

Exemption of certain microenterprises

84. (1) With the exception of Regulations 85 and 86, Part 11 does not apply to microenterprises providing number-independent interpersonal communications services unless they also provide other electronic communications services.

(2) A microenterprise benefitting from an exemption referred to in paragraph (1) shall inform an end-user of the exemption before the end-user is bound by a contract or any corresponding offer in a clear, comprehensive and easily accessible form. Any notification provided to the end-user pursuant to this paragraph shall be on a durable medium.

(3) A microenterprise that fails to comply with an obligation under paragraph (2) commits an offence and is liable on summary conviction to a class A fine.

Non-discrimination

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

(2) Where the Regulator considers that any different requirements or general conditions of access to, or use of, networks or services applied under paragraph (1) by a provider of electronic communications networks or services is not justified, the Regulator may direct the provider to cease their application.

(3) A provider who, without reasonable excuse, fails to comply with a direction under paragraph (2) commits an offence and is liable on summary conviction to a class A fine.

Fundamental rights safeguard

86. Any measure taken by the Regulator regarding end-users' access to, or use of, services and applications through electronic communications networks that is liable to limit the exercise of the rights or freedoms recognised by the Charter of Fundamental Rights of the European Union shall be in accordance with Article 100 of the Directive.

Information requirements for contracts

87. (1) Before a consumer is bound by a contract or any corresponding offer, a provider of publicly available electronic communications services, other than transmission services used for the provision of machine-to-machine services, shall provide the consumer with the information referred to in Regulation 5, 7 or 10 of the European Union (Consumer Information, Cancellation and Other Rights) Regulations 2013 (S.I. No. 484 of 2013) as the case may be, and, in addition the information listed in Schedule 7, to the extent that the information relates to a service the provider provides.

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

(3) The Regulator may specify the circumstances in which provision of information referred to in paragraph (1) on a durable medium will not be feasible.

(4) Subject to any requirement of law for accessibility for products or services, the information referred to in paragraph (1) shall, upon request, be provided in an accessible format for end-users with disabilities.

(5) The Regulator may specify requirements in order to ensure compliance by providers with paragraph (4).

(6) The information referred to in paragraphs (1), (7) and (10) shall also be provided to end-users that are microenterprises or small enterprises or not-for-profit organisations, unless they have explicitly agreed to waive all or part of those provisions and the provisions of this Regulation shall apply *mutatis mutandis*. Providers shall maintain a record of such waiver in accordance with data protection law.

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

- (a) the name, address and contact information of the provider and, if different, the contact information for any complaint;
- (b) the main characteristics of each service provided;

- (c) the respective prices for activating the electronic communications service and for any recurring or consumption-related charges, where the service is provided for direct monetary payment;
- (d) the duration of the contract and the conditions for its renewal and termination;
- (e) the extent to which the products and services are designed for end-users with disabilities; and
- (f) with respect to internet access services, a summary of the information required pursuant to points (d) and (e) of Article 4(1) of Regulation (EU) 2015/2120.

(8) Providers subject to the obligations under paragraph (1) shall duly complete the contract summary template with the required information and provide the contract summary template free of charge to consumers, prior to the conclusion of the contract, including distance contracts. Where, for objective technical reasons, it is impossible to provide the contract summary at that moment, it shall be provided without undue delay thereafter, and the contract shall become effective when the consumer has confirmed his or her agreement after reception of the contract summary.

(9) The information referred to in paragraphs (1) and (7) shall become an integral part of the contract and shall not be altered unless the contracting parties expressly agree otherwise. Providers shall maintain a record of a consumer's express consent in accordance with data protection law.

(10) Where internet access services or publicly available interpersonal communications services are billed on the basis of either time or volume consumption, their providers shall offer consumers the facility to monitor and control the usage of each of those services. This facility shall include access to timely information on the level of consumption of services included in a tariff plan. In particular, providers shall notify consumers before any consumption limit, as established by the Regulator, included in their tariff plan, is reached and when a service included in their tariff plan is fully consumed.

(11) The Regulator may further specify requirements in respect of the timing, format, and content of notifications referred to in paragraph (10) and the mediums upon which they may be sent.

(12) A provider who fails to —

- (a) provide information under paragraph (1) or (7) in accordance with this Regulation,
- (b) comply with a requirement imposed under paragraph (5), or
- (c) offer the facilities or make notifications under paragraph (10) in accordance with this Regulation,

commits an offence and is liable on summary conviction to a class A fine.

(13) A provider shall comply with Article 2 of Commission Implementing Regulation (EU) 2019/2243 of 17 December 2019².

(14) A provider who fails to comply with paragraph (13) commits an offence and is liable on summary conviction to a class A fine.

(15) In proceedings for an offence under paragraph (12) it is a defence for a provider to show that it took all reasonable steps and exercised all due diligence to avoid committing the offence.

Transparency, comparison of offers and publication of information

88. (1) Subject to any requirement of law for accessibility for products or services, providers of internet access services or publicly available interpersonal communications services that make the provision of those services subject to terms and conditions, shall publish such of the information referred to in Schedule 8 as is pertinent to the provider in a clear, comprehensive, machine-readable manner and in an accessible format for end-users with disabilities. Such information shall be updated regularly.

(2) The Regulator may —

- (a) further specify the requirements regarding the publication of information referred to in paragraph (1), and in particular —
 - (i) the requirements that the information is published in a clear, comprehensive and machine-readable manner,
 - (ii) the requirement that the information is published in an accessible format for end-users with disabilities, and
- (b) require a provider to which paragraph (1) applies to supply it with the information referred to in that paragraph prior to its publication by the provider.

(3) Without prejudice to paragraphs (1) and (2), the Regulator may publish some or all of the information referred to in Schedule 8.

(4) The Regulator may, if it considers it appropriate to do so, promote self or co-regulatory measures prior to requiring a provider referred to in paragraph (1) to act in accordance with that paragraph.

(5) The Regulator shall ensure that end-users have access free of charge to at least one independent comparison tool which enables them to compare and evaluate different internet access services and publicly available number-based interpersonal communications services, and, where applicable publicly available number-independent interpersonal communications services with regard to —

- (a) prices and tariffs of services provided against recurring or consumption-based direct monetary payments, and
- (b) the quality of service performance, where minimum quality of service is offered or the undertaking is required to publish such information in accordance with Article 104 of the Directive.

(6) A comparison tool referred to in paragraph (5) shall —

- (a) (i) be operationally independent from the providers of such services referred to in paragraph (5), and

- (ii) ensure that those providers are given equal treatment in search results,
- (b) clearly disclose the owners and operators of the comparison tool,
- (c) set out clear and objective criteria on which the comparison is to be based,
- (d) use plain and unambiguous language,
- (e) provide accurate and up-to-date information and state the time of the last update,
- (f) be open to any provider of internet access services or publicly available interpersonal communications services making available the relevant information, and include a broad range of offers covering a significant part of the market and, where the information presented is not a complete overview of the market, a clear statement to that effect, before displaying results,
- (g) provide an effective procedure to report incorrect information, and
- (h) include the possibility to compare prices, tariffs and quality of service performance between offers available to consumers and, if required by the Regulator, between those offers and the standard offers publicly available to other end-users.

(7) A comparison tool shall, upon request by the provider of the tool, be certified by the Regulator or by a person nominated by the Regulator where the Regulator or the person determines that the tool fulfils the requirements of subparagraphs (a) to (h) of paragraph (6).

(8) The Regulator may specify requirements to be complied with by providers of the services referred to in paragraph (5) and by providers of comparison tools in order to ensure compliance with paragraphs (5) and (6). These requirements may include, without limitation, requirements regarding accessibility for end-users with disabilities.

(9) The Regulator may provide a comparison tool for the purposes of this Regulation either itself, or by way of third party procurement, even where another comparison tool meeting the requirements of this Regulation is available to end-users.

(10) Third parties, including those procured by the Regulator in accordance with paragraph (9), shall have the right to use, free of charge and in open data formats, the information published by providers of internet access services or publicly available interpersonal communications services, for the purposes of making available independent comparison tools in accordance with this Regulation.

(11) The Regulator may, at its own initiative or at the request of the Minister, require a provider of internet access services or publicly available number-based interpersonal communications services, or both, to distribute public interest information free of charge to existing and new end-users where appropriate, by the means that it ordinarily uses with end-users.

(12) Public interest information for the purpose of paragraph (11) shall be provided in a standardised format to relevant providers and shall, *inter alia*, cover the following topics —

- (a) the most common uses of internet access services and publicly available number-based interpersonal communications services to engage in unlawful activities or to disseminate harmful content, in particular where it may prejudice respect for the rights and freedoms of others, including infringements of data protection rights, copyright and related rights, and their legal consequences, and
- (b) the means of protection against risks to personal security, privacy and personal data when using internet access services and publicly available number-based interpersonal communications services.

(13) A provider that fails to —

- (a) publish the information required under paragraph (1) in accordance with this Regulation, or
- (b) comply with a requirement imposed by the Regulator under paragraph (8) or (11),

commits an offence and is liable on summary conviction to a class A fine.

(14) In proceedings for an offence under paragraph (13) it is a defence for a provider to show that it took all reasonable steps and exercised all due diligence to avoid committing the offence.

Contract duration and termination

89. (1) Conditions and procedures for contract termination shall not act as a disincentive to changing service provider.

(2) A provider of publicly available electronic communications services, other than transmission services used for the provision of machine-to-machine services, shall not conclude a contract with a consumer that mandates a commitment period longer than 24 months. A provider who concludes a contract in contravention of this paragraph commits a hybrid offence.

(3) Paragraphs (1) and (2) shall not apply to the duration of an instalment contract where the consumer has agreed in a separate contract to instalment payments exclusively for deployment of a physical connection, in particular to very-high-capacity networks. An instalment contract for the deployment of a physical connection shall not include terminal equipment, such as a router or modem, and shall not preclude consumers from exercising their rights under this Regulation.

(4) Paragraphs (1) and (2) shall also apply to end-users that are microenterprises, small enterprises or not-for-profit organisations unless they have specifically agreed to waive those provisions. Providers shall maintain a record of such waiver in accordance with data protection law.

Prolongation of fixed term contract

- (5) (a) In this Regulation a reference to the prolongation of a fixed duration contract is a reference to a contract that following the expiry of a fixed term automatically continues on the same terms and conditions and irrespective of the term of the prolongation.
- (b) Where a contract or law provides for automatic prolongation of a fixed duration contract for electronic communications services other than number-independent interpersonal communications services and other than transmission services used for the provision of machine-to-machine services, after such prolongation, end-users shall be entitled to terminate the contract at any time with a maximum one-month notice period, or such shorter notice period as may be specified by the Regulator, and without incurring any costs except the charges for receiving the service during the notice period.
- (c) A provider of services to which subparagraph (b) applies shall not prevent an end-user from terminating their contract in accordance with that subparagraph. A provider who so prevents an end-user commits a hybrid offence.

(6) Before a fixed duration contract is automatically prolonged the provider concerned shall inform the end-user, in a prominent and timely manner (being not less than one month before the prolongation date) and on a durable medium, of the end of the contractual commitment and of the means by which to terminate the contract. In addition, and at the same time, providers shall give end-users best tariff advice relating to their services. Providers shall provide end-users with best tariff information at least annually. A provider who fails to inform an end-user or give tariff advice or information in accordance with this paragraph commits a hybrid offence. Proceedings for an offence under this paragraph shall not be instituted where a direction under paragraph (16) has been issued in respect of the non-compliance.

Termination of contracts – change of contractual conditions

(7) A provider of publicly available electronic communications services other than number-independent interpersonal communications services, shall, not less than one month prior to the date of implementation of any change in the contractual conditions that is proposed by that provider, notify end-users in a clear and comprehensible manner on a durable medium, of —

- (a) the proposed change in the conditions of the contract for the service, and
- (b) where applicable, their right to terminate their contract without incurring any further cost if they do not accept the change.
- (8) (a) The Regulator may specify requirements to be complied with by providers of the services referred to in paragraph (7), in order to ensure compliance with that paragraph. A provider who fails to

comply with such a requirement commits an offence and is liable on summary conviction to a class A fine.

- (b) A provider who fails to notify an end-user of proposed changes under paragraph (7)(a) or the right to terminate under paragraph (7)(b) commits a hybrid offence.

(9) Subject to paragraph (10) and in accordance with paragraph (12), an end-user has the right to terminate their contract with a provider referred to in paragraph (7) during the termination period without incurring further cost if they do not accept a proposed change referred to in paragraph (7).

(10) A proposed change in the conditions of a contract shall not entitle an end-user to terminate the contract in accordance with paragraph (9) where the change is —

- (a) exclusively to the benefit of the end-user,
- (b) is of a purely administrative nature and has no negative effect on the end-user, or
- (c) is directly imposed by law.

(11) Whether a contract change is exclusively to the benefit of the end-user shall be assessed by the Regulator on the basis of objective criteria and the Regulator may require a provider, where it proposes to exclude or has excluded the right of an end-user to terminate a contract on the basis of the exclusions referred to in paragraph (10), to justify such an exclusion.

(12) Where, in accordance with paragraph (7), a provider notifies an end-user of a proposed change to its contractual conditions in excess of one month prior to the date of implementation of the proposed contract change, the end-user shall be entitled to terminate the contract without incurring any further costs during the termination period, being —

- (a) the period commencing on the date of notification of the proposed contract change and concluding on the date immediately prior to the date of implementation of the proposed contract change, or
- (b) the period commencing four months prior to the date of implementation of a notified proposed contract change and concluding on the date immediately prior to the date of implementation of the proposed contract change,

whichever is the shorter period, or where they are of the same duration, that period.

Termination of contracts – discrepancy of service

(13) Any significant continued or frequently recurring discrepancy between the actual performance of an electronic communications service, other than an internet access service or a number-independent interpersonal communications service, and the performance indicated in the contract shall be considered to be a basis for triggering the remedies available in law, including the right to terminate the contract free of cost.

- (14) (a) Where an end-user has the right to terminate a contract for a publicly available electronic communications service, other than a number-independent interpersonal communications service, before the end of the agreed contract period under this Regulation or other provision of law, no compensation shall be due by the end-user other than for retained subsidised terminal equipment.
- (b) Where the end-user chooses to retain terminal equipment bundled at the moment of the conclusion of the contract, any compensation due shall not exceed its *pro rata temporis* value as agreed at the moment of the conclusion of the contract or the remaining part of the service fee until the end of the contract, whichever is the smaller.
- (c) The Regulator may, following the procedure referred to in Regulations 101 and 102, as appropriate, determine other methods to calculate the compensation rate, provided that such methods do not result in a level of compensation exceeding that calculated in accordance with subparagraph (b).
- (d) A provider shall lift any condition on the use of terminal equipment retained in accordance with this Regulation on other networks free of charge within such time period as may be specified by the Regulator and at the latest, upon payment of any compensation by the end-user. A provider who fails to lift any such condition in accordance with this subparagraph commits a hybrid offence.

Machine-to-machine services

(15) The right to terminate a contract under paragraph (9) or (14) shall benefit only end-users of transmission services used for machine-to-machine services that are consumers, microenterprises, small enterprises or not-for-profit organisations.

Directions

(16) Where the Regulator, on the Regulator's own initiative, or upon the complaint of an end-user, considers that a provider is failing to comply with paragraph (1), (3) or (6) or the exercise of a right of an end-user under this Regulation, the Regulator may give a direction to the provider to ensure compliance in accordance with, and within the period specified in, the direction. The direction shall set out the nature of the non-compliance and the remedies to ensure compliance. The direction takes effect upon its service, but the provider concerned may make representations to the Regulator within 21 days of service or such later period decided by the Regulator. Having considered any representations, the Regulator shall confirm the direction, with or without amendment, or withdraw it, if satisfied the direction is being complied with. A provider who, without reasonable excuse, fails to comply

with a direction commits an offence and is liable on summary conviction to a class A fine.

Defence

(17) In proceedings for an offence under paragraph (6), it is a defence for a provider to show that it took all reasonable steps and exercised all due diligence to avoid committing the offence.

Provider switching and number portability

90. (1) In the case of switching by an end-user between providers of internet access services —

- (a) the providers concerned shall provide the end-user with adequate information before and during the switching process and ensure continuity of the internet access service, unless technically not feasible,
- (b) the receiving provider shall ensure that the activation of the internet access service occurs within the shortest possible time on the date and within the timeframe expressly agreed with the end-user, and
- (c) the transferring provider shall continue to provide its internet access service on the same terms until the receiving provider activates its internet access service.

Loss of service during the switching process shall not exceed one working day.

A provider who fails to comply with this paragraph commits a hybrid offence.

(2) The Regulator shall ensure the efficiency and simplicity of the switching process for the end-user and may specify requirements to be complied with by providers in this regard.

(3) An end-user with a number from the national numbering plan has the right, upon request, to retain his or her number independently of the provider providing the service —

- (a) in the case of geographic numbers, at a specific location, and
- (b) in the case of non-geographic numbers, at any location.

This paragraph does not apply to the porting of numbers between networks providing services at a fixed location and mobile networks. A provider who fails to allow an end-user to retain their number in accordance with this paragraph commits a hybrid offence.

- (4) (a) Where an end-user terminates a contract with a provider, the end-user has the right to port a number from the national numbering plan to another provider for a minimum of one month after the date of termination, or such other period as may be agreed with the provider, unless that right is renounced by the end-user.

- (b) A record of such renunciation by an end-user shall be maintained by the provider in accordance with data protection law.
- (c) A provider who fails to comply with subparagraph (a) commits an offence and is liable on summary conviction to a class A fine.

(5) Pricing among providers related to the provision of number portability as provided for in paragraph (3) shall be cost-oriented and no direct charges shall be applied to end-users.

(6) The Regulator may issue a direction to a provider to ensure compliance by that provider with its obligations under paragraph (5). A provider who fails to comply with a direction issued to him or her commits a hybrid offence.

- (7) (a) The porting of numbers and their subsequent activation shall be carried out within the shortest possible time on the date explicitly agreed with the end-user.
- (b) In the case where an end-user has concluded an agreement to port a number to a new provider, that number shall be activated within one working day from the date agreed with the end-user.
- (c) In the case of failure of the porting process, the transferring provider shall reactivate the number and related services of the end-user until the porting is successful.
- (d) The transferring provider shall continue to provide its services on the same terms and conditions until the services of the receiving provider are activated.
- (e) Operators whose access networks or facilities are used by either the transferring or the receiving provider, or both, shall ensure that there is no loss of service that would delay the switching and porting process.

Loss of service during the porting process shall not exceed one working day.

A provider who fails to comply with subparagraph (a), (b), (c) or (d) or an operator who fails to comply with subparagraph (e) commits a hybrid offence.

- (8) (a) The receiving provider shall lead the switching and porting processes set out in paragraphs (1) and (7) and both the receiving and transferring providers shall cooperate in good faith.
- (b) The receiving and transferring providers shall not —
 - (i) delay or abuse the switching or porting processes, or
 - (ii) port numbers or switch end-users without the end-users' explicit consent.
- (c) An end-user's contract with the transferring provider shall be terminated automatically upon conclusion of the switching process.

- (d) A provider who fails to comply with subparagraph (b)(ii) or (c) commits a hybrid offence.

(9) The Regulator may take measures to establish the details of the switching and porting processes, taking into account national provisions on contracts, technical feasibility and the need to maintain continuity of service to the end-user. This shall include, where technically feasible, a requirement for the porting to be completed through over-the-air provisioning, unless an end-user requests otherwise. A provider who fails to comply with any switching or porting process established by the Regulator commits a hybrid offence.

(10) The Regulator shall take appropriate measures to ensure that end-users are adequately informed and are protected throughout the switching and porting processes and not switched to another provider without their consent.

(11) Transferring providers shall refund, upon request, any remaining credit to a consumer using pre-paid services. Such refunds may be subject to a fee only if provided for in the consumer's contract. Any such fee shall be proportionate and commensurate with the actual costs incurred by the transferring provider in offering the refund.

(12) The obligations referred to in this Regulation apply to all providers, and operators whose access networks or facilities are used by providers with a role in facilitating change of provider, including the provider to which the end-user is porting and any wholesale provider with involvement in the process.

Bundled offers

91. (1) If a bundle of services or a bundle of services and terminal equipment offered to a consumer comprises at least an internet access service or a publicly available number-based interpersonal communications service, Regulation 87(7) and (8), Regulation 88(1) and (2), Regulation 89 and Regulation 90(1) and (2), shall apply to all elements of the bundle including, *mutatis mutandis*, those not otherwise covered by those provisions.

(2) Where a consumer has, under European Union law, or national law in accordance with European Union law, a right to terminate any element of the bundle as referred to in paragraph (1) before the end of the agreed contract term because of a lack of conformity with the contract or a failure to supply, the consumer has the right to terminate the contract with respect to all elements of the bundle.

(3) Any subscription to additional services or terminal equipment provided or distributed by the same provider of internet access services or of publicly available number-based interpersonal communications services shall not extend the original duration of the contract to which such services or terminal equipment are added, unless the consumer expressly agrees otherwise when subscribing to the additional services or terminal equipment. The provider shall maintain a record of any express agreement in accordance with data protection law.

(4) Paragraphs (1) and (3) shall also apply to end-users that are microenterprises, small enterprises, or not-for-profit organisations, unless they have explicitly agreed to waive all or parts of those provisions. Waiver of such provisions shall not be made a condition of such end-users entering a contract for the services referred to in those paragraphs.

(5) The Regulator may also apply paragraph (1) as regards other provisions laid down in this Part.

Availability of services

92. (1) A provider of voice communications services or internet access services shall, in the event of catastrophic network breakdown or in cases of *force majeure*, take all necessary measures to ensure the fullest possible availability of voice communication services or internet access services as the case may be provided over public electronic communications networks.

(2) A provider of voice communications services shall take all necessary measures to ensure uninterrupted access to emergency services and uninterrupted transmission of public warnings.

(3) The Regulator may give a direction to a provider to give effect to this Regulation.

(4) A provider that fails to comply with a direction of the Regulator under paragraph (3) commits an offence and is liable on summary conviction to a class A fine.

Emergency communications and single European emergency number

93. (1) A provider of publicly available number-based interpersonal communications services, where those services allow end-users to originate calls to a number in the national numbering plan or in an international numbering plan (including public pay telephones), shall ensure that end-users are able to access the emergency services free of charge through the emergency communications referred to in paragraph (2) and without having to use any means of payment, by using the single European emergency number “112”, the national emergency number “999” and any other national emergency number that may be specified by the Regulator.

(2) The emergency communications for the purposes of paragraph (1) are voice communications services, SMS, and eCall as defined in Regulation (EU) 2015/758 of the European Parliament and of the Council of 29 April 2015¹³, and communications services determined under paragraph (3)(a)(i).

(3) (a) Without prejudice to paragraphs (1) and (2), the Regulator, in consultation with the Minister, having taken into account the capabilities and technical equipment of PSAPs, and having consulted with the emergency services, providers of electronic

¹³ OJ L 123, 19.5.2015, p.77.

communications services, and other interested parties, in accordance with Regulations 101 and 102, as appropriate, shall:

- (i) determine publicly available number-based interpersonal communications services that are appropriate for emergency services in accordance with paragraph (1),
 - (ii) specify obligations for compliance by providers for the provision of access to emergency services through the emergency communications determined in accordance with (i), and
 - (iii) without prejudice to subparagraph (b), specify standards to be complied with by network independent providers (as referred to in paragraph (7)) to ensure accurate and reliable routing and connection to the emergency services in order to fulfil the obligations in relation to access to emergency services and caller location information provision provided for in this Regulation, at a level comparable to that required of other providers of such communications services.
- (b) The Regulator may review any obligations or standards specified, or any determination made in accordance with the procedures set out in this paragraph.

(4) Following a determination by the Regulator in accordance with paragraph (3), providers of the services referred to in paragraph (1) shall provide access to emergency services to the most appropriate PSAP through such emergency communications services as may be determined, and in accordance with any obligations and where applicable any standards, specified by the Regulator.

(5) The Minister, or a person nominated by the Minister, shall promote access to emergency services through the single European emergency number '112', through the national emergency number "999" and through any other national emergency number that may be specified by the Regulator, from electronic communications networks which are not publicly available but which enable calls to public networks, in particular when the undertaking responsible for that network does not provide an alternative and easy access to an emergency service.

- (6) (a) Providers of the services referred to in paragraph (1) shall ensure that end-users with disabilities can enjoy access to emergency services through emergency communications equivalent to that enjoyed by other end-users, in accordance with any requirement of law for accessibility for products or services.
- (b) The Regulator may, following consultation with the Minister, specify measures applicable to providers for the purpose of compliance with subparagraph (a). These shall include appropriate measures to ensure that whilst travelling in another Member State, end-users with disabilities can access emergency

services on an equivalent basis with other end-users, where feasible, without any pre-registration. Those measures shall seek to ensure interoperability across Member States and shall be based to the greatest extent possible on, but not limited to, European standards or specifications laid down in accordance with Regulation 23.

- (7) (a) A provider of the services referred to in paragraph (1) shall make caller location information available to the most appropriate PSAP without delay after the emergency communication is set up. This shall include network-based location information and, where available, handset-derived caller location information.
- (b) The establishment and the transmission of the caller location information referred to in subparagraph (a) shall be free of charge for the end-user and the PSAP with regard to all emergency communications to the single European emergency number “112”, to the national emergency number “999”, and to any other national emergency number that may be specified by the Regulator.
- (c) In the absence of standards specified by the Regulator in accordance with paragraph (3)(a)(iii), where a provider referred to in subparagraph (a) is neither a provider of a public electronic communications network, or integrated with such a provider (a ‘network independent provider’), it shall provide caller location information to the most appropriate PSAP in accordance with this paragraph only to the extent that it is technically feasible or economically viable.
- (d) For the purpose of this paragraph, the Regulator, if necessary after consulting BEREC, and in consultation with the Minister, shall lay down criteria pertaining to the accuracy and reliability of the caller location information provided and a provider to which this paragraph applies shall comply with such criteria.

(8) The Regulator may, in consultation with the Minister, specify obligations for compliance by providers of any particular class or classes that may be specified by the Regulator for the purpose of ensuring that members of the public are adequately informed about the existence and use of the single European emergency number “112”, as well as its accessibility features, including through initiatives specifically targeting persons travelling between Member States and end-users with disabilities. The information shall be provided in accessible formats, addressing different types of disabilities.

(9) A provider that fails to comply with this Regulation commits an offence and is liable on summary conviction to a class A fine.

(10) In proceedings for an offence under paragraph (9) it is a defence for the provider charged to show that it took all reasonable steps and exercised due diligence to avoid committing the offence.

Equivalent access and choice for end-users with disabilities

94. (1) The Regulator shall specify requirements to be complied with by providers of publicly available electronic communications services in order to ensure that end-users with disabilities —

- (a) have access to electronic communications service, including the related contractual information provided pursuant to Regulation 87, equivalent to that enjoyed by the majority of end-users, and
- (b) benefit from the choice of undertakings and services available to the majority of end-users.

(2) When specifying requirements in accordance with paragraph (1), the Regulator shall encourage providers to comply with the relevant standards or specifications laid down in accordance with Regulation 23.

(3) Any requirements specified by the Regulator under Regulation 17 of the universal service regulations, which are in force on the commencement of this Regulation are deemed to be requirements under this Regulation.

Directory enquiry services

95. (1) A provider of number-based interpersonal communications services which attributes numbers from a numbering plan shall meet all reasonable requests to make available, for the purposes of the provision of publicly available directory enquiry services, directories and the record referred to in paragraph (3), the relevant information in an agreed format, on terms which are fair, objective, cost oriented, and non-discriminatory.

(2) In accordance with Regulation 42, the Regulator may impose obligations and conditions on undertakings that control access to end-users, for the provision of directory enquiry services and any such obligations and conditions shall be objective, equitable, non-discriminatory and transparent.

(3) Subject to Regulation 14 of the Privacy and Electronic Communications Regulations and for the purposes of this Regulation, a person that may be required to do so by the Regulator shall keep a record (to be known as the National Directory Database) of all subscribers of voice communication services in the State, including those with fixed, personal and mobile numbers who have not refused to be included in that record, and shall meet all reasonable requests for access to any information contained in that record in an agreed format, on terms that are fair, objective, cost orientated and non-discriminatory, and in accordance with such terms and conditions as may be specified by the person and approved by the Regulator.

(4) The Regulator shall not maintain any regulatory restriction which prevents an end-user in the State from accessing directly, by voice call or SMS, a directory enquiry service in another Member State or an end-user in another Member State from accessing directly directory enquiry services in the State and shall take measures to ensure such access in accordance with Regulation 83.

(5) This Regulation applies subject to the requirements of European Union law on the protection of personal data and privacy and in particular Regulation 12 of the Privacy and Electronic Communications Regulations.

(6) A person that fails to comply with a requirement of paragraph (1), (2) or (3) commits an offence and is liable on summary conviction to a class A fine.

(7) In proceedings for an offence under paragraph (6) it is a defence for the person charged to show that they took all reasonable steps and exercised due diligence to avoid committing the offence.

(8) The National Directory Database under Regulation 19(4) of the Universal Service Regulations continues in being.

Interoperability of car radio and consumer radio receivers and consumer digital television equipment

96. (1) A person who places on the market for sale or rent or otherwise makes available consumer equipment intended for the reception of digital television signals (that is, broadcasting via terrestrial, cable or satellite transmission) that is capable of descrambling digital television signals shall ensure that such equipment possesses the capability to —

- (a) allow the descrambling of such signals according to the common European scrambling algorithm as administered by a recognised European standards organisation, and
- (b) display signals that have been transmitted in the clear provided that, in the event that such equipment is rented, the person renting is in compliance with the relevant rental agreement.

(2) A person who places on the market for sale or rent a digital television set with an integral screen of visible diagonal greater than 30 centimetres shall ensure that the set is fitted with at least one open interface socket (either standardised by, or conforming to a standard adopted by, a recognised European standards organisation or conforming to an industry-wide specification) permitting simple connection of peripherals, and able to pass all the elements of a digital television signal, including information relating to interactive and conditionally accessed services.

(3) The Competition and Consumer Protection Commission shall encourage providers of digital television services to ensure, where appropriate, that the digital television equipment that they provide to their end-users is interoperable so that, where technically feasible, the digital television equipment is reusable with other providers of digital television services.

(4) Without prejudice to the European Union (Waste Electrical and Electronic Equipment) Regulations 2014 (S.I. No. 149 of 2014), end-users shall be permitted to return the digital television equipment upon termination of their contract through a free and easy process, unless the provider demonstrates that it is fully interoperable with the digital television services of other providers, including those to which the end-user has switched.

(5) Digital television equipment which conforms with harmonised standards the references of which have been published in the Official Journal of the European Union or with parts conforming to these standards shall be considered to comply with the requirements of paragraph (2).

(6) A person who places on the market for sale or rent a new vehicle of category M with an integrated car radio receiver shall ensure that the integrated car radio receiver is capable of receiving and reproducing at least radio services provided via digital terrestrial radio broadcasting.

(7) Receivers which conform with harmonised standards the references of which have been published in the Official Journal of the European Union or with parts conforming to these standards shall be considered to comply with the requirements of paragraph (6).

(8) In this Regulation “rent” in relation to any television set, or other equipment or vehicle of category M means the supplying to a customer of that set, or equipment or vehicle of category M under a rental agreement.

(9) It shall be a task of –

- (a) the Regulator to monitor compliance with paragraphs (1) and (6), and
- (b) the Competition and Consumer Protection Commission to monitor compliance with paragraph (2).

(10) Any person who fails to comply with a requirement of paragraph (1), (2) or (6) commits an offence and is liable on summary conviction to a class A fine.

(11) In a prosecution for an offence under paragraph (10) it is a defence for the person charged to show that he or she took all reasonable steps and exercised all due diligence to avoid committing the offence.

Provision of additional facilities

97. (1) Without prejudice to Regulation 74(2) and subject to paragraph (3), the Regulator may specify that providers of internet access services or publicly available number-based interpersonal communications services are required to make available free of charge all or part of the additional —

- (a) facilities listed in Part B of Schedule 5, subject to technical feasibility, and
- (b) facilities and services listed in Part A of Schedule 5.

(2) A provider shall comply with any requirement made of it under paragraph (1) within such reasonable period as the Regulator shall specify.

(3) Where a provider referred to in paragraph (1) considers that it is not technically feasible to provide all or part of the additional facilities listed in Part B of Schedule 5, it shall notify the Regulator of the fact and give reasons including all relevant information in support of its views.

(4) The Regulator shall consider the information given to it under paragraph (3) and any other information it considers relevant and shall either agree or disagree with the decision of the provider.

(5) Where the Regulator disagrees with the decision of the provider as aforesaid, it may issue a direction to that provider to provide all or part of the additional facilities listed in Part B of Schedule 5.

(6) If the Regulator considers, after taking into account any views expressed to it under a public consultation carried out in accordance with Regulations 101 and 102, as appropriate, that there is sufficient access to the facilities referred to in paragraph (1) in all or in any part of the State, it may dis-apply paragraph (1) in relation to the whole or any such part of the State.

(7) A provider that fails to comply with —

- (a) a requirement specified under paragraph (1), or
- (b) a direction issued to it under paragraph (5),

commits an offence and is liable on summary conviction to a class A fine.

(8) In proceedings for an offence under paragraph (7) it is a defence for a provider to show that it took all reasonable steps and exercised due diligence to avoid committing the offence.

Part 12

PROVISION AND PUBLICATION OF INFORMATION, SURVEYS AND CONSULTATION MECHANISM

Information request to undertakings

98. (1) Notwithstanding section 13D or 39 of the Act of 2002, the Regulator or another relevant competent authority may, in writing, require any undertaking providing electronic communications networks, electronic communications services, associated facilities or associated services, any person referred to in Regulation 79 or any public authority for the purposes of Regulation 100, to provide, within such timescales and in conformity with the level of detail specified by the Regulator or the other competent authority, any information, including financial information, that the Regulator or the other competent authority, or BEREC, considers necessary for the purposes of ensuring conformity with the provisions of, or decisions or opinions of the Regulator or the other competent authority adopted in accordance with the Directive, and Regulation (EU) 2018/1971 of the European Parliament and of the Council of 11 December 2018¹⁴. Any such requirement shall be proportionate to the performance of the task and shall be reasoned.

In particular, the Regulator shall have the power to require such undertakings, persons or public authorities to provide information concerning future network or service developments that could have an impact on the wholesale services

¹⁴ OJ L 321, 17.12.2018, p.1.

that the undertaking, person or authority makes available to competitors, as well as information on electronic communications networks and associated facilities which is disaggregated at local level and sufficiently detailed, in the opinion of the Regulator, to enable the geographical survey and designation of areas in accordance with Regulation 100.

(2) Where the information collected in accordance with paragraph (1) is insufficient for the Regulator or another competent authority under these Regulations or BEREC under the Directive to carry out their regulatory tasks, such information may be requested from other relevant undertakings active in the electronic communications or closely related sectors.

(3) Where an undertaking referred to in paragraph (1) is designated as having significant market power on wholesale markets, the Regulator may, in accordance with paragraph (1), require the undertaking to provide accounting data on the retail markets that are associated with those wholesale markets.

(4) The Regulator or another competent authority may request information from a single information point established in another Member State under Directive 2014/61/EU of the European Parliament and of the Council of 15 May 2014¹⁵.

(5) An undertaking, or person referred to in Regulation 79, that fails to comply with a requirement under paragraph (1) commits an offence and is liable on summary conviction to a class A fine.

(6) An undertaking that fails to comply with paragraph (3) commits an offence and is liable on summary conviction to a class A fine.

(7) In proceedings for an offence under paragraph (5) or (6), it is a defence for the undertaking or person referred to in Regulation 79 that is charged to show that he or she took all reasonable steps and exercised all due diligence to avoid committing the offence.

(8) Upon receipt of a reasoned request from the European Commission, the Regulator or another competent authority shall, subject to this Regulation, provide the European Commission with such information as is necessary for the European Commission to carry out its tasks under the Treaties governing the European Union.

(9) Where any information requested by the European Commission under paragraph (8) has been previously obtained by the Regulator or another competent authority under paragraph (1), (2) or (3) or the Regulator under section 13D or 39 of the Act of 2002, the Regulator or the other competent authority shall notify, in writing, the undertaking, person or authority which provided that information that the Regulator or the other competent authority has been requested to provide the information to the European Commission and that the European Commission is entitled to pass such information on to national regulatory authorities or competent authorities in other Member States, unless the Regulator or the other competent authority makes an explicit and reasoned request to the contrary. In the case of information expressed to be confidential by the undertaking, person or authority which provided it, the

¹⁵ OJ L 173, 12.6.2014, p.349.

Regulator or the other competent authority shall, except where it considers there are exceptional circumstances, delay provision of the information to the European Commission to enable the undertaking, person or authority which provided the information concerned to make written representations to it within 7 days of the notification referred to in this paragraph.

(10) The Regulator or another competent authority may, taking into account any representations expressed to it under paragraph (9), make an explicit and reasoned request to the European Commission not to make any information provided under paragraph (8) available to a national regulatory authority or competent authority in another Member State.

(11) The Regulator or another competent authority may make information submitted to it under paragraph (1), (2) or (3) available to a national regulatory authority or competent authority in another Member State and to BEREC, after a substantiated request, where the Regulator or other competent authority is satisfied that provision of such information is necessary to allow the Regulator or the other competent authority, or BEREC, to fulfil its responsibilities under European Union law.

(12) Where the Regulator or another competent authority considers information gathered pursuant to paragraph (1), (2) or (3), including information gathered in the context of a geographical survey, to be made available under paragraph (8) or (11) is confidential, it shall identify such information accordingly.

(13) The confidentiality of information referred to in paragraph (12) shall not prevent the sharing of information between the Regulator, the European Commission, BEREC and any other competent authorities concerned in a timely manner for the purposes of reviewing, monitoring and supervising the application of the Directive.

(14) Where the Regulator or another competent authority receives information classified as confidential from the European Commission or from a national regulatory authority or competent authority of another Member State under Article 20 of the Directive and the Regulator or the other competent authority is satisfied that such information is so classified in accordance with rules of commercial confidentiality of the European Union or of the Member State from which the information originated, as the case may be, they shall protect the confidentiality of such information. The Freedom of Information Act 2014 shall not apply to such information.

(15) The Regulator and other competent authorities shall, subject to the protection of the confidentiality of any information which they consider to be confidential and the protection of personal data, publish from time to time such information as would, in the opinion of the Regulator or the other competent authority, contribute to an open and competitive market.

(16) The Regulator and other competent authorities shall publish the terms of public access to information as referred to in paragraph (15), including the procedures for obtaining such access.

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

99. (1) Without prejudice to any information requested pursuant to Regulation 98 and information and reporting obligations under national law other than the general authorisation, the Regulator may require an undertaking to provide information in respect of the general authorisation, of the rights of use for radio spectrum, of a right of use for numbers or of the specific obligations but only where such requirement is proportionate and objectively justified in particular for the purposes of —

- (a) verifying on a systematic or case-by-case basis compliance with, as appropriate, condition 1 of Part A, conditions 2 and 6 of Part D, and conditions 2 and 7 of Part E of Schedule 1 and of compliance with any of the specific obligations,
- (b) verifying on a case-by-case basis, compliance with conditions as set out in Schedule 1 where a complaint has been received by the Regulator, where the Regulator has other reasons to believe that a condition is not complied with or in the case of an investigation by the Regulator on its own initiative,
- (c) carrying out procedures for and the assessment of requests for granting rights of use,
- (d) publishing of comparative overviews of quality and price of services for the benefit of consumers,
- (e) collating clearly defined statistical reports or studies,
- (f) carrying out market analyses for the purposes of these Regulations, including data on the downstream or retail markets associated with or related to the markets which are the subject of the market analysis,
- (g) safeguarding the efficient use and ensuring the effective management of radio spectrum and of numbering resources, and
- (h) evaluating future network or service developments that could have an impact on wholesale services made available to competitors, on territorial coverage, on connectivity available to end-users or on the designation of areas pursuant to Regulation 100,
- (i) conducting geographical surveys,
- (j) responding to reasoned requests for information by BEREC.

(2) The information referred to in subparagraphs (a) and (b), and (d) to (j) of paragraph (1) shall not be required prior to or as a condition for market access.

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

(4) Where the Regulator requires an undertaking to provide any such information as is referred to in paragraph (1), the Regulator shall inform the undertaking concerned of the specific purpose for which this information is to be used.

(5) The Regulator shall not duplicate requests of information already made by BEREC pursuant to Article 40 of Regulation (EU) 2018/1971¹⁶ where BEREC has made the information received available to it.

Geographical surveys of network deployments

100. (1) The Regulator shall conduct a geographical survey of the reach of electronic communications networks capable of delivering broadband (“broadband networks”) by 21 December 2023 and shall update it at least every three years thereafter.

(2) The geographical survey shall include a survey of the current geographic reach of broadband networks, as required for the tasks of the Regulator and the Minister under these Regulations and for the surveys required for the application of State aid rules.

(3) The geographical survey may also include a forecast for a period determined by the Regulator of the reach of broadband networks, including very-high-capacity networks, and such forecast shall include all relevant information, including information on planned deployments by any undertaking or public authority, of very-high-capacity networks and significant upgrades or extensions of networks to at least 100 Mbps download speeds.

(4) For the purpose of a forecast referred to in paragraph (3), the Regulator shall request undertakings and public authorities to provide such information to the extent that it is available and can be provided with reasonable effort.

(5) The Regulator shall decide, with respect to tasks specifically attributed to it under the Directive, the extent to which it is appropriate to rely on all or part of the information gathered in the context of such forecast.

(6) The information collected by the Regulator in the geographical survey shall be at an appropriate level of local detail and shall include sufficient information on the quality of service and parameters thereof and shall be treated in accordance with Regulation 98(12) to (14).

(7) The Minister may, having consulted with the Regulator, designate an area with clear territorial boundaries where, on the basis of the information gathered by the Regulator and any forecast prepared under paragraph (3), it is determined that, for the duration of the relevant forecast period, no undertaking or public authority has deployed or is planning to deploy a very-high-capacity network or significantly upgrade or extend its network to a performance of at least 100 Mbps download speeds. The Regulator shall publish the designated areas.

¹⁶ OJ L 321, 17.12.2018, p.1.

(8) Within a designated area, the Regulator, following a request by the Minister, shall invite undertakings and public authorities to declare their intention to deploy very-high-capacity networks over the duration of the relevant forecast period. Where this invitation results in a declaration by an undertaking or public authority of its intention to do so, the Regulator, following a request by the Minister, shall require other undertakings and public authorities to declare any intention to deploy very-high-capacity networks, or significantly upgrade or extend its network to a performance of at least 100 Mbps download speeds in this area. The Regulator shall specify the information to be included in such declarations, in order to ensure at least a similar level of detail as that taken into consideration in any forecast pursuant to paragraph (3). It shall also inform any undertaking or public authority expressing its interest whether the designated area is covered or likely to be covered by a next-generation access network offering download speeds below 100 Mbps on the basis of the information gathered pursuant to paragraph (4).

(9) Measures pursuant to paragraph (8) shall be taken in accordance with an efficient, objective, transparent and non-discriminatory procedure, whereby no undertaking is excluded *a priori*.

(10) The Regulator and other competent authorities with responsibility for the allocation of public funds for the deployment of electronic communications networks, for the design of national broadband plans, for defining coverage obligations attached to rights of use for radio spectrum and for verifying availability of services falling within the universal service obligations in their territory shall take into account the results of the geographical survey and of any designated areas in accordance with this Regulation.

(11) (a) The Regulator shall supply the results of the geographical survey and any declaration referred to in paragraph (8) to the Minister, subject to the Minister ensuring the same level of confidentiality and protection of business secrets as required of the Regulator and where information is to be so supplied by the Regulator it shall inform the parties which provided the information.

(b) The Regulator may, subject to the same requirements set out in subparagraph (a), supply the results of the geographical survey to other national regulatory or competent authorities.

(12) The results of the geographical survey shall be made available to BEREC and the Commission upon their request and under the same conditions as referred to in paragraph (11).

(13) If the relevant information is not available on the market, the Regulator shall make data from the geographical surveys which are not subject to commercial confidentiality directly accessible in accordance with the European Union (Open Data and Re-use of Public Sector Information) Regulations 2021 (S.I. No. 376 of 2021) to allow for its reuse. The Regulator shall also, where such tools are not available on the market, make available information tools enabling end-users to determine the availability of connectivity in different areas, with a level of detail which is useful to support their choice of operator or service provider.

(14) An undertaking or public authority shall not knowingly or grossly negligently provide misleading, erroneous or incomplete information in the context of the procedure referred to in paragraph (8).

(15) An undertaking that fails to comply with paragraph (14) commits a hybrid offence.

Consultation and transparency mechanism

101. (1) In this Regulation “measure” means a decision, designation, determination, requirement, specification or other act of an equivalent effect made by the Regulator or any other competent authority under these Regulations, other than a determination under Regulation 67 or 68, and a case falling within Regulation 17(9) to (11).

(2) Except in cases falling within Regulation 17(9) to (11) where the Regulator or any other competent authority intends to take a measure in accordance with these Regulations or intends to provide for a restriction under Regulation 27(3) to (8), which have a significant impact on a relevant market, the Regulator or other competent authority shall observe the procedures referred to in paragraphs (3) and (4).

(3) Before taking a measure under paragraph (2) the Regulator or other competent authority shall publish the text of the proposed measure, give the reasons for it, including information as to which of its statutory powers gives rise to the measure, and specify the period within which submissions relating to the proposal may be made by interested parties.

(4) The period referred to in paragraph (3) shall have regard to the complexity of the matter and, except in exceptional circumstances, shall not be shorter than 30 days.

(5) The Regulator or other competent authority, having considered any representations received under paragraph (3), may take the measure with or without amendment.

(6) The Regulator or other competent authority shall publish its consultation procedures and shall establish a single information point through which all current consultations can be accessed.

(7) The Regulator or other competent authority shall, subject to the protection of the confidentiality of any information which it considers to be confidential, make the results of any consultation under this Regulation publicly available.

(8) For the purposes of Regulation 19, the Regulator shall inform the RSPG at the moment of publication about any draft measure which falls within the scope of the comparative or competitive selection procedure pursuant to Regulation 36(2) and (3) and relates to the use of radio spectrum for which harmonised conditions have been set by technical implementing measures in accordance with the Radio Spectrum Decision in order to enable its use for wireless broadband networks and services.

Consultation of interested parties

102. (1) The Regulator, and where appropriate any other competent authority, shall take account of the views of end-users, in particular consumers, and end-users with disabilities, manufacturers and undertakings that provide electronic communications networks or services on issues related to all end-user and consumer rights, including equivalent access and choice for end-users with disabilities, concerning publicly available electronic communications services, in particular where they have a significant impact on the market, in accordance with such procedures as may be drawn up by the Regulator under Regulation 101(6).

(2) The Regulator, and where relevant any other competent authority in coordination with the Regulator, shall establish a consultation mechanism, accessible for end-users with disabilities, ensuring that, when taking decisions on issues related to end-user and consumer rights concerning publicly available electronic communications services, due consideration is given to consumer interests in electronic communications.

(3) Interested parties may develop, with the guidance of the Regulator, mechanisms involving consumers, user groups and service providers, to improve the general quality of service provision by, *inter alia*, developing and monitoring codes of conduct and operating standards.

(4) Without prejudice to any law in the State in accordance with European Union law promoting cultural and media policy objectives such as cultural and linguistic diversity and media pluralism, the Regulator, and where relevant any other competent authority in coordination with the Regulator, may promote cooperation between undertakings providing electronic communications networks or services and sectors interested in the promotion of lawful content in electronic communications networks and services. Such cooperation may include coordination of the public interest information referred to in Regulation 88.

Notices regarding imposition of obligations

103. (1) The Regulator or other competent authority shall ensure that up-to-date information regarding actions required and decisions made by the Regulator or other competent authority under these Regulations is made publicly available on its website and updated on a regular basis.

(2) The Regulator shall publish a notice in *Iris Oifigiúil* regarding how and where the information referred to in paragraph (1) will be available.

(3) The Regulator shall submit a copy of a notice referred to in paragraph (1) to the European Commission at the time of publication.

Directions

104. The Regulator may, for the purpose of further specifying requirements to be complied with relating to an obligation imposed by or under these Regulations, including requirements to be complied with under Regulations 8, 9 and 10 relating to a condition attached to a —

- (a) general authorisation,
- (b) right of use for radio spectrum, or
- (c) right of use for numbers,

issue directions to an operator or undertaking to do or refrain from doing anything which the Regulator specifies in the direction.

Compliance monitoring and obligations

105. (1) The Regulator shall monitor and supervise compliance with the general authorisation, with rights of use for radio spectrum, with right of use for numbering resources, with the specific obligation, and with the obligation to use radio spectrum effectively and efficiently in accordance with Article 4 of the Directive, Regulation 27(1) and 29.

(2) The Regulator may require a person subject to the general authorisation or benefitting from rights of use for radio spectrum or rights of use for numbering resources to provide the Regulator with all information that the Regulator considers necessary to verify compliance by the undertaking with the conditions of the general authorisation, with rights of use for radio spectrum, with rights of use for numbering resources, with the specific obligations or with Regulation 29, in accordance with Regulation 99.

(3) A person shall comply with any regulatory decision, determination, specification, requirement, direction, an obligation, term, condition or measure, under these Regulations, including —

- (a) one or more of its obligations under Regulation 6,
- (b) one or more of the conditions attached to its general authorisation,
- (c) one or more of the conditions attached to its rights of use for radio spectrum,
- (d) one or more of the conditions attached to its rights of use for numbering resources,
- (e) one or more of the specific obligations, or
- (f) an information requirement under Regulation 99.

Service of determinations, directions and notifications

106. (1) Where the Regulator issues a determination or direction, or where a notice or notification is required to be given, to a person under these Regulations, the determination, direction, notice or notification shall be in writing, state the reasons on which it is based and be addressed to the person

concerned and, as soon as practicable, be sent or given in any one of the ways referred to in, and in accordance with, section 60 of the Act of 2002.

Prosecution of offences

107. (1) Subject to paragraph (2), proceedings for an offence under these Regulations may be brought and prosecuted summarily by the Regulator.

(2) Proceedings for an offence under Regulation 96(10), relating to a breach of paragraph (2) of that Regulation, may be brought and prosecuted summarily by the Competition and Consumer Protection Commission.

(3) An offence under these Regulations (other than a hybrid offence or an offence referred to in paragraph (2)) is one to which section 44 of the Act of 2002 applies.

Hybrid penalties

108. A person who commits a hybrid offence under these Regulations is liable —

- (a) on summary conviction, to a class A fine, or
- (b) on conviction on indictment, to a fine not exceeding €500,000.

Offences by bodies corporate

109. (1) If —

- (a) an offence under these Regulations is committed by a body corporate, and
- (b) the offence is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, a person who is a director, manager, secretary or other similar officer of the body, or is a person who was purporting to act in any such capacity,

that person as well as the body corporate commits an offence and is liable to be proceeded against and punished as if that person had committed the first mentioned offence.

(2) If the affairs of a body corporate are managed by its members, paragraph (1) applies in relation to the acts and omissions of a member of that body in connection with the member's functions of management as if the member were a director or manager of it.

(3) A person may be proceeded against for an offence under paragraph (1) whether or not the body corporate has been proceeded against or been convicted of the offence committed by the body.

Suspension or withdrawal of authorisation, rights of use for radio spectrum or rights of use for numbers

110. (1) Where the Regulator considers that there is or has been serious or repeated breaches by an undertaking of the conditions attached to its general authorisation, of its rights of use for radio spectrum, of its rights of use for numbering resources or of the specific obligations, the Regulator may decide, having considered any representations made by the undertaking within the period referred to in paragraph (2), that the undertaking is no longer authorised under Regulation 6 and may suspend or withdraw any rights of use for radio spectrum or rights of use for numbering resources granted to the undertaking.

(2) The Regulator shall notify an undertaking where the Regulator proposes to take action under paragraph (1) against it and shall allow the undertaking 28 days to make representations to the Regulator before taking the action.

(3) Where the Regulator decides, in accordance with paragraph (1), that an undertaking is no longer to be authorised under Regulation 6 or decides to suspend or withdraw a right of use for radio spectrum or a right of use for numbering resources, the Regulator may also apply to the High Court for an order to pay to the Regulator such amount by way of financial penalty, as the Regulator proposes as appropriate in light of the serious or repeated breach, and an application for such order may include amounts by way of financial penalties in respect of periods of non-compliance where there has since been compliance.

(4) In deciding on an application under paragraph (3), the High Court shall decide the amount, if any, of the financial penalty which should be payable and shall not be bound by the amount proposed by the Regulator. In deciding the amount payable the High Court shall consider the circumstances of the non-compliance including —

- (a) its duration,
- (b) the effect on consumers, users and other operators,
- (c) the submissions of the Regulator on the appropriate amount,
- (d) any representations made by the undertaking under paragraph (2), and
- (e) any excuse or explanation for the non-compliance.

(5) Any financial penalty ordered by the High Court to be paid by an undertaking under this Regulation shall be paid to and retained by the Regulator as income.

Part 14

AMENDMENT OF ACT OF 2002, CONSEQUENTIAL AMENDMENTS AND TRANSITIONAL ARRANGEMENTS

Amendments – Act of 2002

111. The Act of 2002 is amended:

- (a) in section 2(1) —

- (i) by inserting after the definition of “Director” the following: “‘Electronic Communications Code Regulations’ means European Union (Electronic Communications Code) Regulations 2022 (S.I. No. 444 of 2022);”, and
 - (ii) by substituting for the definition of “conditional access systems” the following: “‘conditional access system’ means any technical measure, authentication system or arrangement or both whereby access to a protected radio or television broadcasting service in intelligible form is made conditional upon subscription or another form of prior individual authorisation;”,
- (b) in section 10(1), by inserting after paragraph (ad) the following:
 “(ae) to perform the tasks assigned to it under the Electronic Communications Code Regulations,”,
- (c) after section 11, by inserting the following:
“Objectivity and transparency of Commission in regulating under Electronic Communications Code Regulations
 11A. For the purposes of performing its tasks under the Electronic Communications Code Regulations the Commission shall act objectively in a transparent manner and be accountable in accordance with the law of the European Union and shall not seek or take instructions from any other body in relation to tasks assigned to it under law implementing the law of the European Union.”,
- (d) in section 30 —
- (i) in subsection (1) —
 - (I) by deleting “and” after “organisations,” in paragraph (b) and inserting after that paragraph the following:
 “(c) enabling the Commission to have adequate technical, financial and human resources to carry out the tasks assigned to it, and (d) enabling the Commission to have adequate financial and human resources to enable it to actively participate and contribute to BEREC,”, and
 - (II) by substituting “Regulation 6 of the Electronic Communications Code Regulations” for “Regulation 4 of the European Communities (Electronic Communications Networks and Services)(Authorisation) Regulations 2003 (S.I. No. 306 of 2003)”,
 - (ii) in subsection (1A), by substituting for paragraph (a) the following: “(a) cover, in total, only the administrative costs which will be incurred in the

management, control and enforcement of the general authorisation system, the licensing scheme for the licence concerned, the schemes for the grant of the rights of use for numbering resources and specific obligations, and may include costs for international co-operation, harmonisation and standardisation, market analysis, monitoring compliance and other market control, as well as regulatory work involving preparation and enforcement of any orders under section 3(6) (inserted by section 11(c) of the Wireless Telegraphy Act 1972) of the Wireless Telegraphy Act 1926 or regulations under section 6 of that Act relating to apparatus for wireless telegraphy for the provision of an electronic communications network or service and administrative decisions, such as decisions on access and interconnection, and”,

(iii) in subsection (1A)(b), by deleting “attendant” and substituting “associated”, and

(iv) by inserting after subsection (1A) the following:

“(1B)(a) For the purposes of paragraph (1A)(b) and having regard to –

- (i) its objectives under section 12(1)(a),
- (ii) the impact of the levy on providers of electronic communications services and providers of electronic communications networks, and
- (iii) the need to minimise any distortion or restriction of competition in the market for the provision of the electronic communications concerned,

the Commission may make a determination that such class or classes of electronic communications provider referred to in subsection (1) are exempt from an order made under that subsection.

(b) A determination by the Commission in accordance with paragraph (a) shall only be made:

- (i) where the annual turnover of the provider is below an amount specified by the Commission, or
- (ii) where the activities of the provider do not reach a market share specified by the Commission, or have a very limited territorial scope.

(c) In this subsection, ‘turnover’ means in relation to a body corporate, the turnover of the body in the financial year of the body ending immediately before the financial year in which the determination referred to in paragraph (a) is made.”,

- (e) by inserting after section 31 the following:
 “Report on state of electronic communication markets
 31D. The Commission shall report annually to the Minister on the state of the electronic communications markets, on the decisions it issues, on its human, financial and technical resources and how those resources are attributed.”, and
- (f) in Part 2 of Schedule 1, by substituting for paragraphs (39) to (42) the following: “(39) the Electronic Communications Code Regulations;”.

Consequential amendments

112. (1) The Privacy and Electronic Communications Regulations are amended:

- (a) in Regulation 2(1), by substituting “Electronic Communications Code Regulations” for “Framework Regulations”,
- (b) in Regulation 2(2) —
 - (i) by inserting after the definition of “EEA Agreement” the following: “‘Electronic Communications Code Regulations’ means European Union (Electronic Communications Code) Regulations 2022 (S.I. No. 444 of 2022);”,
 - (ii) by deleting the definition of “Framework Regulations”,
 - (iii) by substituting the following for the definition of “National Directory Database”:

“‘National Directory Database’ means the record of all subscribers of voice communication services in the State, including those with fixed, personal or mobile numbers, who have not refused to be included in that record, kept in accordance with Regulation 95 of the Electronic Communications Code Regulations and these Regulations;”, and
 - (iv) by substituting the following for the definition of “operator”:

“‘operator’ means a person required by the Regulator under Regulation 95(3) of the Electronic Communications Code Regulations to keep the National Directory Database within the meaning of that Regulation;”,
- (c) in Regulation 2(3), by substituting “Electronic Communications Code Regulations” for “Framework Regulations”,
- (d) in Regulation 10(b), by inserting the following after “112”:

“and any other national emergency number that may be specified by the Regulator,”,

(e) by substituting for Regulation 12 the following:

“12. (1) A provider of number-based interpersonal communications services which attributes numbers from a numbering plan shall ensure that all its subscribers are, without charge —

- (a) informed, before they are included in any directory for which the provider provides relevant information in accordance with Regulation 95 of the Electronic Communications Code Regulations and in which their personal data can be included, about the purpose of such a directory and any further usage possibilities based on search functions embedded in electronic versions of that directory,
- (b) given the opportunity to determine whether their personal data are included in that directory, and
- (c) given the opportunity to determine which of their personal data are included in that directory to the extent that such data are relevant for the purpose of the directory as determined by the provider of the directory and to verify, correct or withdraw such data.

(2) Any other person responsible for the collection and making available of a subscriber’s data for inclusion in any other directory of subscribers shall ensure that the subscribers are, without charge—

- (a) informed, before they are included in any such directory in which their personal data can be included, about the purpose of such a directory and any further usage possibilities based on search functions embedded in electronic versions of the directory,
- (b) given the opportunity to determine whether their personal data are included in that directory, and
- (c) given the opportunity to determine which of their personal data are included in that directory to the extent that such data are relevant for the purpose of the directory as determined by the provider of the directory and to verify, correct or withdraw such data.

(3) (a) A provider of number-based interpersonal communications services which attributes numbers from a numbering plan shall ensure that its subscribers other than natural persons are, without charge, provided with the information referred to in paragraph (1)(a) and the

opportunities referred to in paragraph (1)(b) and (c) notwithstanding the fact that the data may not be personal data.

(b) Any other person responsible for the collection and making available of data for inclusion in any other directory of subscribers shall ensure that subscribers other than natural persons are, without charge, provided with the information referred to in paragraph (2)(a) and the opportunities referred to in paragraph (2)(b) and (c) notwithstanding the fact that the data may not be personal data.

(4) A subscriber may request the relevant provider or person to disregard or reverse the effect of a determination previously made by the subscriber to the undertaking or person under paragraph (2) or (3).

(5) The relevant provider or person shall comply with any notification of a determination made, or deemed to have been made, to that provider or that person under paragraph (1), (2) or (4).”,

(f) in Regulation 14 —

(i) by substituting –

(I) in paragraph (1), “A provider of number-based interpersonal communications services which attributes numbers from a numbering plan”, and

(II) in paragraphs (2), (3) and (6)(a), “A provider referred to in paragraph (1)”,

for “An undertaking referred to in Regulation 19(1) or (2) of the Universal Service Regulations”,

(ii) in paragraph (1)(b), “provider” for “undertaking”,

(iii) by substituting in paragraph (4)(a) —

(I) “A provider” for “An undertaking”, and

(II) “the provider” for “the undertaking”, and

(iv) by substituting in paragraph (6)(a) “95(3) of the Electronic Communications Code Regulations” for “19(4) of the Universal Service Regulations”, and

(g) in Regulations 29 and 30, by inserting the words “or provider” after the word “undertaking” where it occurs.

(6) The European Communities (Electronic Communications Networks and Services)(Privacy and Electronic Communications)(Amendment) Regulations 2019 (S.I. No. 347 of 2019) are revoked.

Transitional arrangements

113. (1) A measure that was in force under the Framework Regulations, the Authorisation Regulations, the Access Regulations or the Universal Service Regulations (“the 2011 Regulations”) immediately before the commencement of these Regulations shall continue in force as if it was made under these Regulations.

(2) Licences, rights of use, or authorisations granted under the Act of 1926 or any instrument made under that Act in accordance with any provision of the 2011 Regulations, that were in force immediately before the commencement of these Regulations shall be construed as licences granted in accordance with these Regulations.

(3) Any reference in the Act of 1926 or any instrument made under that Act to —

- (a) the Framework Regulations,
- (b) the Access Regulations,
- (c) the Authorisation Regulations, or
- (d) the Universal Service Regulations,

shall be read as a reference to these Regulations.

SCHEDULE 1

LIST OF CONDITIONS WHICH MAY BE ATTACHED TO GENERAL AUTHORISATIONS, RIGHTS OF USE FOR RADIO SPECTRUM AND RIGHTS OF USE FOR NUMBERING RESOURCES

Regulations 8, 9, 10, 15, 40

This Schedule provides for the maximum list of conditions which may be attached to general authorisations for electronic communications networks and services, except number-independent interpersonal communications services (Part A), electronic communications networks (Part B), electronic communications services, except number-independent interpersonal communications services (Part C), rights of use for radio spectrum (Part D), and rights of use for numbering resources (Part E)

A. General conditions which may be attached to a general authorisation

1. Administrative charges in accordance with section 30 of the Act of 2002.
2. Personal data and privacy protection specific to the electronic communications sector in accordance with the Privacy and Electronic Communications Regulations.
3. Information to be provided under a notification procedure in accordance with Regulation 6 and for other purposes as included in Regulation 99.
4. Enabling of legal interception by competent national authorities in accordance with Regulation (EU) 2016/679⁴ and the Privacy and Electronic Communications Regulations.
5. Terms of use for communications from public authorities to the general public for warning the public of imminent threats and for mitigating the consequences of major catastrophes.
6. Terms of use during major disasters or national emergencies to ensure communications between emergency services and authorities.
7. Access obligations other than those provided for in Regulation 8 applying to undertakings providing electronic communications networks or services.
8. Measures designed to ensure compliance with the standards or specifications referred to in Regulation 23.
9. Transparency obligations on providers of public electronic communications network providing publicly available electronic communications services to ensure end-to-end connectivity, in accordance with the objectives and principles set out in Regulation 4 and, where necessary and proportionate, access by competent authorities to such information needed to verify the accuracy of such disclosure.

B. Specific conditions which may be attached to a general authorisation for the provision of electronic communications networks

1. Interconnection of networks in accordance with these Regulations.
2. ‘Must carry’ obligations in accordance with these Regulations.
3. Measures for the protection of public health against electromagnetic fields caused by electronic communications networks in accordance with Union law, taking utmost account of Recommendation 1999/519/EC.
4. Maintenance of the integrity of public electronic communications networks in accordance with these Regulations including by conditions to prevent electromagnetic interference between electronic communications networks or services in accordance with the European Communities (Electromagnetic Compatibility) Regulations 2016 and 2017.
5. Security of public networks against unauthorised access in accordance with the Privacy and Electronic Communications Regulations.
6. Conditions for the use of radio spectrum, in accordance with Regulation 7 of the European Communities (Electromagnetic Compatibility) Regulations 2017, where such use is not made subject to the granting of individual rights of use in accordance with Regulations 28 and 30.

C. Specific conditions which may be attached to a general authorisation for the provision of electronic communications services, except number-independent interpersonal communications services

1. Interoperability of services in accordance with these Regulations.
2. Accessibility by end-users of numbers from a national numbering plan, numbers from the UIFN and, where technically and economically feasible, from numbering plans of other Member States, and conditions in accordance with these Regulations.
3. Consumer protection rules specific to the electronic communications sector.
4. Restrictions in relation to the transmission of illegal content in accordance with the European Communities (Directive 2000/31/EC) Regulations 2003 (S.I. No. 68 of 2003) and restrictions in relation to the transmission of harmful content in accordance with the European Communities (Cooperation Between National Authorities Responsible for the Enforcement of Consumer Protection Laws) Regulations 2006 (S.I. No. 290 of 2006).

D. Conditions which may be attached to rights of use for radio spectrum

1. Obligation to provide a service or to use a type of technology within the limits of Regulation 27 including, where appropriate, coverage and

quality of service requirements.

2. Effective and efficient use of radio spectrum in accordance with these Regulations.
3. Technical and operational conditions necessary for the avoidance of harmful interference and for the protection of public health against electromagnetic fields, taking utmost account of Recommendation 1999/519/EC where such conditions are different from those included in the general authorisation.
4. Maximum duration in accordance with Regulation 31, subject to any changes in the National Frequency Allocation Plan.
5. Transfer or leasing of rights at the initiative of the holder of the rights and conditions for such transfer in accordance with these Regulations.
6. Fees for rights of use in accordance with Regulation 24.
7. Any commitments which the undertaking obtaining the rights of use has made in the framework of an authorisation or authorisation renewal process prior to the authorisation being granted or, where applicable, to the invitation for application for rights of use.
8. Obligations to pool or share radio spectrum or allow access to radio spectrum for other users in specific regions or at national level.
9. Obligations under relevant international agreements relating to the use of radio spectrum bands.
10. Obligations specific to an experimental use of radio spectrum bands.

E. Conditions which may be attached to rights of use for numbering resources

1. Designation of service for which the number shall be used, including any requirements linked to the provision of that service and, for the avoidance of doubt, tariff principles and maximum prices that can apply in the specific number range for the purposes of ensuring consumer protection in accordance with Regulation 4(3)(d).
2. Effective and efficient use of numbering resources in accordance with these Regulations.
3. Number portability requirements in accordance with these Regulations.
4. Obligation to provide public directory end-user information for the purposes of Regulation 95.
5. Maximum duration in accordance with Regulation 80, subject to any changes in a national numbering plan.

6. Transfer of rights at the initiative of the holder of the rights and conditions for such transfer in accordance with these Regulations, including any condition that the right of use for a number be binding on all the undertakings to which the rights are transferred.
7. Fees for rights of use in accordance with Regulation 81.
8. Any commitments which the undertaking obtaining the rights of use has made in the course of a competitive or comparative selection procedure.
9. Obligations under relevant international agreements relating to the use of numbers.
10. Obligations concerning the extraterritorial use of numbers within the Union to ensure compliance with consumer protection and other number-related rules in Member States other than that of the country code.

SCHEDULE 2

CRITERIA FOR DETERMINATION OF WHOLESALE VOICE TERMINATION RATES

Regulation 57

Principles, criteria and parameters for the determination of rates for wholesale voice termination on fixed and mobile markets referred to in **Article 75(1)** of the Directive:

- (a) rates shall be based on the recovery of costs incurred by an efficient operator; the evaluation of efficient costs shall be based on current cost values; the cost methodology to calculate efficient costs shall be based on a bottom-up modelling approach using long-run incremental traffic-related costs of providing the wholesale voice termination service to third parties;
- (b) the relevant incremental costs of the wholesale voice termination service shall be determined by the difference between the total long-run costs of an operator providing its full range of services and the total long-run costs of that operator not providing a wholesale voice termination service to third parties;
- (c) only those traffic-related costs which would be avoided in the absence of a wholesale voice termination service being provided shall be allocated to the relevant termination increment;
- (d) costs related to additional network capacity shall be included only to the extent that they are driven by the need to increase capacity for the purpose of carrying additional wholesale voice termination traffic;
- (e) radio spectrum fees shall be excluded from the mobile voice termination increment;

- (f) only those wholesale commercial costs shall be included which are directly related to the provision of the wholesale voice termination service to third parties;
- (g) all fixed network operators shall be considered to provide voice termination services at the same unit costs as the efficient operator, regardless of their size;
- (h) for mobile network operators, the minimum efficient scale shall be set at a market share not below 20%;
- (i) the relevant approach for asset depreciation shall be economic depreciation; and
- (j) the technology choice of the modelled networks shall be forward looking, based on an IP core network, taking into account the various technologies likely to be used over the period of validity of the maximum rate; in the case of fixed networks, calls shall be considered to be exclusively packet switched.

SCHEDULE 3

CRITERIA FOR ASSESSING CO-INVESTMENT OFFERS

Regulation 58(2)

When assessing a co-investment offer pursuant to Regulation 58(2), the Regulator shall verify whether the following criteria have at a minimum been met. The Regulator may consider additional criteria to the extent they are necessary to ensure accessibility of potential investors to the co-investment, in light of specific local conditions and market structure:

- (a) the co-investment offer shall be open to any undertaking over the lifetime of the network built under a co-investment offer on a non-discriminatory basis. The undertaking designated as having significant market power may include in the offer reasonable conditions regarding the financial capacity of any undertaking, so that for instance potential co-investors need to demonstrate their ability to deliver phased payments on the basis of which the deployment is planned, the acceptance of a strategic plan on the basis of which medium-term deployment plans are prepared, and so on;
- (b) the co-investment offer shall be transparent:
 - (i) the offer shall be available and easily identified on the website of the undertaking designated as having significant market power;
 - (ii) full detailed terms shall be made available without undue delay to any potential bidder that has expressed an interest, including the legal form of the co-investment agreement and, when relevant, the heads of term of the governance rules of the co-investment vehicle;

and

- (iii) the process, like the road map for the establishment and development of the co-investment project shall be set in advance, shall be clearly explained in writing to any potential co-investor, and all significant milestones shall be clearly communicated to all undertakings without any discrimination.
- (c) The co-investment offer shall include terms to potential co-investors which favour sustainable competition in the long term, in particular:
- (i) All undertakings shall be offered fair, reasonable and non-discriminatory terms and conditions for participation in the co-investment agreement relative to the time they join, including in terms of financial consideration required for the acquisition of specific rights, in terms of the protection awarded to the co-investors by those rights both during the building phase and during the exploitation phase, for example by granting indefeasible rights of use (IRUs) for the expected lifetime of the co-invested network and in terms of the conditions for joining and potentially terminating the co-investment agreement. Non-discriminatory terms in this context do not entail that all potential co-investors shall be offered exactly the same terms, including financial terms, but that all variations of the terms offered shall be justified on the basis of the same objective, transparent, non-discriminatory and predictable criteria such as the number of end-user lines committed for.
 - (ii) The offer shall allow flexibility in terms of the value and timing of the commitment provided by each co-investor, for example by means of an agreed and potentially increasing percentage of the total end-user lines in a given area, to which co-investors have the possibility to commit gradually and which is set at a unit level enabling smaller co-investors with limited resources to enter the co-investment at a reasonably minimum scale and to gradually increase their participation while ensuring adequate levels of initial commitment. The determination of the financial consideration to be provided by each co-investor needs to reflect the fact that early investors accept greater risks and engage capital sooner.
 - (iii) A premium increasing over time shall be considered to be justified for commitments made at later stages and for new co-investors entering the co-investment after the commencement of the project, to reflect diminishing risks and to counteract any incentive to withhold capital in the earlier stages.
 - (iv) The co-investment agreement shall allow the assignment of acquired rights by co-investors to other co-investors, or to third parties willing to enter into the co-investment agreement subject to the transferee undertaking being obliged to fulfil all

original obligations of the transferor under the co-investment agreement.

- (v) Co-investors shall grant each other reciprocal rights on fair and reasonable terms and conditions to access the co-invested infrastructure for the purposes of providing services downstream, including to end-users, in accordance with transparent conditions which are to be made transparent in the co-investment offer and subsequent agreement, in particular where co-investors are individually and separately responsible for the deployment of specific parts of the network. If a co-investment vehicle is created, it shall provide access to the network to all co-investors, whether directly or indirectly, on an equivalence of inputs basis and in accordance with fair and reasonable terms and conditions, including financial conditions that reflect the different levels of risk accepted by the individual co-investors.
- (d) The co-investment offer shall ensure a sustainable investment likely to meet future needs, by deploying new network elements that contribute significantly to the deployment of very-high-capacity networks.

SCHEDULE 4

MINIMUM SET OF SERVICES WHICH ADEQUATE BROADBAND INTERNET ACCESS SERVICE IN ACCORDANCE WITH REGULATION 70(2) SHALL BE CAPABLE OF SUPPORTING

Regulation 70(2)

- (1) E-mail
- (2) search engines enabling search and finding of all type of information
- (3) basic training and education online tools
- (4) online newspapers or news
- (5) buying or ordering goods or services online
- (6) job searching and job searching tools
- (7) professional networking
- (8) internet banking
- (9) eGovernment service use
- (10) social media and instant messaging
- (11) calls and video calls (standard quality)

SCHEDULE 5

DESCRIPTION OF FACILITIES AND SERVICES REFERRED TO IN REGULATION 74 (CONTROL OF EXPENDITURE), REGULATION 97 (ADDITIONAL FACILITIES) AND REGULATION 90 (PROVIDER SWITCHING AND NUMBER PORTABILITY)

Regulations 74 and 97

Part A

Facilities and services referred to in Regulations 74 and 97

When applied on the basis of Regulation 74, this Part is applicable to consumers.

When applied on the basis of Regulation 97, this Part is applicable to the categories of end-users determined by the Regulator, except for paragraphs (c), (d) and (g) below which are applicable only to consumers.

(a) Itemised billing

The Regulator, subject to the requirements of the Privacy and Electronic Communications Regulations and data protection law, may lay down the basic level of itemised bills which are to be offered by undertakings to end-users free of charge in order that they can:

- (i) allow verification and control of the charges incurred in using internet access services or voice communications services, or number-based interpersonal communications services in the case of Regulation 97; and
- (ii) adequately monitor their usage and expenditure and thereby exercise a reasonable degree of control over their bills.

Where appropriate, additional levels of detail may be offered to end-users at reasonable tariffs or at no charge.

Such itemised bills shall include an explicit mention of the identity of the supplier and of the duration of the services charged by any premium numbers unless the end-user has requested that information not to be mentioned.

Calls which are free of charge to the calling end-user, including calls to helplines, shall not be required to be identified in the calling end-user's itemised bill.

The Regulator may require operators to provide calling-line identification free of charge.

(b) Selective barring for outgoing calls or premium SMS or MMS, or, where technically feasible, other kinds of similar applications, free of charge

namely, the facility whereby an end-user can, on request to a provider of voice communications services, or number-based interpersonal communications services in the case of Regulation 97, bar outgoing calls or premium SMS or MMS or other kinds of similar applications of defined types or to defined types of numbers free of charge.

(c) Pre-payment systems

The Regulator may require undertakings to offer means for consumers to pay for access to the public electronic communications network and use of voice communications services, or internet access services, or number-based interpersonal communications services in the case of Regulation 97, on pre-paid terms.

(d) Phased payment of connection fees

The Regulator may require undertakings to allow consumers to pay for connection to the public electronic communications network on the basis of payments phased over time.

(e) Non-payment of bills

The Regulator may authorise specified measures, which are to be proportionate, non-discriminatory and published, to cover non-payment of bills issued by undertakings. Those measures are to ensure that due warning of any consequent service interruption or disconnection is given to the end-user beforehand. Except in cases of fraud, persistent late payment or non-payment, those measures shall ensure, as far as is technically feasible, that any service interruption is confined to the service concerned. Disconnection for non-payment of bills shall take place only after due warning is given to the end-user. The Regulator may allow a period of limited service prior to complete disconnection, during which only calls that do not incur a charge to the end-user (for example, calls to the '112' number) and minimum service level of internet access services, defined by the Regulator in light of national conditions, are permitted.

(f) Tariff advice

namely, the facility whereby end-users may request the provider to offer information regarding alternative lower-cost tariffs, if available.

(g) Cost control

namely, the facility whereby undertakings offer other means, if determined to be appropriate by the Regulator, to control the costs of voice communications services or internet access services, or number-based interpersonal communications services in the case of Regulation 97, including free-of-charge alerts to consumers in the case of abnormal or excessive consumption patterns.

(h) Facility to deactivate third party billing

namely, the facility for end-users to deactivate the ability for third party service providers to use the bill of a provider of an internet access service or a provider of a publicly available interpersonal communications service to charge for their products or services.

Part B

Facilities referred to in Regulation 97

(a) Calling-line identification

namely, the calling party's number is presented to the called party prior to the call being established.

This facility shall be provided in accordance with the Privacy and Electronic Communications Regulations and data protection law.

To the extent technically feasible, operators shall provide data and signals to facilitate the offering of calling-line identity and tone dialling across Member State boundaries.

- (b) E-mail forwarding or access to e-mails after termination of the contract with a provider of an internet access service.

This facility shall, on request and free-of-charge, enable end-users who terminate their contract with a provider of an internet access service to either access their e-mails received on the e-mail address based on the commercial name or trade mark of the former provider, during a period that the Regulator considers necessary and proportionate, or to transfer e-mails sent to that address during that period to a new email address specified by the end-user.

SCHEDULE 6

CALCULATING NET COST, IF ANY, OF UNIVERSAL SERVICE OBLIGATIONS AND ESTABLISHING ANY COMPENSATION OR SHARING MECHANISM IN ACCORDANCE WITH REGULATIONS 75 AND 76

Regulation 75, 76

Part A

Calculation of net cost

Universal service obligations refer to those obligations placed upon an undertaking by a Member State which concern the provision of universal service as set out in Regulations 70 to 73.

National regulatory authorities are to consider all means to ensure appropriate incentives for undertakings (designated or not) to provide universal service obligations cost efficiently. In undertaking a calculation exercise, the net cost of universal service obligations is to be calculated as the difference between the net cost for any undertaking operating with the universal service obligations and operating without the universal service obligations. Due attention is to be given to correctly assessing the costs that any undertaking would have chosen to avoid had there been no universal service obligations. The net cost calculation shall assess the benefits, including intangible benefits, to the universal service provider.

The calculation is to be based upon the costs attributable to:

- (i) elements of the identified services which can only be provided at a loss or provided under cost conditions falling outside normal commercial standards.

This category may include service elements such as access to emergency telephone services, provision of certain public pay telephones, provision of certain services or equipment for end-users with disabilities, and so on;

- (ii) specific end-users or groups of end-users who, taking into account the cost of providing the specified network and service, the revenue generated and any geographical averaging of prices imposed by the Member State, can only be served at a loss or under cost conditions falling outside normal commercial standards.

This category includes those end-users or groups of end-users which would not be served by a commercial provider which did not have an obligation to provide universal service.

The calculation of the net cost of specific aspects of universal service obligations is to be made separately and in order to avoid the double counting of any direct or indirect benefits and costs. The overall net cost of universal service obligations to any undertaking is to be calculated as the sum of the net costs arising from the specific components of universal service obligations, taking account of any intangible benefits. The responsibility for verifying the net cost lies with the national regulatory authority.

Part B

Compensation of net costs of universal service obligations

The recovery or financing of any net costs of universal service obligations may require undertakings with universal service obligations to be compensated for the services they provide under non-commercial conditions. Because such a compensation involves financial transfers, Member States are to ensure that those are undertaken in an objective, transparent, non-discriminatory and proportionate manner. This means that the transfers result in the least distortion to competition and to user demand.

In accordance with Regulation 76, a sharing mechanism based on a fund shall use a transparent and neutral means for collecting contributions that avoids the danger of a double imposition of contributions falling on both outputs and inputs of undertakings.

The independent body administering the fund is to be responsible for collecting contributions from undertakings which are assessed as liable to contribute to the net cost of universal service obligations in the Member State and is to oversee the transfer of sums due or administrative payments to the undertakings entitled to receive payments from the fund.

SCHEDULE 7

INFORMATION REQUIREMENTS TO BE PROVIDED IN ACCORDANCE WITH REGULATION 87 (INFORMATION REQUIREMENTS FOR CONTRACTS)

Regulation 87

A. Information requirements for providers of publicly available electronic communications services other than transmission services used for the provision of machine-to-machine services

Providers of publicly available electronic communications services other than transmission services used for the provision of machine-to-machine services shall provide the following information:

- (1) as part of the main characteristics of each service provided, any minimum levels of quality of service to the extent that those are offered and, for services other than internet access services, the specific quality parameters assured.

Where no minimum levels of quality of service are offered, a statement to this effect shall be made;

- (2) as part of the information on price, where and to the extent applicable, the respective prices for activating the electronic communications service and for any recurring or consumption-related charges;
- (3) as part of the information on the duration of the contract and the conditions for renewal and termination of the contract, including possible termination fees, to the extent that such conditions apply:
 - (i) any minimum use or duration required to benefit from promotional terms;
 - (ii) any charges related to switching and compensation and refund arrangements for delay or abuse of switching, as well as information about the respective procedures;
 - (iii) information on the right of consumers using pre-paid services to a refund, upon request, of any remaining credit in the event of switching, as set out in Regulations 90(8) to (11);
 - (iv) any fees due on early termination of the contract, including information on unlocking the terminal equipment and any cost recovery with respect to terminal equipment;

- (4) any compensation and refund arrangements, including, where applicable, explicit reference to rights of consumers, which apply if contracted levels of quality of service are not met or if the provider responds inadequately to a security incident, threat or vulnerability;

- (5) the type of action that might be taken by the provider in reaction to security incidents or threats or vulnerabilities.

B. Information requirements for providers of internet access services and publicly available interpersonal communications services

- I. In addition to the requirements set out in Part A, providers of internet access services and publicly available interpersonal communications services shall provide the following information:

- (1) as part of the main characteristics of each service provided:
- (i) any minimum levels of quality of service to the extent that these are offered, and taking utmost account of the BEREC guidelines adopted in accordance with Article 104(2) regarding:
 - for internet access services: at least latency, jitter, packet loss,
 - for publicly available interpersonal communications services, where they exert control over at least some elements of the network or have a service level agreement to that effect with undertakings providing access to the network: at least the time for the initial connection, failure probability, call signalling delays in accordance with Schedule 9; and
 - (ii) without prejudice to the right of end-users to use terminal equipment of their choice in accordance with Article 3(1) of Regulation (EU) 2015/2120, any conditions, including fees, imposed by the provider on the use of terminal equipment supplied;
- (2) as part of the information on price, where and to the extent applicable, the respective prices for activating the electronic communications service and for any recurring or consumption-related charges:
- (i) details of specific tariff plan or plans under the contract and, for each such tariff plan the types of services offered, including where applicable, the volumes of communications (such as MB, minutes, messages) included per billing period, and the price for additional communication units;
 - (ii) in the case of tariff plan or plans with a pre-set volume of communications, the possibility for consumers to defer any unused volume from the preceding billing period to the following billing period, where this option is included in the contract;
 - (iii) facilities to safeguard bill transparency and monitor the level of consumption;
 - (iv) tariff information regarding any numbers or services subject to particular pricing conditions; with respect to individual categories of services, the Regulator may require in addition such information to be provided immediately prior to connecting the call or to connecting to the provider of the service;

- (v) for bundled services and bundles including both services and terminal equipment the price of the individual elements of the bundle to the extent they are also marketed separately;
 - (vi) details and conditions, including fees, of any after-sales service, maintenance, and customer assistance; and
 - (vii) the means by which up-to-date information on all applicable tariffs and maintenance charges may be obtained;
- (3) as part of the information on the duration of the contract for bundled services and the conditions for renewal and termination of the contract, where applicable, the conditions of termination of the bundle or of elements thereof;
 - (4) without prejudice to Article 13 of the Regulation (EU) 2016/6794, information on what personal data shall be provided before the performance of the service or collected in the context of the provision of the service;
 - (5) details on products and services designed for end-users with disabilities and how updates on this information can be obtained;
 - (6) the means of initiating procedures for the resolution of disputes including national and cross-border disputes in accordance with Article 25.

II. In addition to the requirements set out in Part A and under Point I, providers of publicly available number-based interpersonal communications services shall also provide the following information:

- (1) any constraints on access to emergency services or caller location information due to a lack of technical feasibility insofar as the service allows end-users to originate calls to a number in a national or international numbering plan;
- (2) the end-user's right to determine whether to include his or her personal data in a directory, and the types of data concerned, in accordance with Regulation 12 of the Privacy and Electronic Communications Regulations;

III. In addition to the requirements set out in Part A and under Point I, providers of internet access services shall also provide the information required pursuant to Article 4(1) of Regulation (EU) 2015/2120.

SCHEDULE 8
INFORMATION TO BE PUBLISHED IN ACCORDANCE WITH
REGULATION 88 (TRANSPARENCY AND PUBLICATION OF
INFORMATION)

Regulation 88

The Regulator is responsible for ensuring that the information in this Schedule is published, in accordance with Regulation 88. The Regulator shall decide which information is relevant to be published by the providers of internet access services or publicly available interpersonal communications services, and which information is to be published by the Regulator itself, in order to ensure that all end-users are able to make informed choices. If considered to be appropriate, the Regulator may promote self- or co-regulatory measures prior to imposing any obligation.

1. Contact details of the undertaking
2. Description of the services offered
 - 2.1. Scope of the services offered and the main characteristics of each service provided, including any minimum levels of quality of service where offered and any restrictions imposed by the provider on the use of terminal equipment supplied.
 - 2.2. Tariffs of the services offered, including information on communications volumes (such as restrictions of data usage, numbers of voice minutes, numbers of messages) of specific tariff plans and the applicable tariffs for additional communication units, numbers or services subject to particular pricing conditions, charges for access and maintenance, all types of usage charges, special and targeted tariff schemes and any additional charges, as well as costs with respect to terminal equipment.
 - 2.3. After-sales, maintenance and customer assistance services offered and their contact details.
 - 2.4. Standard contract conditions, including contract duration, charges due on early termination of the contract, rights related to the termination of bundled offers or of elements thereof, and procedures and direct charges related to the portability of numbers and other identifiers, if relevant.
 - 2.5. If the undertaking is a provider of number-based interpersonal communications services, information on access to emergency services and caller location, or any limitation on the latter. If the undertaking is a provider of number-independent interpersonal communications services, information on the degree to which access to emergency services may be supported or not.
 - 2.6. Details of products and services, including any functions, practices, policies and procedures and alterations in the operation of the service, specifically designed for end-users with disabilities, in accordance with European Union law harmonising accessibility requirements for products and services.

1. Dispute resolution mechanisms, including those developed by the undertaking.



GIVEN under my Official Seal,
6 September, 2022.

EAMON RYAN,
Minister for the Environment,
Climate and Communications.

EXPLANATORY NOTE

(This note is not part of the Instrument and does not purport to be a legal interpretation)

These Regulations give effect to Directive (EU) 2018/1972 of the European Parliament and of the Council of 11 December 2018 establishing the European Electronic Communications Code. They establish a harmonised framework for the regulation of electronic communications networks, electronic communications services, associated facilities and associated services, and certain aspects of terminal equipment. They lay down tasks of the national regulatory authority and, where applicable, of other competent authorities, and establish a set of procedures to ensure the harmonised application of the regulatory framework throughout the Union.

The Regulations aim to implement an internal market in electronic communications networks and services that results in the deployment and take-up of very-high-capacity networks, sustainable competition, interoperability of electronic communications services, accessibility, security of networks and services and end-user benefits, and to ensure the provision throughout the Union of good quality, affordable, publicly available services through effective competition and choice, to deal with circumstances in which the needs of end-users, including those with disabilities in order to access the services on an equal basis with others are not satisfactorily met by the market and to lay down the necessary end-user rights.

The Commission for Communications Regulation will be the national regulatory authority for the purposes of overseeing and enforcing these Regulations.

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