

# Telecommunications

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## TELECOMMUNICATIONS (OPEN NETWORK PROVISION) (FRAMEWORK) REGULATIONS 2001

**2000-18**

**Repealed**  
**Subsidiary**  
**2001/091**

Regulations made under ss. 11 and 47.

## TELECOMMUNICATIONS (OPEN NETWORK PROVISION) (FRAMEWORK) REGULATIONS 2001

**Repealed by Ord. 2006-15 as from 5.6.2006**

**(LN. 2001/091)**

**19.7.2001**

Amending enactments	Relevant current provisions	Commencement date
None		

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### ARRANGEMENT OF REGULATIONS

Regulation

1. Title.
2. Interpretation.
3. Access to and use of networks and services.
4. Open network provision conditions.
5. Standards and specifications.

### SCHEDULE

PRINCIPLES AND GUIDELINES FOR OPEN NETWORK PROVISION  
CONDITIONS

**2000-18**

**Repealed**

**Subsidiary  
2001/091**

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(FRAMEWORK) REGULATIONS 2001**

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(FRAMEWORK) REGULATIONS 2001**

**Repealed**  
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**2001/091**

**Title.**

1. These Regulations may be cited as the Telecommunications (Open Network Provision) (Framework) Regulations 2001.

**Interpretation.**

2.(1) For the purposes of these Regulations—

“open network provision conditions” means the conditions subject to which open and efficient access to public telecommunications networks and, where applicable, publicly available telecommunications services may be granted and those networks and services efficiently used;

“particular telecommunications market” means any market which the Minister considers to be such a market for the purpose of making a determination under sub-regulation (2); and

“significant market power” means, subject to sub-regulation (2), having more than twenty-five per cent (25%) of a particular telecommunications market.

(2) The Minister may, after consultation with the Authority and after taking into account the matters referred to in sub-regulation (3)—

- (a) determine that a person who has less than twenty-five per cent (25%) of a particular telecommunications market is a person who has significant market power; and
- (b) determine that a person who has more than twenty-five per cent (25%) of a particular telecommunications market is a person who does not have significant market power.

(3) In making a determination under sub-regulation (2), the Minister shall take into account—

- (a) the ability of the person to influence conditions in that market;
- (b) the turnover of the person in relation to the size of that market;
- (c) the control that the person may have of the means of access to end-users;
- (d) the access that the person may have to financial resources; and

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- (e) the experience that the person may have in providing products and services in that market.

(4) Except where the context otherwise requires and subject to sub-regulations (1), (2) and (3), any word or expression used in these Regulations which is also used in the Ordinance has the same meaning in these Regulations as it has in the Ordinance.

#### **Access to and use of networks and services.**

3. The Minister and the Authority shall each ensure that, subject to open network provision conditions, there is open and efficient access to and use of public telecommunications networks and, where applicable, publicly available telecommunications services.

#### **Open network provision conditions.**

4.(1) Open network provision conditions must—

- (a) be based on objective criteria;
- (b) be transparent and published in an appropriate manner;
- (c) guarantee equality of access; and
- (d) be non-discriminatory.

(2) Open network provision conditions may not restrict access to public telecommunications networks or publicly available telecommunications services or both save as contained in any one or more of the following—

- (a) in accordance with sub-regulation (4);
- (b) on grounds based on essential requirements;
- (c) by the imposition of such conditions as are generally applicable to the connection of terminal equipment to a public telecommunications network.

(3) Open network provision conditions may not, save—

- (a) in accordance with sub-regulation (2) or (4) or both;
- (b) as may otherwise be compatible with Community law, or
- (c) as provided for in paragraph (a) and in paragraph (b),

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restrict the use of public telecommunications networks or publicly available telecommunications services or both.

(4) Open network provision conditions may include, without prejudice to their application on a case-by-case basis and to sub-regulation (5), conditions regarding—

- (a) technical interfaces and network functions including the setting and implementation of network termination points;
- (b) supply and usage conditions;
- (c) tariffs; and
- (d) access to frequencies, numbers, addresses and names,

which conditions must follow the principles and guidelines set out in the Schedule.

(5) The Minister, unless competition in the market in Gibraltar for the—

- (a) establishment or operation; or establishment and operation, of a specific type of network;
- (b) provision of a specific type of service; or
- (c) establishment or operation, or establishment and operation, referred to in paragraph (a) and the provision referred to in paragraph (b)

has become effective in keeping down prices for users of that type of network or service or both as the case may be, shall have the right to set the tariff level for that type of network or service or both and the setting of such level by the Minister shall not be the subject of open network provision conditions.

## **Standards and specifications.**

5.(1) The Authority shall encourage the use of such standards or specifications or both as may be referenced in the Official Journal of the European Communities, in accordance with article 5 (1) of the ONP Framework Directive, for the provision of technical interfaces or network functions or both.

(2) The Authority shall, for so long as the standards or specifications or both referred to in sub-regulation (1) shall not be adopted, encourage the use of the standards or specifications or both listed below in order of priority—

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- (a) such standards or specifications or both as shall be adopted by European standardisation bodies such as the European Telecommunications Standards Institute (ETSI) or the Joint European Standards Institution (CEN/CENELEC),  
  
or, in the absence of such standards or specifications or both,
- (b) international standards or recommendations adopted by the International Telecommunication Union (ITU), the International Organisation for Standardisation (ISO) or the International Electrotechnical Committee (IEC),  
  
or, in the absence of such standards or specifications or both,
- (c) such standards or specifications or both as the Minister may prescribe.

### SCHEDULE

Regulation 4

#### PRINCIPLES AND GUIDELINES FOR OPEN NETWORK PROVISION CONDITIONS

Paragraphs 1 to 5 set out the principles and guidelines referred to in regulation 4(4).

#### **Technical interfaces and network functions**

1.(1) The conditions referred to in paragraph (a) of regulation 4(4) shall follow the principles and guidelines set out in sub-paragraphs (2) to (6).

(2) Such interface specifications as are current shall be adopted for the purposes of the provision of such publicly available telecommunications services and public telecommunications networks as are being provided.

(3) For the purpose of—

- (a) the provision of such publicly available telecommunications services as are not being provided;
- (b) the improvement of such publicly available telecommunications services as are being provided; or
- (c) the provision referred to in paragraph (a) and the improvement referred to in paragraph (b),

such interface specifications as are current at the time when it is sought to provide the new services or improve the existing services or both, as the case may be, shall be adopted as far as possible.

(4) If such interfaces as are current at the time referred to in sub-paragraph (3) are not suitable for the purposes referred to in that sub-paragraph, then those interfaces shall be enhanced or new interface specifications shall be adopted or both, as the case may be, for those purposes.

(5) Regulation 4 shall be taken into account when specifications for interface and network functions are being developed for telecommunications networks that are still to be introduced and are being standardised.

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(6) Proposals for open network provision must, wherever possible, be in conformity with the ongoing work of the European standardisation bodies, in particular, the European Telecommunications Standards Institute (ETSI), and must also take into account the work of international standardisation organisations such as the ITU-T.

#### Supply and usage

2.(1) The conditions subject to which public telecommunications networks and publicly available telecommunications services may be offered to users may include conditions, with which the person offering those networks and services must comply, regarding—

- (a) the period normally taken for those networks and services to be delivered;
- (b) the time normally taken for a fault in the provision of those networks and services to be repaired or otherwise remedied;
- (c) the quality of those networks and services, in particular the availability and quality of transmission; and
- (d) the maintenance and management of those networks.

(2) The conditions subject to which public telecommunications networks and publicly available telecommunications services may be used may include conditions, with which users must comply, regarding—

- (a) access to those networks;
- (b) shared use; and
- (c) the protection of personal data and confidentiality of communications, where required.

#### Tariffs

3.(1) Tariffs must be—

- (a) based on objective criteria; and,
- (b) cost-oriented, in principle, until such time as competition has become effective in keeping down prices for users.

(2) Where a person who has had significant market power no longer does so, the Minister may, after consultation with the Authority, consider

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that competition in that market has become effective in keeping down prices for users.

- (3) Tariffs must be—
  - (a) transparent; and
  - (b) properly published.
- (4) Tariffs must, where technology so permits, be sufficiently unbundled to give users an opportunity to identify and choose between the individual elements of the service that they are being offered.
- (5) Such features as may be introduced for the provision of specific services must, as a general rule, be charged separately from—
  - (a) the charge for those features of the service that may be permitted to be bundled; and
  - (b) the conveyance of the service.
- (6) Tariffs must—
  - (a) be non-discriminatory; and
  - (b) be set in a manner which, save as otherwise permitted under Community law, guarantees equality of treatment for users.
- (7) Any charge for access to the resources of a network or to services must—
  - (a) comply with the principles set out in sub-paragraphs (1) to (6); and
  - (b) be set taking into account—
    - (i) the principle of fair sharing in the global cost of the resources used;
    - (ii) the need for a reasonable level of return on investment; and, where appropriate;
    - (iii) the financing of universal service in accordance with the Telecommunications (Interconnection) Regulations 2001.
- (8) Different tariffs may be set to take account, in particular, of –

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- (a) excess traffic during peak periods; and
- (b) lack of traffic during off-peak periods,

if such a tariff differential can be commercially justified and is not in conflict with the principles set out in sub-paragraphs (1) to (7).

**Numbers, addresses and names**

4. The principles upon which access to numbers, addresses and names shall be based and the guidelines which such access must follow are those set out in regulation 13 of the Telecommunications (Interconnection) Regulations 2001.

**Access to frequencies**

5. (1) Frequencies must be made available in accordance with and subject to regulation 5 of the Telecommunications (Competition) Regulations 2001 and to the Telecommunications (Licensing) Regulations 2001 in order to enable telecommunications services to be provided.

(2) Where an authorisation granted under the Ordinance grants access to frequencies it must do so subject to the Council resolution of 19 November 1992 on the implementation in the Community of European Radiocommunications Committee Decisions<sup>1</sup>.

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<sup>1</sup> OJ No. C318, 4.12.1992, P.1