

THE INFORMATION AND COMMUNICATION TECHNOLOGIES (AMENDMENT) BILL

(No..... of 2009)

Explanatory Memorandum

The object of this Bill is to amend the Information and Communication Technologies Act 2001 by -

- (a) making better provision for the definition of “access” and “public operator”;
- (b) making better provision for the supply of Information and Communication Services in a competitive environment;
- (c) making provision for the better classification of licences and for the processing of applications for certain licences using competitive methods;
- (d) making better provisions for the hearing of objections made in respect of applications for licences;
- (e) giving the Information and Communication Technologies Authority the power to conduct market analysis to determine which public operator has significant market power;
- (f) redefining the functions of the Internet Management Committee;
- (g) providing that the Minister may, on such terms and conditions as he considers appropriate, exempt any fully government-owned company from the payment of fees for the use of frequencies for such period as he may determine, on the ground of public interest;
- (h) making better provisions for the safety of the general public with regard to exposure to Radio Frequency radiation from radio base stations installed by public operators and other frequency users;
- (i) making better provisions for the management of spectrum, numbering and electronic addressing resources;
- (j) providing for IMEI tampering as an offence;
- (k) providing for the use of frequencies without the proper authorisation as an offence;
- (l) providing for any person who submits false or fabricated information to the Authority as an offence.

- (m) providing for better child on-line protection;
- (n) repealing and replacing the First Schedule to the Information and Communications Technologies Act 2001;
- (o) providing for an adequate cyber security regulatory framework to ensure Critical Information Infrastructure Protection at the National level;
- (p) making provisions for the operational licensing framework in respect of Certification Authorities.

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*Minister of Information and Communication
Technology*

**THE INFORMATION AND COMMUNICATION TECHNOLOGIES
(AMENDMENT) BILL**

(No of 2009)

ARRANGEMENT OF CLAUSES

Clause

1. Short title
2. Interpretation
3. Section 2 of principal Act amended
4. Section 3 of principal Act amended
5. Section 13 of principal Act amended
6. Section 16 of principal Act amended
7. Section 17 of principal Act amended
8. Section 18 of principal Act amended
9. New “Part VI sub-part I – Licensing Provisions” added to principal Act
10. Section 24 of principal Act repealed and replaced
11. New section 24A added to principal Act
12. New section 24B added to principal Act
13. New section 24C added to principal Act
14. New section 24D added to principal Act
15. New section 24E added to principal Act
16. New section 24F added to principal Act
17. New section 24G added to principal Act
18. Section 27 of principal Act repealed and replaced
19. New “Part VI sub-part II – Competition” added to principal Act
20. Section 30 of principal Act repealed and replaced by new sections 30A and 30B
21. New section 30A added to principal Act
22. New section 30B added to principal Act
23. Section 31 of principal Act repealed and replaced
24. New section 31A added to principal Act
25. New section 31B added to principal Act
26. Section 32 of principal Act amended
27. Section 46 of principal Act amended
28. Section 47 of principal Act amended
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31. Transitional Provision
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A BILL

To amend the Information and Communication Technologies Act 2001

ENACTED by the Parliament of Mauritius, as follows –

1. Short title

This Act may be cited as the Information and Communication Technologies (Amendment) Act 2009.

2. Interpretation

In this Act –

“principal Act” means the Information and Communication Technologies Act 2001.

3. Section 2 of principal Act amended

Section 2 of the principal Act is amended –

- (a) by repealing the definitions of “access”, “Certification Authority”, “dominant operator” and “public operator”;
- (b) by adding the following new definitions in their appropriate alphabetical order –

“Access “ means access by a person to the facilities and services of a licensee other than an interconnection for the purpose of providing information and communication services

“apparatus assignment” means an assignment issued under section 24C

“assignment” means the assignment by the Authority of the rights to use the radio-frequency spectrum, numbers or electronic addresses and may include conditions to which the exercise of those rights shall be subject;

“Certification Authority” shall have the same meaning as in the Electronic Transactions Act as amended.

“class assignment” means an assignment issued under section 24C

“class licence” means a licence for the conduct of such activity as may be specified in Part One of the First Schedule;

“frequency band” means a continuous frequency range of spectrum;

“Internet” means the collection of interconnected networks using the Internet Protocol which allows them to function as a single, large virtual network.

“Internet Protocol (IP)” means the Internet network-layer protocol as defined by the Internet Engineering Task Force (IETF).

“International Mobile Station Equipment Identity (IMEI)” means a unique number that shall be allocated to each individual mobile station equipment in the Public Land Mobile Network and shall be unconditionally implemented by the Mobile Station (MS) manufacturer.

“individual licence” means a licence issued to a specified person to conduct such activity as may be specified in Part Two, Part Three and Part Four of the First Schedule;

“Key pair” shall have the same meaning as in the Electronic Transactions Act, as amended.

“Minister” means the Minister to whom responsibility for the subject of information and communication technology is assigned.

“public operator” means either—

- (a) a licensee who owns or operates a public information and communication network, including telecommunication network, or
- (b) a licensee who offers an information and communication service including telecommunication service to the public;
- (c) or both.

“Public Key” shall have the same meaning as in the Electronic Transactions Act, as amended.

“significant market power” refers to a public operator which, either individually or jointly with any of its subsidiaries or others, enjoys a position equivalent to dominance in any specific market segment such that its position of economic strength affords it the power to behave to an appreciable extent independently of competitors, customers and ultimately consumers;

“spectrum assignment” means the assignment issued under section 24C;

“spectrum plan” means the spectrum plan developed under section 24C;

4. Section 3 of principal Act amended

Section 3 of the principal Act is amended –

(a) in subsection (1), by deleting the words “Subject to subsection (2)” and replacing them by the words “Subject to subsections (2) and (3)”;

(b) by inserting the following new subsection after subsection (2) –

(3) The Minister may, on the recommendation of the Authority, exempt any company wholly owned by Government from the payment of fees for the use of frequencies for such period as he may determine, in the public interest, subject to:-

(a) the company remaining a company wholly owned by Government; and

(b) such other terms and conditions as he considers desirable.

5. Section 13 of principal Act Amended

Section 13 of the principal Act is amended by deleting subsection (1)(c).

6. Section 16 of principal Act amended

Section 16 is amended by deleting paragraph (g) and replacing it by the following new paragraph –

(g) to further the advancement of technology and market opportunities, taking into account the convergence of information technology, media, telecommunications and consumer electronics, through involvement in, and/or support for, as may be the case -

(1) research and development relating to information and communication technologies;

(2) training and/or training accreditation in emerging areas of information and communication technologies;

(3) development of modern, trusted and effective telecommunication infrastructure;

7. Section 17 of principal Act amended

Section 17 of the principal Act is amended by deleting subsection (3) and replacing it by the following subsections –

(3) The Authority shall have the power to make such orders and determinations, issue such directives and guidelines, and do such acts and things, as are incidental or conducive to the attainment of its objects and the fulfillment of its functions;

(4) The Authority shall in addition have power to regulate its own procedure in pursuance of subsection (3).

8. Section 18 of principal Act amended

Section 18 is amended in subsection (1), by deleting -

(i) paragraph (f) and replacing it by the following new paragraph –

(f) exercise licensing and regulatory functions in respect of information and communication services in the Republic of Mauritius including –

(i) the regulation and approval of prices and tariffs and their alterations, for the supply of information and communication services, including telecommunication services,

(ii) the determination of the types and classification of licences as well as spectrum and apparatus assignments, and,

(iii) the provision for an adequate cyber security regulatory framework to ensure Critical Information Infrastructure Protection at the National level.

(ii) paragraph (z) and replacing it by the following new paragraph -

(z) be the Controller of Certification Authorities, and in this exercise, have particular regard to the -

(i) exercising supervision over the activities of the Certification Authorities;

(ii) Certifying public keys of the Certification Authorities;

(iii) laying down the standards to be maintained by the Certification Authorities;

- (iv) specifying the qualifications and experience which employees of the Certification Authorities should possess;
- (v) specifying the conditions subject to which the Certification Authorities shall conduct their business;
- (vi) specifying the content of written, printed or visual material and advertisements that may be distributed or used in respect of a Certificate and the Public Key;
- (vii) specifying the form and content of a Certificate and the key pair;
- (viii) specifying the form and manner in which accounts shall be maintained by the Certification Authorities;
- (ix) specifying the terms and conditions subject to which auditors may be appointed;
- (x) facilitating the establishment of any electronic system by a Certification Authority either solely or jointly with other Certification Authorities and regulation of such systems;
- (xi) specifying the manner in which the Certification Authorities shall conduct their dealings with the subscribers;
- (xii) resolving any conflict of interests between the Certification Authorities and the subscribers;
- (xiii) laying down the duties of the Certification Authorities;
- (xiv) maintaining a data-base containing the disclosure record of every Certification Authority containing such particulars as may be determined, which shall be accessible to the public.

9. Section 24 of principal Act repealed and replaced

SUB-PART I – Licensing Provisions

10. Section 24 of the principal Act is repealed and replaced by the following new section 24 -

24. Individual licence

- (1) Subject to sections 24A and 24D, and such other Regulations as maybe made under any other enactments, no person shall –
 - (a) own or operate an information and communication network including telecommunication network; or
 - (b) offer, either directly or indirectly, an information and communication service including telecommunication service;
 - (c) issue a Certificate;
 - (d) import for sale, a telecommunication or radiocommunication equipment;
 - (e) sell or offer for sale, a telecommunication or radiocommunication equipment, as may be subject of a determination under section 17(3);

unless he holds an individual licence from the Authority.

(2) Any person who wishes to obtain, transfer, renew, or vary the terms of an individual licence specified in Part Two of the First Schedule, shall, upon invitation for application by the Authority in accordance with government policy thereto, which shall be published in two dailies, make a written application to the Authority in the prescribed form.

(3) Upon receipt of application(s) referred to in subsection (2), the Authority shall give public notice of the application(s) received in 2 dailies and invite any interested person who wishes to object to the application(s) to do so in writing within 14 days.

(4) Any person who wishes to obtain, transfer, renew, or vary the terms of an individual licence specified in Part Three and/or Part Four of the First Schedule, shall make a written application to the Authority in the prescribed form.

(5) Upon receipt of an application referred to in subsection (4), the Authority –

- (a) shall, in relation to the licences specified in Part Three of the First Schedule, give public notice of the

application in 2 daily newspapers and invite any interested person who wishes to object to the application to do so in writing within 14 days;

- (b) may require the applicant to furnish any additional information that it considers relevant;
- (c) may inspect any installation, apparatus or premises relating to the application.

(6) The Authority shall, after hearing any objection that may be made pursuant to subsections (3) and (5)(a), determine whether to grant, issue, transfer, renew, or vary the terms of, an individual licence.

(7) The Authority shall, in the exercise of its powers under subsection (6), have regard to any licensing policy in force at the time of application and have regard in particular to -

- (a) the public interest and any likelihood of unfair practice;
- (b) any element of national security;
- (c) the technical compatibility of the application with any other information and communication service including a telecommunication service;
- (d) the likelihood of any health hazard;
- (e) the likely effect on the environment;
- (f) any agreement between Mauritius or the Authority with any other State, or any national or international organisation relating to information and communication technologies including telecommunication;
- (g) any regulations made under any other enactments.

(8) (a) The Authority shall convey its decision to the applicant within a period of 90 days from the date of receipt of the application together with all relevant information sought under subsection (5)(b).

- (b) Any additional information required to be furnished under subsection (6)(b), shall be submitted to the Authority within 7 days of the request or such longer period as may be granted by the Authority.

- (c) Any application for an individual licence which does not comply with this section may be set aside by the Authority.

(9) Where the Authority agrees to issue, transfer, renew, or vary the terms of an individual licence –

- (a) it may do so by imposing any term or condition that it thinks fit; and
- (b) it shall give written notice of its decision, and the reasons therefor, to any person who has raised an objection pursuant to subsections (3) and (5)(a).

(10) Where the Authority refuses to grant, issue, transfer, renew or vary the terms of, an individual licence, it shall give written notice of its decision, and the reasons therefor, to the applicant and to any person who has raised an objection pursuant to subsections 3 and (5)(a).

(11) No individual licence shall be issued or renewed under this section unless the prospective licensee pays such fee as may be prescribed.

(12) Every individual licence shall specify –

- (a) the name and business address of the licensee;
- (b) the installation, apparatus and premises to which it relates;
- (c) the network to be operated or service to be provided by the licensee; and
- (d) any term or condition imposed pursuant to subsection (9)(a).

(13) Subject to subsection (14), the Authority may, of its own motion, vary the terms of, or revoke, an individual licence on the ground that the licensee has –

- (a) contravened this Act; or
- (b) acted in breach of any term or condition imposed pursuant to subsection (9)(a).

(14) Where the Authority proposes to vary the terms of, or revoke, an individual licence pursuant to subsection (13), it shall give written notice of its intention to the licensee, stating-

- (a) the reasons for which it proposes to do so; and
- (b) the time, being not less than 14 days, within which the licensee may make written representation to object to the proposal.

(15) The Authority shall, after considering any representations made pursuant to subsection (14), communicate its decision in writing, and the reasons therefor, to the licensee.

(16) Where the urgency of the matter so requires, the Authority may forthwith suspend an individual licence on any ground specified in subsection (13).

(17) A suspension effected pursuant to subsection (16) shall, unless sooner revoked, lapse after 30 days.

(18) An individual licence issued under this Act shall be of such duration as may be specified in Part Two, Part Three and Part Four of the First Schedule as may be the case.

(19) (1) A licensee may apply to the Authority in writing for the cancellation of his individual licence.

(2) Upon receipt of an application under subsection (19)(1), the Authority may cancel the individual licence on such terms and conditions as may be determined by the Authority and subject to the settlement by the licensee of all monies dues to the Authority as at the date of the application.

11. New section 24A added to principal Act

24A. Class licence

(1) The Authority may determine such standard conditions as it thinks appropriate in respect of any class licence.

(2) Any person who conducts any prescribed activity which is governed by a class licence shall comply with every condition as may be determined by the Authority under subsection (1).

(3) The Authority shall publish every class licence in 2 daily newspapers.

12. New section 24B added to principal Act

24B. Spectrum Management and Assignment

(1) The Authority, through the Radio Frequency Management Unit, shall publish a Radiofrequency Spectrum Plan for Mauritius in accordance with the Radio Regulations as set out by the International Telecommunication Union

(2) No person shall -

- (a) use any radio frequency ;
- (b) use any radiocommunication equipment capable of transmission or emission;
- (c) use any radiocommunication equipment on board a ship or an aircraft registered in Mauritius; or,
- (d) intentionally transmit in any part of the radio frequency spectrum,

unless —

- (a) the person holds a spectrum assignment issued under this section;
- (b) the person holds an apparatus/station assignment issued under this section;
- (c) the use of the spectrum is subject to a class assignment issued under section 24C; or,
- (d) the frequency bands or equipment used has been exempted from licences under section 24D.

(3) Any person who wishes to obtain, transfer, renew, or vary the terms of a spectrum assignment or apparatus/station assignment specified in part Four of the First Schedule, shall make a written application to the Authority in the prescribed form.

(4) Upon receipt of an application referred to in subsection (3), the Authority may –

- (a) require the applicant to furnish any additional information that it considers relevant;

(b) inspect any installation, apparatus/station or premises relating to the application.

(5) The Authority shall, after conducting technical evaluations, determine whether to grant, issue, transfer, renew, or vary the terms of, a spectrum assignment or apparatus/station assignment, as may be the case, which confers rights on a person to use one or more specified frequency bands for any purpose consistent with the assignment conditions.

(6) A spectrum assignment may be issued under this section only when the relevant frequency bands for spectrum assignment have been determined by the Authority in accordance with the allocation chart.

(7) A spectrum assignment shall not be issued unless it is consistent with the spectrum plan.

(6) A holder of a spectrum assignment may transfer to or otherwise deal with any or all of the rights assigned under this section with a third party only upon the approval of the Authority in pursuance of subsection (5).

(7) The Authority may make rules, for the transfer of the rights of the holder of the spectrum assignment conferred by the spectrum assignment.

(8) The Authority may direct a holder of a spectrum assignment to comply with any rules made under this section.

(9) The Authority may issue an apparatus/station assignment which confers rights on a person to use the spectrum to operate a network facility of a specified kind at a specified frequency or in any specified frequency band or bands.

(10) An apparatus/station assignment issued under this section may be subject to such conditions as the Authority may impose.

(11) An apparatus/station assignment shall not be issued unless it is consistent with the spectrum plan developed under this section.

(12) Where the Authority has determined that the use of a specific frequency band shall be governed under a spectrum assignment, no apparatus/station assignment shall be issued in respect of the same frequency band.

(13) The holder of an apparatus/station assignment may authorise a third party to operate a network facility which is the subject of an apparatus/station assignment.

(14) An apparatus/station assignment shall be valid for a period not exceeding five years from its date of issue.

(15) The Authority may develop a spectrum plan in respect of any part or all of the spectrum.

(16) The spectrum plan shall be made available to the public (including in an electronic media).

(17) A spectrum plan shall define how the spectrum shall be used and define the methodology for assignment and reassignment of the spectrum.

(18) The Authority, in exercising the functions under subsection (17), shall take into account—

(a) the objects of the Authority under this Act;

(b) the impact of the spectrum plan on existing users; and

(c) any applicable international standards, conventions and agreements including, but not limited to, the International Telecommunication Union and its radio regulations as agreed to and adopted by Mauritius.

(19) The Authority may resolve disputes arising out of harmful interference between any two parties.

(20) The resolution of disputes under subsection (19) shall comply with such guidelines for dispute resolution that may be published by the Authority.

(21) The Authority may at its own motion determine that a certain spectrum is to be reallocated for spectrum assignments.

(22) The determination made under subsection (21) may include limits on the amount of spectrum available, either generally or to particular persons or classes of persons.

(23) The spectrum plan may include procedures for the assignment of spectrum assignments and apparatus/station assignments such as, but is not limited to, the following:

(a) procedures for the assignment of spectrum assignments and apparatus/station assignments by auction;

- (b) procedures for the assignment of spectrum assignments and apparatus/station assignments by open tender;
- (c) procedures for the assignment of spectrum assignments at a prescribed charge; and/or
- (d) a conversion plan for the conversion of designated apparatus/station assignments into spectrum assignments.

(24) The Authority shall develop procedures for spectrum redeployment in accordance with applicable international standards including, but not limited to those developed by the International Telecommunication Union.

13. New section 24C added to principal Act

24C. Class Assignment

(1) The Authority may issue a class assignment which confers rights on any person to use any frequency band or bands or radio equipment for a specified purpose.

(2) A Class assignment issued under this section may be subject to such conditions as the Authority may impose.

(3) A class assignment shall not be issued unless it is consistent with the spectrum plan developed under section 24B(1).

(4) Where the Authority has determined that the use of a specific frequency band shall be governed under a spectrum assignment, no class assignment shall be issued in respect of the same frequency band.

14. New section 24D added to principal Act

24D. Licence exempt frequency bands and equipment

Notwithstanding sections 24 and 24A, the Minister may, on the recommendation of the Authority, make regulations to provide that no licence shall be required in respect of –

- (a) Operation in specified radio frequency bands; or
- (b) Use of any radiocommunication equipment capable of transmission and emission.

15. New section 24E added to principal Act

24E. Establishment of Spectrum Redeployment Fund

- (1) The Authority shall establish a Spectrum Redeployment Fund -
 - (a) into which shall be paid any contribution received from spectrum assignees in pursuance of subsection (2);
 - (b) out of which payments may be made to any licensee required by the terms of his licence, or otherwise directed by the Authority, to effect spectrum redeployment in accordance with the procedures developed under section 24B.
- (2) Every spectrum assignees shall, in addition to the respective fee payable in respect of the spectrum assignment made to it, pay into the Spectrum Redeployment Fund, such annual contributions as may be prescribed.
- (3) The Minister may, on the recommendation of the Board, prescribe –
 - (a) The basis and manner of determination of such contributions;
 - (b) The dates when such contributions shall become payable and the manner and, if he deems it appropriate, the period over which the contribution shall be paid.

16. New section 24F added to principal Act

24F. Approval of equipment

- (1) Any equipment to be used for connection to any telecommunication system or equipment belonging to a telecommunication system licensee or any radiocommunication equipment shall be approved by the Authority before use.
- (2) Where the Authority has approved the use of an equipment, it shall issue a type approval certificate.
- (3) No type approval certificate shall be issued unless the applicant pays such fee as may be prescribed

17. New section 24G added to principal Act

24G. Numbering And Electronic Addressing

(1) The Authority shall in pursuance of sections 18(1)(g) and 18(1)(y) be vested with the control, planning, administration, management and assignment of the numbering and electronic addressing of network services and applications services.

(2) The Authority shall develop a numbering and electronic addressing plan for the numbering and electronic addressing of network services and applications services.

(3) The numbering and electronic addressing plan may set out rules which include, but are not limited to—

(a) the use of different numbers and electronic addresses for different kinds of services;

(b) the assignment of numbers and electronic addresses;

(c) the transfer of assigned numbers and addresses;

(d) the use of assigned numbers and electronic addresses;

(e) the portability of assigned numbers and electronic addresses;

(f) the requirements for network service providers and applications service providers to maintain a plan for assigning and reassigning numbers and electronic addresses; and

(g) the applicable fee payable in respect of assignment and transfer of numbers and electronic addresses as may be prescribed.

(4) The Authority shall make the numbering and electronic addressing plan available to the public.

18. Section 27 of principal Act repealed and replaced

27. Installation of and access to Network Facilities

(1) A Facilities-Based Operator may, for the purposes of determining whether any land is suitable for his purpose of installing, or obtaining access to, network facilities for the benefit of the public —

- (a) enter on, and inspect, the land; and
- (b) do anything on the land that is necessary or desirable for that purpose, including making surveys, taking levels, sinking bores, taking samples, digging pits and examining the soil.

(2) A Facilities-Based Operator may, for purposes connected with the provision of network services, carry out the installation of network facilities for the benefit of the public, where -

- (a) the operator is authorised to do so by a network infrastructure licence issued by the Authority under section 24;
- (b) the network facilities are low-impact network facilities;
- (c) the network facilities are temporary network facilities for use in conjunction with the Security of the State; or
- (d) the installation is carried out for the sole purpose of connecting a building or structure, or a line that forms part of a network facility.

(3) The installation of the network facilities authorised under this section may require the approval of the Municipality, local authority, or other relevant authority, as the case may be.

(4) Where Facilities-Based Operator is authorised to carry out a particular activity, the operator may, for purposes in connection with the carrying out of that activity—

- (a) enter on, and occupy, any land; and
- (b) on, over or under the land, do anything necessary or desirable for those purposes, including—
 - (i) constructing, erecting and placing any post or network facility;
 - (ii) felling and lopping trees and clearing and removing other vegetation and undergrowth;
 - (iv) making cuttings and excavations;
 - (v) restoring the surface of the land and, for that purpose, removing and disposing of soil, vegetation and other material;

(vi) erecting temporary workshops and sheds and other temporary buildings; and

(vi) levelling the surface of the land and making roads.

(5) For the purposes of subsection (1), the Authority may, determine that specified network facilities are low-impact network facilities.

(6) In engaging in an activity under this section, a Facilities-Based Operator shall take all reasonable steps to ensure that he causes as little detriment and inconvenience, and does as little damage, as is practicable.

(7) Where a Facilities-Based Operator engages in an activity under this section in relation to any land, the operator shall take all reasonable steps to restore the land to a condition that is similar to its condition before the activity began.

(8) A Facilities-Based Operator shall, in connection with carrying out an activity covered under this section, take all reasonable steps—

- (a) to act in accordance with good engineering practice;
 - (b) to protect the safety of persons and property;
 - (c) to ensure that the activity interferes as little as practicable with—
 - (i) the operations of a public utility;
 - (ii) public roads and paths;
 - (iii) the movement of traffic; and
 - (iv) the use of land;
- and
- (d) to protect the environment.

(9) A Facilities-Based Operator shall take all reasonable efforts to enter into an agreement with a public utility that makes provision for the manner in which the provider will engage in an activity that is—

- (a) covered by this section; and

(b) likely to affect the operations of the utility.

(10) A Facilities-Based Operator shall comply with an agreement in force under subsection (9).

(11) Where—

(a) a Facilities-Based Operator engages, or proposes to engage, in an activity covered under this section;

(b) that activity is or will be authorised by a network facilities installation permit; and

(c) the network facilities installation permit is subject to one or more conditions.

the Facilities-Based Operator shall comply with those conditions.

(12) Before engaging in an activity under this section in relation to any land, a Facilities-Based Operator shall give written notice of his intention to do so—

(a) to the owner of the land; and

(b) where the land is occupied by a person other than the owner, to the occupier.

(13) A notice given in pursuance of subsection (12) shall specify the purpose for which the provider intends to engage in the activity, and shall contain a statement to the effect that if a person suffers financial loss or damage in relation to property because of anything done by the provider in engaging in the activity, compensation may be payable.

(14) The notice under subsection (12) must be given at least fourteen days before the provider begins to engage in the activity.

(15) At least fourteen days before—

(a) cutting down or lopping a tree on private land;

or

(b) clearing or removing undergrowth or vegetation on private land, under subsection (2), Facilities-Based Operator shall give —

(i) the owner of the land; and

(ii) where the land is occupied by a person other than the owner, the occupier, a written notice requesting that the tree be

cut down or lopped, or that the undergrowth or vegetation be cleared, in the manner, and within the period, specified in the notice.

- (16) (a) Before entering on any private property pursuant to subsection (1), a public operator shall give not less than 14 days written notice of his intention to the owner or occupier, stating the reasons for which he proposes to do so.
- (b) Any person who receives a notice issued pursuant to paragraph (16)(a) may apply to the Authority forthwith for a review of the decision specifying the grounds of his objection.
- (c) The Authority shall, after hearing the parties, determine every application under paragraph (16)(b) within a reasonable delay.

(17) Where a Facilities-Based Operator engages in an activity covered under subsection (2), the operator shall ensure that the network facilities installed over a road, bridge, path or navigable water are installed in a way that will allow reasonable passage by persons, vehicles and vessels.

(18) Notwithstanding the provisions of any other enactment, a Facilities-Based Operator shall provide to any other licensee non-discriminatory access to any post, facilities or right-of-way owned or controlled by him.

(21) Notwithstanding subsection (20), a Facilities-Based Operator may deny any access to his post, facilities or right of way on a non-discriminatory basis where there is insufficient capacity, or for reasons of safety, security, reliability, or difficulty of a technical or engineering nature.

(22) The Authority may regulate the rates, terms and conditions for access to any post, facilities or right-of-way and provide that such rates, terms and conditions are just and reasonable and may adopt procedures necessary and appropriate to hear and resolve disputes arising from the application of this section of the Act.

(23) Nothing in this section shall be construed to apply to, or to give the Authority jurisdiction with respect to access to any posts, facilities or right-of-way where such matters are regulated by a Municipality, local authority or other authority.

19. New “Part VI sub-part II – Competition” added to principal Act

SUB-PART II – Competition

20. Section 30 of principal Act repealed

21. New section 30A added to principal Act

30A. Market definition and determination of significant market power

(1) The Authority shall hold a public consultation process and carry out market analysis, at such times as it may decide -

- (a) to identify information and communication service markets or market segments;
- (b) to designate every information and communication service market and market segment for which their tariffs must be approved by the Authority prior to the service being offered to the public;
- (c) to determine whether any operator has significant market power in those information and communication service markets or market segments.

(2) The Authority shall, after the public consultation process referred in subsection (1), designate and give public notification of –

- (a) every service market and market segment; and
- (b) every public operator which has a significant market power in a service market or market segment,

identified under subsection (1).

(3) The Authority may establish such guidelines as are necessary for the purposes of determining which public operator has significant market power in the information and communication service market or a market segment thereof. Such guidelines will be drafted in consultation with the Competition Commission and such guidelines shall not be in contradiction with those issued by the Competition Commission under Section 38 of the Competition Act 2007.

(4) Where a public operator has a significant market power in a market or market segment, it may also be deemed to have a significant market power in a closely related market or market segment, where the links between the two markets or market segments are such as to allow

the market power held in one market or market segment to be leveraged into the other market or market segment, thereby strengthening the market power of the public operator.

(5) Every public operator shall furnish to the Authority such information relating to its operations as the Authority may require under this section.

22. New section 30B added to principal Act

30B. Significant market powers conditions

(1) Where the Authority has made a determination that a public operator has significant market power in an identified information and communication service market, the Authority shall set such conditions as it considers appropriate to be imposed on that public operator.

(2) Every public operator with significant market power shall comply with every condition that may be imposed by the Authority under subsection (1).

23. Section 31 of principal Act repealed and replaced

31. Tariffs

(1) Every public operator shall provide the Authority with a tariff of its charges for every information and communication service including telecommunication service which he proposes to supply and of every intended alteration of those charges in a form approved by the Authority, and in compliance with the requirements of this section.

(2) Any tariff provided to the Authority shall be based on such principles as may be stipulated in any guidelines issued by the Authority or in any regulation made under this Act.

(3) Subject to subsection (2), every tariff provided to the Authority, shall include information relating to –

- (a) the term during which the tariff is to apply;
- (b) the description of the service;
- (c) the amount of the charges payable for each service including the amount of any surcharge that may be imposed as a result of non-payment of fees or charges and the cost-related computation thereof;
- (d) the quantity in which the service is supplied;

- (e) the network configuration, including the capacity needed, to supply the service;
- (f) the performance characteristics for the service supplied; and
- (g) the terms and conditions on which the service is supplied including the mode of payment.

(4) No public operator shall demand or receive from any person payment of any fee or charge for the supply of an information and communication service which -

- (a) is different from the fee or charge payable under the appropriate tariff;
- (b) is not worked out or computed in accordance with the appropriate tariff; or
- (c) is worked out or computed in accordance with a tariff which has been disallowed in accordance with this Act.

(5) Every public operator shall display the tariffs applicable for every information and communication service it offers in a conspicuous place at every point of sale of such service.

24. New section 31A added to principal Act

31A. Application for approval of tariffs

(1) Every public operator with significant market power offering any of the information and communication services determined under section 30A(1)(b) shall provide the Authority with a tariff of its charges for every such service which he proposes to supply or offer and of every intended alteration of those charges in a form approved by the Authority, in compliance with the requirements of this section.

(2) Where the Authority considers that additional information, essential to the determination of an application made under subsection (1), has not been supplied by a public operator, the public operator shall be requested to submit such additional information.

(3) The Authority shall, within 60 days of –

- (a) the receipt of a tariff under subsection (1) or,

- (b) the receipt of additional information submitted under subsection (2),

determine whether to allow, or to disallow, or to amend the tariff and shall, in so doing, have regard, inter alia, to the just and reasonable nature of the charges set out therein.

- (4) Where, under subsection (2), the Authority –
 - (a) allows a tariff for a public operator, the public operator shall forthwith give public notification of the approved tariffs in two dailies;
 - (b) disallows or amends a tariff for a public operator, the Authority shall communicate its decision in writing and the reasons therefor to the public operator.

25. New section 31B added to principal Act

31B. Filing of tariffs

- (1) Where –
 - (a) a public operator not having significant market power proposes to supply or offer an information and communication service including telecommunication service; or
 - (b) any public operator having significant market power who proposes to supply or offer an information and communication service including telecommunication service which is not identified and designated under section 30A(1)(b),

the public operator shall provide the Authority with a tariff of its charges and of every intended alteration of those charges in a form approved by the Authority, at least 15 working days before the proposed date of implementation of the tariff.

(2) Any tariff filed by a public operator under subsection (1) shall be deemed to have been approved by the Authority where after the specified period of 15 days the public operator does not, receive any communication from the Authority in relation to such tariff.

(3) Notwithstanding subsection (2), the Authority may, at any time thereafter, disallow a tariff where such tariff may breach the provisions of sub-part II above of this Act or any other enactment.

26. Section 32 of principal Act amended

Section 32 of the principal Act is amended by inserting after subsection (6) the following new subsection (7) –

(7) Notwithstanding subsection (6), nothing in this Act shall prevent a public operator or any of its employees or agents from disclosing to a police officer not below the rank of Assistant Commissioner the name, address and other particulars of a person suspected of committing an offence under section 46(gg) and the contents of a message which is in contravention of that provision.

27. Section 46 of principal Act amended

Section 46 of the principal Act is amended –

(a) by inserting, after paragraph (a), the following paragraph –

(aa) uses a radio frequency or wilfully or intentionally transmits in any part of the radio frequency spectrum otherwise than provided under Part VI Sub-Part I;

(b) by inserting, after paragraph (g), the following paragraph -

(gg) makes use of a telephone apparatus for the purpose of sending, delivering or showing a message which is -

(i) obscene, indecent, abusive, threatening, false or misleading; or

(ii) likely to cause distress or anxiety to any other person;

(c) in paragraph (h), by deleting the word “uses’ and replacing it by the words “in any manner other than as specified in paragraph (gg), uses”.

(d) by inserting after paragraph (k) the following paragraph -

(kk) wilfully tampers, or causes to be tampered with the IMEI of any mobile apparatus;

(e) by inserting after paragraph (n) the following paragraph

(q) knowingly provides information which is false or fabricated

28. Section 47 of principal Act amended

Section 47 of the principal Act is amended -

(a) by deleting subsection (1) and replacing it by the following subsection -

(1) (a) Any person who commits an offence under section 46(gg) shall, on conviction, be liable to a fine not exceeding 10,000 rupees and to imprisonment not exceeding 12 months.

(b) Any person who other wise contravenes this Act shall, on conviction, be liable to a fine not exceeding one million rupees and to imprisonment not exceeding 5 years.

(b) in subsection (3), by deleting the words “An offence” and replacing them by the words “An offence, other than an offence under section 46 (gg),”

29. Savings

Notwithstanding section 24(17), the duration of a licence issued prior to the coming into operation of this Act shall be the period as specified in the licence.

30. First Schedule of principal Act repealed and replaced

The First Schedule to the principal Act is repealed and replaced by the Schedule to this Act.

31. Transitional Provisions

Every person who has before the commencement of this Act been licenced under section 24 of the ICT Act 2001, shall -

(a) be deemed to be licenced for a period not exceeding 6 months after the coming into operation of this Act, after which he shall surrender his licence or authority granted to him; and

(b) furnish to the Authority such further information as it may require concerning his operation under that licence or authority, for the purpose of determining the new licence and/or spectrum and/or apparatus assignments to be issued under this Act.

32. Commencement

This Act shall come into operation on a day to be fixed by Proclamation.

Different dates may be fixed for the coming into operation of different sections.