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COMMUNICATIONS ACT 2006

EXPLANATORY NOTE TO NOTICE (No. 3/2006) CONCERNING AN EXEMPTION FROM THE REQUIREMENT TO NOTIFY THE PROVISION OF AN ELECTRONIC COMMUNICATIONS NETWORK OR SERVICE.

Notice No. 3/2006, exempts a person seeking to provide an electronic communications network or an electronic communications service which is wholly for own use, including use by connected persons, from having to notify the Authority of his intention to provide such a network or service.

In the Notice -

“connected persons” means -

- (a) persons who are wholly owned by a common person (either directly or indirectly); or
- (b) a person who is a wholly owned subsidiary of the other; and

“wholly for own use” means an electronic communications network or an electronic communications service used exclusively by the person providing that network or service.

In the Communications Act 2006

“Electronic communications network” means—

- (a) a transmission system for the conveyance, by the use of electrical, magnetic or electro-magnetic energy, of signals of any description; and

- (b) such of the following as are used, by the person providing the system and in association with it, for the conveyance of the signals–
 - (i) apparatus comprised in the system;
 - (ii) apparatus used for the switching or routing of the signals; and
 - (iii) software and stored data;

“Public electronic communications network” means an electronic communications network provided, wholly or mainly, for the purpose of securing the provision of publicly available electronic communications services;

“Publicly available electronic communications service” means an electronic communications service available to members of the public;

The word “public” is not defined in the Communications Act, but the Oxford English Dictionary definition is – “ordinary people in general; the community”. This is the definition that will be applied by the Authority.

In applying the definition of “public”, the Authority will also take into account other matters, *inter alia*, the ownership of the network, its rollout in terms of geography and concentration of population and the commercial interests in expanding the network and/or attracting new customers.

The application of the definition of “public” will, therefore, exclude a “closed user group” which, the Authority will interpret as being, –

- (a) A group formed by non-profit entities for communication among themselves or among their members in order to achieve common aims and projects,
- (b) A group formed by persons who develop a non-commercial common activity, for the communications arising from this activity, or
- (c) A group formed by an organisation and its affiliates for the communications related to their industrial or commercial activities.

Closed User Groups and non-public networks may be characterised by:

- (a) a minimal rollout of a network in terms of geography and concentration of population, and
- (b) they are not vertically integrated.

A person providing an electronic communications network or an electronic communications service falling outside the criteria established above shall not be exempt from the requirement of regulation 4 (1) of the Communications (Authorisation and Licensing) Regulations 2006.

Dated this 30th day of June, 2008

**Paul J. Canessa
Chief Executive Officer
Gibraltar Regulatory Authority**