**A.L. 300 ta' l-2005**

**ATT DWAR L-UNJONI EWROPEA**
**(KAP. 460)**

**Ordni ta' l-2005 dwar il-Protezzjoni ta' l-Interess tal-Konsumaturi fir-Reklamar, l-Isponsorjar u t-Telebejgħ (Inġunzjoni dwar ix-Xandir Televiżiv)**

BIS-SAĦĦA tas-setgħat mogħtija bis-subartikolu (2) ta' l-artikolu 4 ta' l-Att dwar l-Unjoni Ewropea, il-Prim Ministru għandu dan l-Ordni li ġej:-

**1.** (1) Dan l-Ordni jissejjaħ l-Ordni ta' l-2005 dwar il-Protezzjoni ta' l-Interess tal-Konsumaturi fir-Reklamar, l-Isponsorjar u t-Telebejgħ (Inġunzjoni dwar ix-Xandir Televiżiv). Titolu u bidu fis-seħħ.

(2) Dan l-Ordni jibda jseħħ fl-1 ta' Settembru, 2005.

**2.** (1) Sakemm f'dan l-Ordni ma jkunx meħtieġ mod ieħor: - Tifsir.

"l-Att" tfisser l-Att dwar ix-Xandir; Kap. 350.

"l-awtorità kompetenti" tfisser l-Awtorità tax-Xandir kif imwaqqfa mill-Kostituzzjoni ta' Malta;

"id-Direttiva" tfisser id-disposizzjonijiet tad-Direttiva 98/27/KE tal-Parlament Ewropew u tal-Kunsill tad-19 ta' Mejju, 1998 dwar l-inġunzjonijiet għall-ħarsien ta' l-interessi tal-konsumaturi;

"Direttiva tat-Televiżjoni Bla Fruntieri" tfisser l-Artikoli 10 sa 21 tad-Direttiva tal-Kunsill 89/552/KEE tat-3 ta' Ottubru, 1989 dwar il-koordinament ta' ċerti provvedimenti stipulati mil-liġi, ir-regolazzjoni jew azzjoni amministrattiva fi Stati Membri dwar l-attività li x-xandir televiżiv isegwi (OJ L298, 17.10.1989, p. 23) kif emendata bid-Direttiva 97/36/KE (OJ L202, 30.7.1997, p. 60);

"entità kwalifikata" tfisser kull għaqda jew organizzazzjoni li, għax imwaqqfa kif jixraq skond il-liġi ta' Stat Membru, għandha interess leġittmu tara li jkun hemm qbil ma' dak li jipprovdi l-

artikolu 3 ta' dan l-Ordni, bla preġudizzju mal-ġeneralità ta' dak hawn qabel imsemmi, u li jinkludi:

Kap. 378.

(a) għaqda reġistrata ta' konsumaturi skond kif imfissra fit-Taqsima IV ta' l-Att dwar l-Affarijiet tal-Konsumatur;

(b) għaqda waħda jew aktar ta' għaqdiet pubbliċi indipendenti li għandhom interess leġittmu li jiżguraw il-ħarsien ta' l-interessi kollettivi tal-konsumaturi fir-reklamar televiżiv, fl-isponsorjar u t-telebejgħ fi Stati Membri oħra jew fi Stati EEA fejn ikun hemm għaqdiet bħal dawn;

(ċ) organizzazzjonijiet volontarji fi Stati Membri oħra jew fi Stati EEA li għandhom l-għan iħarsu l-interessi msemmija f'paragrafu (a) ta' din it-tifsira skond il-kriterji stabbiliti fil-liġi nazzjonali tagħhom;

(d) organizzazzjonijiet rikonoxxuti mill-awtoritajiet kompetenti bħala li jkunu qegħdin kollettivament jirrapreżentaw is-servizzi professjonali tax-xandir; jew

(e) kull entità kwalifikata minn Stat Membru jew Stat EEA li jkun qiegħed fil-lista ta' entitajiet kwalifikati;

"il-Komunità Ewropea" tfisser l-organizzazzjoni mwaqqfa bit-Trattat ta' Ruma fl-1957 u emendat istituzzjonalment u mod iehor fl-1986 bl-Att Waħdieni Ewropew, fl-1993 bit-Trattat dwar l-Unjoni Ewropea, fl-1997 bit-Trattat ta' Amsterdam u fl-2001 bit-Trattat ta' Nizza u kif emendat bit-trattati ta' adeżjoni u kif jista' jkun aktar emendat minn żmien għall-iehor;

"il-Kummissjoni" tfisser il-Kummissjoni tal-Komunità Ewropea;

"lista ta' entitajiet kwalifikati" tfisser il-lista miġbura u aġġornata mill-Kummissjoni u pubblikata fil-Ġurnal Uffiċjali tal-Komunitajiet Ewropej li jkun fiha mniżżla l-entitajiet kwalifikati fi Stati Membri u Stati EEA skond l-Artikolu 4 tad-Direttiva;

Kap. 12.

"Qorti ta' l-Appell" tfisser il-Qorti ta' l-Appell fil-ġurisdizzjoni inferjuri tagħha kif kostitwita skond ma hemm fis-subartikolu (6) ta' l-artikolu 41 tal-Kodiċi ta' Organizzazzjoni u Proċedura Ċivili;

"Stat EEA" tfisser kull Stat li hu parti kontraenti fil-ftehim dwar iż-Żona Ekonomika Ewropea iffirmat f'Oporto fit-2 ta' Mejju,

1992 u emendat bil-Protokol iffirmat fi Brussell fis-17 ta' Marzu, 1993 u kif dan jiġi emendat minn żmien għall-ieħor;

"Stat Membru" tfisser membru tal-Komunità Ewropea.

(2) Kliem u frażijiet użati f'dan l-Ordni li jinsabu wkoll fl-Att, għandhom l-istess tifsir li għandhom fl-Att.

**3.** Dan l-Ordni qiegħed isir biex jiġu implimentati d-disposizzjonijiet tad-Direttiva, skond kif jgħodd għar-reklamar televiżiv, għall-isponsorjar u għat-telebejgħ imsemmija fid-Direttiva tat-Televiżjoni Bla Fruntieri kif inkorporati fl-Att, u dawn għandhom jiġu mfissra applikati skond hekk. Ghan.

**4.** Dan l-Ordni jgħodd għal kull reklamar televiżiv, sponsorjar u telebejgħ imsemmi fid-Direttiva tat-Televiżjoni Bla Fruntieri kif traspost fl-Att kull meta jixxandar reklamar, sponsorjar u telebejgħ minn xi ħadd awtorizzat li jipprovdi servizz ta' xandir taħt id-disposizzjonijiet ta' l-Att. Skop.

**5.** (1) Entità kwalifikata li tixtieq titlob il-ħruġ ta' ordni ta' konformità għandha tibgħat applikazzjoni bil-miktub lill-awtorità kompetenti. F'din l-applikazzjoni trid tissodisfa lill-awtorità kompetenti li għamlet ħilitha biex dan il-ksur tal-liġi ma jibqax isir billi hija tkun diġà ikkonsultat ruħha kemm mal-konvenut waħdu jew ukoll mal-konvenut u entità oħra kwalifikata ta' l-Istat Membru jew ta' l-Istat EEA fejn tkun qed tintalab l-inġunzjoni. L-awtorità kompetenti tikkonsidra biss applikazzjoni bil-miktub jekk l-entità kwalifikata tissodisfaha b'dak li tkun għamlet billi turi li l-ksur tal-liġi ma jkunx waqaf sa ġimgħatejn wara li tkun waslitilha t-talba għall-konsultazzjoni. Talba minn entitajiet kwalifikati għal ordnijiet ta' konformità.

(2) Meta l-entità kwalifikata tkun minn Stat Membru jew Stat EEA ieħor, l-awtorità kompetenti tqis il-lista ta' entitajiet kwalifikati stampata mill-Kummissjoni bħala prova konklużiva tas-setgħa legali ta' l-entità legali li tippreżenta dik l-applikazzjoni miktuba f'Malta.

(3) L-awtorità kompetenti, fuq talba ta' entità kwalifikata minn Malta, għandha twassal lill-Kummissjoni l-isem u l-għanijiet ta' dawk l-entitajiet u li dik l-entità kwalifikata għandha tiżdied mal-lista ta' entitajiet kwalifikati biex tkun tista' tissewwa l-ħsara ta' ksur ta' liġi inter-komunitarja.

(4) Qabel ma tasal biex toħroġ l-ordni ħalli dak li jkun jimxi mal-liġi taħt l-artikolu 6, l-awtorità kompetenti għandha, jekk tħoss li dan ikun possibbli u raġonevoli, tipprova l-ewwel tikseb qbil volontarju minn min ikollu lienza biex joffri servizzi tax-xandir taħt il-

provvedimenti ta' l-Att u oħrajn involuti, skond dan l-Ordni, l-Att jew xi liġi oħra li jkollha x'taqsam mal-ħarsien u l-jeddijiet tal-konsumatur.

(5) Għall-iskopijiet ta' dan l-Ordni, il-ksur tal-liġi jseħħ meta jsir xi att kontra d-Direttiva tat-Televiżjoni Bla Fruntieri, kif trasposti bl-Att li jagħmel ħsara għall-interessi kollettivi tal-konsumatur.

Hruġ ta' ordnijiet ta' konformità.

**6**. (1) Meta l-awtorità kompetenti tqis li hu raġonevolment adatt jew meħtieġ tipproteġi l-konsumatur, tista' wara li tirievi talba bil-miktub minn entità kwalifikata, toħroġ ordni ta' konformità kontra xi ħadd li għandu l-lienza jagħti servizzi tax-xandir skond kif hemm fl-Att għal xi wieħed jew aktar minn dawn l-għanijiet li ġejjin:-

(a) tordna biex min qed jagħmel hekk jieqaf ixandar kull reklam, sponsorjar jew telebejgħ li l-awtorità kompetenti tqis bħala qed jikser il-provvedimenti ta' l-Att li jirregola r-reklamar, l-isponsorjar u t-telebejgħ;

(b) titlob lil min qed jagħmel hekk jieħu kull pass meħtieġ kif imfisser fl-ordni ta' konformità, fiż-żmien speċifikat fl-istess ordni biex tiżgura li dan l-Ordni jiġi osservat;

(ċ) tinħtieġ lil min qed jagħmel hekk li jieqaf u ma jkomplix jikser dan l-Ordni jew il-provvedimenti ta' l-Att li jirregola r-reklamar, l-isponsorjar u t-telebejgħ.

(2) Meta l-awtorità kompetenti toħroġ ordni ta' konformità skond dan ir-regolament, hija għandha -

(a) twassal kopja ta' l-ordni ta' konformità kontra kull min tkun qed issir l-ordni;

(b) tinkludi ma' l-ordni ta' konformità, tagħrif dwar il-jedd li tinfetaħ kawża quddiem il-Qorti ta' l-Appell, skond l-artikolu 9; u

(ċ) tagħti fil-qosor ir-raġunijiet għaliex dik l-ordni ta' konformità tkun ħarġet, tinnotifika b'dawn ir-raġunijiet kull min tkun ħarġet kontrih l-ordni ta' konformità u, jekk ikun hemm, lill-entità kwalifikata li fuq it-talba tagħha tkun ħarġet l-ordni ta' konformità.

(3) L-ebda qorti jew tribunal ma għandha toħroġ ebda mandat kawtelatorju jew ordni oħra taħt ebda liġi oħra li żżomm jew tirrestrinġi lill-awtorità kompetenti milli toħroġ ordni ta' konformità taħt dan l-Ordni.

**7.** (1) Għandha tkun fid-diskrezzjoni ta' l-awtorità kompetenti jekk toħroġx ordni ta' konformità jew le wara li tkun saritilha talba bil-miktub minn entità kwalifikata skond is-subartikolu (1) ta' l-artikolu 6.

Diskrezzjoni ta' l-awtorità kompetenti li toħroġ ordni ta' konformità.

(2) Jekk l-awtorità kompetenti tiddeċiedi li ma toħroġx ordni ta' konformità wara li tkun saritilha talba bil-miktub minn entità kwalifikata, hija għandha tgħarraf bil-miktub, fi żmien sebat ijiem mid-data li tkun ittieħdet id-deċiżjoni, lill-entità kwalifikata u lil dawk in-nies li tkun intalbet toħroġ ordni ta' konformità kontra tagħhom, bid-deċiżjoni li tkun ħadet u x'kienu r-raġunijiet għal dan.

(3) Entità kwalifikata tista', sa ħmistax-il ġurnata mid-data tan-notifika li tkun waslitilha bid-deċiżjoni ta' l-awtorità kompetenti li ma toħroġx l-ordni ta' konformità, tiftaħ kawża fil-Qorti ta' l-Appell biex tinħareġ ordni li titlob lill-awtorità kompetenti toħroġ ordni ta' konformità skond l-artikolu 6. Dawk in-nies li tintalab toħroġ l-ordni ta' konformità kontrihom ikunu l-partijiet fil-kawża, u għalhekk l-entità kwalifikata fid-dmir li tinfurmahom.

(4) Il-Qorti ta' l-Appell, fil-qadi tal-funzjonijiet tagħha u bis-setgħat mogħtija b'din l-Ordni, trid taġixxi fil-każijiet kollha malajr kemm jista' jkun.

**8.** Ordni ta' konformità maħruġa mill-awtorità kompetenti tibda sseħħ fil-pront.

Ordni ta' konformità tibda sseħħ fil-pront.

**9.** (1) Min tinħariġlu ordni ta' konformità, jista' sa ħmistax-il ġurnata minn meta jkun irieva n-notifika ta' l-ordni ta' konformità, jappella bil-miktub lill-Qorti ta' l-Appell biex jirrevoka jew jemenda l-ordni ta' konformità, billi jagħti raġunijiet dettaljati għal din it-talba. Appell bħal dan jista' jsir biss minħabba dawn ir-raġunijiet:-

Appell kontra ordni ta' konformità.

(a) fejn l-awtorità kompetenti fid-deċiżjoni tagħha, tkun ħaddmet ħażin xi wieħed mill-provvedimenti li hemm f'dan l-Ordni; jew

(b) id-deċiżjoni ta' l-awtorità kompetenti toħloq abbuż ta' diskrezzjoni jew tkun tidher ċar li tmur kontra l-ħaqq.

(2) Il-Qorti ta' l-Appell tista' tikkonferma, tibdel jew tħassar l-ordni ta' konformità skond dawk il-pattijiet u kundizzjonijiet li tqis li jkunu l-aktar adatti.

(3) Meta jinfetaħ appell skond is-subartikolu (1), l-ordni ta' konformità tibqa' fis-seħħ b'dawk il-kundizzjonijiet u l-emendi li l-Qorti ta' l-Appell tista' tistabbilixxi, sakemm l-istess Qorti ta' l-Appell

ma tagħtix ordnijiet speċifiċi li l-ordni ta' konformità tibqa' pendenti sa ma jkun hemm riżultat mill-appell. Meta jiġri hekk, l-awtorità kompetenti tista' titlob lill-Qorti ta' l-Appell li toħroġ sadattant ordni ta' konformità fejn titlob li l-ordni ta' konformità tibqa' fis-seħħ, b'xi tibdiliet li l-awtorità kompetenti tista' tissuġġerixxi, sakemm il-każ fl-aħħarnett jingħalaq skond is-subartikolu (1). Ordni ta' konformità temporanja tiskadi meta fl-aħħarnett ikun deċiż il-każ.

(4) Skond dan l-Ordni, il-Qorti ta' l-Appell għandha timxi *mutatis mutandis* skond il-provvedimenti tal-Kodiċi ta' l-Organizzazzjoni u Proċedura Ċivili.

Kap. 12.

Ma hemmx ghalfejn tinġieb prova ta' telf, ħsara, eċċ.

**10.** Meta l-awtorità kompetenti toħroġ ordni ta' konformità taħt l-artikolu 6, ma jkollhiex bżonn provi ta':-

(a) telf jew ħsarat attwali; jew

(b) negliġenza, traskuraġni jew ħtija ta' dak li tkun inħarġitlu l-ordni ta' konformità.

L-awtorità kompetenti tista' tkun teħtieġ l-istampa.

**11.** (1) L-awtorità kompetenti tista', biex tgħarraf aħjar lill-pubbliku:-

(a) tippubblika kopja shiha jew parti minnha, ta' l-ordni ta' konformità maħruġa kontra t-tali persuna, skond l-artikolu 6; jew

(b) tordna lil dak li għandu l-lienza jagħti s-servizzi tax-xandir skond il-provvedimenti ta' l-Att, biex jippubblika stqarrija korrettorja f'dak li għandu x'jaqsam ma' kull ksur ta' dan l-Ordni; jew

(ċ) tieħu ż-żewġ passi msemmija hawn qabel, f'paragrafi (a) u (b).

(2) Il-pubblikazzjoni magħmula skond is-sub-artikolu (1) isir għall-ispejjeż ta' min ikun inħariġlu l-avviż u l-provvedimenti tas-sub-artikolu (7) ta' artikolu 41 ta' l-Att japplikaw, *mutatis mutandis*, għal min ikollu l-lienza biex jagħti servizzi tax-xandir skond dak li hemm fl-Att. Meta din il-publikazzjoni ma ssirx kif hawn qabel imsemmi, l-awtorità kompetenti tista' taħseb biex twettaq hi stess din il-pubblikazzjoni b'liema mezz tħoss li jkun xieraq, u f'dan il-każ ikollha l-jedd tiġbor lura l-ispejjeż li tkun għamlet mingħand dak li jkun ingħatalu l-avviż, bħala debitu ċivili li jikkostitwixxi titlu esekuttiv għall-iskopijiet ta' Titlu VII ta' l-Ewwel Taqsima tat-Tieni Ktieb tal-Kodiċi ta' Organizzazzjoni u Proċedura Ċivili daqs li kieku l-ħlas ta' dik is-

somma ta' debitu ċivili kienet ordnata b'sentenza f'qorti b'ġurisdizzjoni ċivili.

**12.** L-awtorità kompetenti tista' tawtorizza bil-miktub li-*chairman* jew membru tagħha jew xi ħadd mill-uffiċjali u impjegati jew xi ħaddieħor biex jaqdi d-dmirijiet tagħha għall-infurzar ta' dan l-Ordni jew jagħmel użu mis-setgħat mogħtija lilha skond dawn il-provvedimenti. Kull min ikun awtorizzat għaldaqstant għandu, meta jkun meħtieġ, juri l-awtorizzazzjoni miktuba u iffirmata mill-awtorità kompetenti. Id-delega tas-setgħat ta' l-awtorità kompetenti.

**13.** (1) L-awtorità kompetenti biex tkun tista' twettaq il-ħidma tagħha skond dan l-Ordni, jista' jkun li jkollha bżonn titlob lil min ikun jagħti kull xorta ta' tagħrif, mhux l-inqas li:- Ksib ta' tagħrif.

(a) jwieġeb xi mistoqsijiet, bil-fomm jew bil-miktub; jew

(b) jintalab iġib xi ħaġa skond ma' tħoss li jkun meħtieġ l-awtorità kompetenti.

(2) Kulmin jintalab jagħmel dan għandu jobdi dik l-ordni.

**14.** (1) Min ikollu l-lienza biex jagħti servizzi ta' xandir skond kif jipprovdi l-Att, jista' jeħel il-penali amministrattiva kif imfissra fl-artikolu 15, jekk:- Min ma jobdix l-Ordni.

(a) ma josservax xi provvediment ta' dan l-Ordni;

(b) ma jimxix ma' l-ordni ta' konformità maħruġa skond dan l-Ordni; jew

(ċ) jirrifjuta jew ma jagħtix tagħrif kif meħtieġ skond dan l-Ordni jew b'xi mod ieħor jagħti informazzjoni qarrieqa jew imħawda.

(2) Min ikollu l-lienza biex jagħti servizzi ta' xandir skond kif jipprovdi l-Att, jista' jeħel penali amministrattiva jekk huwa:-

(a) ifixkel apposta, jaħbat għal, jhedded, jirreżisti jew jindaħal lill-awtorità kompetenti f'dak li tagħmel jew xi ħadd delegat minnha skond l-ordni 12 jew xi uffiċjal pubbliku waqt li jkun qed jaqdi dmiru skond dan l-Ordni jew jipprova mqar biss jagħmel dan; jew

(b) jindirizza lill-awtorità kompetenti jew imqar lil xi ħadd delegat minnha b'lingwaġġ ta' theddid, abbużiv, jew insolenti

skond kif hemm fl-artikolu 12 jew ukoll lil xi uffiċjal pubbliku fil-qadi ta' dmirijietu.

Penali amministrattivi.

**15.** (1) Jekk ikun hemm xi responsabbiltà skond l-artikolu 14, il-Kap Esekuttiv ta' l-awtorità kompetenti jista' jitlob lill-awtorità kompetenti billi javżaha bil-miktub biex timponi fuq min ikollu lienza li jipprovdi servizzi ta' xandir skond kif hemm fl-Att, il-penali amministrattiva skond l-artikolu 41 ta' l-Att u għandha tapplika *mutatis mutandis* il-proċedura li hemm f'dak l-artikolu.

Kap. 350.

(2) Meta l-Kap Esekuttiv ta' l-awtorità kompetenti joħroġ l-akkuża kontra persuna, hu għandu wkoll jimxi mal-proċedura mniżżla fir-Regolamenti ta' l-2000 dwar Proċedura Speċjali Amministrattiva.

AL 162 ta' l-2000.

Sanzjonijiet oħra amministrattivi.

**16.** Ebda ħaġa f'dan l-Ordni ma għandha tippreġudika jew tnaqqas mis-setgħat ta' l-awtorità kompetenti fil-ħidmiet tagħha li tieħu l-miżuri amministrattivi jew timponi penali skond l-Att, kontra xi ħadd li għandu liċenza jagħti servizz tax-xandir skond dan l-Att u li jkun kiser xi provvediment ta' dan l-Ordni jew ma ssodisfax jew ma mexiex skond xi kundizzjoni jew rabta li jista' jitlob minnu dan l-Att.

Notifika ta' ordnijiet jew taħrikiet.

**17.** (1) Meta jkun meħtieġ li titwassal ordni jew taħrika skond dan l-Ordni dan għandu jsir hekk:-

(a) billi titwassal jew tintbagħat bil-posta reġistrata lil min ikun fl-indirizz tiegħu fid-dar fejn jgħix, fl-uffiċċju jew fil-post fejn jaħdem; jew

(b) fil-każ ta' enti morali jew xi għaqda oħra ta' nies, billi tingħata lil xi uffiċjal jew impjegat tal-post fl-uffiċċju reġistrat jew f'xi post ieħor tan-negozju, jew billi tintbagħat f'ittra reġistrata indirizzata li xi uffiċċju bħal dawk.

(2) Madankollu fejn ma jkunx raġonevolment possibbli li din tingħata jew titwassal b'xi mod skond is-subartikolu (1), in-notifika tista' wkoll issir billi tkun pubblikata taqsira ta' dak l-avviż fil-Gazzetta.

**L.N. 300 of 2005**

**EUROPEAN UNION ACT**
**(CAP. 460)**

**Advertising, Sponsorship and Teleshopping**
**(Protection of Consumers' Interest)**
**(Television Broadcasting Injunction) Order, 2005**

IN exercise of the powers conferred by sub-article (2) of article 4 of the European Union Act, the Prime Minister, has made the following Order:-

**1.** (1) The title of this Order is the Advertising, Sponsorship and Teleshopping (Protection of Consumers' Interest) (Television Broadcasting Injunction) Order, 2005. Citation and date of commencement.

(2) This Order shall come into force on the 1st September, 2005.

**2.** (1) In this Order, unless the context otherwise requires - Interpretation.

"the Act" means the Broadcasting Act; Cap. 350.

"the competent authority" means the Broadcasting Authority as established by the Constitution of Malta;

"the Directive" means the provisions of Directive 98/27/EC of the European Parliament and of the Council of 19th May, 1998 on injunctions for the protection of consumers' interests;

"the Television Without Frontiers Directive" means Articles 10 to 21 of Council Directive 89/552/EEC of 3rd October, 1989 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the pursuit of television broadcasting activities (OJ L298, 17.10.1989, p. 23) as amended by Directive 97/36/EC (OJ L202, 30.7.1997, p. 60);

"qualified entity" means any body or organization which, being properly constituted according to the law of a Member State, has a legitimate interest in ensuring that the provisions referred to in article 3 of this Order are complied with and, without prejudice to the generality of the foregoing, includes:

(a) a registered consumer association within the meaning of Part IV of the Consumer Affairs Act; Cap. 378.

(b) one or more independent public bodies, having a legitimate interest in ensuring the protection of the collective interests of consumers of television advertising, sponsorship and teleshopping in other Member States or EEA States in which such bodies exist;

(c) voluntary organisations in other Member States or EEA States whose purpose is to protect the interests referred to in paragraph (a) of this definition in accordance with the criteria laid down by their national law;

(d) organisations recognised by the competent authority as collectively representing professional broadcasting services; or

(e) any qualified entity from a Member State or EEA State included in the list of qualified entities;

"European Community" means the organisation established by the Treaty of Rome in 1957 and amended institutionally and otherwise in 1986 by the Single European Act, in 1993 by the Treaty on European Union, in 1997 by the Treaty of Amsterdam and in 2001 by the Treaty of Nice and as amended by accession agreements and as may be further amended from time to time;

"the Commission" means the Commission of the European Community;

"list of qualified entities" means the list compiled and updated by the Commission and published in the Official Journal of the European Communities listing the qualified entities in Member States and EEA States in accordance with Article 4 of the Directive;

"Court of Appeal" means the Court of Appeal sitting in its inferior jurisdiction as constituted in terms of sub-article (6) of article 41 of the Code of Organization and Civil Procedure;

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"EEA State" means any State which is a contracting party to the agreement on the European Economic Area signed at Oporto on the 2nd May, 1992 as amended by the Protocol signed at Brussels on 17th March, 1993 and as amended from time to time;

"Member State" means a member of the European Community;

(2) Words and expressions used in this Order which are also used in the Act shall have the same meanings as in the Act.

**3.** The object of this Order is to implement the provisions of the Directive, as applicable to television advertising, sponsorship and teleshopping contained in the Television Without Frontiers Directive as transposed in the Act, and shall be interpreted and applied accordingly. Object.

**4.** This Order applies to any television advertising, sponsorship and teleshopping referred to the Television Without Frontiers Directive as transposed by the Act when advertising, sponsorship and teleshopping is broadcast by any person licensed to provide broadcasting services under the provisions of the Act. Scope.

**5.** (1) Where a qualified entity wishes to seek a compliance order, it shall submit its written application to the competent authority. In its application, it shall satisfy the competent authority that it has tried to achieve the cessation of the infringement in consultation with either the defendant or both the defendant and another qualified entity of the Member State or EEA State in which the injunction is sought. The competent authority shall only entertain a written application if the qualified entity shows to its satisfaction that the cessation of the infringement was not achieved within two weeks after the request for consultation was received. Application for compliance orders by qualified entities.

(2) Where the qualified entity is from another Member State or EEA State, the competent authority shall treat the list of qualified entities published by the Commission as conclusive proof of the legal capacity of the legal entity to present such written application in Malta.

(3) The competent authority shall, at the request of a qualified entity from Malta, communicate to the Commission the name and objects of such entities and that such qualified entity should be added to the list of qualified entities so as to facilitate the redress of inter-community infringements.

(4) Before proceeding for the issue of a compliance order under article 6, the competent authority shall, if it considers it to be possible and reasonable to do so, seek first to achieve voluntary compliance by a person licensed to provide broadcasting services under the provisions of the Act and other persons involved, in accordance with this Order, the Act or any other law dealing with consumer rights and protection.

(5) For the purposes of this Order, an infringement occurs when any act is committed contrary to the Television Without Frontiers

Directive as transposed by the Act which harms the collective interests of consumers.

Issue of compliance orders.

**6.** (1) Where the competent authority feels it reasonably appropriate or necessary for the protection of consumers, it may, on a written application to it by a qualified entity, issue a compliance order against any person licensed to provide broadcasting services under the provisions of the Act for one or more of the following purposes:-

(a) ordering any such person to cease broadcasting of any advertisement, sponsorship or teleshopping which the competent authority considers to be in breach of the provisions of the Act regulating advertisements, sponsorship and teleshopping;

(b) requiring such person to take any measures specified in the compliance order, within the time specified in the compliance order to ensure that this Order is complied with;

(c) requiring such person to cease or desist from committing a breach of this Order or of the provisions of the Act regulating advertisements, sponsorship and teleshopping.

(2) The competent authority shall, when issuing a compliance order under this regulation -

(a) serve a copy of the compliance order on each person against whom the order is made;

(b) include with the compliance order, information about the right to institute an action before the Court of Appeal, in accordance with article 9; and

(c) briefly state the reasons for issuing the compliance order, which reasons shall be notified to each person against whom the compliance order is issued and, if any, to the qualifying body on whose application the compliance order is issued.

(3) No precautionary warrant or other order under any other law shall be issued by any court or tribunal restraining or restricting the competent authority from issuing a compliance order under this Order.

Discretion of competent authority to issue a compliance order.

**7.** (1) It shall be at the discretion of the competent authority whether or not to issue a compliance order after a written request by a qualified entity has been made to it in terms of sub-article (1) of article 6.

(2) If the competent authority decides not to issue a compliance order after an application has been made to it by a qualified entity, it shall, within seven days from the date of its decision, notify in writing the qualified entity and the persons against whom the compliance order is requested with its decision stating the reasons therefor.

(3) A qualified entity may within fifteen days from the date of notification upon it of the decision of the competent authority not to issue a compliance order, institute an action before the Court of Appeal for the issue of an order requiring the competent authority to issue a compliance order under article 6. The persons against whom the compliance order is requested to be made shall be parties to the suit, and it shall be the duty of the qualified entity to notify such persons accordingly.

(4) In the exercise of its functions and powers under this Order, the Court of Appeal shall in all cases act as expeditiously as possible.

Compliance order to take immediate effect.

**8.** A compliance order issued by the competent authority shall come into force with immediate effect.

Appeal from a compliance order.

**9.** (1) A person against whom a compliance order has been made, may, within fifteen days from receipt of notification of the compliance order, appeal in writing to the Court of Appeal for the revocation or amendment of the compliance order, giving detailed grounds for the request. Such appeal may be made only on the following grounds:-

(a) the competent authority has, in its decision wrongly applied any of the provisions of this Order; or

(b) the decision of the competent authority constitutes an abuse of discretion or is manifestly unfair.

(2) The Court of Appeal may confirm, change or cancel the compliance order on any terms or conditions it considers appropriate.

(3) Where an appeal is instituted under sub-article (1), the compliance order shall remain in force unless the Court of Appeal specifically orders that the compliance order shall be stayed pending the outcome of the appeal, subject to such conditions and amendments as it may determine. In any such instance, the competent authority may request the Court of Appeal to make an interim compliance order, ordering that the compliance order shall, subject to such modifications as the competent authority may suggest, continue in force pending the

final determination of the case instituted in accordance with sub-article (1). An interim compliance order shall expire upon the final determination of the case.

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(4) Subject to this Order, the provisions of the Code of Organization and Civil Procedure shall, *mutatis mutandis*, govern appeals to the Court of Appeal.

No need to prove actual loss, etc.

**10.** The competent authority, when issuing a compliance order under article 6, shall not be required to prove:–

(a) actual loss or damage; or

(b) actual recklessness, negligence or fault on the part of the person against whom the order is made.

Competent authority may require publication.

**11.** (1) The competent authority may, for the better information of the public:

(a) publish a copy of the compliance order made under order 6 against any such person, in full or in part; or

(b) order any person licensed to provide broadcasting services under the provisions of the Act to publish a corrective statement in relation to any contravention of this Order; or

(c) take both measures mentioned in paragraph (a) and (b) above.

(2) Publication in terms of sub-article (1) shall be made at the expense of the person served with such notice and the provisions of sub-article (7) of article 41 of the Act shall, *mutatis mutandis*, apply to the person licensed to provide broadcasting services under the provisions of the Act. Where such publication is not effected as aforesaid, the competent authority may proceed to effect publication itself, in such medium as it considers appropriate, in which case it shall have the right to recover from the person on whom the notice is served, any expenses incurred, as a civil debt, constituting an executive title for the purposes of Title VII of Part I of Book Second of the Code of Organization and Civil Procedure as if payment of the amount of the civil debt has been ordered by a judgment of a court of civil jurisdiction.

Delegation of powers of the competent authority.

**12.** The competent authority may in writing authorise the chairman or a member thereof or any of its officers and employees or any other person to perform any of its functions in relation to the enforcement of this Order or exercise any power granted to it under

these provisions. Any such authorized person shall, when required, produce the written authorisation signed by the competent authority.

Obtaining information.

**13.** (1) The competent authority may, for the purpose of discharging its functions under this Order, require any person to provide any information in any manner, including by:

(a) answering any questions, orally or in writing; or

(b) producing any item as aforesaid as the competent authority may consider to be necessary.

(2) Any such person shall promptly comply with any such request.

Failure to comply with Order.

**14.** (1) A person licensed to provide broadcasting services under the provisions of the Act, shall be liable to an administrative penalty in terms of article 15 if such person:–

(a) fails to observe any other provision in this Order;

(b) fails to comply with a compliance order issued under this Order; or

(c) refuses or fails to furnish information as required under this Order or else provides false or misleading information.

(2) A person licensed to provide broadcasting services under the provisions of the Act, shall be liable to an administrative penalty if such person:–

(a) wilfully obstructs, assaults, threatens, resists or interferes with the competent authority or any person delegated by it in terms of order 12 or any public officer in the exercise of his duties under this Order or attempts so to do; or

(b) uses threatening, abusive or insulting language to the competent authority or any person delegated by it in terms of article 12 or any public officer in the course of duties.

Administrative penalties.

**15.** (1) In the event of liability arising in terms of article 14 the Chief Executive of the competent authority may by notice in writing request the competent authority to impose on the person licensed to provide broadcasting services under the provisions of the Act an administrative penalty in terms of article 41 of the Act and the procedure laid down in that article shall *mutatis mutandis* apply.

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(2) In issuing the charge against such person, the Chief Executive of the competent authority shall also comply with the procedure set out in the Special Administrative Procedure Regulations, 2000.

L.N. 162 of 2000.

Other administrative sanctions.

**16.** Nothing in this Order shall prejudice or limit the exercise of the powers of the competent authority to take administrative measures or impose penalties under the Act, against a person licensed to provide broadcasting services under the provisions of the Act who has contravened any provisions of this Order or has failed to satisfy or comply with any obligation or condition to which he may be subject under the Act.

Service of orders or notices.

**17.** (1) Where an order or notice is required or authorised to be served under this Order it shall be served in any of the following manners:–

(a) by delivering it, or by sending it by registered mail to the person on whom it is to be served at such person's place of residence, office or place of work; or

(b) in the case of a body corporate or other body of persons, by delivering it to an officer or servant thereof at the registered office or any other place of business, or sending it in a registered letter addressed to any such office.

(2) In any case where it is not reasonably possible to effect service in any manner stated in sub-article (1), service may be effected by publishing a summary of such notice in the Gazette.

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