DECISION NO 01/2012/ED OF THE 18 MAY 2012 IN VIRTUE OF THE MALTA RESOURCES AUTHORITY ACT (CAP. 423) ON THE COMPLAINT BY MR. MARK BORDA AGAINST ENEMALTA CORPORATION IN RELATION TO THE NON-RECOVERY OF THE COST OF THE INFRASTRUCTURE PAID BY A FIRST APPLICANT FOR EXTENSION OF ELECTRICITY SERVICES TO SUBSEQUENT CONSUMERS WHEN MAKING USE OF THAT INFRASTRUCTURE.

1.0 Determination of the Complaint

The complaint which is the subject of this Decision was received by the Authority by means of a letter ("the complaint") dated 15th December 2011, sent by Dr. Rachel Montebello on behalf of her client Mr. Mark Borda ("the complainant") of 'Jardin Dallah', Off Triq tal-providenza, Burbager, Limits of Qrendi, in regard to the complainant's request to Enemalta Corporation ("the Corporation") for the extension of electricity supply to his premises ("Shahemed Cave", Bingemma), which lies beyond the 150 metres mentioned in the Electricity Supply Regulations (hereinafter 'ESRs), specifically Regulation 14 (1) (d).[1]

The complaint (in substance) requested the Authority to proceed immediately to:

"1. Fix the necessary methodologies and tariffs to be applied in order to regulate Mr. Borda's request for provision of supplies that exceed the route length of 150 metres from nearest source of supply;

2. Order Enemalta Corporation to comply with its obligations under the new Regulations in terms of Regulation 27; and

3. Order Enemalta Corporation to abide by the provisions of any compliance order that may be eventually issued by the Authority in this regard.".[2]

The Authority took cognisance of the complainant's complaint and duly initiated dispute resolution proceedings as provided for by regulation 21 (9) of the Electricity Market Regulations[3]. The two month period provided for by law, for the Authority to issue a decision was extended by two months because of the additional information which was sought by the Authority. After holding dispute resolution meetings between the parties involved on the 27th January 2012 and on the 22nd March 2012, and after the subsequent communication by email correspondence for the purposes of receiving and the clarification of information necessary for the issue of a decision, the Authority is

[1] (See para. 2.0 below)
[2] Letter of the 15th December 2011, sent by Dr. Rachel Montebello on behalf of her client Mr. Mark Borda
[3] (S.L.423.22)

hereby for the reasons stated in paragraph 4.0 of this decision, determining and deciding the following:

(1) There shall be paid a refund to complainant in the case that new applicants are connected to the extension to the distribution network originally financed by him, and which refund shall be paid by Enemalta Corporation. The extension will be considered as part of the electricity distribution infrastructure and maintained by the Corporation. Subsequent consumers connected to the infrastructure will be treated as all other applicants in accordance with the ESRs in force at the time.

(2) The refund shall be made by Enemalta, following a request made by the complainant which will be verified by Enemalta, provided that connections are made within ten (10) years from the original extension, and there shall be no time bar for requests for refund from the complainant. Enemalta Corporation shall notify and bring to the attention of the complainant the fact of the expiry of the 10 year period.

(3) The compensation mechanism shall apply whether the connection to the original extension is made by a consumer or by a producer of electricity.

(4) The methodology proposed by Enemalta as shown in paragraph 2. of the Annex to this decision is hereby approved and shall apply to the case in question.

2.0 The law

Functions of the Authority under the Malta Resources Authority Act

In terms of article 4 (1) (*a*) of the Malta Resources Authority Act[4], the Authority regulates, monitors and keeps under review all practices, operations and activities relating to energy, water and mineral resources. The practice under review falls under the energy part of this provision.

In terms of article 4 (1)(*i*) of the said Act, the Authority regulates the price structure for any activity regulated by this Malta Resources Authority Act and where appropriate establishes the mechanisms whereby the price to be charged for the acquisition, production, manufacture, sale, storage and *distribution* thereof is determined. The mechanism of the practice under question is clearly one which falls within the Authority's competence to determine, inasmuch as the determination of the amount of money to be paid by a first applicant for an extension of service in the situations contemplated by Regulation 14 (1) (d) of the ESR would fall under the "distribution thereof" part of article 4(1) (i) of the Act.

[4] Cap.423 of the Laws of Malta.

Presently, the Electricity Supply Regulations do not provide for compensation to be made to an applicant when an extension to the distribution network beyond the 150 metres from the nearest suitable low voltage source of supply is fully financed by that applicant in the case when the extension is subsequently used to connect other applicants.

Regulation 14(1) (d) of the Electricity Supply Regulations (**Government Notice 223 of 1940)**

Regulation 14(1)(d) of the Electricity Supply Regulations provides that:

> "(*d*) Where the route length is beyond 150 metres from the nearest suitable low voltage source of supply the applicant will have to pay for the full amount of the extension less the connection fees in paragraph (*c*). The minimum charge will be €430 for single phase and €1300 per three phase supplies. Extensions beyond 150 metres will only be made using standard materials and given that voltage regulation can be kept within 6% from the nominal value."

Thus, in terms of regulation 14 (1) (d), once the low voltage source of supply has been extended to provide a service to an applicant, any subsequent applicant is not obliged by law to share the costs involved in setting up the extension financed by the first applicant.

The Electricity Market Regulations (S.L.423.22)

S.L. 423.22 provides *inter alia* in regulation 21 thereof ,that:

> "(9) Any party having a complaint against the distribution system operator in relation to that operator 's obligations under these regulations may refer the complaint to the Authority which, acting as dispute settlement authority, shall issue a decision within a period of two months after receipt of the complaint. That period may be extended by two months where additional information is sought by the Authority. That extended period may be further extended with the agreement of the complainant. The Authority's decision shall have binding effect unless and until overruled on appeal."

The distribution system operator in Malta is Enemalta Corporation, hence the initiation of dispute resolution proceedings and the issue of this decision in terms of the above-quoted legislation.

The regulation in question also provides *inter alia* that:

> **"21.** (1) The Authority shall have the following duties and powers in terms of these regulations:
>
> (*a*) fixing or approving, in accordance with transparent criteria, electricity generation, distribution and supply tariffs or their methodologies;
> (*c*) ensuring compliance of the distribution system operator, as well as of any electricity undertakings, with their obligations under these regulations, other relevant legislation and Community legislation, including as regards cross-border issues;".

3.0 Enemalta's position

Following the dispute resolution proceeding meeting held on the 27th January 2012, the Corporation formalised its response in general on the issue of compensation to a first applicant as in Mr. Mark Borda's case and as partially and previously expressed during that meeting, by means of an email sent on the 31st January 2012 by the Corporation's Chief Technical Officer, Mr. Peter Grima to the Chief Executive Officer of the Malta Resources Authority, wherein it was stated that:

"Basically he (i.e. the complainant) has applied for a 60A TPN electricity service at a point about 325m from the closest suitable source of supply. Since this is in excess of 150m, it is not covered by the standard application fee (€900) and hence he has been provided with a quote for the works to extend the distribution infrastructure to his site, which amounts to €18,609.

According to the ESR (i.e. the Electricity Supply Regulations) this extension of the infrastructure becomes part of the LV (i.e. low voltage) distribution network and any subsequent applicant may be provided with supply using it, without any obligation to pay any share of the costs.

Enemalta provides services at 40A SPN and 60ATPN at standard fees of €300 and €900 respectively, provided that they are within 150m of the closest source of supply. In cases where the closest suitable source of supply is located at a distance exceeding 150m, a quote for the full cost of works to extend the infrastructure to provide the supply is made.

Whenever the distribution infrastructure is extended, the extension is implemented using standard materials and is compatible with any extension of the network. It is not sized to be sufficient for the applicant only, but as with all distribution infrastructure accommodate several consumers.

With the exception of Valletta and some other small areas, the extension of the distribution network is carried out as standard using overhead lines. If for an extension which is less than 150m long, an underground cable is used, either at the request of the applicant or as a result of a condition by MEPA, the difference in cost between the equivalent overhead line extension and the underground cable extension is charged to the applicant in addition to the application fee. In the case of an extension which exceeds 150m the full cost of the overhead line extension or the underground extension as applicable is charged to the applicant.

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Proposed compensation mechanism.

Compensation mechanisms based on the length of the infrastructure used by the second and subsequent applicants are complicated and would require calculation of updated percentage 'ownership' of the infrastructure leading to a complicated bookkeeping exercise. A much more simple compensation mechanism would be based on the nominal capacity of the infrastructure and the services provided. Enemalta's proposal is:

If there is only one applicant who requires a supply at a point which is more than 150m from the closest suitable source of supply, the full cost of the infrastructure required should be paid by the applicant. If there are subsequent applicants, and Enemalta makes use of this infrastructure (financed by the first/original applicant) to service them, then the infrastructure is considered to be made use of by Enemalta which will then compensate the first applicant, whilst charging standard application fees or providing a quote as the case may be, to subsequent applicants. In this case the compensation would be given in proportion to the nominal capacity of the service provided to the second and subsequent applicants vis-à-vis the cable nominal capacity and all new applicants would be treated in the same way, i.e. connection to the distribution infrastructure within 150m subject to a standard application fee and if in excess of 150m subject to a quote for the full cost of works.

In such a case, if the second or subsequent applicant requests a 60A TPN supply, the original applicant would be refunded 60/200 of the cost of the infrastructure as the infrastructure has a nominal capacity of 200A. If the second or subsequent service request is for 40A SPN, then the proportion of the capital cost to be refunded would be (40/3)/200. Compensation would only be given if the infrastructure is used within 10

years and the amount of capital cost refunded would be depreciated over the expected useful economic life of the infrastructure, namely 20 years. The maximum total amount of refund would be capped not to exceed 65% of the depreciated capital cost. Depreciation will be 5% p.a. (twenty years) straight line method. Each new applicant's load will be entered into the formula based on maximum cable capacity of 200 amps so as to work out a refund due to the original applicant who financed the cable in full.

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The compensation will only be given to the original applicant and only upon request. Compensation will only be given for new services connected to the said cable within ten years of energisation. The applicant can apply for a refund even after this ten year period as long as the new service is provided within this ten year limit."

Enemalta's proposed methodology is included in paragraph 2. of the Annex to this Decision.

In a further communication sent to MRA on the 23rd March 2012, Enemalta replied to some of the points raised by Mr. Borda in his communications of the 9th and the 13th March 2012:

"The application fee is intended to cover all applications for service within a specified distance from the closest suitable source of supply. In the case of services which are located directly beneath the supply lines, the cost to provide the service is much less than the application fee. Similarly in the case of services at the maximum distance from the closest source of supply, the cost to extend service is more than the application fee. The application fee represents an average cost to extend service within the specified distance. If the specified distance was to be increased, this would result in the average cost to extend service also increasing, with the result that the bulk of consumers (located very close to supply lines, would end up paying more to accommodate the relatively few customers located a distance from the supply source. If we were to accommodate Mr. Borda's suggestion that the first 150m be charged at €900 and the excess over 150m at cost, this would have a similar effect in increasing the overall average cost, and hence require a revision of the application fee.

The contention that this practice is (a) illegal or (b) discriminatory is unfounded. It is clearly not illegal and it is normal practice that different situations or circumstances are addressed through different methodologies. The basic principle is that the bulk of consumers who are located close to supply infrastructure and require 'standard' supplies, pay a fee based on an average cost which in fact does not include all costs required. For example services provided at 40A SPN or 60A TPN do not include a contribution to the cost of the MV substation, whereas services provided at more than 100A (chargeable bulk supplies) do include such a contribution, however it is clear that to provide any supply, an investment in the MV and HV network is required. Similarly an

applicant who requires a chargeable bulk LV supply pays a contribution to the cost of the MV substation and not to the rest of the HV infrastructure required to support it. This practice is quite transparent and applicable to all and is in line with the socio-economic policy of the government and cannot be considered as being discriminatory. This is also reflected in the tariff system where the number of persons resident is taken into account in the calculation and application of rates. The practice of paying increased costs for non-standard arrangements (which are themselves subsidised) is common throughout all sectors of the economy and is not in any way discriminatory. By providing a simple and easy methodology to cater for standard applications, the bulk of the consumers obtain the further advantage of lower charges through lower administrative costs and economies of scale. These savings are obviously not available for non-standard applications, which require dedicated input.

Finally, whilst it is true that the economic lifetime is taken as twenty years, it is also clear that the infrastructure will require maintenance and probably repair throughout this period. The costs of this are borne by the Corporation and not the original developer/applicant, and hence taking a repayment period of ten years is reasonable. If Mr Borda wishes to have full control of the infrastructure for the full economic lifetime, then the simple solution is that he finance a direct line, which he will then be responsible to maintain."

3.1 Mr. Borda's position

Mr. Borda further explained his position by means of an email to the Authority dated 9th March 2012. In that email, Mr. Borda pointed out that his complaint was not solely about the fair sharing of the infrastructure costs between first applicant and subsequent applicants. Mr. Borda stated that "Amongst other things, the practice of charging much higher sums to consumers over 150m from the grid, for that portion of the costs pertaining to the first 150m, as compared to consumers who are within 150m from the grid, has also always been central to my various complaints.

Concerning the MRA proposal that compensation be paid to a first applicant by subsequent applicants, such that all users of a particular infrastructure contribute in proportion to the use they make of it, I confirm that this would satisfy this particular aspect of my compliant. Regarding eligibility to recover costs, only if the service connections occur within a maximum period of ten years time from the date of energizing, this period in my opinion is unfairly short. In their own submissions Enemalta themselves have confirmed the viability of installations for up twenty years "the expected useful economic life of the infrastructure, namely 20 years". Therefore it would appear that discrimination against the first applicant would still be occurring if subsequent applicants who connect before twenty years do not pay a portion of the costs that are then refunded to the first applicant.

Concerning that part of my complaint, not directly addressed by the MRA, i.e., the practice of charging much higher sums for the first 150m to those consumers over 150m from the grid, this policy is in my opinion clearly unfair and also appears to be contrary to law on account of the fact that it discriminates between applicants who are located within 150m from the grid and those who are over this distance. The fact that all applicants who need trenching must pay for this, even if they are less than 150 from the grid does not eliminate the discrimination because such applicants only pay for the cost difference between poles and trenching whilst those located more than 150m from the grid, pay for all the infrastructure costs within the first 150m but are not charged the Euro900 application fee. However it is obvious that the value for 150m worth of cable and poles that is free to all applicants within 150m, is far more than the Euro900 discounted to applicants over 150m and this clearly discriminates against the latter. In my own case, Enemalta has charged me Euro 18,609 for 325 meters which is Euro57.25 per meter. So the cost for the first 150m is Euro8,587. However much difference there is in costs between poles and trenching over a distance of 150m, it is certain that this difference amounts to more than Euro900 over the same 150m distance. If this difference ie', the would-be cost of the poles, is not charged to consumers within 150m, it cannot be charged to consumers located more than 150m from the grid without involving illegal discrimination. "

Mr. Borda concluded by stating that "it would seem that to satisfy the requirements of the new laws, it would be necessary that the period allowed to the first subscriber for compensation should not be less than the lifetime of the infrastructure and the enormous disparity in charges for the first 150m between applicants under and over 150m should be eliminated."

Mr. Borda further communicated with the Authority by means of an email dated 13th March 2012, wherein he proposed as follows:

"Further to my previous email, may I add the following suggestion which according to my lawyers, will eliminate the existing discrimination and therefore will also conform to the law as it now is:-

Enemalta calculate the cost for poles and cables for 150 meters which is normally supplied free to all applicants within 150 meters. This amount is then deducted from the quotation Enemalta gave me for 325 meters of trenching and cabling and the amount of Euro900 is added back to my costs. In this way, I will be getting exactly the same treatment that applicants up to 150m get and therefore all discrimination and/or illegality will be eliminated."

Concerning the issue of the **"**RECOVERY OF THE COST OF THE INFRASTRUCTURE PAID BY A FIRST APPLICANT FOR EXTENSION OF ELECTRICITY SERVICES TO SUBSEQUENT CONSUMERS WHEN MAKING USE OF THAT INFRASTRUCTURE" and after further consultations with Dr. Montebello, I confirm again that I am in agreement with the

principal that the first applicant is compensated by subsequent applicants, such that all users of a particular infrastructure contribute in proportion to the use they make of it. What this means to us is that any compensation method applied by Enemalta (the service provider) in this regard, does not in any way advantage one or more subscribers over any one or more others ie', that there is no discrimination in any shape or form between first, second, third etc applicants and that any compensation method is fully compliant with Maltese and EU law. Whether the formula for compensation you indicated in your latest decision is in fact compliant with the law cannot be ascertained as yet because the way you have presented your proposed formula, without any explanatory notes or example workings is not entirely clear.

To conform with the law as it is now and to the principal of proportionate contribution referred to above as we understand it, it is necessary that a second subscriber connecting to infrastructure previously costing an original subscriber Euro20,000, must pay half this amount to the first subscriber ie., Euro10,000, plus compound inflation according to official annual Central bank rates from the date of payment of the original connection to assure accurate parity. These amounts should be paid to the first subscriber in full, irrespective of how many years later the second connection is made, irrespective of the ratio of the capacity of the new service to the capacity of the shared extension and without any form of depreciation being deducted. Note that the Irish laws which you have been informed by, in connection with the 'ratios' and with the 'time bar', are not necessarily compliant with EU law. The notion of charging depreciation on the value of the supply line to consumers more than 150m from the grid is also clearly discriminatory and would entail unjustified enrichment by Enemalta and therefore such an idea is clearly not acceptable. First of all, Enemalta have no right to single out a small class of subscribers for such charges and secondly, the infrastructure is the property of Enemalta and consumers are not obliged, to make good for any depreciations effecting such infrastructure.

A further communication was received from Mr. Borda on the 17th March 2012 whereby he stated that:

Concerning the other issue of the charges to consumers for the first 150 meters, you stated that:-

"The methodology for the calculation of the applicable connection charges is established by the ESRs and Enemalta has applied the regulations as applied in similar situations. Hence, Enemalta's position and the methodology established by this decision is in compliance with the legal position established by the Electricity Supply Regulations.

With due respect I must advise that this statement is irrelevant and cannot have any bearing on the resolution of this issue because the MRA's role in this affair is to determine if the methodologies for providing service to consumers are compliant with

the Electricity Market Regulations (sic) and not to determine if they are compliant with the Electricity Supply Regulations.

You also state that:-

"The law expressly provides in regulation 14 (1)(d) of the ESRs that in the case when an application is made for a service connection within 150 metres from the nearest suitable low voltage source of supply **a standard fee should be paid**, and the Authority has no power to go beyond with what in law is provided for in relation to the circumstances in question."

Here again with respect, I must point out further serious failings in the MRA's reasoning. You have stated that "a standard fee should be paid" but you have ignored the fact that a 'standard fee" **is in fact not being paid.** As the MRA should know very well, applicants over 150 meters are currently subject to higher costs for the first 150m than applicants who have only 150 meters route length. This has been explained to you by Enemalta themselves and also by myself at length in several previous communications and to eliminate any possibility of the MRA again overlooking these facts, I again append an extract from my email to you of the 9th. March[5] as follows which explain very clearly how and why the charges for the first 150 **are not standard,** and that in fact they are much more expensive for subscribers over 150 meters and therefore that they are discriminatory and against the law:-

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The notion that it is beyond the power of the MRA to remedy this oppressive discrimination as you have also stated, is quite frankly incomprehensible as the Electricity Market Regulations very clearly invests the MRA with just such powers; not only that, but the law also makes it clear that the MRA has a duty and an obligation to exercise such powers.

In view of the fact that your decision does not appear to be compliant with the Electricity Market Regulations, failing as it does, to eliminate the various forms of unfair discrimination about which I am protesting and which are prohibited by this law, your decision, as we understand it and as it stands so far, must regrettably be rejected on every count. Notwithstanding these differences, it should be remembered that at our first meeting, it was agreed that the long overdue service will be supplied immediately without any further payments being made until a settlement is reached. This arrangement will allow the immediate need of provision of service to be met whilst at the same time, it will allow the MRA the full time it needs for a careful and balanced appraisal of the case, taking into account and in proper context, all my submissions to

[5] Reproduced above.

date, now also including this communication. I therefore urge you to take advantage of the extra time the MRA has negotiated as per this agreement and to review the MRA's assessments in this case until your decisions are no longer in opposition to the law.

I think it would be very unfortunate if the investigations of the EU Commission, which mainly concern the conduct of the MRA and which are currently on hold pending your final decision, will be put into motion simply because you have rushed into a decision without need. We are more than willing to meet again on the 22nd. March as arranged but I strongly urge that the purpose of this meeting should be to debate how best to achieve the requirements of the law rather than being about you serving us your advice about your decision NO XX/2012/ED OF THE xx xx 2012 as contained in your email of the 16th. March; a decision which is seriously flawed and demonstrably wrong on several counts."

A further communication on the matter was sent by Mr. Borda on the 27th March 2012, whereby, *inter alia* he stated that:

"3. Concerning the submissions put forward by the various parties it should be noted that Enemalta could not, in my opinion put forward any arguments or explanations that could justify the discriminatory charging methods that currently apply according to the ESR within the first 150 meters of route length. On the other hand it should be noted that that my lawyer and myself where able to explain precisely why the 'two standards system' in question is very clearly, very blatantly and very obviously, discriminatory. It should also be noted that this discriminatory charging method very probably arose as a result of an unintended anomaly in the law and not by deliberate design of the legislators. Concerning compensation to first applicants, again Enemalta could not justify its proposed diminutions of the amount that should be refunded as all their suggestions are based on the false premise (sic) that they have a right to hold subscribers responsible for the deterioration/wear and tear of their infrastructure which is not the case. Surely such costs are already covered in the universal connection fees and/or in the rates Enemalta are charging consumers for electricity. The notion of assigning a finite lifespan to an infrastructure and using this as a means to deduct sums owed to consumers is also clearly invalid as the services that Enemalta provide are not finite but indefinite."

4.0 Determination of the Authority on a cost recovery mechanism for infrastructure financed by the first applicant

After, considering both the complainant's and Enemalta submissions both written and oral, the Authority deems that from the point of view of the complainant, it is unfair that no compensation is given to him should the Corporation use the connection financed by him to connect other future consumers. The situation warrants the

intervention of the Authority, based on its functions at law as referred to in this decision.

A cost recovery mechanism for infrastructure financed by the complainant is hereby being established. In terms of such mechanism, compensation shall be paid to the complainant by the Corporation as to the costs involved such that he is refunded in proportion to the use future applicants make of the particular infrastructure financed by him. The complaint shall be eligible to recover costs only if the service connections occur within a maximum period of ten years time from the date of energising. Costs recovered would take into account the depreciation of the infrastructure financed by the complainant.

The MRA has investigated practices in other countries**.** One example considered was the practice adopted by ESB of Ireland for similar cases. The compensation mechanism currently used by ESB[6] whereby a refund to the first applicant is calculated on the basis of the ratio of the capacity of the new service to the capacity of the shared extension was examined and a similar mechanism hereby adopted.

The methodology for the calculation of the applicable connection charges is established by the ESRs and Enemalta has applied the regulations as applied in similar situations. Hence, Enemalta's position and the methodology established by this decision is in compliance with the legal position established by the Electricity Supply Regulations.

The law expressly provides in regulation 14 (1)(d) of the ESRs that in the case when an application is made for a service connection within 150 metres from the nearest suitable low voltage source of supply a standard fee should be paid, and the Authority has no power to go beyond with what in law is provided for in relation to the circumstances in question.

Without prejudice to the above, the Authority considers that it is justified and practical that a standard fee is charged when a service connection of the type in question is required within an area where the electricity network is already developed. The Authority agrees with Enemalta's position that in principle, it is not illegal and that it is correct that different situations or circumstances are addressed through different methodologies. Similarly, the Authority does not agree with the complainant's contention that the charging of a different or higher tariff rate for such different situations and circumstances, such as in the case when an electricity service is provided for beyond a certain distance from the nearest feasible low voltage source of supply is in contravention of the Electricity Market Regulations and Directive 2009/72/EC.

[6] ESB Networks; Charges for Connection to the Distribution System Revision 6 13 September 2006 Status: Approved Annex to this Decision

In view of the above, it is the Authority's opinion that there is no discrimination involved in law and in fact when an applicant in a situation like that of Mr. Borda is not charged a standard fee but is charged the full cost of the expenses involved.

The refund should be limited to those connections which are made within ten (10) years from the energisation of the original extension. This refund must be tied to a specific timeframe to ensure legal certainty, and which timeframe should be sufficient to ensure the protection of the applicants' rights and the good administration of the refund scheme. It is the opinion of the Authority that a 10 year period is thus reasonable to ensure this.

The Authority deems that the methodology hereby established is in principle a proportionate and just and equitable solution to the complainant's case in the circumstances.

It is henceforth auspicated that appropriate amendments should be made to the Electricity Supply Regulations, so that the fair and just procedure established by this decision should apply by application of the law in regard to all instances where a situation similar to that of the complainant arises. This would also be in line with the recommendation of the Ombudsman, as stated in his Final Opinion on Case No G 0453 on a complaint made by the complainant in regard to the case which is the subject of this decision.

Ms Fleur Vella
Chairman
Malta Resources Authority

Annex

1. ESB Mechanism

Permanent connections

Refund amount $=MIC_2 * CC * / (MIC_1 + MIC_2)$

where:

MIC_1 = maximum import capacity in kVA of existing connection.

MIC_2 = MIC of new connection

CC = the capital contribution originally charged in respect of the shared asset excluding any standard charge.

Period = The expected time the connection will be used (years) or 40, whichever is the shorter

Term = term of connection agreement for original connection or 40, whichever is the shorter.

2. The Corporation's Mechanism

Permanent connections

In the case the subsequent service is a single phase connection then

Refund = $(I_1 * CC_d)/(3 * I_2)$

In the case the subsequent service is a three phase connection

Refund = $(I_1 * CC_d)/ I_2$

where

I_1 = fuse rating of new service

I_2 = fuse rating of the three phase shared infrastructure

CC_n = cost of the infrastructure depreciated at year n

Year n = date of energisation of the subsequent connection

depreciation on the shared infrastructure is calculated on a straight line basis over a period of 20 years (i.e. 5% per annum)

The total refund will be limited to 0.65 * $\mathbf{CC_n}$, where $\mathbf{CC_n}$ is the depreciated value of the original investment (€X) in year n, which is the year when the accumulated refund reaches €(0.65 * Xn).