

Act No. 169 of 3 March 2011

*Unofficial and non-binding English translation
Only the Danish version of the text has legal validity*

Act on Electronic Communications Networks and Services¹

Chapter I

Purpose and definitions

Part 1

Purpose of the Act

1. The purpose of this Act is to promote an efficient and innovative market for electronic communications networks and services for the benefit of end-users.

Part 2

Definitions

2. For the purposes of this Act, the following definitions shall apply:

- 1) *Provider*: Any person who makes products, electronic communications networks or services governed by this Act available to other parties on a commercial basis.
- 2) *Commercial provider*: A provider who, for commercial purposes, offers products or electronic communications networks or services governed by this Act as its main service or as a non-accessory part of its business.
- 3) *End-user*: User of electronic communications networks or services who does not make such electronic communications networks or services available to other parties on a commercial basis.
- 4) *Electronic communications networks*: Any form of radio frequency or cable based telecommunications infrastructure used for handling electronic communications services.

- 5) *Public electronic communications networks*: Electronic communications networks as mentioned in no. 4 made available to a number of end-users or providers of electronic communications networks or services who have not been specified in advance.
- 6) *Network termination point*: Physical or logical interface in an electronic communications network that constitutes the end-user's connection to this.
- 7) *Electronic communications service*: Service consisting wholly or mainly in electronic conveyance of communications in the form of sound, images, text or combinations thereof, by means of radio or telecommunications techniques, between network termination points, including two-way and one-way communications.
- 8) *Public electronic communications service*: Service as mentioned in no. 7 made available to a number of end-users or providers of electronic communications networks or services who have not been specified in advance.
- 9) *Information and content service*: Any form of electronic provision of information or content to which other end-users get access via electronic communications networks or services on the basis of an individual request.
- 10) *Voice telephony service*: Electronic communications service available to end-users for originating and receiving, directly or indirectly, national or national and international calls through a number or numbers in a national or international telephone numbering plan.
- 11) *Network access*: Access to a provider's electronic communications networks or services and associated facilities for another provider for the purpose of providing electronic communications networks or services.
- 12) *Interconnection*: A form of network access established between providers of electronic communications networks or services, consisting of physical and logical linking of electronic communications networks, used by the same or a different undertaking to allow communication or to get access to electronic communications services.
- 13) *Subscriber number*: Any number included in the overall Danish numbering plan and which can be reassigned to an end-user.
- 14) *Conditional access system*: Any technical measure or arrangement whereby access to a protected radio or television broadcasting service in intelligible form is made conditional upon subscription or other forms of prior individual authorisation.
- 15) *Application program interfaces (APIs)*: Software interface between applications, made available by broadcasters or service providers and the facilities in set-top boxes intended for connection to television sets or integrated digital television sets which are able to receive digital interactive radio and television services.
- 16) *Multiplex operator*: Provider of electronic communications networks or services or owner of electronic communications networks who operates a terrestrial digital television platform.

- 17) *Gateway*: Terrestrial technical installation used in connection with communication between a group of end-users specified in advance one or more of whom are connected to a satellite-based network.

Chapter II

End-user aspects and universal service obligation etc.

Part 3

Basic end-user rights

3. The Minister for Science, Technology and Innovation may lay down rules for the purpose of obliging owners of electronic communications networks and providers of electronic communications networks or services to ensure end-users access to making calls to the public emergency service (112), directory enquiry services, the text telephone service, and any other electronic communications services vital to society.

4.-(1) The Minister for Science, Technology and Innovation may lay down rules for the purpose of obliging providers of electronic communications networks or services to ensure a number of basic end-user rights in connection with agreements on delivery of electronic communications networks or services to end-users.

(2) Rules laid down under subsection (1) may include provisions on the end-user's right to a contract, the content of the contract, terminal equipment, technical interfaces and how to deal with complaints. In this connection, the Minister for Science, Technology and Innovation may lay down specific rules about the obligation to make special functions and facilities available to end-users, free of charge where applicable, and to draw the end-users' attention to these, as well as the obligation to inform end-users about the ways in which personal data can be protected, and the obligation to distribute public interest information about lawful and unlawful use of electronic communications services etc.

(3) In laying down rules under subsection (1), the Minister for Science, Technology and Innovation may determine that these should only apply to certain types of contractual relationships, including agreements with non-commercial end-users, and that it should not be possible to derogate from such rules by agreement. Furthermore, the Minister for Science, Technology and Innovation may lay down specific rules for the extent to which the National IT and Telecom Agency may grant exemptions from the requirements.

(4) The National IT and Telecom Agency may lay down minimum requirements to be met by providers of electronic communications networks or services for the quality of their electronic communications services. In laying down such minimum requirements, the National IT and Telecom Agency may specify, inter alia, the quality of service parameters to be measured.

(5) The National IT and Telecom Agency may lay down rules for the purpose of obliging providers of electronic communications networks or services to end-users to publish

information about prices, standard terms and conditions, quality, fees etc. for the services they offer, and rules about the duty of providers to give information to the end-user.

(6) The National IT and Telecom Agency may lay down rules on requirements to be met by providers of electronic communications networks or services to end-users regarding access to electronic communications services, choice of providers etc. by special user groups, including disabled persons.

(7) The National IT and Telecom Agency may lay down rules for the purpose of requiring providers of electronic communications networks or services to ensure end-users the ability to access and distribute information and to run applications and services of their choice.

(8) For the purpose of preventing fraud or misuse in connection with the use of specific numbers or services, the National IT and Telecom Agency may lay down rules ordering providers of electronic communications networks or services to end-users to block access to such numbers or services and require that the provider should withhold relevant interconnection or other service revenues.

5.-(1) The Minister for Science, Technology and Innovation may lay down rules for the purpose of obliging providers of telecommunications terminal equipment used for mobile communications services to ensure basic end-user rights in connection with agreements on delivery of telecommunications terminal equipment to end-users. In doing so, the Minister for Science, Technology and Innovation may lay down specific rules on maximum commitment periods in connection with facilities in telecommunications terminal equipment.

(2) In laying down rules under subsection (1), the Minister for Science, Technology and Innovation may determine that the rules should only apply to certain types of contractual relationships, including agreements with non-commercial end-users, and that it should not be possible to derogate from such rules by agreement.

6. The National IT and Telecom Agency may lay down rules for the establishment and operation of payphones or other access to public voice telephony, containing minimum requirements for the provision of payphones or other access to public voice telephony, including rules to meet the special needs of disabled end-users.

Secrecy of electronic communications, information security, processing of personal data, assistance for interception etc.

7.-(1) Owners of electronic communications networks and providers of electronic communications networks or services and their employees and former employees shall not be entitled without authorisation to disclose or utilise information about other persons' use of the network or the service or the content thereof that comes to their knowledge in connection with the provision of electronic communications networks or services. The owners and providers in question shall take the measures necessary to ensure that information about other persons' use of the network or service or the content thereof will not be available to unauthorised persons.

(2) The provisions of sections 152, 152a and 152d-152f of the Penal Code shall apply correspondingly to persons who are or have been in the service of an owner of electronic

communications networks or a provider of electronic communications networks or services, or who are or have been engaged otherwise in tasks carried out by agreement with these.

8.-(1) The Minister for Science, Technology and Innovation shall lay down rules for providers of public electronic communications networks or services about minimum requirements for information security and processing of personal data in connection with the provision of networks and services.

(2) Rules laid down under subsection (1) shall include requirements about the following:

- 1) Appropriate technical and organisational measures for the purpose of managing the risks posed to the information security of networks and services, including the security of personal data, and ensuring a level of security which is appropriate to the risk presented.
- 2) Notification of the National IT and Telecom Agency in case of an information security breach having a significant impact on the operation of networks or services and in case of a personal data breach. The obligation may include notification of parties other than the National IT and Telecom Agency in special circumstances.

(3) For the purpose of protecting personal data, rules laid down under subsection (1) may also include requirements about the following:

- 1) Calling line identification, automatic call forwarding and itemised billing.
- 2) Storage and processing of traffic data and location data in connection with electronic communications.

(4) The Minister for Science, Technology and Innovation shall lay down specific rules about supervision of compliance with rules laid down under subsection (1), including supervision of information security and the security of personal data.

9. For the purpose of protecting end-users, the Minister for Science, Technology and Innovation shall lay down rules with requirements for natural and legal persons' storing of information on end-users' terminal equipment, and access to information stored on end-users' terminal equipment.

10.-(1) Providers of electronic communications networks or services to end-users shall ensure, without expense to the State:

- 1) that the technical equipment and the technical systems used by the provider are arranged in such a manner that the police may have access to information about telecommunications traffic and to intervening in the secrecy of communications in the form of historical telecommunications data and historical extended telecommunications data, forward-looking telecommunications data and forward-looking extended telecommunications data, interception and telecommunications observation, cf. Parts 71 and 74 of the Administration of Justice Act, including, in the case of forward-looking telecommunications data and extended telecommunications data, the ability of the police to have access directly after recording of this data,

- 2) that the technical equipment and the technical systems used by the provider are arranged in such a manner that it is possible, following a request by the police, to carry out interception and immediate transmission of telecommunications to another member state under Article 18 subsection (5)(a), cf. subsection (2)(a) and (c), of the Convention of 29 May 2000 on Mutual Assistance in Criminal Matters between the Member States of the European Union,
- 3) that the gateways used by the provider are arranged in such a manner that providers of electronic communications services in other member states using the gateways have direct access to these so that it will be possible, via such providers, to carry out direct interception of communications at the gateways in respect of subjects present in the member state concerned, cf. Article 19 of the Convention of 29 May 2000 on Mutual Assistance in Criminal Matters between the Member States of the European Union, and
- 4) that the provider has direct access to gateways located in other member states and used by the provider, so that the police are able, via the provider, to carry out direct interception of communications at the gateway in respect of subjects present in Denmark, cf. Part 71 of the Administration of Justice Act and the Convention of 29 May 2000 on Mutual Assistance in Criminal Matters between the Member States of the European Union.

(2) Following negotiation with the Minister of Justice, the Minister for Science, Technology and Innovation may lay down specific rules about the technical requirements to be met by equipment, systems and gateways as mentioned in subsection (1).

(3) The provider shall assist the police in carrying out the intervention in the secrecy of communications in the cases mentioned in subsection (1), no. 2.

(4) The provider shall ensure that requests by the police for supplying telecommunications traffic data as well as historical telecommunications data and historical extended telecommunications data will be dealt with immediately and in such a manner that the purpose of the intervention is not lost.

(5) Following negotiation with the Minister of Justice, the Minister for Science, Technology and Innovation may lay down rules under which the requirements mentioned in subsection (1), nos. 1 and 2, for the arrangement of equipment and systems may be derogated from in special cases where technical or practical considerations necessitate this.

11. Providers of electronic communications networks or services shall report and update data about telephone numbers and current providers to a common database, cf. section 29. Data shall be reported directly after an end-user's change of provider, cf. section 26 on number portability. The obligation shall rest with the provider who takes over the contractual relationship with the end-user, and shall also include cases in which the end-user is transferred without using the procedures for number portability.

12.-(1) Providers of electronic communications networks or services shall register their undertaking with the Telecommunications Centre of the Danish National Police.

(2) Following negotiation with the Minister of Justice, the Minister for Science, Technology and Innovation may lay down rules under which the requirement mentioned in subsection (1) may be derogated from for minor providers or where special practical considerations necessitate this.

13. When requested by the police, providers of electronic communications networks or services to end-users shall supply data identifying an end-user's access to electronic communications networks or services.

Part 4

Universal service obligation (USO)

USO services

14.-(1) The universal service obligation is intended to ensure all end-users access to a number of basic electronic communications services on reasonable terms and at reasonable prices.

(2) The universal service obligation shall be ensured by all end-users being able to get access to the following USO services:

- 1) Access to a public electronic communications network at a fixed location.
- 2) Access to a publicly available voice telephony service via the electronic communications network referred to in no. 1.
- 3) Special USO services for certain defined groups of persons with disabilities.
- 4) An exhaustive directory containing all numbers in the overall Danish numbering plan assigned to end-users.

(3) The Minister for Science, Technology and Innovation may lay down rules prescribing that the universal service obligation should include services other than those mentioned in subsection (2).

(4) The Minister for Science, Technology and Innovation may lay down rules prescribing that one or more of the USO services, or parts thereof, mentioned in subsection (2) or prescribed under subsection (3), and which are generally available:

- 1) shall no longer be provided as an element in the universal service obligation, or
- 2) shall not, or shall only to a limited extent, be provided to new customers as an element in the universal service obligation.

(5) The Minister for Science, Technology and Innovation shall lay down rules as to:

- 1) what services fall within subsection (2), no. 3,

- 2) the extent of USO services under subsections (2) and (3), including the facilities and functions to be made available, and
- 3) the extent of the obligation to deliver universal services, cf. section 16.

15.-(1) The Minister for Science, Technology and Innovation shall lay down rules about the following:

- 1) The obligations of the designated USO providers in order to satisfy the need for ensuring basic end-user rights in connection with the provision and delivery of USO services. The rules may stipulate requirements for the content of the contract regulating the relationship between a USO provider and an end-user, including:
 - a) requirements for compensation and refund schemes to be used in case quality requirements laid down by the National IT and Telecom Agency under section 4(4) or section 15(3) are not complied with, and
 - b) requirements to be met by any contract terms for providing security.
- 2) Designation of USO providers. The rules may include details on how the designation should be made, designation via public tendering, and the duration of the designation.
- 3) Framework for specifying terms on how the providers designated under subsection (2) should handle their universal service obligation. Such rules may include requirements for the content of terms, e.g. quality requirements for the services to be delivered by the designated USO providers, and requirements regarding quality measurements and the publication thereof.

(2) On the basis of rules laid down under subsection (1), no. 2, the National IT and Telecom Agency shall designate one or more undertakings as USO providers who are required to provide USO services as mentioned in section 14(2) or laid down under section 14(3).

(3) On the basis of rules laid down under subsection 1(3), the National IT and Telecom Agency shall specify terms on how the providers designated under subsection (2) should handle their universal service obligation.

16.-(1) Providers designated as USO providers under section 15(2) shall deliver or provide the services falling under the universal service obligation to any person who requests so, unless the person in question who requests so has repeatedly and grossly misused the USO service, and there is a significant risk of future misuse of the USO service in question.

(2) A decision made by the USO provider not to deliver USO services may be appealed to the National IT and Telecom Agency.

Maximum prices for USO services

17.-(1) The Minister for Science, Technology and Innovation may lay down specific rules about the following:

- 1) The requirements for, and calculation of, maximum prices for USO services as mentioned in section 14 or laid down in pursuance thereof, including the framework for the National IT and Telecom Agency's determination of such prices, and for the price proposals to be prepared by USO providers.
- 2) That USO providers in the area in which the USO provider is obliged to deliver must charge the same list prices for one or more USO services.

(2) The Minister for Science, Technology and Innovation may determine that the National IT and Telecom Agency should determine maximum prices for one or more of the USO services mentioned in section 14(2) or prescribed under section 14(3). The National IT and Telecom Agency shall fix maximum prices on the basis of proposals from the USO providers and according to rules laid down under subsection (1).

(3) It shall not be possible to determine maximum prices which imply that general coverage of the costs incurred by the USO provider in providing the USO services is not obtained.

(4) Subsection (3) shall not apply to the extent that USO services are to be offered free of charge under international commitments in this field.

Financing of universal service obligation

18.-(1) USO providers designated under section 15(2) shall be entitled to be compensated for any documented net costs incurred in providing USO services if the National IT and Telecom Agency considers that the provision of universal service represents an unfair burden on the designated USO provider. Net costs shall be calculated as the USO provider's overall loss in providing and delivering all the USO services that the individual USO provider is obliged to provide by virtue of the designation under section 15(2), deducting the value of any intangible benefits derived by the USO provider from handling the universal service obligation. Net costs shall not be covered if the USO provider's prices are abnormally low in relation to the service.

(2) The Minister for Science, Technology and Innovation may specify rules about the compensation mentioned in subsection (1), including the following:

- 1) Calculation of the compensation referred to in subsection (1).
- 2) Requirements for USO providers' presentation of accounts and documentation of the net costs referred to in subsection (1).
- 3) Time limits for calculation and payment of contributions towards coverage of the costs, cf. subsection (4).
- 4) Collection of contributions, cf. subsection (4), and the duty to give information resting on the obliged providers in connection therewith.
- 5) Identification of the group of providers of public electronic communications networks or services obliged under subsection (4) to contribute towards covering any net costs.

- 6) Notification schemes for the purpose of prior registration of the providers of public electronic communications networks or services that will be obliged, under subsection (4), to contribute towards covering any net costs.
- 7) The possibility of withdrawing the designation of an existing USO provider in connection with a public tender as mentioned in subsection (7).

(3) On the basis of rules laid down under subsection (2), the National IT and Telecom Agency shall make a decision on determination and coverage of net costs, including the following:

- 1) whether the USO provider has presented sufficient documentation to justify the coverage of net costs as mentioned in subsection (1),
- 2) whether the universal service obligation is considered by the National IT and Telecom Agency to represent an unfair burden, cf. subsection (1), 1st sentence, on the designated USO provider, and
- 3) whether the USO provider's prices are considered by the National IT and Telecom Agency to be abnormally low in relation to the service.

(4) If the net costs, cf. subsection (1), have arisen from providing USO services as mentioned in section 14(2), or as laid down under section 14(3), to the extent that these obligations fall within Directive 2002/22/EC as subsequently amended, the National IT and Telecom Agency's decision under subsection (3) shall release an obligation on providers of public electronic communications networks or services who provide services corresponding to the USO services mentioned in section 14(2), nos. 1 and 2, or laid down under section 14(3), to co-finance the USO provider's net costs. To cover this, the National IT and Telecom Agency shall determine and collect contributions from the providers concerned.

(5) The obligation mentioned in subsection (4) shall also apply to the USO provider to the extent that the USO provider, in addition to USO services, is providing electronic communications services similar to those mentioned in section 14(2), nos. 1 and 2, or laid down under section 14(3), in the same way as other providers of public electronic communications networks or services.

(6) Contributions as mentioned in subsections (4) and (5) shall be fixed in the Finance Act and be announced by the National IT and Telecom Agency.

(7) On or before the date on which the National IT and Telecom Agency makes a decision under subsection (3), the Agency shall initiate a public tender for the purpose of designating one or more alternative USO providers according to rules laid down under section 15(1), no. 2, and subject to the same terms as those laid down under section 15(3), unless conditions regarding financing of net costs have been included as an element in designating the USO provider in question.

(8) If net costs under subsection (1) have arisen from providing USO services as mentioned in section 14(3), the National IT and Telecom Agency's decision under subsection (3) shall release an obligation on the State to cover the USO provider's net costs to the extent that the services are not included in the obligations in Directive 2002/22/EC as subsequently amended.

Notification obligation

19. A USO provider intending to transfer its local access network or a substantial part thereof to a separate legal entity under different ownership shall notify the National IT and Telecom Agency thereof in advance and without undue delay, so as to allow the Agency to assess how the intended transfer will affect the provision of USO services as mentioned in section 14(2), nos. 1 and 2. The access network means the outermost part of the telecommunications network connecting the end-user with the rest of the network.

Part 5

Supervision

20.-(1) The National IT and Telecom Agency shall supervise compliance with the provisions of this Chapter and rules and terms issued in pursuance thereof, but see subsection (2).

(2) The National IT and Telecom Agency shall not supervise compliance with section 10(3)-(5), section 12 and section 13.

Chapter III

Numbering

Part 6

Administration and use of the overall Danish numbering plan

21.-(1) The National IT Telecom Agency shall draw up, announce and administer an overall Danish numbering plan which contains an allocation of the overall numbering resources, comprising numbers, number series, codes and addresses to be used in connection with the provision of electronic communications networks or services. The National IT and Telecom Agency shall specify rules for the administration of the overall Danish numbering plan, including rules for:

- 1) Relations between the overall Danish numbering plan and common international numbering and addressing plans.
- 2) Internal numbering and addressing in electronic communications networks.
- 3) Deployment, assignment, modification, revocation and withdrawal of numbers, number series, codes and addresses.
- 4) Use, implementation and other terms regarding the assignment of numbers, number series, codes and addresses.

(2) In the numbering plan, cf. subsection (1), numbering resources shall be designated for various purposes, including the following:

- 1) Short codes.
- 2) Provision of electronic communications networks or services with special tariff conditions.
- 3) Reservation for the purpose of later use, including reservation for the purpose of rearranging the numbering plan.
- 4) Provision of freephone numbers, where calls are made without call- or time-based charging of the end-user.
- 5) Provision of numbers where the provider of electronic communications networks or services, as an integral part of charging the call, is also responsible for recording the usage of an underlying information or content service as well as invoicing and billing this to the end-user.

(3) Providers of electronic communications networks or services may not use call- or time-based charging of the calling end-user in connection with the end-user's calls to numbers as mentioned in subsection (2), no. 4.

22.-(1) Short codes, cf. section 21(2), no. 1, may be designated for the following purposes:

- 1) The public emergency service.
- 2) A common telephone line to public authorities.
- 3) Provision of directory enquiry services included under the universal service obligation, cf. section 14(2), no. 4, and provision of special services of social value.
- 4) Provision of directory enquiry services other than those mentioned in no. 3.
- 5) Ensuring that end-users are capable of using or connecting to:
 - a) a provider of electronic communications networks or services other than the provider with whom the end-user otherwise has a customer relationship, for the purpose of using one or more of that provider's electronic communications services, or
 - b) other electronic communications services under the same provider as the one with whom the end-user otherwise has a customer relationship.
- 6) Provision of common short codes to be used for special consumer-oriented or social purposes related to the provision of electronic communications networks and services.

(2) Providers of electronic communications networks or services may not, as an integral part of charging calls to subscriber numbers, collect non-traffic-related payments from the calling

end-user on behalf of third parties, including on behalf of the called end-user, in connection with calls to numbers other than those mentioned in subsection (1), nos. 2-4 and 6, and section 21(2), no. 5.

23. The National IT and Telecom Agency may lay down rules on the use of numbers, number series, codes and addresses from the overall Danish numbering plan when these are linked with domain names.

24. Within the framework of the rules laid down under section 21, the National IT and Telecom Agency shall, when requested, assign numbers, number series, codes and addresses to any party that provides electronic communications networks or services or USO services on a commercial basis.

Number charges

25.-(1) The National IT and Telecom Agency shall collect number charges from providers who, under section 24, have been or are being assigned numbers, number series, codes or addresses by the Agency.

(2) Charges as mentioned in subsection (1) shall be fixed annually in the Finance Act and be published by the National IT and Telecom Agency.

(3) The duty to pay the number charges mentioned in subsection (1) shall at all times rest on the provider to whom the National IT and Telecom Agency has assigned the numbers, number series, codes or addresses in question, irrespective of whether the use of such numbers, number series, codes or addresses, individually or in blocks, has been left to end-users or to other providers of electronic communications networks or services.

Part 7

Number portability

26.-(1) Providers of electronic communications networks or services shall ensure that end-users under such providers will be able to retain their subscriber numbers when changing between providers within fixed networks and mobile networks respectively (number portability).

(2) Providers of electronic communications networks or services shall meet all requests from other providers of electronic communications networks or services for establishing agreements to transfer subscriber numbers for the purpose of enabling number portability as requested by an end-user.

27.-(1) It shall be possible for end-users to have subscriber numbers ported no later than by the end of the next working day following reception of the request by the transferring provider. However, porting of subscriber numbers shall not be made earlier than the date on which the end-user's subscription under the provider intended to receive the subscriber numbers has entered into force.

(2) An end-user who has requested porting of subscriber numbers shall not be bound to await expiry of any commitment period or notice of termination before porting is effected.

(3) Providers of electronic communications networks or services shall pay end-users a reasonable compensation in case of delayed porting and in case of misuse of porting made by the provider or on the provider's behalf.

28.-(1) Providers of electronic communications networks or services with whom the end-user has its customer relationship shall not be entitled, in connection with the end-user's request for number porting, cf. section 26(1), to claim any special payment from the end-user for such porting.

(2) Providers of electronic communications networks or services shall not be entitled, in relation to an end-user making calls to numbers that other end-users have retained as an element in number porting, cf. section 26(1), to charge prices for the call that exceed the relevant provider's end-user prices for similar calls to numbers not ported.

(3) Providers of electronic communications networks or services who transfer numbers as an element in number porting may not charge other providers a fee for this in excess of the costs directly incurred by the provider in transferring the numbers plus current payment of the number charge.

(4) The National IT and Telecom Agency may lay down specific rules prescribing that the costs of upgrading infrastructure etc. for the purpose of implementing number portability shall be borne by the individual provider of electronic communications networks or services.

29.-(1) Providers of electronic communications networks or services shall ensure that other providers have access, via a database, to being informed of the provider to whom a subscriber number has been transferred, so as to enable correct routing of calls to ported subscriber numbers.

(2) The National IT and Telecom Agency may lay down specific rules prescribing that providers as mentioned in subsection (1) shall leave the administration of information about ported subscriber numbers to a common database established and operated by one or more providers of electronic communications networks or services or by a third party.

Part 8

Access to numbers and agreements on routing of calls

30.-(1) Providers of electronic communications networks or services shall ensure correct routing of calls to subscriber numbers comprised in the overall Danish numbering plan, including calls to subscriber numbers governed by the rules of Part 7 on number portability, as well as calls to the European telephone numbering area.

(2) The obligation in subsection (1) shall not include calls to numbers with special charging if the recipient of the call has chosen to limit access to such calling.

(3) The National IT and Telecom Agency may lay down specific rules on how, and on what terms, porting of numbers and routing of calls between providers of electronic communications networks or services, cf. subsection (1), should be arranged, including rules on how porting and routing should be effected when a number is retained by the end-user in case of several successive changes between providers of public electronic communications networks or services, as well as any supplementary requirements for the content of interconnection agreements in this regard.

(4) The National IT and Telecom Agency may lay down specific rules about the payment and terms that may be imposed by providers of electronic communications networks or services or third parties on other providers of electronic communications networks or services in connection with database lookup by such other providers, as mentioned in section 29(1), for the purpose of ensuring correct routing of calls to numbers, cf. subsections (1)-(3), that are governed by the rules of Part 7 on number portability.

Part 9

Framework for utilising number information data

31.-(1) Providers of electronic communications networks or services who reassign subscriber numbers to end-users shall deliver number information data to all parties who wish so. The payment for delivering such number information data shall not exceed the marginal costs of delivering it.

(2) Number information data means information about subscriber numbers assigned to end-users, containing the name, address, occupation (if applicable), subscriber number and the category of service for which the subscriber number is used.

(3) The National IT and Telecom Agency shall lay down specific rules about minimum requirements for collecting and passing on number information data, the appearance of such data, updating of information etc., and the extent of the obligations that may be imposed on providers of number information databases and registers in relation to end-users.

(4) An end-user may demand that its number information data shall not be disclosed in connection with the provision of directory enquiry services. Such demand also implies that the end-user's number information data shall not be passed on to other parties, but see subsection (5).

(5) Notwithstanding subsection (4),

- 1) number information data may always be passed on to other providers of electronic communications networks or services for the purpose of signalling, and
- 2) number information data shall always be passed on to the USO provider's nationwide directory enquiry service, cf. section 14(2), no. 4.

(6) Information as mentioned in subsection (5), no. 2, may exclusively be passed on by the USO provider's nationwide directory enquiry service when required by public emergency services or the police.

(7) An end-user may demand that providers of general and publicly available number information databases and registers include the end-user in all such number information databases and registers when the end-user's number information is relevant to the purpose of the number information database or register. At the request of an end-user, providers of number information databases and registers shall give the end-user access to checking information about the end-user's own number information data at the relevant provider of the number information database and register.

(8) Providers as mentioned in subsection (7) shall inform the end-user, free of charge, about the purpose(s) of the database or register and about any further usage possibilities based on search functions embedded in electronic versions, before the end-user is included in the database or register, or before any modification of such purpose(s) or usage possibilities is initiated.

Part 10

Supervision of compliance with rules on numbering

32.-(1) The National IT and Telecom Agency shall supervise compliance with the provisions of this Chapter and rules issued in pursuance thereof, but see subsections (2) and (3).

(2) Providers who, under the provision in section 24, have been assigned numbers, number series, codes or addresses in the overall Danish numbering plan shall ensure compliance with rules laid down under section 21 and terms laid down in accordance therewith, irrespective of whether the use of such numbers, number series, codes or addresses, individually or in blocks, has been left to end-users or to other providers of electronic communications networks or services.

(3) The National IT and Telecom Agency shall not carry out supervision as to the amount of compensation paid under section 27(3).

Chapter IV

Sector-specific competitive regulation

Part 11

Common provisions on network access and interconnection

33.-(1) Providers of public electronic communications networks or services have an obligation to negotiate agreements with each other on interconnection, for the purpose of providing publicly available electronic communications services, in order to ensure provision and interoperability of such services throughout the EU and EEA.

(2) The National IT and Telecom Agency may impose obligations to the extent necessary to ensure connection between end-users in individual networks or to create interoperability in relation to providers of electronic communications networks or services who control access to one or more end-users, including the obligation to interconnect their networks.

34.-(1) Agreements on network access and interconnection shall be made on commercial terms.

(2) Notwithstanding subsection (1), providers of public electronic communications networks or services on whom obligations have been imposed under section 33(2), section 41 or rules issued under section 49, shall offer other providers of public electronic communications networks or services agreements on network access and interconnection on terms and conditions consistent with the obligations imposed on the provider.

35. Providers of electronic communications networks or services who acquire information from another provider of electronic communications networks or services before, during or after the process of negotiating network access or interconnection arrangements shall use such information solely for the purpose for which it was supplied and respect at all times the confidentiality of information received. The received information shall not be passed on to other parties for whom such information could provide a competitive advantage, in particular other departments, subsidiaries or partners.

Part 12

Technical regulation of network access

36. The National IT and Telecom Agency may lay down specific rules prescribing that providers with significant market power on whom an obligation to give network access has been imposed, cf. section 42, and providers of public electronic communications networks or services using such network access shall meet technical or operational conditions when necessary to ensure normal operation of the network.

Part 13

Analyses of the competitive situation

37.-(1) The National IT and Telecom Agency shall carry out analyses of the competitive situation in the telecommunications market (market analyses) at regular intervals for the purpose of assessing the need for, and possibly imposing, obligations under section 41.

(2) The National IT and Telecom Agency shall carry out updates of already completed market analyses when this is found necessary by the Agency in the light of market-related or factual conditions.

(3) Providers with significant market power on whom obligations have been imposed, cf. section 41, shall notify the National IT and Telecom Agency of decisions about organisational or structural changes essential to the obligations imposed.

(4) In cases where the National IT and Telecom Agency cannot carry out a market analysis as mentioned in subsection (1) within the timescale set by current EU regulation, the Agency may request assistance from the Body of European Regulators for Electronic Communications.

(5) The market analyses shall be undertaken jointly with regulatory authorities in other countries when the European Commission has identified a transnational market.

Market definition

38.-(1) As an element in the market analyses, cf. section 37, the National IT and Telecom Agency shall define the markets that fall within the European Commission's Recommendation on Relevant Product and Service Markets, appropriate to Danish circumstances.

(2) Subject to the consent of the European Commission, the National IT and Telecom Agency may furthermore define product and service markets other than those mentioned in subsection (1) that should be subjected to a market analysis.

Market analysis

39. As an element in the market analyses, cf. section 37, the National IT and Telecom Agency shall analyse the markets defined under section 38 for the purpose of assessing whether these markets are effectively competitive.

Identification of providers with significant market power

40.-(1) If a market analysis, cf. section 39, shows that a relevant market is not effectively competitive, the National IT and Telecom Agency shall identify one or more providers of public electronic communications networks or services with significant market power (provider with significant market power) on the market in question.

(2) A provider shall be deemed to have significant market power, cf. subsection (1), if, either individually or jointly with others, the provider enjoys a position of economic strength affording the provider the power to behave to an appreciable extent independently of competitors and customers.

(3) When a provider is identified or has been identified as having significant market power on a specific market, cf. subsection (1), the National IT and Telecom Agency may, at the same time, designate the provider as having significant market power on a related market where the links between the two markets are such as to allow the market power held in one market to be leveraged into the other market, thereby strengthening the market power of the provider.

(4) If a market analysis, cf. section 39, shows that a relevant market is effectively competitive, or if a provider no longer has significant market power on the market, the National IT and Telecom Agency shall withdraw all obligations imposed on providers under this Chapter or rules issued in pursuance thereof for the purpose of regulating their position as providers with significant market power on the market in question.

Part 14

Obligations for the purpose of regulating providers with significant market power

Market decision

41.-(1) In connection with decisions made by the National IT and Telecom Agency under section 40(1), the Agency shall impose on providers with significant market power, cf. section 40, one or more obligations. In each individual decision, the National IT and Telecom Agency shall specify the extent and content of such obligations.

(2) Obligations as mentioned in subsection (1) may include:

- 1) Network access, cf. section 42.
- 2) Non-discrimination, cf. section 43.
- 3) Transparency, cf. section 44.
- 4) Accounting separation, cf. section 45.
- 5) Price control, cf. section 46.
- 6) Functional separation, cf. section 47.

(3) In special cases and subject to the European Commission's consent being obtained, the National IT and Telecom Agency may impose obligations other than those mentioned in section 2 on providers with significant market power.

(4) Notwithstanding subsection (3), the National IT and Telecom Agency, when regulating providers with significant market power at the retail level, may impose other obligations if the Agency considers that the obligations mentioned in subsection (2) are not suitable for solving the competitive problem identified under section 39.

(5) Simultaneously with its decision as mentioned in subsection (1), (3) or (4), the National IT and Telecom Agency shall decide how notification should be given to the providers of public electronic communications networks or services that are affected by this. These providers shall be notified at a suitable time in advance.

Network access obligation

42.-(1) The network access obligation means an obligation on providers with significant market power to offer actual or virtual network access to specified parts of the provider's network elements, services and associated facilities. In this connection, the provider may be required to meet reasonable requests for establishing or modifying agreements on network access. The obligation may include:

- 1) To give access to specified network elements and facilities, including network elements which are not active, unbundled access to the local loop, to allow provision of services such as carrier preselection, call-by-call carrier selection and subscriber line resale offer.
- 2) To negotiate in good faith with providers of public electronic communications networks or services requesting access.
- 3) Not to withdraw access to facilities already granted.
- 4) To provide specified services on a wholesale basis for resale by third parties.
- 5) To grant open access to technical interfaces, protocols or other key technologies that are indispensable for the interoperability of services or virtual network services,
- 6) To offer co-location, virtual co-location or other forms of shared use of associated facilities, including shared use of buildings, entries to buildings, building wiring, masts, antennas, towers and other supporting constructions, ducts, conduits, manholes and cabinets.
- 7) To offer specified services needed to ensure interoperability between networks and connections between end-users, including facilities for intelligent network services or roaming on mobile networks;
- 8) To provide access to operational support systems or similar software systems necessary to ensure fair competition.
- 9) To offer physical and logical linking of communications networks or network facilities.
- 10) To provide access to associated services such as identity, location and presence services.

(2) In determining obligations for network access, the National IT and Telecom Agency shall take account in particular of the following:

- 1) Whether the rate of market development makes it technically and economically feasible to use or install competing facilities, taking into account the nature and type of the network access and interconnection arrangements involved.
- 2) Whether it is practically feasible to provide the network access proposed, in relation to the capacity available.
- 3) The initial investment by the facility owner, bearing in mind the public investments and the risks involved in making the investment.
- 4) The need to safeguard competition in the long term, with particular attention to economically efficient infrastructure-based competition.

- 5) Any relevant intellectual property rights.
- 6) The provision of pan-European services.

Obligation of non-discrimination

43.-(1) The obligation of non-discrimination means an obligation on providers with significant market power to ensure that they apply equivalent conditions and prices in equivalent circumstances to other providers of public electronic communications networks or services providing equivalent services, and that they provide services and information to others under the same conditions, at the same prices and of the same quality as they provide for their own services, or those of their subsidiaries or partners.

(2) The obligation in subsection (1) shall also include situations in which services provided to the provider with significant market power itself, its subsidiaries or partners, are composed of several products, and situations in which equivalent services are provided in relation to, or are included as subelements, in various products.

(3) If an obligation of transparency is imposed on a provider with significant market power, where the provider is required to publish information on new products and coming changes in the existing provision thereof, cf. section 44, the National IT and Telecom Agency may issue a market decision requiring that a new or modified wholesale product falling within a network access obligation, cf. section 42, shall not be sold internally or externally for a specified period.

Obligation of transparency

44.-(1) The obligation of transparency means an obligation on providers with significant market power to publish specified information.

(2) If an obligation of non-discrimination is imposed on a provider with significant market power, cf. section 43, the provider may be required to publish a reference offer, which shall be sufficiently unbundled to ensure that other providers of public electronic communications networks or services are not required to pay for facilities which are not necessary for the network access requested, giving a description of the relevant offerings broken down into components and the associated terms and conditions, including prices.

(3) Where an obligation as mentioned in section 42(1), no. 1, has been imposed on a provider with significant market power, to give unbundled network access to the local loop, a reference offer about this shall be published. As a minimum, such reference offer shall contain the elements set out in current EU regulation.

(4) Providers with significant market power on whom an obligation to publish reference offers as mentioned in subsections (2) and (3) has been imposed shall submit the reference offer to the National IT and Telecom Agency not later than the date on which the offer is published.

Obligation of accounting separation

45.-(1) The obligation of accounting separation means an obligation on providers with significant market power to prepare accounts for specified activities related to network access.

(2) Subject to confidentiality rules, including rules in the Public Administration Act and the Act on Processing of Personal Data, the National IT and Telecom Agency may publish accounting information, including information on revenues.

Obligation of price control

46.-(1) The obligation of price control means an obligation on providers with significant market power to fulfil pricing requirements set in a market decision under section 41(1).

(2) Obligations as mentioned in subsection (1) may be imposed if a market analysis indicates that a lack of effective competition means that a provider with significant market power might sustain prices at an excessively high level, or sustain a price squeeze, to the detriment of end-users.

(3) In setting requirements under subsection (1), account shall be taken of the investment made by the obliged provider, and the provider shall be allowed a reasonable rate of return on adequate capital employed, taking into account the risks involved.

(4) Where an obligation as mentioned in subsection (1) is imposed, it shall be ensured that any cost recovery mechanism or pricing methodology that is mandated serves to promote efficiency and sustainable competition and maximise end-user benefits.

(5) If an electronic communications network is used simultaneously for several services which, if used separately, are each to cover the costs of the electronic communications network or parts thereof, the National IT and Telecom Agency, in pricing a network access product designated for simultaneous use, may undertake a proportional allocation of the costs associated with such use between the providers of the network access products.

(6) If an obligation of price control, cf. subsection (1), has been imposed on a provider with significant market power, an obligation to use a cost accounting system in order to support such price control may be imposed on the provider in association therewith. In this connection the provider may be required to make a description of the cost accounting system publicly available, showing at least the main categories under which costs are grouped and the rules used for the allocation of costs.

(7) The provider with significant market power shall let a third party independent of the provider check that cost accounting under subsection (6) is performed in accordance with the obligation imposed, and issue a statement of compliance. The National IT and Telecom Agency shall publish the statement of compliance for each individual year.

(8) The National IT and Telecom Agency shall lay down specific rules as to what price control methods may be adopted, and about the preparation, use and updating of price control

methods, including rules determining when and to what extent the industry should be involved.

Obligation of functional separation

47.-(1) The obligation of functional separation means that in a market a provider with significant market power operating within different production and distribution stages shall place activities related to the wholesale provision of relevant access products in an independently operating business entity.

(2) In exceptional cases only, and subject to the European Commission's consent, the National IT and Telecom Agency may impose an obligation of functional separation on providers with significant market power if:

- 1) in connection with an analysis, cf. section 39, the National IT and Telecom Agency identifies important and persisting competition problems or market failures in relation to the wholesale provision of certain access products, and
- 2) the National IT and Telecom Agency concludes that the obligations imposed under section 41(2), nos. 1-5, have failed to achieve effective competition.

(3) An obligation of functional separation may include:

- 1) Separating relevant departments into certain specified independent business entities.
- 2) Separating the assets of the separate business entity and the products or services to be supplied by that entity.
- 3) Physical separation of employees and management from other employees and the rest of the management.
- 4) Setting up programmes for internal monitoring that describe the company's initiatives to prevent discriminatory behaviour.
- 5) Setting up governance arrangements to ensure the independence of the staff employed by the separate business entity, and the corresponding incentive structure.
- 6) Preparing rules for ensuring compliance with the obligations.
- 7) Preparing rules for ensuring transparency of operational procedures, in particular towards other stakeholders.

Part 15

Digital radio and television services

48. Following negotiation between the Minister for Science, Technology and Innovation and the Minister of Culture, the National IT and Telecom Agency may lay down rules requiring multiplex operators to offer access to application program interfaces (APIs) and to electronic programme guides (EPGs) on a fair, reasonable and non-discriminatory basis to the extent that this is necessary to ensure access by end-users to digital radio and television broadcasting services.

49. The National IT and Telecom Agency shall lay down rules on the following:

- 1) Requirements to be met by providers of conditional access services regarding conditions for using conditional access systems and conditions for the providers' presentation of accounts.
- 2) Terms for transferring the right of use to patents or trademarks regarding conditional access systems and products for these.

50.-(1) The National IT and Telecom Agency may undertake market analyses using the procedure in Part 13 and, following negotiation between the Minister for Science, Technology and Innovation and the Minister of Culture, decide to maintain, amend or withdraw terms and conditions laid down under section 49 for providers who, according to the market analysis, do not have significant market power in the market concerned.

(2) A decision under subsection (1) to amend or withdraw terms and conditions may be made if this will not adversely effect:

- 1) Accessibility for end-users to radio and television broadcasts and broadcasting channels and services specified in accordance with section 6 of the Radio and Television Broadcasting Act.
- 2) The prospects for effective competition in the markets for retail digital television and radio broadcasting services, conditional access systems and other associated facilities.

Part 16

Requirements for providers of cable TV

51.-(1) A provider of public electronic communications networks or services may not operate its cable TV networks and other public electronic communications networks within the same legal entity if the provider:

- 1) has special rights in the telecommunications sector,
- 2) holds, within the meaning of the Competition Act, a dominating position in a significant part of the overall market for public electronic communications networks or public telephony services, and
- 3) operates a cable TV network established on the basis of special or exclusive rights within the same geographical area.

(2) When there is sufficient competition in the separate market for provision of local loop infrastructure and services, the Minister for Science, Technology and Innovation may lay down specific rules to the effect that the requirement in subsection (1) shall not be applicable.

Part 17

Supervision etc.

52. The National IT and Telecom Agency shall supervise compliance with the provisions of this Chapter and rules issued in pursuance thereof.

53.-(1) If a complaint is submitted to the National IT and Telecom Agency in respect of an agreement falling within this Chapter or rules issued in pursuance thereof between a provider of public electronic communications networks or services resident in Denmark and a similar provider resident in another EU or EEA country, the National IT and Telecom Agency shall coordinate its efforts with the national regulatory authority of the other EU or EEA country if a complaint in respect of the same agreement has been submitted to that authority.

(2) In connection with complaints under subsection (1), the National IT and Telecom Agency shall be entitled to consult the Body of European Regulators for Electronic Communications to find a solution to the dispute.

(3) The National IT and Telecom Agency may request the Body of European Regulators for Electronic Communications to give an opinion as to the action to be taken to resolve the dispute.

(4) When the Body of European Regulators for Electronic Communications has been requested to give an opinion under subsection (3), the National IT and Telecom Agency shall await the opinion before the Agency takes steps to resolve the dispute. This shall not preclude the National IT and Telecom Agency from making provisional decisions under section 55 to obviate pressing competition problems.

Reasonable requests for network access and interconnection

54.-(1) The National IT and Telecom Agency may decide whether there is a reasonable request in specific cases for establishing or modifying an agreement on network access or interconnection in accordance with obligations imposed under section 33(2), section 41 or rules issued in pursuance of section 49. The request shall be made by a provider of public electronic communications networks or services who may invoke, or falls within, section 34(2).

(2) The National IT and Telecom Agency's decisions under subsection (1) shall be made as quickly as possible and preferably not later than four months after the date on which a provider of public electronic communications networks and services submitted the case to the National IT and Telecom Agency or the case was transferred from alternative dispute resolution, cf. subsection (4).

(3) Instead of making a decision under subsection (1), the National IT and Telecom Agency may decide that cases as to whether there is a reasonable request in specific cases for establishing or modifying an agreement on network access and interconnection shall be transferred to alternative dispute resolution if the Agency deems that this will be the most appropriate way of solving the dispute. The Minister for Science, Technology and Innovation shall lay down specific rules on alternative dispute resolution.

(4) If one of the involved providers of public electronic communications networks or services, in a case falling within subsection (1) that has been transferred to alternative dispute resolution under subsection (3), requests so, the National IT and Telecom Agency shall decide the case under subsection (1).

Provisional decisions etc.

55.-(1) If, in dealing with a case under the rules of this Chapter or rules issued in pursuance thereof, the National IT and Telecom Agency has not received the information or the material required by the Agency, cf. section 73(1), the Agency may make a decision on the existing basis.

(2) When dealing with a case about network access or interconnection between providers of public electronic communications networks or services, the National IT and Telecom Agency may decide, following request by one of the parties to the case, that network access or interconnection shall be initiated, continued or resumed on a provisional basis, and specify provisional terms and prices for this.

(3) The National IT and Telecom Agency may change a provisional decision made under subsection (2).

(4) If a final agreement is made, the provisional decision shall cease at the time when the agreement is concluded.

(5) When a final decision has been made, any prices fixed in decisions made under subsections (2) and (3) shall subsequently be adjusted in such a manner that the providers of public electronic communications networks or services are left in a position as if the final decision had taken effect from the time when the provisional decision was made. When such subsequent adjustment of prices is made, a not insignificant loss of interest may be taken into account.

(6) If a provider of public electronic communications networks or services has not presented sufficient documentation and it has therefore been necessary to make a provisional decision, cf. subsection (2), or to make a decision on the existing basis, cf. subsection (1), a subsequent price adjustment, notwithstanding subsection (5), shall solely be made if such adjustment is in favour of third parties.

Part 18

Other aspects

Accounting aspects

56.-(1) Providers of public electronic communications networks or services who enjoy special or exclusive rights to provide services in other sectors in Denmark or another EU or EEA country shall:

- 1) keep separate accounts for the activities associated with the provision of electronic communications networks or services, to the extent that would be required if these activities were carried out by legally independent companies, or
- 2) have structural separation for the activities associated with the provision of electronic communications networks or services.

(2) Subsection (1) shall not be applicable to undertakings the annual turnover of which in activities associated with electronic communications networks or services in Denmark is less than DKK 100 million.

(3) The National IT and Telecom Agency shall lay down specific rules on fulfilling obligations under subsection (1), including requirements for formats, accounting methods and auditing.

Consultations

57. The Minister for Science, Technology and Innovation shall lay down specific rules on consultations, including what decisions shall be subjected to extended consultation and on procedures for the National IT and Telecom Agency 's conduct of consultations.

Chapter V

Co-location and sharing of facilities

Part 19

Co-location and sharing of network elements and associated facilities

58.-(1) The Minister for Science, Technology and Innovation may lay down rules requiring providers of electronic communications networks to give other providers of electronic communications networks access to co-location and sharing of network elements in electronic communications networks and associated facilities. Rules regulating co-location and sharing of network elements in electronic communications networks and associated facilities shall be

proportionate and justified in the light of the purpose referred to in section 1 and the considerations in subsection (2).

(2) Co-location and sharing of network elements and associated facilities imposed under rules laid down according to subsection (1) shall be justified in the light of the environment, public health, public security or to meet planning objectives and shall be effected for the purpose of establishing electronic communications networks.

(3) Rules laid down under subsection (1) may include:

- 1) Co-location and sharing of existing network elements and associated facilities.
- 2) Requirements for the dimensioning and location of new network elements and associated facilities in connection with permissions to establish, extend or modify these for the purpose of later co-location or sharing.

(4) The Minister for Science, Technology and Innovation may lay down rules on the apportioning of costs involved in co-location and sharing of network elements in electronic communications networks and associated facilities under subsection (1) and on specifying terms for co-location and sharing of network elements in electronic communications networks and associated facilities under subsection (1). In addition, the Minister for Science, Technology and Innovation may lay down rules on inspection of agreements, supervision, alternative dispute resolution, imposition of enforcement fines, and complaints procedures in connection with rules laid down under subsection (1).

Part 20

Sharing of wiring

59.-(1) The Minister for Science, Technology and Innovation may lay down rules requiring owners of building wiring or holders of rights therein to give providers of electronic communications networks access to sharing such wiring for the purpose of establishing electronic communications networks. Rules regulating sharing of building wiring shall be proportionate and justified in the light of the purpose referred to in section 1 and the considerations in subsection (2).

(2) Sharing imposed under rules laid down according to subsection (1) shall be justified in the light of the environment, public health, public security or to meet planning objectives and may be imposed when it will not be economically efficient or physically practicable to install new, functionally similar wiring.

(3) The Minister for Science, Technology and Innovation may lay down rules on the apportioning of costs involved in sharing of building wiring under subsection (1) and on specifying terms for sharing of building wiring under subsection (1). In addition, the Minister for Science, Technology and Innovation may lay down rules on inspection of agreements, supervision, alternative dispute resolution, imposition of enforcement fines, and complaints procedures in connection with rules laid down under subsection (1).

Part 21

Duty to give information

60.-(1) The Minister for Science, Technology and Innovation may lay down rules on the duty of owners of, or holders of rights in, network elements, building wiring and associated facilities governed by sections 58 and 59 to give information about the nature, availability and geographical location of network elements and associated facilities.

(2) The Minister for Science, Technology and Innovation may lay down rules on the extent to which information obtained under subsection (1) shall be made available to the public.

Chapter VI

Emergency preparedness, unauthorised access to information and content services, delegation and preclusion from giving instructions

Part 22

Vital electronic communications in emergency situations and other extraordinary situations

61.-(1) The Minister for Science, Technology and Innovation may lay down rules on minimum requirements for providers of electronic communications networks or services and owners of electronic communications networks connected to public electronic communications networks or services for the purpose of protecting telecommunications in case of emergencies. The rules may include a duty to:

- 1) arrange mutual routing and coordination of the delivery of emergency calls (112) to the relevant emergency centre, including a duty on one or more providers of electronic communications networks or services to handle coordinated delivery of emergency calls (112) and location information from other providers and owners of networks,
- 2) make location information available to the relevant emergency centre in case of emergency calls (112), and
- 3) give assistance when emergency centres alert the police, rescue units, ambulance services and other emergency services.

(2) The National IT and Telecom Agency may lay down minimum requirements for the accuracy and reliability of location information.

62.-(1) The Minister for Science, Technology and Innovation shall lay down specific rules requiring commercial providers of electronic communications networks or services to carry out the necessary planning and take the necessary measures to safeguard vital electronic

communications in emergency situations and in other extraordinary situations, including the duty to establish special facilities without expense to the State.

(2) The Minister for Science, Technology and Innovation shall lay down specific rules requiring owners of electronic communications networks used for commercial provision of public electronic communications services to do the following, without expense to the State:

- 1) Prepare emergency preparedness plans based on a documented risk management process.
- 2) Ensure suitable protection of critical electronic infrastructure.
- 3) Plan and participate in exercise activities.

(3) The Minister for Science, Technology and Innovation may lay down rules similar to those referred to in subsections (1) and (2) for public authorities as well as public and private undertakings and institutions.

(4) The National IT and Telecom Agency shall coordinate and prioritise the emergency authorities' need for vital electronic communications. The Minister for Science, Technology and Innovation may specify rules on this.

63.-(1) Following recommendation from a provider of electronic communications networks or services, the National IT and Telecom Agency shall assign security clearance to the provider's employees and representatives when the persons involved, in relation to solving specific tasks for the undertaking, are to handle classified information or other information that justifies protection in relation to the electronic infrastructure of providers and handling of emergency-related tasks for the provider.

(2) Owners of electronic communications networks used for commercial provision of public electronic communications services shall ensure that employees or representatives of the owners who handle the contact to the National IT and Telecom Agency in relation to emergency planning in the area of IT and telecommunications are assigned security clearance by the National IT and Telecom Agency to handle classified information.

(3) Providers of electronic communications networks or services or owners of electronic communications networks governed by subsection (1) or (2) whose employees or representatives are assigned security clearance shall ensure compliance with the National IT and Telecom Agency's directions in respect of security regulations for processing, storage or destruction of classified information.

(4) The National IT and Telecom Agency may revoke a security clearance when the conditions for such clearance are no longer present.

(5) Providers of electronic communications networks or services or owners of electronic communications networks governed by subsection (1) or (2) shall notify the National IT and Telecom Agency without undue delay when security-cleared persons no longer handle the tasks for the provider on which the security clearance was based.

64.-(1) The National IT and Telecom Agency shall supervise compliance with rules laid down under sections 61 and 62. The National IT and Telecom Agency may lay down specific rules on performance of its supervision, including the duty to give information and the duty to submit material to be used for such supervision.

(2) The National IT and Telecom Agency may make decisions in relation to providers of electronic communications networks or services and owners of electronic communications networks who are connected to public electronic communications networks or services, on compliance with section 63(2), (3) and (5), and rules laid down under subsection (1) and sections 61 and 62. Decisions about compliance with rules laid down under section 62(2) may include directions on specific protection measures.

Part 23

Unauthorised access to information and content services

65. It shall not be permitted as a commercial activity to manufacture, import, sell, own or change decoders or other decoding equipment the purpose of which is to give unauthorised access to information and content services that are normally subject to payment. Advertisements or other promotion of such equipment is not permitted.

Part 24

Delegation and preclusion from giving instructions

66.-(1) The Minister for Science, Technology and Innovation may empower a governmental authority established under the Ministry or, following negotiation with the minister concerned, other governmental authorities, to exercise the powers conferred on the Minister for Science, Technology and Innovation under this Act.

(2) The Minister for Science, Technology and Innovation may lay down rules on the right to appeal decisions made by virtue of empowerment under subsection (1), including that decisions shall not be appealable.

(3) Following negotiation with the minister concerned, the Minister for Science, Technology and Innovation may lay down rules on exercising the powers that another governmental authority is authorised to exercise under subsection (1).

67.-(1) The Minister for Science, Technology and Innovation shall not be in a position to give official orders to the National IT and Telecom Agency on the Agency's handling of authority functions in specific cases; on handling and decision of individual cases; on the National IT and Telecom Agency's issue of administrative regulations in areas where the Agency is authorised to do so by statute; or on other supervisory activities of the National IT and Telecom Agency for the purpose of ensuring compliance with this Act and administrative regulations issued in pursuance thereof.

(2) The Minister for Science, Technology and Innovation may not grant exemptions from administrative regulations issued by the Minister under this Act.

(3) Notwithstanding subsections (1) and (2), the Minister for Science, Technology and Innovation may give official orders to the National IT and Telecom Agency in specific cases where supervision is carried out and decisions are made pursuant to section 63 or in accordance with rules laid down under section 62, and the Minister for Science, Technology and Innovation may also grant exemptions therefrom.

Chapter VII

The Telecommunications Complaints Board

Part 25

Setting up of the Board

68.-(1) The Minister for Science, Technology and Innovation shall set up a Telecommunications Complaints Board.

(2) The Telecommunications Complaints Board shall consist of 5 to 7 members, to be appointed by the Minister for Science, Technology and Innovation. In appointing Board members, the Minister for Science, Technology and Innovation will consider it important that the overall Board should represent expertise in legal, financial and market-related fields as well as competition law and telecommunications technology.

(3) Members shall be appointed for periods of four years.

(4) The Minister for Science, Technology and Innovation shall appoint the chairman of the Board among the members of the Board. The chairman shall be a lawyer. The Minister for Science, Technology and Innovation may appoint among the members of the Board a lawyer as vice-chairman to take charge in case the chairman is absent or disqualified.

Part 26

Activities of the Board

69.-(1) The Minister for Science, Technology and Innovation shall lay down specific rules for the Telecommunications Complaints Board's activities and case administration, including rules on the following:

- 1) collection of fees for cases dealt with by the Board and

- 2) that appeals against a decision made by the National IT and Telecom Agency shall be submitted to the Telecommunications Complaints Board within specific time limits.

(2) The Minister for Science, Technology and Innovation shall make secretarial assistance available to the Board.

(3) In its activities the Telecommunications Complaints Board shall be independent of instructions on how to deal with and decide individual cases. The chairman of the Board shall organise the work of the Telecommunications Complaints Board, including work in its secretariat.

70.-(1) The Telecommunications Complaints Board shall deal with cases referred to the Board by statute or rules issued under statute.

(2) As far as possible, the decisions of the Telecommunications Complaints Board regarding appeals against the National IT and Telecom Agency's decisions shall be made no later than three months after the date on which the appeal was submitted to the Board.

71.-(1) The decisions of the Telecommunications Complaints Board cannot be brought before other administrative authorities.

(2) The decisions of the Telecommunications Complaints Board may be brought before the courts not later than eight weeks after the date on which the decision was communicated to the party concerned.

Chapter VIII

Publication of decisions

Part 27

Rules for publication

72.-(1) The National IT and Telecom Agency and the Telecommunications Complaints Board shall publish decisions made under section 33(2) and sections 38-41 of this Act.

(2) In addition, the National IT and Telecom Agency and the Telecommunications Complaints Board shall publish decisions of general interest or of significance to understanding the provisions of this Act or rules issued in pursuance thereof.

(3) Publication under subsections (1) and (2) shall be made within the framework of current confidentiality rules, including rules in the Public Administration Act and the Act on Processing of Personal Data.

Chapter IX

Duty to give information

Part 28

Information to be used for supervision etc.

73.-(1) The National IT and Telecom Agency may require all information and all material deemed relevant by the Agency for supervision of compliance with the provisions of this Act or rules laid down in pursuance thereof and for administration, analyses and specific decisions implemented and made under the relevant provisions of the Act, from:

- 1) providers of electronic communications networks or services,
- 2) owners of electronic communications networks,
- 3) providers of information or content services,
- 4) providers of number information databases and registers,
- 5) natural and legal persons as mentioned in section 9 and in rules laid down in pursuance thereof,
- 6) third parties as mentioned in section 30(4),
- 7) providers of payphones,
- 8) providers of telecommunications terminal equipment used for mobile communications services,
- 9) providers of conditional access services,
- 10) holders of the ownership of conditional access products and systems, and
- 11) end-users.

(2) From the parties obliged under subsection (1), nos. 1-7 and 9-11, the National IT and Telecom Agency may request information for the purpose of passing it on to the European Commission or the national regulatory authorities in other EU member states to enable these to meet their tasks in relation to commitments under the Treaty or commitments under Community law. The National IT and Telecom Agency shall notify the parties from whom information has been requested prior to passing it on to the European Commission or national regulatory authorities in other EU member states.

(3) From the parties mentioned in subsection (1), the Telecommunications Complaints Board may request all information and all material deemed relevant by the Board for its decisions regarding compliance with the provisions of this Act or rules laid down in pursuance thereof.

(4) The Telecommunications Complaints Board and the National IT and Telecom Agency may prescribe how and in what form such information and material shall be submitted.

Part 29

Information from other EU countries

74. Information received or originating from national regulatory authorities in other EU member states shall be regarded as confidential if the originating national regulatory authority regards the information as business secrets under EU rules or national rules.

Part 30

Statistics etc.

75.-(1) The National IT and Telecom Agency shall prepare and publish current statistics and documentation on various matters within the telecommunications market deemed relevant by the Agency. The purpose is to make it possible to assess and compare the overall provision of electronic communications networks and services and to provide an overview of how competition is working in the telecommunications market.

(2) The National IT and Telecom Agency may demand that providers of electronic communications networks or services deliver all material and all information, including information on the providers' competitive situation, market shares etc., deemed necessary for preparing documentation and statistics as mentioned in subsection (1).

Chapter X

Right of appeal

Part 31

Appeal

76.-(1) The National IT and Telecom Agency's decisions made under this Act or rules issued in pursuance thereof as well as case administration in connection therewith may be appealed to the Telecommunications Complaints Board, but see subsections (2) and (3).

(2) The National IT and Telecom Agency's decisions made under section 63 and decisions on compliance with rules laid down under section 62 and case administration in connection therewith may not be appealed to the Telecommunications Complaints Board. These decisions shall be appealed to the Minister for Science, Technology and Innovation.

(3) Provisional decisions under section 55(2), decisions on the duty to give information, cf. section 73, section 75(2), or rules about this issued under section 64(1), and decisions made under section 79(1) may not be appealed to other administrative authorities.

77. Decisions under section 33(2) and sections 38-41 may, in addition to appeal by the party to whom the National IT and Telecom Agency's decision is addressed, be appealed by the providers of public electronic communications networks or services who, at the time of the Agency's decision, are operating on the market governed by the decision.

Part 32

Suspensive effect

78.-(1) Appeals against the National IT and Telecom Agency's decisions under Chapter IV of this Act or rules laid down in pursuance thereof cannot be given any suspensive effect, but see subsection (2).

(2) The chairman of the Telecommunications Complaints Board may give an appeal as mentioned in subsection (1) a suspensive effect if warranted by quite exceptional circumstances.

(3) The chairman of the Telecommunications Complaints Board may attach special terms to a decision under subsection (2).

(4) The Minister for Science, Technology and Innovation shall lay down specific rules on the ability of the National IT and Telecom Agency and the Telecommunications Complaints Board to give an appeal a suspensive effect in areas other than those mentioned in subsection (1) and on the effect thereof.

Chapter XI

Sanctions and penalty provisions

Part 33

Enforcement fines

79.-(1) In case the parties obliged under section 73(1), nos. 1-7, 9 and 10, fail to submit information that the National IT and Telecom Agency or the Telecommunications Complaints Board may require under this Act, or to comply with decisions from the authorities concerned made under this Act or rules laid down in pursuance thereof, the authorities concerned may impose enforcement fines on the party to whom the duty to give information or the decision is addressed, for the purpose of enforcing compliance therewith.

(2) In case a provider designated as USO provider under section 15(2) fails to comply with a decision made by the National IT and Telecom Agency under this Act or rules laid down in pursuance thereof, or in case a USO provider fails to pay enforcement fines imposed under subsection (1), the National IT and Telecom Agency may withdraw the designation as USO provider.

(3) In case a provider designated as USO provider under section 15(2) fails to comply with a decision made by the Telecommunications Complaints Board under this Act or rules laid down in pursuance thereof, or in case a USO provider fails to pay enforcement fines imposed by the Telecommunications Complaints Board under subsection (1), the Telecommunications Complaints Board may order the National IT and Telecom Agency to withdraw the designation as USO provider.

Part 34

Application of regulations

80. The Minister for Science, Technology and Innovation may lay down such rules as might be necessary to apply regulations issued by the European Communities in the field of telecommunications legislation, including rules on financial penalties or enforcement fines for failure to comply with regulations.

Part 35

Penalties

81.-(1) A fine shall be imposed on:

- 1) any person who violates section 7(1), section 10(3) and (4), section 13, section 31(4)-(7), section 35 or section 63(2), (3) and (5),
- 2) any provider who fails to comply with an obligation as mentioned in section 41(2), nos. 2 and 3, imposed on the provider pursuant to a decision made under section 41(1),
- 3) any person who wilfully or grossly negligently violates section 65, or
- 4) the USO provider who, in special circumstances, fails to comply with rules, terms and obligations mentioned in section 16 and section 17(4), or maximum prices fixed under section 17(1) and (2),

(2) Rules laid down under section 3, section 8(1), and sections 9, 61 and 62 may prescribe penalties in the form of fines for violating the rules.

(3) Rules laid down under sections 14 and 15 may prescribe penalties in the form of fines for any USO provider who repeatedly or grossly violates rules, terms and obligations in the regulations.

(4) Criminal liability may be imposed on companies etc. (legal persons) under the rules of Part 5 of the Penal Code.

(5) In assessing the penalty under subsection (1), no. 2, the amount of the fine, besides being fixed under the general rules of Part 10 of the Penal Code, shall also take into account the legal person's turnover during the last year before the judgment is obtained or a fine is imposed.

Chapter XII

Commencement and transitional provisions, etc.

Part 36

Coming into force and transitional arrangements

82.-(1) This Act shall come into force on 25 May 2011.

(2) The Act on Competitive Conditions and Consumer Interests in the Telecommunications Market, cf. Consolidated Act No. 780 of 28 June 2007, shall be repealed.

(3) Administrative regulations and decisions, including market analyses, and appointments that have been issued, made or maintained under the Act on Competitive Conditions and Consumer Interests in the Telecommunications Market, cf. Consolidated Act No. 780 of 28 June 2007, or rules issued in pursuance thereof, shall remain in force until they cease according to their content or are repealed.

Part 37

Applicability to the Faroe Islands and Greenland.

83.-(1) This Act shall not apply to the Faroe Islands and Greenland.

(2) All or any of the provisions of Parts 4 and 5 and Chapter XI may be brought into force by Royal Decree for Greenland.

¹ This Act contains rules implementing parts of Directive 2002/19/EF of the European Parliament and of the Council of 7 March 2002 on access to, and interconnection of, electronic communications networks and associated facilities (Access Directive), Official Journal 2002, no. L 108, page 7; Directive 2002/21/EC of the European Parliament and of the Council of 7 March 2002 on a common regulatory framework for electronic communications networks and services (Framework Directive), Official Journal 2002, no. L 108, page 7; Directive 2002/22/EC of the European Parliament and of the Council of 7 March 2002 on universal service and users' rights relating to electronic communications networks and services (Universal Service Directive), Official Journal 2002, no. L 108, page 51; Directive 2002/58/EC of the European Parliament and of the Council of 12

July 2002 concerning the processing of personal data and the protection of privacy in the electronic communications sector (e-Privacy Directive), Official Journal 2002, no. L 201, page 37; Commission Directive 2002/77/EC of 16 September 2002 on competition in the markets for electronic communications networks and services, Official Journal 2002, no. L 249, page 21; Directive 2002/20/EC of the European Parliament and the Council of 7 March 2002 on the authorisation of electronic communications networks and services (Authorisation Directive), Official Journal 2002, no. L 108, page 21); Directive 98/84/EC of the European Parliament and of the Council of 20 November 1998 on the legal protection of services based on, or consisting of, conditional access, Official Journal 1998, no. L 320, page 54; Directive 2009/140/EC of the European Parliament and of the Council of 25 November 2009 amending Directives 2002/21/EC on a common regulatory framework for electronic communications networks and services, 2002/19/EC on access to, and interconnection of, electronic communications networks and associated facilities, and 2002/20/EC on the authorisation of electronic communications networks and services, Official Journal 2009, no. L 337, page 37;. and Directive 2009/136/EC of the European Parliament and of the Council of 25 November 2009 amending Directive 2002/22/EC on universal service and users' rights relating to electronic communications networks and services, Directive 2002/58/EC concerning the processing of personal data and the protection of privacy in the electronic communications sector and Regulation (EC) No 2006/2004 on cooperation between national authorities responsible for the enforcement of consumer protection laws, Official Journal 2009, no. L 337, page 11.