

Translation

Consolidated Act No. 663 of 10 July 2003

Act on the Establishment and Joint Utilization of Masts for Radiocommunications Purposes etc. (Consolidated Act)¹

This is an Act to consolidate Act No. 212 of 30 March 1999 on the Establishment and Joint Utilization of Masts for Radiocommunications Purposes etc., with the amendments following from section 2 of Act No. 420 of 6 June 2002, section 3 of Act No. 1088 of 17 December 2002, and section 3 of Act No. 450 of 10 June 2003.

PART 1

Scope and application

1.-(1) The purpose of this Act is, by setting a framework for joint utilization of masts erected for radiocommunications purposes and mounting of antenna systems on buildings and other high structures, to ensure optimal radiocommunications, at the same time limiting the total number of masts and the effect of these on the environment as much as possible.

(2) This Act shall apply to:

- 1) Joint utilization of masts etc. used for radiocommunications purposes in electronic communications networks.
- 2) Access to mount antenna systems on buildings and other high structures of more than two storeys, where the external walls or roof of the building is raised more than 8.5 m above ground level, and where the municipal council has given a permission for this under rules laid down in pursuance of section 8(1), no. 3, of the Building Act.
- 3) Access to mount antenna systems on high structures other than those referred to in no. 2, including silos, windmills and masts not used for radiocommunications purposes (electrical pylons, light masts etc.) to the extent that the height of these structures is greater than the height restrictions of the Building Act.

¹ This Act contains rules implementing parts of Directive 2002/19/EC 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 p. 7); parts of 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 p. 33); and parts of Directive 2002/20/EC of the European Parliament and of the Council of 7 March 2002 on the authorisation of electronic communications networks and services (Authorisation Directive) (Official Journal 2002 No. L 108 p. 21).

(3) Subsection (2) shall not apply to masts, buildings or other high structures belonging to the police.

(4) In this Act, antenna systems shall mean cables, antenna supporting tubes and antennas mounted on the mast, building or structure itself, or on the supporting tubes mounted on the mast, building or structure.

(5) The Minister of Science, Technology and Innovation may lay down rules to the effect that the provisions of this Act in respect of joint utilization shall apply correspondingly, in whole or in part, to antenna systems.

(6) Lessees and holders of user rights shall be placed on an equal footing with owners of masts, buildings and other high structures if the items leased or the user right in question is not initially utilized in full. However, this shall not apply to the rules in section 2(8), section 2(10), section 8(4) and section 10(8). Owners of masts, buildings and other high structures have a duty to notify lessees and holders of user rights, as referred to in the first sentence hereof, of any requests and orders for joint utilization and any requests and orders for mounting of antenna systems. Similar rules shall apply to the rural zone and building authority when dealing with cases regarding joint utilization and mounting of antenna systems under this Act.

PART 2

Joint utilization of masts for radiocommunications purposes

2.-(1) Owners of masts for radiocommunications purposes shall meet requests from other parties for joint utilization of the mast in question. In this connection, owners shall also meet requests for joint utilization of the associated buildings etc. to the extent that such joint utilization is an element in the requesting party's utilization of the mast.

(2) Requests under subsection (1) may refer to the establishment of new agreements on joint utilization or modification of agreements already established.

(3) The provisions of subsections (1) and (2) shall also apply where joint utilization requires the mast in question to be extended or replaced.

(4) The provisions of subsections (1) and (2) shall not apply where there are technical impediments to joint utilization. Technical impediments shall mean:

- 1) That joint utilization is not possible because of impediments relating to radio engineering.
- 2) That extension or replacement of the mast in question requires the existing user(s) of the mast to close down the operation of publicly available telecommunications services or radio or TV programme services to meet the request. However, the need for an interruption not exceeding two hours in connection with the extension or replacement shall not justify the refusal of requests for joint utilization, unless the mast is used for

emergency and safety services or for radio or TV programme services where even short interruptions should be avoided.

- 3) That special safety regulations laid down under other legislation, or regulations laid down by public authorities, are prescribed for access to, or use of, the mast in question which make joint utilization impossible.
 - 4) That in relation to joint utilization of the associated buildings etc., there is no possibility of physical separation of the parties' equipment, and that separate access cannot be established to this.
- (5) A request under subsection (1) presupposes that:
- 1) the National IT and Telecom Agency, under the Act on Radio Frequencies, has assigned the applying party an individual licence to use radio frequencies, and that the request concerns the use of such frequencies, or
 - 2) the applying party, under the Act on Radio Frequencies, is exempted from the requirement for an individual licence.
- (6) It shall be a condition of joint utilization of masts as mentioned in subsections (1) and (3) that the necessary permissions to mount additional antenna systems or to extend or replace such systems have been given by the rural zone and building authorities, cf. section 35(1) and (4) of the Planning Act, section 16(1) of the Building Act, and sections 5 and 6 of the present Act.
- (7) To the extent that special safety regulations have been prescribed under other legislation for the mast in question, joint utilization shall be subject to the terms and limitations resulting from this.
- (8) In case of replacement as mentioned in subsection (3), the owner of the existing mast, as regards the costs relating to the replacement, including the costs of dismantling the existing mast, may choose between the following:
- 1) Bear the costs himself.
 - 2) Order the applying party to take charge of the establishment of the new mast and, in this connection, to bear all costs relating to the replacement. In that case the applying party shall have the ownership of the newly established mast. The owner of the existing mast may require that a right to use the newly established mast be granted to him for an indefinite duration and free of charge. The right to use the mast for an indefinite duration and free of charge shall comprise a number of positions corresponding to the current use of the existing mast by the person concerned at the time of the replacement as well as reservations of additional positions, cf. section 9(2), unless otherwise agreed between the parties. The owner of the existing mast may require that an agreement be made to the effect that the new mast should remain at the site for a period corresponding to the remaining life of the existing mast.
- (9) Where masts belonging to the national defence forces are replaced for the purpose of joint utilization, subsection (8), no. 2, shall not be applicable. Without transfer of ownership, the

Ministry of Defence, following negotiation with the applying party, to the extent that access to a transmitting position covered by the mast in question is desired by the party, may require the party to take charge of the establishment of the new mast and, in this connection, to defray all costs relating to the replacement.

(10) Operation and maintenance of the mast and the antenna systems placed in the mast shall be undertaken by the owner of the mast unless otherwise agreed between the parties.

(11) Access to use a third party's areas for the purpose of joint utilization of a mast shall be ensured via an agreement on this, or, in case such agreement cannot be negotiated, by using the procedure in section 15.

(12) On extension or replacement as mentioned in subsection (3), all rights in the existing mast, including reservations, cf. section 9(2), shall be transferred without changes to the newly established mast.

3.-(1) The rural zone authority, or in cases where the rural zone authority is not involved, the building authority, cf. section 2(6), may issue an order to give access to joint utilization of masts for radiocommunications purposes. Such order may replace, supplement or modify agreements under section 2.

(2) The provision in subsection (1) shall apply correspondingly to orders on joint utilization of associated buildings etc., to the extent that such joint utilization is an element in the requesting party's utilization of the mast.

(3) In cases where the applying party requests that an order be issued, orders under subsections (1) and (2) may solely be issued where the applying party has substantiated that it has not been possible to negotiate an agreement on joint utilization.

(4) Section 2(2)-(12) shall apply correspondingly in cases under subsections (1) and (2).

4.-(1) In cases about joint utilization of masts with a height of more than 100 metres, the rural zone and building authority shall refuse to give permission to joint utilization, cf. section 2, or to issue an order for joint utilization, cf. section 3, to the extent that such permission or order will prevent the granting of subsequent requests for joint utilization for radio or TV purposes as registered in the survey referred to in section 16(2).

(2) Notwithstanding subsection (1), the owner may grant requests for joint utilization provided that a clause is inserted in the agreement on joint utilization stipulating that antenna systems mounted shall be removed when the relevant antenna position is to be used for the intended radio or TV activity.

5.-(1) In cases under sections 2 and 3, where there is a dispute over payment for the agreed or ordered joint utilization, the owner who, under section 2, makes an agreement, or who, under section 3, receives an order about this, and any other rights holders, shall receive full compensation as a minimum. The payment obligation shall rest upon the party who has made

the request for joint utilization pursuant to section 2, or who is given access to joint utilization pursuant to section 3.

(2) Failing agreement about the question of compensation, this shall be settled by a court of arbitration for which each of the parties shall choose one arbitrator. If agreement cannot be reached between the arbitrators, settlement shall be made through an award given by an umpire appointed by the president of the relevant High Court. The decision under the first and second sentences hereof shall be made on the basis of a proposal from the rural zone or building authority, cf. section 3(1), for the intended permission or the intended order.

(3) Subject to a request being made to the umpire within four weeks from the award, each of the parties may submit the assessment of compensation to the relevant valuation commission under the rules of section 19 of the Act on Expropriation Procedures regarding Real Property. In other cases the rules of section 26 of the said Act shall apply correspondingly.

(4) When the question of compensation has been decided by the court of arbitration, the umpire or the valuation commission, cf. subsections (2) and (3), and the amount of compensation has been paid, or security has been provided for the payment thereof on the issue of the permission or order, the permission as mentioned in section 2(6) may be given, or the order under section 3 be issued by the rural zone or building authority, cf. section 3(1).

(5) When deciding the question of compensation, cf. subsection (3), the valuation commission may rule that the applying party should provide a sum as security to cover any higher compensation fixed through a decision of the court.

6.-(1) In cases under sections 2-3 where there is a dispute over access to use a third party's areas or payment for this, and joint utilization will therefore imply expropriation under section 15 of this Act, the rural zone or building authority, cf. section 3(1), before giving its permission as mentioned in section 2(6), or issuing an order under section 3, shall submit the case to the National IT and Telecom Agency for the purpose of any subsequent submission to the expropriation commission under the procedure in section 15. The rural zone or building authority's submission of the case to the National IT and Telecom Agency shall contain a proposal for the intended permission or the intended order.

(2) When expropriation has been made and when the question of compensation has been decided, either because the time limit for filing complaints has expired or through the ruling of the valuation commission, the rural zone or building authority may give a permission as mentioned in section 2(6) or issue an order as mentioned in section 3, cf. section 3(1).

(3) However, a permission or order, cf. subsection (2), cannot be issued until the amount of compensation has been paid or security has been provided for the payment thereof on the issue of the permission or order, and until a possible case under section 5 has been settled and the conditions of section 5(4) have been complied with.

7. The Minister of Science, Technology and Innovation may lay down rules on payment in addition to that mentioned in sections 5 and 6, and other terms for joint utilization of masts for radiocommunications purposes and for joint utilization of buildings etc. falling within section 2(1), second sentence. Furthermore, the Minister of Science, Technology and Innovation may

lay down rules on the extent to which the provisions regarding inspection of agreements, supervision, mediation, stipulation of terms, duty to give information, imposition of enforcement fines, and complaints procedure as set out in the Act on Competitive Conditions and Consumer Interests in the Telecommunications Market shall apply correspondingly to agreements on additional payment, terms etc. for joint utilization of masts for radiocommunications purposes.

8.-(1) In connection with applications for permission to erect new masts for radiocommunications purposes or for extension or conversion of existing masts for radiocommunications purposes, the rural zone or building authority, cf. section 3(1), may lay down terms for the overall dimensioning of the mast, with the aim of making subsequent joint utilization possible.

(2) Terms under subsection (1) shall be conditional on information being available from the National IT and Telecom Agency indicating that other holders of licences to use radio frequencies have plans to set up masts or antenna systems for radiocommunications purposes in the geographical area concerned, cf. section 16.

(3) Terms under subsection (1) may only be laid down where there are no technical impediments to subsequent joint utilization. Section 2(4), nos. 1-3, shall apply correspondingly.

(4) Terms under subsections (1)-(3) may be laid down in relation to owners of masts for radiocommunications purposes.

9.-(1) Owners of masts for radiocommunications purposes shall have access to place their own antenna systems prior to the choice of positions by other parties for the purpose of placing antenna systems.

(2) Owners of masts for radiocommunications purposes shall have access, to the necessary extent, to reserve further positions for later use prior to the choice of positions by other parties for the purpose of placing antenna systems. Information about owners' reservations in their own masts shall be submitted to the National IT and Telecom Agency for the use of the survey referred to section 16(2).

(3) The Minister of Science, Technology and Innovation may lay down rules on the distribution of positions among owners and existing holders of user rights and on the distribution of other positions among parties who have requested or who wish to request joint utilization.

PART 3

Access to mount antenna systems on buildings, structures and masts not used for radiocommunications purposes

10.-(1) Owners of masts, buildings and structures included under section 1(2), nos. 2 and 3, shall meet requests for access to mount antenna systems on the mast, building or structure in question.

(2) Requests under subsection (1) may refer to the establishment of new agreements or modification of agreements already established.

(3) The provisions of subsections (1) and (2) shall not apply if there are technical impediments to the mounting of antenna systems. Technical impediments shall mean:

- 1) That mounting of antenna systems is not possible because of impediments relating to radio engineering.
- 2) That mounting of antenna systems is not possible because of the design, carrying capacity etc. of the mast, building or structure in question.
- 3) That special safety regulations laid down under other legislation, or regulations laid down by public authorities, are prescribed for access to the mast, building or structure in question which make mounting of antenna systems impossible.

(4) Requests under subsection (1) may be made by parties included under section 2(5).

(5) It shall be a condition of the placing of antenna systems as mentioned in subsection (1) that the necessary permissions to mount antenna systems have been given by the rural zone and building authorities, cf. section 35(1) and (4) of the Planning Act, section 16(1) of the Building Act, and sections 12 and 13 of the present Act. Furthermore, the placing of antenna systems on the church buildings of the Danish National Evangelical Lutheran Church or on the church buildings of recognized or approved religious organizations shall be subject to permission from the diocesan authority or the religious organization in question.

(6) To the extent that special safety regulations have been prescribed under other legislation for the masts, buildings and structures referred to in section 1(2), nos. 2 and 3, the mounting of antenna systems shall be subject to the terms and limitations resulting from this.

(7) Owners of antenna systems placed on masts, buildings and other high structures included under subsection (1) shall meet requests from other parties for joint utilization of the associated buildings etc. to the extent that such joint utilization is related to the requesting party's mounting and utilization of his own antenna systems on the same mast, building or structure. It shall be a condition of joint utilization that the equipment of the parties can be physically separated and that separate access can be established to the equipment.

(8) If special safety regulations apply to the mast, building or structure in question, operation and maintenance of the antenna systems placed thereon shall be undertaken by the owner of the mast, building or structure unless otherwise agreed between the parties.

(9) Access to use a third party's areas for the purpose of mounting antenna systems and joint utilization of the associated buildings shall be ensured via an agreement on this, or, in case such agreement cannot be negotiated, by using the procedure in section 15.

11.-(1) The rural zone authority, or in cases where the rural zone authority is not involved, the building authority, cf. section 2(6), may issue an order to give access to mounting antenna systems on masts, buildings and other high structures included under section 1(2), nos. 2 and 3. Such order may replace, supplement or modify agreements under section 10.

(2) The provision in subsection (1) shall apply correspondingly to orders on joint utilization of buildings etc. associated with other antenna systems placed on the mast, building or structure in question, cf. section 10(1), to the extent that such joint utilization is an element in the requesting party's mounting and utilization of his own antenna systems on the same mast, building or structure.

(3) In cases where the applying party requests that an order be issued, orders under subsections (1) and (2) may solely be issued where the applying party has substantiated that it has not been possible to negotiate an agreement on the mounting of antenna systems.

(4) Section 10(3)-(9) shall apply correspondingly in cases under subsections (1) and (2).

12.-(1) In cases under sections 10 and 11, where there is a dispute over payment for the agreed or ordered access to mounting of antenna systems, the owner who, under section 10, makes an agreement, or who, under section 11, receives an order about this, and any other rights holders, shall receive full compensation as a minimum. The payment obligation shall rest upon the party who has made the request for mounting of antenna systems pursuant to section 10, or who is given access to mounting of antenna systems pursuant to section 11.

(2) Failing agreement about the question of compensation, this shall be settled by a court of arbitration for which each of the parties shall choose one arbitrator. If agreement cannot be reached between the arbitrators, settlement shall be made through an award given by an umpire appointed by the president of the relevant High Court. The decision under the first and second sentences hereof shall be made on the basis of a proposal from the rural zone or building authority, cf. section 3(1), for the intended permission or the intended order.

(3) Subject to a request being made to the umpire within four weeks from the award, each of the parties may submit the assessment of compensation to the relevant valuation commission under the rules of section 19 of the Act on Expropriation Procedures regarding Real Property. In other cases the rules of section 26 of the said Act shall apply correspondingly.

(4) When the question of compensation has been decided by the court of arbitration, the umpire or the valuation commission, cf. subsections (2) and (3), and the amount of compensation has been paid, or security has been provided for the payment thereof on the issue of the permission or order, the permission as mentioned in section 10(5) may be given, or the order under section 11 be issued by the rural zone or building authority, cf. section 3(1).

(5) When deciding the question of compensation, cf. subsection (3), the valuation commission may rule that the applying party should provide an amount as security to cover any higher compensation fixed through a decision of the court.

13.-(1) In cases under sections 10 and 11 where there is a dispute over access to use a third party's areas or payment for this, and mounting of antenna systems will therefore imply expropriation under section 15 of this Act, the rural zone or building authority, cf. section 3(1), before giving its permission as mentioned in section 10(5), or issuing an order under section 11, shall submit the case to the National IT and Telecom Agency for the purpose of any subsequent submission to the expropriation commission under the procedure in section 15. The rural zone or building authority's submission of the case to the National IT and Telecom Agency shall contain a proposal for the intended permission or the intended order.

(2) When expropriation has been made and when the question of compensation has been decided, either because the time limit for filing complaints has expired or through the ruling of the valuation commission, the rural zone or building authority, cf. section 3(1), may give a permission as mentioned in section 10(5) or issue an order under section 11.

(3) However, a permission or order, cf. subsection (2), cannot be issued until the amount of compensation has been paid or security has been provided for the payment thereof on the issue of the permission or order, and until a possible case under section 12 has been settled and the conditions of section 12(4) have been complied with.

14. The Minister of Science, Technology and Innovation may lay down rules on payment in addition to that mentioned in sections 12 and 13, and other terms for access to mount antenna systems and for joint utilization of associated buildings etc. falling within section 10(7). Furthermore, the Minister of Science, Technology and Innovation may lay down rules on the extent to which the provisions regarding inspection of agreements, supervision, mediation, stipulation of terms, duty to give information, imposition of enforcement fines, and complaints procedure as set out in the Act on Competitive Conditions and Consumer Interests in the Telecommunications Market shall apply correspondingly to agreements on additional payment, terms etc. for mounting of antenna systems.

PART 4

Expropriation

15.-(1) When required by the common good, the National IT and Telecom Agency may allow expropriation to be initiated under the rules of the Act on Expropriation Procedures regarding Real Property for the purpose of ensuring access to use areas in which masts or antenna systems can be established for radiocommunications purposes, or for the purpose of constructing buildings for equipment to be used for masts or antenna systems for radiocommunications purposes.

(2) Expropriation under subsection (1) may be made for new plant, extension and modification of existing plant and for necessary supplementary measures, including establishment of the requisite access roads etc.

(3) Requests for initiation of expropriation under subsection (1) shall be submitted to the National IT and Telecom Agency and may be made by holders of licences to use radio frequencies for radio-based telecommunications infrastructure included in the provision of public electronic communications networks or services, or for provision of nationwide radio or TV services via the terrestrial transmission network.

(4) When making decisions under subsection (1), the National IT and Telecom Agency shall ensure, among other things, that expropriation will exclusively take place in cases where:

- 1) there are no other possibilities of establishing the plant referred to in subsection (1) to which reference may reasonably be made, and
- 2) the plant referred to in subsection (1) is of essential importance to the provision of public electronic communications networks or services.

(5) The liability to pay compensation in connection with expropriation and the obligation to defray the costs of the expropriation proceedings shall lie with the party who has made the request for expropriation or the party who, under sections 2, 3, 10 and 11, obtains access to joint utilization or to the mounting of antenna systems.

PART 5

Survey of radio coverage plans

16.-(1) Holders of licences to use radio frequencies for public mobile communications networks with associated basic services, and enterprises which, under the Act on Radio and Television Services, have a licence for operation of nationwide radio or TV services via the terrestrial transmission network, shall submit radio coverage plans for at least two years ahead to the National IT and Telecom Agency.

(2) On the basis of the information referred to in subsection (1), the National IT and Telecom Agency shall prepare and maintain an overall survey of the total future radio coverage plans of the licence holders in question for at least two years ahead.

(3) On the basis of this survey the National IT and Telecom Agency shall deliver opinions to the rural zone or building authority, cf. section 8(2). The Agency's opinion shall be delivered not later than one month after the request from the rural zone or building authority.

(4) Information about radio coverage plans shall not imply any restriction on the access to modify radio coverage plans for the party who has given such information. Information about modifications shall be given to the National IT and Telecom Agency.

(5) The National IT and Telecom Agency shall lay down specific rules on the delivery of information under subsections (1) and (4) and section 9(2), second sentence.

(6) The Minister of Science, Technology and Innovation may lay down rules under which holders of radio frequencies other than those mentioned in subsection (1) shall submit radio coverage plans to the National IT and Telecom Agency for the purpose of inclusion in the survey mentioned in subsection (2).

PART 6

Decisions, complaints etc.

17.-(1) If it is contested that the mounting of antenna systems is possible in terms of structural engineering, the rural zone or building authority, cf. section 3(1), may ask for an expert opinion on construction technology. The opinion shall be obtained before a decision is made under section 3(1) and section 11(1).

(2) The party contesting that the mounting of antenna systems is possible in terms of construction technology may be ordered by the rural zone or building authority, cf. section 3(1), to cover the costs of asking for the expert opinion on construction technology as referred to in subsection (1) in case the opinion confirms that the mounting of antenna systems is possible in terms of structural engineering.

18.-(1) If it is contested that the mounting of antenna systems is possible in terms of radio engineering, the rural zone or building authority, cf. section 3(1), shall ask the National IT and Telecom Agency to deliver an opinion on radio engineering aspects. The opinion shall be obtained before a decision is made under section 3(1) and section 11(1).

(2) For the purpose of delivering the opinion referred to in subsection (1) the National IT and Telecom Agency will request information from the parties to the case. The information shall be submitted to the National IT and Telecom Agency not later than 14 days after receiving a request from the Agency. The Agency's opinion under subsection (1) shall be delivered not later than one month after expiry of this time limit.

(3) The opinion of the National IT and Telecom Agency under subsection (1) shall not be binding on the rural zone or building authority unless the opinion constitutes a rejection that mounting of antenna systems is possible in terms of radio engineering. In that case the rural zone or building authority shall not be in a position to issue orders to give access to joint utilization under section 3(1), lay down terms under section 8(1) or issue orders to give access to mount antenna systems under section 11(1).

19.-(1) The National IT and Telecom Agency and the rural zone or building authority may demand from the parties all such information and all such material as is deemed necessary for administration of this Act and administrative regulations issued in pursuance thereof.

(2) From the rural zone and building authorities and licence holders governed by this Act, the National IT and Telecom Agency may request information for the purpose of passing this 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 rural zone and building authorities and licence holders from whom information has been requested prior to forwarding this to the European Commission or national regulatory authorities in other EU member states.

(3) The National IT and Telecom Agency may request information from the holders of licences mentioned in section 16(1) for the purpose of publishing statistics on the total number of masts and antenna systems.

(4) The rules of the Open Administration Act and the Public Administration Act on access to documents shall not apply to information received by the National IT and Telecom Agency from the European Commission or national regulatory authorities in other EU member states if the authority giving the information considers that such information shall not be publicly accessible.

19a.-(1) Decisions under sections 3, 11 and 15 shall be made as quickly as possible and in all circumstances within four months from the date on which the necessary information is available.

(2) Decisions under subsection (1) shall be published and notified simultaneously to the parties.

19b.-(1) Rights, conditions and procedures concerning general authorizations and rights of use or licences for joint utilization of masts with associated facilities or access to mounting antennas on buildings, structures and masts not used for radiocommunications purposes may only be amended in objectively justified cases and in a proportionate manner. Notice shall be given of the intention to make such amendments, and interested parties, including users and consumers, shall be allowed a sufficient period of time to express their views on the proposed amendments.

(2) The period shall be no less than four weeks except in exceptional circumstances.

19c. The National IT and Telecom Agency and the rural zone and building authorities shall be legally separate from, and functionally independent of, providers of electronic communications networks, electronic communications equipment or electronic communications services.

20.-(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 concrete 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 authorized to do so; 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 of Science, Technology and Innovation may not grant exemptions from administrative regulations issued by the Minister in pursuance of this Act.

21.-(1) The rural zone or building authority, cf. section 3(1), may impose enforcement fines on one or more of the parties to a case involving joint utilization and mounting of antenna systems, for the purpose of enforcing:

- 1) compliance with orders under section 3(1) and (2), and section 11(1) and (2),
- 2) observance of terms issued in pursuance of section 8(1), and
- 3) submission of information according to section 19(1).

(2) Distraint may be levied to recover the amounts.

22.-(1) Complaints about the decisions of the rural zone authority under section 3(1) and (2), section 8(1), and section 11(1) and (2) shall be submitted to the Nature Protection Board of Appeal, cf. section 58 of the Planning Act.

(2) The Nature Protection Board of Appeal may require the parties to give all relevant information deemed necessary for dealing with cases.

(3) The Nature Protection Board of Appeal shall not be bound by the National IT and Telecom Agency's opinion under section 18(1). The Board may obtain further information on radio engineering aspects in the case.

(4) The Nature Protection Board of Appeal may remit a complaint to the rural zone authority for further consideration, including further evaluation and clarification of technical aspects regarding joint utilization and mounting of antenna systems. In such cases the rural zone authority shall not be bound by the National IT and Telecom Agency's opinion under section 18(1).

(5) The decisions of the Nature Protection Board of Appeal cannot be referred to other administrative authorities.

(6) Sections 59 and 60 of the Planning Act shall apply correspondingly.

23.-(1) Complaints about the decisions of the building authority under section 3(1) and (2), section 8(1), section 11(1) and (2) shall be submitted to the office of the governor of the county, and in the districts of Copenhagen and Frederiksberg to the Prefect's Office in Copenhagen.

(2) The authorities mentioned in subsection (1) may require the parties to give all relevant information deemed necessary for dealing with cases.

(3) The office of the governor of the county and the Prefect's Office in Copenhagen shall not be bound by the National IT and Telecom Agency's opinion under section 18(1). The office of

the governor of the county and the Prefect's Office in Copenhagen may obtain further information on radio engineering aspects in the case.

(4) The office of the governor of the county and the Prefect's Office in Copenhagen may remit a complaint to the building authority for further consideration, including further evaluation and clarification of technical aspects regarding joint utilization and mounting of antenna systems. In such cases the building authority shall not be bound by the National IT and Telecom Agency's opinion under section 18(1).

(5) The decisions of the authorities mentioned in subsection (1) cannot be referred to other administrative authorities.

24.-(1) Complaints about the National IT and Telecom Agency's refusals under section 15(1), including complaints about the Agency's administration of cases in connection therewith, may be submitted to the Telecommunications Complaints Board appointed in pursuance of the Act on Competitive Conditions and Consumer Interests in the Telecommunications Market.

(2) The Minister of Science, Technology and Innovation may lay down rules to the effect that complaints about the National IT and Telecom Agency's decisions under administrative regulations issued in accordance with section 16(5) should be submitted to the Telecommunications Complaints Board.

(3) The National IT and Telecom Agency's opinion under section 18(1) and (3) and the laying down of administrative regulations by the Agency under section 16(5) cannot be referred to other administrative authorities.

(4) The Telecommunications Complaints Board may require the parties to give all relevant information deemed necessary for hearing of cases by the Board.

PART 6a

Harmonization

24a. The National IT and Telecom Agency shall notify rural zone and building authorities of relevant recommendations made by the European Commission under Article 19, cf. the procedure in Article 22(2), of Directive 2002/21/EC of the European Parliament and of the Council, in respect of the duty on national regulatory authorities to follow recommendations from the European Commission to the widest possible extent.

PART 7

Penalty provisions

25.-(1) Any person who:

- 1) fails to comply with orders issued pursuant to section 3(1) and (2), section 11(1) and (2),
- 2) does not give information pursuant to section 16(1), section 22(2), section 23(2), and section 24(4), and
- 3) fails to observe terms laid down pursuant to section 8(1)

shall be liable to a fine.

(2) Regulations issued pursuant to section 7, section 9(3), section 14 and section 16(6) may prescribe penalties in the form of fines for violating the rules.

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

PART 8

Coming into force, amendments

26.-(1) This Act shall come into force on 1 April 1999.

(2) The Act shall apply to applications for erection of masts for radiocommunications purposes or mounting of antenna systems submitted after 1 April 1999.

(3) (Omitted)

(4) (Omitted)

27. (Repealed)

28. This Act shall not apply to the Faroe Islands and Greenland.

Act No. 420 of 6 June 2002 contains the following commencement provision:

Section 9

This Act shall come into force on 1 July 2002.

Act No. 1088 of 17 December 2002 contains the following commencement provision:

Section 4

(1) Section 1 and section 2, nos. 2 and 3, shall come into force on 1 January 2003. Section 2, nos. 1 and 4, and section 3 shall come into force on 1 April 2003.

(2) (Omitted)

(3) Section 2, no. 1, and section 3 shall apply to complaints submitted on 1 April 2003 or later. Complaints submitted before 1 April 2003 shall be governed by the rules previously in force.

Act No. 450 of 10 June 2003 contains the following commencement provision:

Section 6

This Act shall come into force on 25 July 2003.

Ministry of Science, Technology and Innovation, 10 July 2003

Helge Sander

/ Sune Rahn