

# ELECTRONIC COMMUNICATIONS ACT

## I. GENERAL PROVISIONS

### Article 1 (contents of the Act)

This Act governs the conditions for ensuring an electronic communications network and for the provision of electronic communications services, ensuring universal service, management of the radio frequency spectrum and the use of number space (numbering), it lays down the conditions for restrictions on ownership rights, defines the rights of users, governs the operation of networks and services in emergency situations, governs the protection of secrecy and confidentiality of electronic communications, governs the resolution of disputes among subjects in the electronic communications markets, governs the responsibilities and tasks of the Postal and Electronic Communications Agency (hereinafter: Agency) as an independent regulative body as well as the powers of other bodies operating under this Act, and governs other issues relating to electronic communications.

### Article 2 (purpose of the Act)

The purpose of this Act is to establish effective competition in the electronic communications market, to maintain effective use of the radio frequency spectrum and of the number space, to ensure universal services and to protect the rights of users. The purpose of the Act is to promote the development of electronic communications networks and services in the Republic of Slovenia and thereby also economic and social development in the country generally, as well as the development of the internal market of the European Union, and to exercise the legitimate interests of all of its citizens.

### Article 3 (terms)

The terms used in this Act shall have the following definitions:

1. Electronic communications equipment are all the associated facilities of the electronic communications network that enable electronic communications services. They include, inter alia, the switching and routing equipment or all types of base stations or electrical cable systems, when they are used for the purpose of transmitting signals in the provision of radio and television broadcasting, cable television and cable communications irrespective of the type of information transmitted.

2. Electronic communications service means a service normally provided for remuneration which consists wholly or mainly in the transmission of signals on electronic communications networks, including telecommunications services and transmission services in networks used for broadcasting, but excluding services providing or exercising editorial control over content transmitted using electronic communications networks and services, and does not include Information Society services.
3. Electronic mail means any message in the form of text, voice, sound or image sent over a public communications network which can be stored in the network or in the recipient's terminal equipment until it is collected by the recipient.
4. Electronic communications network means transmission systems and, where appropriate, switching or routing equipment and other resources which permit the transmission of signals by wire, by radio, by optical or by other electromagnetic means, including satellite networks, fixed (circuit and packet switched, including Internet) and mobile terrestrial networks, electricity cable systems, if they are used for the transmission of signals, networks used for radio and television broadcasting, and cable TV networks, irrespective of the type of information transmitted.
5. Geographic number means a number from the numbering plan of the Republic of Slovenia from Article 59 of this Act (hereinafter: numbering plan), where part of its digit structure contains geographic significance used for routing calls to the physical location of the network termination point.
6. Universal service provider (hereinafter: provider) means a natural person or legal entity providing universal services or part thereof.
7. Public communications service means electronic communications service available to the general public.
8. Public pay telephone means a telephone available to the public, the use of which is paid for by such means as coins and/or credit or debit cards and/or pre-payment cards, including cards for use with dialling codes.
9. Publicly available telephone service means a service available to the general public that includes initiating and receiving national and international calls and access to emergency services through the numbers laid down for such services in the numbering plan, and may, where appropriate, include one or more of the following services: the provision of operator assistance, the provision of services providing information on subscribers (hereinafter: directory enquiry services), directories, provision of public pay phones, provision of service under special terms, provision of special facilities for users with disabilities or with special social needs and/or the provision of services through non-geographic numbers.
10. Public communications network means an electronic communications network used wholly or mainly for the provision of publicly available electronic communications services.
11. Public telephone network means an electronic communications network which is used to provide publicly available telephone services and which enables the transfer between network termination points of speech and other communications, such as facsimile and data communications.
12. Call means a communication established by means of a publicly available telephone service allowing two-way communication in real time.

13. Emergency call means a call to the number allocated to the body that deals with emergency services, including police, ambulance, rescue and fire services, as organised in the Republic of Slovenia.
14. Communication means information exchanged or transmitted between a finite number of parties by means of an electronic communications service, but does not include any information conveyed as part of a broadcasting service to the public over an electronic communications network, except to the extent that the information can be related to a clearly identifiable subscriber or user receiving such information.
15. End user means a user not providing public electronic communications networks or publicly available electronic communications services.
16. Local loop means the physical circuit connecting the network termination point at the subscriber's premises to the main distribution frame or equivalent facility in the fixed public telephone network.
17. Location data means any data processed in an electronic communications network which indicates the geographic position of the terminal equipment of a user of an electronic communications service.
18. Interconnection means the physical and logical linking of public communications networks used by the same or different operators in order to allow the users of one operator to communicate with users of the same or another operator, or to access services provided by another operator. Services may be provided by the parties involved or other parties who have access to the network. Interconnection is a specific type of access implemented between public communications network operators.
19. Non-geographic numbers means numbers from the numbering plan that are not geographic numbers. They include mobile, freephone (green telephone), premium rate numbers and the like.
20. Subscriber means any natural person or legal entity who or which is party to a contract with a provider of publicly available communications services for the use of such services or their provision by the provider.
21. A facility as part of the associated electronic communications infrastructure includes the building, section of a building, or independent premises within the building where electronic communications equipment is installed, as well as civil engineering work which consists of an aerial mast or a mast with an antenna mount or mounts for mounting antennas connected to the associated electronic communications equipment in the facility that enables the transmission of radio frequency signals including transmission over the satellite network.
22. Network termination point means the physical point at which a subscriber has access to a public communications network. In the case of networks involving switching or routing, the network termination point is identified by means of a specific network address, which may be linked to a subscriber number or name.
23. Operator means a natural person or legal entity who or which provides a public communications network or publicly available communications service.
24. Access means the making available of facilities and/or services to another operator under defined conditions, on either an exclusive or non-exclusive basis, for the purpose of providing electronic communications services. It covers inter alia: access to network elements and associated facilities, which may involve the connection of equipment by fixed or non-fixed means (in particular this includes access to the local loop and to facilities and services necessary to provide services over the local loop); access to

physical infrastructure including buildings, ducts and masts; access to relevant software systems including operational support systems; access to number translation or systems offering equivalent functionality; access to fixed and mobile networks, in particular for roaming; access to conditional access systems for digital television services; access to virtual network services.

25. Traffic data means any data processed for the purpose of the transmission of communications on an electronic communications network or for the billing thereof.
26. Associated facilities means those facilities associated with an electronic communications network and/or an electronic communications service which enable and/or support the provision of services via that network and/or service. It includes conditional access systems and electronic programme guides.
27. The presentation of the calling line identification is a function that enables the called subscriber to identify the network termination point from which the call originates on the basis of the number or code assigned to that network termination point.
28. The presentation of connected line identification is a function that allows the calling user to identify the network termination point where the call ends on the basis of the number or code assigned to that network termination point.
29. Consumer means any natural person who uses or requests a publicly available communications service for purposes which are outside his or her occupational or trading activities.
30. Amateur service is a radiocommunications service for the purpose of self-training, intercommunication (the establishment of interconnections) and technical investigation carried out by amateurs, that is, by duly authorized persons interested in radio technique solely with a personal aim and without pecuniary interest.
31. Amateur satellite service is a radiocommunications service using space stations or Earth satellites for the same purposes as those of the amateur service.
32. Radiocommunications services means electronic communications services provided through the use of radio frequencies in open space.
33. Radio frequency under this Act is part of the radio frequency spectrum and is defined by a central frequency and the width of the radio-frequency channel, upper and lower limit frequencies of the radio-frequency channel, or a statement of individual carrier frequencies.
34. Broadcasting means a radiocommunications service intended for the transmission and propagation of radio or television programmes with direct public reception in open space without selective choice. Programme has the meaning defined in the Act governing media.
35. Information society services mean services provided for remuneration, at a distance, with electronic means and upon individual request of the recipient of the service. "At a distance" shall mean that the service is provided without the two parties being present simultaneously. "With electronic means" shall mean that the service is sent at the point of origin and received at the final destination by electronic equipment for processing (including digital compression) and data storage and is sent, transmitted and received wholly via cable, radio, optical means, or other electromagnetic means. "Upon individual request of the recipient of the service" shall mean that the services are provided with the transmission of data upon individual request. Information society services include, in particular, the sales of goods and services, services of access to information or advertising over the internet and the access to the communications network services, transmission of data, or storing the recipient's data in the communications network.

36. Value added service means any service which requires the processing of traffic data, or location data other than traffic data, that are not necessary for the transmission of a communication or the billing thereof.
37. Conditional access system means any technical measure and/or arrangement whereby access to a protected broadcasting service in unencrypted form is made conditional upon subscription or other form of prior individual authorisation.
38. Wide-screen television service means a television service that consists wholly or mainly of programmes produced and edited to be displayed on a wide-screen television. The 16:9 format is the reference format for wide-screen television services.
39. Number means the number or prefix defined by recommendations E.164 of the International Telecommunications Union (ITU).
40. Emergency call numbers are the single European emergency call number "112" and all other numbers so stipulated in the numbering plan including the police number "113".
41. Harmful interference means interference which endangers the functioning of a radio-navigation service or of other safety services or which otherwise seriously degrades, obstructs or repeatedly interrupts radiocommunications services operating in accordance with national or Community regulations.
42. User means a natural person or legal entity using or requesting a publicly available communications service.
43. Controller in this Act shall mean the natural person or legal entity, public body, agency or any other body which alone or jointly with others determines the purposes and means of the processing of personal data.
44. Application Program Interface (API) means a software interface between applications, made available by broadcasters or service providers, and the resources in the enhanced digital television equipment for digital television and radio services.
45. The provision of an electronic communications network means the establishment, operation, control or making available of such a network.
46. Lawful interception shall mean the procedure ordained pursuant to the Act governing the penal procedure or to the Act governing the Slovenian Intelligence-Security Agency, wherein the operator collects the contents, circumstances and facts relating to communications at a specific point in the public communications network.
47. Leased lines are a type of electronic communication facility allowing the user transparent transmission connection between network termination points without the function of automatic routing or switching which would be available to the user as part of the functions of leased lines.
48. Enhanced digital television equipment means devices that can be placed on top of and connected to television sets or integrated digital television sets which can receive digital interactive television services.

## **II. ELECTRONIC COMMUNICATIONS NETWORKS AND ELECTRONIC COMMUNICATIONS SERVICES**

#### Article 4

(provision of electronic communications networks and services)

- (1) Any natural persons and legal entities may provide electronic communications networks and services, subject to the conditions set out in this Act and secondary legislation issued pursuant thereto and in accordance with other valid legislation, provided this does not endanger public order, human life and health, public security and the defence of the country.
- (2) The Agency shall within its authorisations supervise the compliance of the provision of electronic communications networks or services with the conditions of general authorisation arising from this Act and regulations issued pursuant thereto, except where stipulated differently by this Act in individual instances.

#### Article 5

(notification)

- (1) Prior to the commencement, alteration or cessation of the provision of public communications networks or services, notification must be given in writing to the Agency. If the public communications networks or services are provided without the notification, the inspector responsible for electronic communications (hereinafter: inspector) shall take appropriate action in accordance with the supervision procedure.
- (2) The notification from the previous paragraph of this Article must state all the data required by the Agency for maintenance of official records of operators and supervision, in particular:
  1. name, address and tax and registration numbers for natural persons,
  2. title, principal office and tax and registration numbers, register number and indication of legal representative for legal entities,
  3. short description of public communications networks and/or services including the description of the typical physical and environmental characteristics of the networks, facilities and the manner of their provision,
  4. envisaged date of commencement, alteration or cessation of the provision of public communications networks and/or services.
- (3) Evidence of the data from the previous paragraph of this Article and a declaration on compliance with all technical, safety and other defined conditions for the provision of public communications networks and/or services must be attached to the notification.
- (4) Operators shall be obliged to report changes to the data from clauses 1, 2 and 3 of the second paragraph of this Article within an interval of thirty (30) days of the occurrence thereof, and changes to the data from clause 4 of the same paragraph prior to the envisaged date.
- (5) Within seven (7) days of receipt of notification with all necessary data and evidence from the second and third paragraphs of this Article, the Agency shall record the operator in the official records and at the same time send to the operator confirmation of receipt of notification and recording in the official records. Recording in official records shall not form a condition for the exercise of rights and obligations of operators under this Act. The confirmation shall not be an administrative act and shall not in itself create rights and obligations under this Act.

- (6) Within seven (7) days of receipt of notification not containing all the necessary data and evidence from the second and third paragraphs of this Article, the Agency shall specifically call upon the operator to supplement the notification as necessary within an interval not shorter than eight (8) days.
- (7) The Agency may through its general act prescribe in more detail the content and form of the notification from the first paragraph of this Article and the content of data and evidence from the second and third paragraphs of this Article, as well as the form and content of the receipt of notification from the fifth paragraph of this Article.

## Article 6 (fees)

- (1) Pursuant to the notification from the first paragraph of the previous Article, an annual fee must be paid to the Agency from which the Agency shall cover the costs of implementing provisions of this Act except provisions from chapters five and six of this Act.
- (2) The method of calculating fees pursuant to this Article shall be prescribed by the minister responsible for electronic communications (hereinafter: minister), wherein he or she shall take into account the annual revenue of the operator from the provision of public communications networks and services but shall not be allowed to distort competition or create barriers to market entry. Depending on the amount of the above mentioned revenue, the operators shall be ranked into four categories so that operators with the lowest revenue are in the first category and the operators with the highest revenue are in the fourth category. The level of revenue increases with the consecutive number of the category. The income of operators ranked into the same category are the same.
- (3) The operator must no later than by 31 March of every year notify the Agency of the amount of revenue from the previous paragraph from the previous year.
- (4) If the Agency suspects on reasonable grounds the truthfulness of the data reported by the operator, the Agency or the responsible inspector (hereinafter: inspector) may, on the basis of the discretion of the Agency, inspect the data and estimate the revenue at the operator's expense. If the estimated revenue deviates substantially from the reported revenue from the second paragraph, the Agency shall take into account the estimated revenue in calculating fees.
- (5) The amount of fees to be paid on the basis of this Article is defined with a tariff, which is a general act of the Agency. In issuing the tariff the Agency shall take into account the necessary coverage of expenses from the first paragraph of this Article as regards the planned objectives and tasks defined in the plan of action of the Agency and the balance of financial resources from the previous year. The tariff comprises a special explanation that states the reasons for the adoption or change of the tariff and the objectives sought. The tariff is published in the *Uradni List* RS together with the explanation and enters into force after publication.
- (6) Before the tariff is issued or changed, the costs from the first paragraph of this Article must be determined and the deadlines must be set for the liable persons from the first paragraph of this Article to be called to submit their opinions, complaints and suggestions regarding the issue and change of the tariff, that must not be shorter than fifteen (15) days nor longer than two (2) months. During this period mutual interviews can be held. Before the tariff can be issued or changed it is necessary to acquire the consent of the Government.

## Article 7

(construction and operation of electronic communications networks)

- (1) Electronic communications networks and associated infrastructure intended for connections to public communications networks and the provision of public communications services must be constructed and operated in accordance with the regulations on spatial-planning arrangements and building including their essential characteristics, environmental protection and in accordance with valid technical regulations and standards laying down the safe operation of electronic communications networks, their integrity, interoperability of services and the connection of telecommunications terminal equipment.
- (2) The construction of public communications networks and associated infrastructure is of national importance and interest and shall be considered spatial-planning arrangements of national importance.
- (3) Irrespective of the fact that public communications networks are not intended to ensure the provision of commercial public services, the following work in particular on public communications networks and associated infrastructure shall be considered maintenance work for the public good in terms of the building regulations:
  1. completion and upgrading of existing facilities or equipment of public communications networks (replacement of equipment, increasing capacity, installation of new systems/technologies, relocation, protection and repairs of the cable networks),
  2. strengthening and raising of existing antenna systems,
  3. replacement of existing or expansion with new housing,
  4. increasing the capacity of existing or the installation of new communications systems and public access networks (microwave systems, optics, copper, interfaces, etc.),
  5. ensuring the required increase in existing power supplies,
  6. execution of required earthing or expansion of existing earthing due to replacement of housing/towers.
- (4) Maintenance work for the public benefit must be carried out so that facilities retain their essential characteristics in accordance with building regulations.
- (5) The minister may stipulate structures and their analysis within the context of public communications networks and associated facilities with regard to the degree of difficulty of the construction or maintenance thereof and/or may arrange in greater detail issues arising from the implementation of this Article.
- (6) The inspector responsible for matters of spatial-planning and building supervises the implementation of regulations on the construction of public communications networks and associated facilities arising from this Act, and secondary legislation issued pursuant thereto, and in so doing works in concerted action and cooperation with the inspector. The inspector supervises the operation from the first paragraph of this Article, and in so doing cooperates and works in concerted action with the inspector responsible for the supervision of goods on the market. All the aforementioned inspectors cooperate with the Agency in the application of the third paragraph of Article 141 of this Act.

## Article 8

(joint use)

- (1) Operators of public communications networks acquiring the right to install facilities on, over or under public or private property must, due to the economical use of space, construct networks and facilities so that they facilitate the joint use of existing facilities of the communications network as much as possible.
- (2) Operators of public communications networks shall be obliged to reach an agreement with other operators of public communications networks on the joint use of such property or facilities.
- (3) The Agency shall encourage contractual arrangements for joint use from the first paragraph of this Article.
- (4) Where operators of public communications networks are deprived of access to viable alternatives due to the economical use of space or because of the need to protect the environment, public health, public security or spatial-planning arrangements and are unable to reach agreement amongst themselves, the Agency shall at the request of one of the parties decide on the matter through a decision under the procedure from Article 129 of this Act. In such instances the Agency may require an operator of public communications networks to enable other operators of public communications networks to jointly use the facilities or property concerned, wherein it shall determine appropriate financial compensation with regard to the circumstances of the case.
- (5) The Agency may order joint use only on the basis of a prior public consultation which must not last a shorter period of time than that defined in Article 95 of this Act.
- (6) The Agency cannot order joint use if this would prejudice the rights of third parties except if the operator has instituted proceedings for expropriation or easement.

Article 9

(interconnections and access)

- (1) Operators of public communications networks shall have the right and obligation to negotiate amongst themselves concerning access or interconnection.
- (2) Parties shall agree exclusively by contract which must not contravene provisions of this Act on technical and commercial issues of access or interconnection.
- (3) In concluding interconnection or access contracts, parties shall be obliged to protect the confidentiality of all data exchanged in the process. Such data may not be used for any other purpose or passed on to a third party, in particular to other departments, branches, subsidiaries or partners, for whom such information could provide a competitive advantage. Regardless of this, the obligations from Articles 23 and 24 of this Act apply.
- (4) In the absence of an agreement from the second paragraph of this Article, the Agency shall decide at the request of one party or *ex officio* by a decision, with *mutatis mutandis* application of the procedure from Article 129 of this Act. The Agency regulates by a decision only those issues of interconnections or access in which there is an absence of an agreement between parties and which are in contravention of this Act.

Article 10

(separate provision of electronic communications services in companies with special or exclusive rights for a particular commercial activity)

Operators with special or exclusive rights to provide other commercial activities and with annual revenues in the area of electronic communications networks or services in excess of two (2) billion Slovenian tolar shall be obliged to provide electronic communications networks or services in legally independent companies or to keep separate financial accounts for activities associated with the provision or ensuring of electronic communications services or networks as if these activities were performed in a legally independent company.

### **III. UNIVERSAL SERVICE**

#### Article 11

(universal service)

- (1) Universal service means the minimum set of services of specified quality which is available to all end users in the Republic of Slovenia at an affordable price regardless of their geographical location.
- (2) The minimum set of services forming part of universal service shall include:
  1. connection to the public telephone network and access to publicly available telephone services at a fixed location at a reasonable request of the user, enabling users to make and receive internal (local and national) and international calls, facsimile communications and data communications at data rates that are sufficient to permit functional Internet access;
  2. ensuring and providing access to a comprehensive directory and comprehensive directory enquiry services (hereinafter: comprehensive directory enquiry service) in accordance with Article 12 of this Act;
  3. ensuring public pay telephones from which it is possible free of charge and without having to use any means of payment to make emergency calls so as to meet all the reasonable needs of end users in terms of the geographical coverage, the number of public pay telephones, accessibility for disabled users and the quality of services;
  4. ensuring measures for disabled end users defined by the minister in agreement with the minister responsible for social affairs (hereinafter: minister responsible for social affairs) that enable disabled end users the same access to and use of publicly available telephone services, including access to emergency services, directories and directory enquiry services, as other end users.
- (3) If the minimum set of services from the previous paragraph is altered in the legislation of the European Community, the Government of the Republic of Slovenia (hereinafter: Government) shall adopt a decree determining the altered minimum set of services.
- (4) The Government may, by decree, increase the extent of the minimum set of services as defined by the second and third paragraphs of this Article if this is in accordance with the development of electronic communications.

## Article 12

(comprehensive directory and comprehensive directory enquiry service)

- (1) The comprehensive directory must contain, at minimum, the data from clauses 1 to 5 of the first paragraph of Article 110 of this Act for all subscribers to publicly available telephone services who do not object. The Agency shall be obliged in advance to issue a decision on consent for the form of the comprehensive directory, which may be printed or electronic.
- (2) Comprehensive directory enquiry services to which all end users, including users of public pay telephones, must have access, must provide data on all subscribers included in the comprehensive directory.
- (3) Data in the comprehensive directory must be updated on a regular basis or at least once a year, taking into account the method of its publication. Data provided by comprehensive directory enquiry services must be updated at least once a month. The provider of universal service providing comprehensive directory or comprehensive directory enquiry services must immediately notify the Agency if another operator of a publicly available telephone service does not provide him or her with the data from the first paragraph of this Article.
- (4) Providers of universal service providing comprehensive directories or comprehensive directory enquiry services may not discriminate in the treatment of data provided to them by different providers of publicly available telephone services.

## Article 13

(ensuring universal service)

- (1) The Agency shall determine for a period of five (5) years one or more providers of universal service so that universal service is guaranteed on the whole territory of the Republic of Slovenia.
- (2) Unless otherwise stipulated by this section of this Act, the Agency shall determine universal service providers by a decision on the basis of *mutatis mutandis* application of the provisions of the public tender laid down in Section V (radio frequency spectrum) of this Act. If the public tender fails, the Agency shall decide to appoint as a universal service provider that operator with significant market power in the area of publicly available telephone services at a fixed location in accordance with the first paragraph of Article 19 of this Act or, where there is no such operator, the operator with the greatest number of subscribers to publicly available telephone services at a fixed location. In doing so, the Agency must take into account the principles of effectiveness, objectivity and transparency.
- (3) The subject of the public tender shall be the guarantee of various parts of universal service or the guarantee of universal service in a defined area or on the territory of the Republic of Slovenia.
- (4) The selection criteria shall, in particular, be the ability to provide universal service and/or part thereof in a defined area and the costs of such provision.
- (5) The Agency shall be obliged, six (6) months prior to the expiry of the decision from the first paragraph of this Article and on the basis of data on the provision of universal

service, to determine whether the general availability of facilities or services comprising universal service is such as to require reappointment of a universal service provider, wherein it shall take account the opinions of interested parties.

Article 14  
(prices and general terms)

- (1) The Agency shall monitor the development and level of retail prices of services provided as universal services.
- (2) The prices of individual services provided as universal services by an individual provider must be equal throughout the territory of the Republic of Slovenia.
- (3) Universal service providers may offer price options or packets for consumers with low incomes and/or special needs that differ from those otherwise provided under normal commercial terms.
- (4) The Agency shall on the basis of collected data from the first paragraph of this Article decide to require an individual service provider to offer price options or packets for consumers with low incomes or special needs that differ from those otherwise provided under normal commercial terms if it determines on the basis of the data collected that the prices from the first paragraph of this Article are excessive with regard to average incomes in the Republic of Slovenia as published by the Statistical Office of the Republic of Slovenia and if they increase by more than 5 percentage points faster than the cost of living index from the previous year. The Agency shall determine the method for respecting the aforementioned criteria by a general act. The minister shall, in agreement with the minister responsible for social affairs, determine the categories of consumers deemed to be persons with low incomes or special needs.
- (5) Universal service providers shall be obliged to determine prices and general terms in such a way that subscribers of specific services provided as universal services are not obliged to pay for facilities or services which are not necessary or not required for such services.
- (6) The Agency may decide to order a universal service provider to provide its subscribers one or more of the following options for monitoring expenditures:
  1. itemised billing in accordance with Article 91 of this Act,
  2. selective call barring for outgoing calls, free of charge, to prevent certain types of call or calls to certain types of numbers,
  3. pre-payment system to pay for access to the public telephone network and the use of publicly available telephone services for consumers,
  4. phased payment of connection fees to the public telephone network.

Article 15  
(quality of universal service)

- (1) The minister shall prescribe the quality of universal service so as in particular to determine the quality parameters, the limit values thereof and the method of measurement of such parameters.

- (2) The Agency shall by general act determine the data transfer rates that are sufficient to permit functional Internet access and the interval within which such must be achieved. In so doing, it shall take account of the prevailing technology of access used by the majority of subscribers and technological and economic feasibility. After the expiry of the interval laid down in the general act, the Agency shall again verify the circumstances that led to the determination of transfer rates and as required lay down new transfer rates by general act.
- (3) The Agency shall by general act prescribe the content, form and method of publication of data on the quality of universal service.
- (4) Universal service providers shall be obliged at least once a year to publish up-to-date information on the quality of universal service and to submit data and all changes thereto to the Agency.
- (5) The Agency shall monitor the quality of universal service and may take action in accordance with the monitoring procedure.
- (6) If the Agency has a reasonable doubt as regards the truthfulness of information from the fourth paragraph of this Article, it may order, *ex officio*, an independent audit or a review similar to such audit of the data on the quality of provision of universal service at the expense of the universal service provider concerned.
- (7) If the measured values of quality parameters for a particular universal service provider at least three times in succession fail to achieve the limit values, the Agency may initiate the procedure for selection of a new universal service provider.

#### Article 16

##### (compensation of net costs of universal service provision)

- (1) Universal service providers shall be entitled to compensation if the provision of services from the second paragraph of Article 11 or the fourth paragraph of Article 14 causes net costs.
- (2) Net costs of the provision of universal service are calculated as the difference between net costs of the chosen provider if he or she operates with obligations for universal service provision or without these obligations, wherein the benefits arising from the provision of universal service including intangible benefits are taken into account. The Agency shall in a general act prescribe the method of calculating net costs and intangible benefits taken into account in the calculation of net costs of universal service provision, wherein it shall be obliged to take account of the defined starting points stated in the legislation of the European Community governing universal service.
- (3) Providers of universal service must record the costs of measures from clause four of the second paragraph of Article 11 and keep these records separate from other costs of universal service provision.
- (4) Universal service providers shall be obliged to send to the Agency within ninety (90) days of the end of the business year an estimate of net costs, audited accounts and information used in the estimate of net costs of universal service provision, otherwise they shall lose the right to claim net costs.
- (5) The Agency or an auditor authorized by the Agency shall be obliged to conduct an audit and approve accounting statements and information from the previous paragraph.

- (6) The Agency shall be obliged to verify the calculation of net costs of universal service provision. If the universal service provider was chosen in a public tender, the Agency shall in its assessment take account of the costs of provision of the universal services offered by the provider in the public tender. The Agency shall take different costs into account only in instances where conditions taken into account in the public tender have changed and when the universal service provider has proved the justifiability of the derogation on an objective and transparent basis. The Agency shall publish the results of costs calculation and audit of the information provided by the universal service provider.
- (7) The Agency shall issue a decision determining the level of compensation, wherein it may on the basis of calculations decide that the universal service provider is not entitled to compensation or is entitled to less compensation for net costs of universal service provision than the provider proposed.

#### Article 17

##### (financing of universal service)

- (1) Compensation for net costs of universal service provision shall be financed from the contributions of operators operating in the territory of the Republic of Slovenia which derive a revenue from public communications networks or services provision higher than SIT 500 million.
- (2) The shares of individual operators' contributions shall be determined by the Agency on the basis of their shares in the revenues from the provision of public communications networks or services with regard to the total revenues from the provision of public communications networks or services of all operators from the previous paragraph on the territory of the Republic of Slovenia.
- (3) Operators shall be obliged to pay their contributions directly to the universal service provider within the interval and in the amount laid down by the decision of the Agency.
- (4) Operators shall by 31 March each year inform the Agency of their revenues in the previous year from the provision of public communications networks or services. If the operator fails to do so, the Agency shall take into account as revenue from the second paragraph of this Article the total revenues of the operator from the previous year obtained on the basis of the data of the Agency of the Republic of Slovenia for Public Legal Records and Related Services.
- (5) If the Agency has a reasonable doubt as regards the truthfulness of the information reported by the operator, the Agency or an auditor authorised by the Agency may review the information and estimate the revenue taking into account the costs of that operator. If the estimated revenue significantly deviates from the reported revenue from the previous paragraph the Agency takes into account the estimated revenue in the calculation.
- (6) Data on compensation of net costs of universal service provision, on the method of their allocation and use and on the parts that were financed shall be public. For this purpose, the Agency shall publish an annual report on compensation of net costs of universal service provision, the calculated net costs, the intangible benefits taken into account in the calculation of net costs and the contributions paid.
- (7) Irrespective of the provisions of the first paragraph of this Article, compensation of net costs for measures for disabled users within the framework of universal service shall be financed by the ministry responsible for social affairs.

Article 18  
(monitoring)

Within the framework of its authorisations, the Agency shall monitor universal service provision.

#### IV. ENSURING COMPETITION

Article 19  
(operators with significant market power)

- (1) In ensuring effective competition in the electronic communications market with *ex ante* arrangements, an operator shall be deemed to have significant market power under this Act if, either individually or with other operators in a particular market of public communications networks or services (hereinafter: relevant market), it has a position equivalent to dominance, that is to say economic influence enabling it a considerable degree of independence in respect of its competitors, users and consumers.
- (2) If two or more operators operate in a market the structure of which is considered to be conducive to coordinated effects, they may be treated as operators in a joint dominant position in terms of the first paragraph of this Article, even in the absence of structural or other links between them.
- (3) Where an operator has significant market power in a relevant market, it may also be deemed to have significant market power in a market closely related to the first, where the links between the two markets are such as to allow the market power held in one market to be transferred into the other market, thereby strengthening the market power of the operator.
- (4) In assessing whether an operator has significant market power in accordance with the first paragraph of this Article, the Agency shall in particular take into account the following criteria which are not of a cumulative nature:
  1. the market share of the operator on the relevant market and the variation of his or her market share on the relevant market over a longer period of time;
  2. obstacles for entry into the relevant market and the effect on potential competition on that market;
  3. the effect of large users on the power of the operator (countervailing purchasing power);
  4. elasticity of demand;
  5. the stage of development of the relevant market;
  5. technological advantages;
  6. the development of sales and distribution networks;
  7. attaining economies of scale or economies of integration;
  8. the level of vertical integration;
  9. the level of product differentiation;

10. the possibility of access to financial resources;
  11. connection mode OSI Network Service.
- (5) When assessing whether two or more operators have significant market power in accordance with the second paragraph of this Article, the Agency takes into account in particular the following criteria which are not of a cumulative nature:
1. the level of concentration of the relevant market, distribution of market shares in the relevant market and their variation over a longer period of time;
  2. obstacles for entry into the relevant market and the effect on potential competition on that market;
  3. the effect of large users on the power of the operator (countervailing purchasing power);
  4. transparency of the relevant market;
  5. the stage in the development of the relevant market;
  6. homogeneity of products;
  7. elasticity of demand;
  8. the amount of technical innovations and the development of technology;
  9. the existence of available (unused) facilities;
  10. if there are informal or other links between these operators;
  11. the retaliatory mechanisms;
  12. the existence of price competition.
- (6) In assessing significant market share and using the criteria from the fourth and fifth paragraphs, the Agency shall be obliged to act in accordance with legislation of the European Community and to consistently take into account the Guidelines of the European Commission governing market analysis and assessment of significant market power in the area of electronic communications networks and services. In so doing, the Agency shall cooperate with the body responsible for the protection of competition.

Article 20  
(definition of relevant markets)

- (1) The Agency shall be obliged, in the area of the provision of electronic communications in accordance with the principles of competition law and consistently taking into account each recommendation of the European Commission on relevant markets for products and services in the area of electronic communications and guidelines from the sixth paragraph of the previous Article, to determine the product, service and geographic markets relevant to conditions in the country. In so doing, the Agency may cooperate with the body responsible for protection of competition.
- (2) If the European Commission in the area of provision of electronic communications determines transnational markets, each definition of transnational markets by decision of the Agency must be in accordance with the decision of the European Commission.
- (3) The Agency shall be obliged to issue an appropriate decision in accordance with this Article within an interval of sixty (60) days from the issue of new recommendations or decisions of the European Commission.
- (4) If the Agency in accordance with this Article issues a decision that differs from the recommendations of the European Commission it shall be obliged prior to doing so to implement public consultation in accordance with Article 95 and cooperation in accordance with Article 124 of this Act, and consultation with competent bodies of other

member states of the European Union and the European Commission in accordance with Article 125 of this Act.

Article 21  
(analysis of relevant markets)

- (1) The Agency shall be obliged at regular intervals in cooperation with the body responsible for protection of competition to analyse markets from the first paragraph of the previous Article, wherein the intervals may not be longer than one (1) year.
- (2) In analysis from the previous paragraph of this Article, the Agency shall be obliged to take into account the guidelines from the sixth paragraph of Article 19 of this Act.
- (3) The Agency shall jointly conduct analysis of transnational markets with the competent bodies of other member states of the European Union covered by such transnational markets.

Article 22  
(determining the obligations of companies with significant market power)

- (1) If, on the basis of an analysis of a relevant market, the Agency finds that the market lacks sufficient competition it shall be obliged to decide on an operator or operators with significant market power in that market. Before issuing the decision it may obtain an opinion from the body responsible for the protection of competition.
- (2) The Agency shall be obliged to impose on operators with significant market power by the decision from the previous Article of this Act at least one of the obligations from Articles 23 to 30 of this Act. In so doing, the Agency shall take into account the principle of proportionality and must appropriately explain this in the decision.
- (3) If the Agency decides to impose on an operator with significant market power obligations other than those laid down in Articles 23 to 30 of this Act, it may only do so on the basis of prior consent of the European Commission.
- (4) Where a particular operator is again assessed as a company with significant market power, the Agency may impose on such company the same or other obligations.
- (5) If on the basis of the analysis of a relevant market, the Agency finds that there is sufficient competition in that market, it must not assess any operator as an operator with significant market power. If this market was non-competitive before, the Agency shall be obliged to abrogate all decisions assessing operators with significant market power in that market.
- (6) In revoking decisions pursuant to the previous paragraph, the Agency shall also revoke the obligations of those subject to such decisions as operators with significant market power.
- (7) The Agency shall decide on imposition, amendment, maintenance or withdrawal of obligations of operators with significant market power in transnational markets together with other competent bodies in the member states of the European Union covered by such transnational markets.

- (8) The Agency may implement any measure pursuant to this Article only on the basis of prior consultation with interested parties as defined in Article 95 of this Act, with the body responsible for the protection of competition pursuant to Article 124 of this Act, and with other competent bodies in the member states of the European Union and the European Commission under the procedure laid down in Article 122 of this Act.

#### Article 23

##### (obligation of transparency)

- (1) The Agency may in accordance with the decision from the previous Article of this Act instruct specific operators with significant market power to ensure transparency with regard to interconnections and/or access by requiring them to publish specific information relating to interconnection and/or access, such as accounting information, technical specifications, network characteristics, terms and conditions for supply and use, and prices. The Agency shall in such decision more precisely define the information to be published, the level of detail required and the manner of publication.
- (2) The Agency may, in accordance with the previous paragraph, decide to require operators from the previous paragraph subject to the obligation from Article 24 of this Act, to publish a reference offer for interconnection and/or access. Such reference offer must be sufficiently itemised so that other operators wanting a specific service relating to interconnection or access are not required to pay for facilities not necessary for the service requested. Such reference offers must describe the services offered by the operator with significant market power in relation to interconnection and/or access broken down into components in accordance with market needs, and the conditions, including prices, relating thereto. If such reference offer does not comply with the provisions of this Act, the Agency may decide to require changes thereto.
- (3) Irrespective of the provisions of the previous paragraph of this Article, reference offers for unbundled access to local loops must contain at least those elements defined by the Agency in a general act prepared in accordance with the legislation of the European Community.

#### Article 24

##### (obligation to ensure equal treatment)

- (1) The Agency may, by a decision from Article 22 of this Act, impose an obligation on a particular operator with significant market power to ensure equal treatment in relation to interconnection or access.
- (2) The imposition of the obligation from the previous paragraph shall in particular ensure that the operator from the previous paragraph:
1. applies equivalent conditions for interconnection and/or access in equivalent circumstances to other operators providing equivalent services, and
  2. provides quality services and information to other operators in relation to interconnection and/or access under the same conditions as it provides for its own services, or those of its subsidiaries or partners.

Article 25  
(obligation of accounting separation)

- (1) The Agency may, in accordance with the regulations governing accounting and by a decision from the first paragraph of Article 22 of this Act, require a specific operator with significant market power to keep accounting records for particular activities relating to interconnection and/or access separate from accounting records for other activities.
- (2) The Agency shall impose such obligation due to monitoring of compliance with the obligations from the previous Article or where necessary to prevent unjustified cross-subsidisation. It shall impose such obligation in particular on a vertically integrated operator, and may require such operator to make transparent its wholesale and internal transfer prices. In so doing, it may also stipulate the form and methodology of account management which must be applied.
- (3) The operator from the first paragraph of this Article shall be obliged on request to submit to the Agency accounting records, including data on revenues received from third parties.
- (4) The Agency may publish such information as would contribute to an open and competitive market, while respecting the degree of confidentiality of the received information in accordance with national and European Community regulations on commercial confidentiality.
- (5) The Agency may by general act govern in greater detail issues arising in the implementation of this Article.

Article 26  
(obligation of access to and use of specific network facilities)

- (1) The Agency may in accordance with the decision from the first paragraph of Article 22 of this Act impose obligations on a specific operator with significant market power to meet all reasonable requests for access to, and use of, specific network elements and associated facilities. The Agency shall so act in particular where it considers that denial of access or unreasonable terms and conditions having a similar effect would hinder the establishment of a sufficiently competitive market at the retail level, or would not be in the end user's interest. In so doing, the Agency may also impose additional conditions to ensure fairness, reasonableness and timeliness in compliance with obligations.
- (2) The Agency may, *inter alia*, require operators from the previous paragraph in particular:
  1. to give access to specified network elements and/or facilities, including unbundled access to the local loop;
  2. to negotiate in good faith with operators requesting access;
  3. not to withdraw access to facilities already granted;
  4. to provide specified services on a wholesale basis for resale on the retail market;
  5. to grant open access to technical interfaces, protocols or other important technologies that are indispensable for the interoperability of services or virtual network services;
  6. to provide joint use (co-location) or other forms of facility sharing, including duct, building or mast sharing;

7. to provide specified services needed to ensure interoperability of end-to-end services to 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 in the provision of services;
  9. to interconnect networks or network facilities.
- (3) When the Agency is considering whether to impose the obligations referred to in the first paragraph of this Article, and in particular when assessing whether such obligations would be proportionate to the benefits sought, it shall be obliged to take into account the following factors:
1. the technical and economic viability of use or installation of competing equipment with regard to the rate of market development and the nature and type of interconnection and access proposed;
  2. the feasibility of providing the access proposed, in relation to the capacity available;
  3. the initial investment by the operator from the first paragraph of this Article, bearing in mind the risks involved in such investment;
  4. the need to safeguard competition in the long term;
  5. where appropriate, any relevant intellectual property rights;
  6. the provision of pan-European services.
- (4) The Agency may by general act govern in greater detail individual issues arising in the implementation of this Article.

#### Article 27

(price control and cost accounting obligations)

- (1) The Agency may, by a decision from the first paragraph of Article 22 of this Act, impose on a specific operator with significant market power obligations relating to cost coverage and price controls, including obligations for cost orientation of prices and obligations concerning cost accounting systems, in connection with the provision of specific types of interconnection and/or access.
- (2) The Agency shall impose the obligations from the previous paragraph if on the basis of a market analysis from Article 21 of this Act it considers that a lack of effective competition means that the operator from the previous paragraph might sustain prices at an excessively high level or a low difference between retail and wholesale prices to the detriment of end users.
- (3) In imposing the obligations from the first paragraph of this Article, the Agency shall be obliged to take into account the investment made by the operator from the first paragraph of this Article and allow him a reasonable rate of return on the assets invested, taking into account the risks involved.
- (4) All cost recovery mechanisms or pricing methodologies prescribed by the Agency must serve to promote effective and lasting competition and increase consumer benefits. In so doing the Agency may also take account of prices available in comparable competitive markets and operators.
- (5) Where an operator from the first paragraph of this Article has an obligation regarding the cost orientation of its prices, it shall be obliged to demonstrate that prices are derived from costs including a reasonable rate of return on investment. When the Agency verifies

compliance with such obligation, it may use accounting methods independent of those used by the operator. The Agency may also decide to require an operator to justify and, where appropriate, request the operator to alter its prices. In this regard, the burden of proof shall lie with the operator obliged to comply with such requirements.

- (6) The Agency shall be obliged to ensure that, where implementation of a cost accounting system is mandated in order to support price controls, a description of the cost accounting system is made publicly available, showing at least the main categories under which costs are grouped and the rules used for the allocation of costs. Compliance with the cost accounting system shall be verified by a certified auditor. A statement concerning compliance shall be published annually.

## Article 28

### (obligation of regulation of retail services)

- (1) The Agency may, by a decision from the first paragraph of Article 22 of this Act, impose on a specified operator with significant market power in a specific retail market obligations relating to regulation of retail services.
- (2) The Agency may only impose the obligations from this Article if, on the basis of market analyses from Article 21 of this Act, it determines that a relevant market intended for end users is insufficiently competitive and the obligations from Articles 23 to 27 inclusive and Article 30 of this Act would not achieve the objectives laid down. Obligations from this Article may include prohibitions on:
  1. the charging of excessive prices,
  2. the obstruction of market entry,
  3. the restriction of competition by setting excessively high or low prices,
  4. the giving of undue advantages to particular end users,
  5. unreasonable bundling of particular services.
- (3) The Agency may at the same time as imposing obligations pursuant to this Article prescribe one of the following methods:
  1. retail price capping;
  2. regulation of individual tariffs;
  3. cost orientation of prices;
  4. orienting prices towards those on comparable markets.
- (4) In complying with obligations pursuant to this Article relating to retail tariff regulation or other relevant retail controls, operators from the first paragraph of this Article shall be obliged to use the necessary and appropriate cost accounting systems laid down by the Agency in the decision from the first paragraph of this Article. In this regard, the Agency may specify the format and accounting methodology to be used by such operators. Compliance with the cost accounting system shall be verified by a qualified independent auditor. The Agency shall ensure that a statement concerning compliance is published annually.
- (5) The Agency shall be obliged on request of the European Commission to report information relating to obligations of retail price controls and, where relevant, to cost accounting systems used by operators from the first paragraph of this Article.

## Article 29

(obligation to provide minimum set of leased lines)

- (1) Where, as a result of a market analysis from Article 21 of this Act, the Agency determines that the market for the provision of the minimum set of leased lines published in the Official Journal of the European Union is not effectively competitive, it may, by a decision from Article 22 of this Act, impose on operators with significant market power in the area of leased lines the obligation to provide the full minimum set of leased lines or only part thereof under equal, cost-oriented and transparent conditions as arise from the legislation of the European Community relating to universal service provision and the rights of users in the area of electronic communications.
- (2) The Agency shall prescribe by general act the method for providing the minimum set of leased lines.

## Article 30

(obligation to provide selection and pre-selection of public communications service provider)

- (1) The Agency shall be obliged to impose, by a decision from Article 22 of this Act, on operators with significant market power in the area of provision of connection to and use of the public telephone network at a fixed location, the obligation to enable their subscribers to access the services of any interconnected operator of publicly available telephone services:
  1. on a call-by-call basis with the use of a special number of the operator selected;
  2. by pre-selection of the operator, which may be overridden during any call by means of the method from the previous indent.
- (2) The Agency may, on the basis of user requests, require operators from the first paragraph of this Article by a decision from Article 22 of this Act to provide an appropriate method of compliance with the obligation different from that laid down in the previous paragraph.
- (3) The Agency may, on the basis of user requests, require operators of other public communications networks with significant market power, by a decision from the first paragraph of Article 22 of this Act, to enable their subscribers to select and pre-select public communications service providers. In this regard, it shall apply *mutatis mutandis* the first paragraph of this Article or lay down another appropriate method for compliance with such obligation. The Agency shall assess the requests of subscribers from this and previous paragraphs in accordance with the procedure for market analysis from Article 21 and with *mutatis mutandis* consideration of the demands from Article 26 of this Act.
- (4) Operators with obligations pursuant to this Article shall be obliged to set cost-oriented prices for access and interconnection in relation to operator selection and pre-selection.
- (5) Operators from the previous paragraph may charge subscribers only a one-off sum to cover the costs of provision of operator pre-selection. Irrespective of this, such sum may not be so high as to act as a disincentive for the use of such facilities by subscribers.
- (6) The Agency may by general act govern in greater detail issues relating to the implementation of this Article.

Article 31  
(supervision)

Within the framework of its authorisations, the Agency shall supervise the application of the provisions of this Act on competition and compliance with obligations imposed by decision on operators with significant market power.

**V. RADIO FREQUENCY SPECTRUM**

Article 32  
(management of radio frequency spectrum)

- (1) The radio frequency spectrum is a limited natural resource.
- (2) State bodies shall, in accordance with acts of international law applicable in the Republic of Slovenia, ensure the effective and undisturbed use of the radio frequency spectrum of the Republic of Slovenia and shall ensure the rights of the Republic of Slovenia to orbital positions.
- (3) The Agency shall manage the radio frequency spectrum of the Republic of Slovenia pursuant to public authorisation.

Article 33  
(radio frequency allocation plan)

- (1) At the proposal of the Agency, the Government shall by decree adopt the radio frequency allocation plan, by which it shall lay down radio communications services in relation to radio frequency bands, the method of use of radio frequency bands and other issues relating to the use thereof.
- (2) The Agency shall prepare the proposed decree from the previous paragraph in accordance with acts of international law applicable in the Republic of Slovenia.

Article 34  
(radio frequency utilisation plan)

- (1) The Agency shall by general act adopt the radio frequency utilisation plan, which must be in accordance with the plan from the previous Article.
- (2) Through the general act from the previous paragraph, the Agency shall define in greater detail the purpose and method of utilisation of radio frequencies within radio frequency

bands envisaged for individual radio frequency services by the decree from the previous Article.

- (3) The Agency shall adopt the general act from the first paragraph of this Article while taking into account the needs of national security and defence, protection against natural and other disasters and the needs of air traffic safety.
- (4) The Agency shall adopt the general act from the first paragraph of this Article:
  1. in the part relating to radio frequencies envisaged for broadcasting in agreement with the Broadcasting Council,
  2. in the part relating to radio frequencies envisaged for the needs of national security and defence and protection against natural and other disasters in agreement with the ministry responsible for defence and the ministry responsible for internal affairs and the director of the Slovenian Intelligence-Security Agency (hereinafter: director of the Slovenian Intelligence-Security Agency),
  3. in the part relating to radio frequencies envisaged for the needs of air traffic safety in agreement with the ministry responsible for transport.

#### Article 35

(use of radio frequencies)

- (1) Natural persons or legal entities may only use specific radio frequencies on the basis of a decision of the Agency granting them the right to use such frequencies. If radio frequencies are used in contravention of this Act and secondary regulations without a valid decision, inspectors shall take action in accordance with the control procedure.
- (2) Irrespective of the provisions of the previous paragraph, a decision on the allocation of radio frequencies shall not be required for radio frequencies envisaged by the general act from the previous Article for the purposes of national security and defence and protection against natural and other disasters. Such radio frequencies shall be governed and allocated by the body responsible for the planning and management of radio frequencies for the needs of state bodies.
- (3) Irrespective of the provisions of the first paragraph of this Article, a decision on the allocation of radio frequencies shall also not be required for radio frequencies which the minister, in accordance with the radio frequency utilisation plan, stipulates may be used without a decision on frequency allocation and prescribes the method of their use. In this regard, the minister shall be obliged to take into account accepted international obligations arising from international agreements in force in the Republic of Slovenia and valid legislation of the European Community.
- (4) The Agency shall prepare a review of allocated radio frequencies that contains data on which natural persons or legal entities specific radio frequencies have been allocated to but that does not contain data for radio frequencies from the second paragraph of this Article. Data from the review of allocated radio frequencies shall be public. The Agency shall publish and regularly update the review of allocated radio frequencies.

#### Article 36

(procedure for issuing decisions on the allocation of radio frequencies)

- (1) The Agency shall issue a decision on the allocation of radio frequencies in accordance with the general act on the radio frequency utilisation plan according to the provisions of the general administrative procedure or pursuant to a public tender, as stipulated by this Act.
- (2) The Agency shall only use the public tender procedure when it determines in the procedure from Article 38 that efficient use of the allocated radio frequencies can only be ensured through restriction of the number of decisions issued on the allocation of radio frequencies.
- (3) Irrespective of the provisions of the previous paragraph, the Agency shall always issue decisions on the allocation of radio frequencies for broadcasting on the basis of a public tender without implementing the procedure from Article 38.
- (4) Where the allocation of specific radio frequencies to specific natural persons or legal entities has been harmonised in the European Community in accordance with international agreements and European Community regulations, the Agency shall be obliged to issue decisions on the allocation of radio frequencies to such persons. If all the conditions prescribed for the allocation of such radio frequencies by this Act have been met in the harmonisation procedure for the selection of such persons, the Agency may not impose additional conditions, criteria or procedures which could restrict, alter or delay the issuing of a decision on the allocation of radio frequencies.

#### Article 37

(issuing of decisions on the allocation of radio frequencies on the basis of the general administrative procedure)

- (1) Applications to initiate the procedure for decisions on the allocation of radio frequencies must contain the data required by the Agency for management of official records of holders of decisions on the allocation of radio frequencies and for monitoring the use of radio frequencies, and in particular:
  1. name, address and tax number for natural persons;
  2. title, principal office, tax and registration number, register number and statement of the lawful representative for legal entities;
  3. statement of the radio frequency to which the application refers and intended use of such radio frequency;
  4. statement of the geographic area of use of the radio frequency applied for;
  5. data on envisaged technical solutions, particularly data on envisaged antenna system and radio equipment, and data required for assessment of radiation, geographic area of use, harmful interference and economy of utilisation of radio frequency.
- (2) The Agency shall be obliged to issue and deliver to applicants decisions on the allocation of radio frequencies, where no public tender is required, within forty-two (42) days of the start of the procedure for the decision on allocation of radio frequencies, and at the same time to record the data of the allocation in the review of allocated radio frequencies.
- (3) Irrespective of the provisions of the previous paragraph, the Agency shall decide to refuse to issue a decision on allocation if it determines that:
  1. the applicant has had a decision on allocation revoked in the last five (5) years *ex officio* on the grounds of clauses 1, 3 and 4 of the third paragraph of Article 54,

2. the allocation of radio frequencies would not be in accordance with the efficient use of the radio frequency spectrum,
3. the signal of radio equipment would cause unavoidable harmful interference to other radio equipment, receivers or electrical or electronic systems.

#### Article 38

(acquisition of opinions of interested parties)

- (1) If the Agency considers that interest in a particular radio frequency could exceed the availability and thereby prevent the efficient use thereof, it shall publish a public call to acquire the opinions of interested parties concerning the conditions of use of such frequencies, particularly regarding limiting the number of holders of decisions allocating radio frequencies. It shall always be obliged to publish such public calls whenever it receives from a party with an interest in the use of specific radio frequencies a call for a public tender. The Agency shall in the public call lay down the deadline for the acquisition of opinions of interested parties, which may not be shorter than thirty (30) days, and issues regarding which it wishes to acquire the opinions of interested parties. The Agency shall be obliged to maintain the confidentiality of possible proposals of interested parties regarding the amount of payment for radio frequencies.
- (2) If the Agency determines on the basis of the response of interested parties that specific radio frequencies will not be sufficient for all interested parties, it shall be obliged to implement a public tender prior to issuing decisions on the allocation of radio frequencies; otherwise the Agency shall issue decisions on the allocation of radio frequencies on the basis of a general administrative procedure.

#### Article 39

(application of provisions in the implementation of public tenders)

- (1) The provisions of the general administrative procedure, with the exception of the provisions on exclusion, shall not apply in the public tender procedure.
- (2) Public tenders shall be managed by a special impartial commission appointed by the director of the Agency (hereinafter: commission) which may include persons not employed by the Agency.

#### Article 40

(decisions on initiation of public tenders)

- (1) Public tenders shall be initiated by a decision of the Agency which must contain at least:
  1. precise statement of the radio frequencies subject to the public tender, the radiocommunications services to be provided through the use of such radio frequencies and the areas or locations where such radio frequencies are to be used;
  2. conditions, requirements and qualifications to be met by bidders, which must comply with the relevant valid legislation and spatial planning documents;

3. criteria for selection of the most favourable bid, the method of their application, and other possible restrictions to be taken into account in evaluation of bids;
  4. minimum amount of fee for efficient use of the limited natural resource and the method for payment thereof (i.e. lump sum, annual), unless the public tender applies to radio frequencies for broadcasting;
  5. the interval within which bidders may submit bids and the method of submission (i.e. date, time, address, code);
  6. the address, place, date and time of public opening of bids;
  7. the place, time and contact person from which interested parties may obtain tender documentation, the price of tender documentation and the method of payment for such documentation;
  8. the contact person from whom bidders can obtain additional information;
  9. the interval within which bidders will be informed of the results of the tender (interval within which decisions will be issued).
- (2) Where the subject of the public tender is the allocation of radio frequencies for the provision of broadcasting, the resolution must also contain the conditions to be met by bidders with regard to programme content and the criteria for the selection of the most favourable bid which will be taken into account in assessing programme content. The Broadcasting Council shall determine the conditions and criteria from this paragraph.
- (3) When the subject of the tender is allocation of radio frequencies for the provision of broadcasting, the Agency shall adopt a decision on the initiation of a public tender in agreement with the Broadcasting Council.
- (4) The Agency shall be required to obtain the consent of the Government with regard to the minimum amount of fee for efficient use of the limited natural resource and the method for payment thereof.
- (5) The Agency shall be obliged to publish resolutions issued pursuant to this Article in the *Official Journal* of the Republic of Slovenia, and may not alter or supplement them after their publication.

#### Article 41

(interval for submission of bids)

- (1) The interval for submission of bids must enable bidders to prepare quality bids, may not be less than thirty (30) nor greater than ninety (90) days, and shall start from the day after publication of the resolution from the previous Article.
- (2) Bids shall be deemed timely if they are submitted within the interval laid down in the public tender.
- (3) The Agency may not accept bids, alteration, supplementation or replacement thereof, arriving after the expiry of the interval from the previous paragraph. If they are sent by post, they must be returned sealed to the sender.
- (4) The Agency shall be obliged to preserve as commercially confidential the list of bidders and bids submitted until the expiry of the interval from the second paragraph of this Article.

Article 42  
(tender documentation)

In the tender documentation the Agency shall be obliged to clarify all clauses of the resolution on initiation of the public tender, clearly stating the selection criteria and indicating which supporting documentations must be provided for the bids to be deemed acceptable.

Article 43  
(special provisions on public opening of bids)

- (1) The opening of bids shall be public.
- (2) The tender commission shall keep minutes on the procedure of opening of bids, which must contain, in particular, data on the serial number of the bid, and if the tender is anonymous, data on the title or code of the bidder and the bid price. Care must be taken throughout the procedure to ensure that bidders' commercial secrets are not disclosed.
- (3) At the public opening of bids it is verified whether the bids contain all documents required by the tender documentation, wherein credibility and content of the documents is not verified.
- (4) Only bids delivered within the set deadline and correctly completed and marked shall be opened.
- (5) The public tender shall succeed if at least one timely and correct bid meeting the tender specifications is received.
- (6) In the resolution on initiation of the public tender, the Agency may stipulate that an individual public tender succeeds if another minimum number of bids meeting the tender conditions are received.

Article 44  
(review and evaluation of bids)

- (1) After completion of the public opening of bids, the commission shall first determine whether all the bid documents meet the tender specifications and are in accordance with the law. If the commission finds that a certain bid is not in accordance with the law and the tender documentation, it shall exclude the bid from the procedure. The commission shall evaluate the remaining bids in accordance with tender criteria.
- (2) After reviewing and evaluating the received bids, the commission shall compile a report presenting the evaluations of individual bids and stating which bid best meets the published selection criteria.
- (3) Where the subject of the public tender is the allocation of radio frequencies for the provision of broadcasting, the commission shall send complete bids and the report on their evaluation in accordance with tender's selection criteria, which shall not cover evaluation of bids with regard to programme contents, to the Broadcasting Council. The Council shall evaluate bids received with regard to programme contents in accordance with the criteria laid down in the resolution on initiation of the public tender and shall, on the basis of selection criteria submit to the Agency its proposal for the selection of the

most favourable bidder with an explanation why such a choice was made. The Broadcasting Council shall be obliged no later than within sixty (60) days of receipt of the bids and the report to send to the Agency a proposed selection with explanation.

- (4) The commission and/or Broadcasting Council may require bidders to explain their bids, but in so doing they may not request, permit or offer any alterations or supplements whatsoever to the content of the bids.
- (5) The Commission and/or Broadcasting Council shall be obliged in reviewing and evaluating bids to take into account only those criteria for the selection of the most favourable bidder laid down by law and the tender documentation, in particular the efficiency or use of the radio frequency spectrum and the promotion and safeguarding of competition.

#### Article 45

(general administrative procedure)

Upon receipt of the report by the commission regarding the evaluation of bids and/or the proposal with explanation of the Broadcasting Council if the subject of the public tender is the allocation of radio frequencies for the provision of broadcasting, the Agency shall continue the decision under the general administrative procedure, wherein all bidders meeting the conditions pursuant to Article 43 and/or the first paragraph of Article 44 of this Act shall have the status of parties.

#### Article 46

(limitation of evidence)

- (1) The Agency shall decide on bids by issuing one or more decisions on the allocation of radio frequencies. The Agency shall be obliged to issue and deliver decisions within no more than eight (8) months from the expiry of the interval for submission of bids, and simultaneously to inform the public of its decision.
- (2) Where the subjects of the public tender are radio frequencies for the provision of broadcasting, the Agency may not select a bidder not proposed by the Broadcasting Council.

#### Article 47

(termination of procedure)

The Agency may terminate the procedure for issuing or altering decisions on the allocation of radio frequencies if additional harmonisation, investigation or activity is required in accordance with acts of international law applicable in the Republic of Slovenia.

#### Article 48

(contents of decisions on allocation of radio frequencies)

- (1) The decision on allocation of radio frequencies shall, in addition to the contents envisaged by the law governing the general administrative procedure, contain, in particular:
  1. data on the holder of the right to use radio frequencies;
  2. radio frequencies allocated;
  3. area of coverage;
  4. validity of the decision on allocation of radio frequencies;
  5. conditions to be met in the use of radio frequencies.
- (2) Where the subject of decision is the allocation of radio frequencies for the provision of broadcasting, the decision shall contain the name of the programme and the conditions and requirements regarding programme content, which must be met in the use of radio frequencies.
- (3) Holders of rights to use radio frequencies shall be obliged to report changes to the data from the first clause of the previous paragraph of this Article within an interval of thirty (30) days from the onset of such changes.

#### Article 49

(conditions for the use of radio frequencies)

The conditions from the fifth clause of the first paragraph of the previous Article may only apply to:

1. electronic communications services or types of electronic communications networks for which the allocated radio frequencies may be used;
2. ensuring efficient use of radio frequencies including the requirements regarding coverage, where appropriate;
3. technical and operative conditions necessary for the avoidance of harmful interference and limitation of public exposure to electromagnetic fields if such conditions differ from those included in the general authorisation;
4. duration of the right to use radio frequencies;
5. transfer of ownership of rights to use radio frequencies and the conditions for such transfer;
6. payment of fees in accordance with Article 56 of this Act;
7. additional obligations undertaken by the selected bidder during participation in the public tender (for example, regarding the rate of construction of the electronic communications network, programme contents, etc.);
8. obligations regarding acts of international law applicable in the Republic of Slovenia relating to radio frequencies.

#### Article 50

(duration of validity of decisions on allocation of radio frequencies)

- (1) The Agency shall issue decisions on the allocation of radio frequencies for a fixed interval no greater than fifteen (15) years, except for the allocation of radio frequencies intended for aeronautical and maritime mobile services.
- (2) The Agency shall issue decisions on the allocation of radio frequencies intended for the purposes of measurement, attestation and other tests of radio equipment for a restricted area of coverage and for no more than ninety (90) days.
- (3) The Agency shall generally issue decisions on the allocation of radio frequencies intended for special events for no more than fifteen (15) days or the other envisaged duration of the event.

#### Article 51

(extension of decisions on the allocation of radio frequencies)

- (1) The validity of a decision on the allocation of radio frequencies may, at the suggestion of the holder thereof, be extended if all the conditions prescribed at the end of its expiry for the use of such radio frequencies are met.
- (2) Applications for extension of decisions on the allocation of radio frequencies must be submitted to the Agency no less than thirty (30) and no more than ninety (90) days prior to the expiry of the validity of the decision on the allocation of radio frequencies.
- (3) In the event of extension, the Agency shall issue a new decision on the allocation of radio frequencies.
- (4) The validity of decisions on the allocation of radio frequencies intended for the purposes of measurement, attestation and other tests of radio equipment, and decisions on the allocation of radio frequencies intended for special events may not be extended.

#### Article 52

(transfer of decisions on the allocation of radio frequencies)

Holders of decisions on the allocation of radio frequencies may transfer by legal transaction their rights to use such radio frequencies to another natural person or legal entity meeting the prescribed conditions, but only with a prior decision of consent from the Agency, which shall verify that such other natural person or legal entity meets the conditions laid down by law, secondary legislation or act of the Agency.

#### Article 53

(amendment of decisions on the allocation of radio frequencies)

- (1) The Agency may, *ex officio*, amend decisions on the allocation of radio frequencies if:
  1. the distribution of radio frequency bands or use of radio frequencies changes;
  2. there is public demand that cannot otherwise be met;
  3. required for the efficient use of the radio frequency spectrum for the public benefit;
  4. harmful interference cannot otherwise be avoided;
  5. so required by acts of international law applicable in the Republic of Slovenia.

- (2) In instances from the previous paragraph, the Agency shall issue a new decision on the allocation of radio frequencies in which it may also lay down the extent of and deadline for adjustment.
- (3) By a decision from the previous paragraph, the Agency may exceptionally extend the validity of a decision on the allocation of radio frequencies if the costs of adjustment from the previous paragraph encroach disproportionately upon the benefits held by the holder of the decision on allocation of radio frequencies.
- (4) In instances from the first paragraph of this Article, the Agency may fully revoke the decision on allocation of radio frequencies by a new decision and lay down new contents.
- (5) Holders of amended or revoked decisions on the allocation of radio frequencies shall have the right to allocation of other equivalent radio frequencies if the reasons for the amendment or revocation arose through no fault of theirs. Radio frequencies with equivalent coverage shall be allocated by a decision under an administrative procedure without a public tender.
- (6) Amendments to the decision on the allocation of radio frequencies at the proposal of its holder shall only be possible within the framework of area of coverage from that decision, in a manner which does not encroach upon the rights of others, and under the conditions of this Act. In case of amendment of the decision on the allocation of radio frequencies for the provision of broadcasting, the amendment is also possible outside the area of coverage if such amendment of the decision on the allocation of radio frequencies provides for greater efficiency in the use of radio frequencies and if such amendment does not encroach upon the benefits of other holders of decisions on the allocation of radio frequencies.

#### Article 54

(revocation of decisions on the allocation of radio frequencies)

- (1) The Agency may revoke a decision on the allocation of radio frequencies either at the suggestion of the holder of the decision on the allocation of radio frequencies or *ex officio*. The Agency shall be obliged to initiate, *ex officio*, the procedure for revocation of the decision on the allocation of radio frequencies for the provision of broadcasting if this is proposed by the Broadcasting Council.
- (2) At the suggestion of the holder of the decision on the allocation of radio frequencies, the Agency shall revoke the decision on the allocation of radio frequencies only in the event that such holder meets all obligations laid down pursuant to valid legislation and pursuant to the decision on the allocation of radio frequencies.
- (3) The Agency shall revoke a decision on the allocation of radio frequencies *ex officio* if it determines that:
  1. the application for a decision on the allocation of radio frequencies contained false data;
  2. the holder no longer meets the prescribed conditions laid down pursuant to valid legislation or to his decision on the allocation of radio frequencies;
  3. the holder failed to remove deficiencies within the interval laid down by a decision of the Agency ordering the removal of the deficiencies detected;

4. fees for the use of radio frequencies or for the efficient use of a limited natural resource were not paid despite a warning;
5. it is not otherwise possible to avoid harmful interference caused by the signal of radio equipment to other radio equipment, receivers or electrical or electronic systems.

#### Article 55

(cessation of decisions on the allocation of radio frequencies)

- (1) Decisions on the allocation of radio frequencies shall, pursuant to the Act itself, cease:
  1. on the expiry of the interval for which they were issued;
  2. if their holders cease to exist;
  3. if their holders failed to start using the radio frequencies within one (1) year of the issuing of the decision on the allocation of radio frequencies or failed to use the allocated radio frequencies for more than one (1) year, unless otherwise stipulated by the decision.
- (2) In instances from clauses 2 and 3 of the previous paragraph, the Agency shall issue a declaratory decision.

#### Article 56

(payment for use of radio frequencies)

- (1) An annual fee shall be paid to the Agency for the use of allocated radio frequencies by the holders of the decisions on the allocation of radio frequencies. The payments shall cover the expenses due to management and monitoring of the radio frequency spectrum.
- (2) The minister shall prescribe the method of calculating fees on the basis of this Article, wherein he/she shall ensure that they do not distort competition or create barriers to market entry. The level of fees shall depend on the coverage, population density in the area of coverage, radio frequency, width of the radio frequency band, type of radio communication, or a combination thereof.
- (3) The Agency shall determine the level of payments pursuant to the first and second paragraphs of this Article with a tariff, taking into account the necessary coverage of costs from the first paragraph of this Article and *mutatis mutandis* application of the fifth and sixth paragraphs of Article 6 of this Act.
- (4) Additional fees for the efficient use of a limited natural resource shall be paid for radio frequencies allocated pursuant to a public tender, except for radio frequencies for broadcasting, thereby ensuring the optimal use of the allocated radio frequencies and creating revenues for the national budget. The minimum amount of such fees and the method of their payment shall be laid down in the resolution on initiation of the public tender procedure. In determining the level or minimum level of fees and of the method of payment thereof, account shall be taken of the supply and demand for tendered frequencies, the development of the market to which the frequencies apply, and the level of such payments in other states of the European Union, and it shall be ensured that they are not so high as to hinder the development of innovative services and market competition.

- (5) Irrespective of the first and second paragraphs of this Article, fees shall not be paid to the Agency for the use of radio frequencies which, pursuant to the plan from Article 34 of this Act, are envisaged for amateur radio and amateur radio satellite service.

Article 57  
(supervision)

The Agency shall supervise the efficient use of radio frequencies within the framework of its authorisations.

## VI. NUMBERING

Article 58  
(objectives and management)

- (1) The Agency shall, pursuant to public authorisation, manage the set of all numbers used in the Republic of Slovenia for the needs of public communications networks and/or services with the objective of ensuring their efficient structuring and use and also the objective of satisfying the needs of operators and other natural persons and legal entities eligible for allocation of a number under this Act in a fair and non-discriminatory manner.
- (2) The Agency shall keep all data relating to number management.
- (3) The Agency shall publish on its website the data of numbers or number blocks allocated:
1. numbers or number blocks;
  2. holders of numbers or number blocks.

Article 59  
(numbering plan)

- (1) The minister shall issue rules on the numbering plan (hereinafter: numbering plan) at the suggestion of the Agency.
- (2) The numbering plan shall lay down the type, length, structure, purpose and method of use of numbers comprising the number space, including numbers for emergency calls, and shall be obliged to enable the transfer of numbers and the introduction of new electronic communications services.
- (3) In the event of amendments or additions to the numbering plan, such amendments or additions shall only start to apply two (2) years after their introduction.

Article 60  
(use of numbers)

The operators or natural persons or legal entities from the first paragraph of Article 62 of this Act may use specific numbers only pursuant to a decision of the Agency allocating to them the right to use such numbers. If numbers are used in contravention of this Act and secondary legislation without a valid decision, inspectors shall take action in accordance with the supervision procedure.

#### Article 61

(procedure for issuing decisions on the allocation of numbers)

- (1) The Agency shall issue decisions on the allocation of numbers in accordance with the numbering plan under the provisions of the general administrative procedure and pursuant to a prior implementation of a public tender as stipulated by this Act.
- (2) The Agency shall only use public tender procedures where, with the *mutatis mutandis* application of the procedure from Article 36, it finds that the efficient use of specific numbers (e.g. short numbers) can only be ensured through restriction of the number of issued decisions on the allocation of numbers. Only operators who can allocate their users numbers so obtained under equal, cost-oriented and transparent conditions, may participate in the public tender procedure as bidders.
- (3) The Agency shall in such public tender procedures apply, *mutatis mutandis*, the provisions of the public tender implemented pursuant to this Act for the allocation of specific radio frequencies.
- (4) The Agency shall decide on bids by issuing one or more decisions on the allocation of numbers, which it shall be obliged in such instances to issue and deliver within an interval of forty-two (42) days from the expiry of the interval for submission of bids, and at the same time to inform the public of its decision.

#### Article 62

(issuing decisions on the allocation of numbers on the basis of a general administrative procedure)

- (1) Applications for decisions on the allocation of numbers may only be submitted by operators, whereas other natural persons or legal entities can do so only if they are able to demonstrate that they need the number to perform activities in the public interest as arising from sectorial legislation.
- (2) Applications from the previous paragraph must contain data required by the Agency to maintain official records of holders of decisions on the allocation of numbers and to supervise the use of numbers, and specifically:
  1. name, address and tax number for natural persons;
  2. title, principal office, tax and registration number, register number and statement of the lawful representative for legal entities;
  3. evidence that the applicant is eligible for allocation of numbers;
  4. data on the type, quantity and purpose of use of numbers applied for:

5. a project containing a needs assessment plan for the following three (3) years if the applicant requests a large block of numbers:
  6. justification by means of which the applicant demonstrates that the allocated quantity of numbers will be used in three (3) years.
- (3) The Agency may by general act prescribe in greater detail the contents and format of applications and the type of evidence to be attached to applications.
  - (4) The Agency shall by general act lay down the size of the block of numbers from clause 5 of the second paragraph of this Article.
  - (5) The Agency shall be obliged to issue and deliver decisions on the allocation of numbers, where a public tender was not implemented, within twenty-one (21) days of initiation of the procedure for the acquisition of numbers.
  - (6) Irrespective of the provisions of the previous paragraph, the Agency shall decide to refuse to issue a decision on the allocation of numbers if it determines that:
    1. the applicant is not eligible for allocation of numbers pursuant to valid legislation;
    2. the applicant has had a decision on allocation revoked in the last five (5) years *ex officio* on the grounds from clauses 1, 3 and 4 of Article 68;
    3. the intended use does not justify the allocation of the requested quantity or type of numbers;
    4. the allocation of numbers would contravene valid legislation.
  - (7) Operators may allocate numbers, in accordance with the decision on the allocation of numbers and valid legislation, to the users of their services and on the basis of lawful transactions for remuneration, may allocate them for use to resellers of their services, wherein they may only charge actual costs. They shall be obliged to send all data on such lawful transactions to the Agency. Resellers of services may allocate numbers so allocated to them only to end users of services of the operator from which they obtained the numbers.

#### Article 63

(contents of decisions on the allocation of numbers)

- (1) Decisions on the allocation of numbers must contain at least:
  1. data on the holder of rights to use numbers;
  2. allocated numbers;
  3. conditions for the use of numbers from the following Article of this Act.
- (2) Holders of rights to use numbers shall be obliged to inform the Agency of changes to the data from clause 1 of the previous paragraph within an interval of thirty (30) days of their onset.

#### Article 64

(conditions for the use of numbers)

Conditions from clause 3 of the first paragraph of the previous Article may only refer to:

1. designation of service for which the allocated number or numbers shall be used, including any requirements linked to the provision of that service;

2. ensuring actual and efficient use of numbers;
3. number portability;
4. obligation to provide information on subscribers required in public directories in accordance with Articles 12 and 89;
5. duration of decisions on the allocation of numbers subject to any changes in the numbering plan;
6. prohibition of the transfer of decisions on the allocation of numbers at the initiative of their holders;
7. payment of fees for the use of allocated numbers in accordance with Article 70 of this Act;
8. obligations undertaken by the holder of the decision on the allocation of numbers in the public tender procedure;
9. obligations from acts of international law applicable in the Republic of Slovenia relating to numbers and the use thereof.

#### Article 65

(validity of decisions on the allocation of numbers)

The Agency shall issue decisions on the allocation of numbers for an indefinite period.\*

#### Article 66

(transfer of decisions on the allocation of numbers)

Decisions on the allocation of numbers shall not be transferable.

#### Article 67

(amendment of decisions on the allocation of numbers)

- (1) The Agency may, due to harmonisation with amendments or additions to the plan in accordance with the third paragraph of Article 59 of this Act, amend *ex officio* previously issued decisions on the allocation of numbers within thirty (30) days of the date of introduction of amendments or additions to the plan. In such instances the holders of decisions on the allocation of numbers or users to whom such numbers were allocated shall not have the right to claim compensation.
- (2) The Agency may also amend decisions on the allocation of numbers at the suggestion of the holders thereof.

#### Article 68

(revocation of decisions on the allocation of numbers)

The Agency shall be obliged *ex officio* to revoke the decision on the allocation of numbers if it determines that:

1. the application for the allocation of numbers contained false data;
2. the holder no longer meets the conditions laid down pursuant to valid legislation and the decision on the allocation of numbers;
3. the holder failed to remove deficiencies within the interval laid down by a decision of the Agency ordering the removal of the deficiencies detected;
4. fees for the use of numbers and/or the amount for efficient use of a limited resource were not paid despite a warning.

#### Article 69

(cessation of decisions on the allocation of numbers)

- (1) Decisions on the allocation of numbers shall cease:
  1. at the suggestion of the holder of the decision on the allocation of numbers;
  2. if the holder of the decision on the allocation of numbers ceases to exist;
  3. on the revocation of the decision on the allocation of numbers.
- (2) If the holder of a decision on the allocation of numbers fails to start to use specific allocated numbers within three (3) years of the issue of the decision on the allocation of numbers, or fails to use specific allocated numbers for more than one (1) year, the decision on the allocation of numbers shall cease to apply for such numbers.
- (3) In instances from clauses 1 and 2 of the first paragraph of this Article, and in instances from the previous paragraph of this Article, the Agency shall be obliged to issue a declaratory decision.

#### Article 70

(payment for use of numbers)

- (1) Holders of decisions on the allocation of numbers shall be obliged to pay an annual fee to the Agency for the use of allocated numbers covering the costs of the Agency for the management and monitoring of the number space.
- (2) The method of calculating the level of the fee to be paid to the Agency pursuant to this Article shall be prescribed by the minister and may not distort competition or create barriers to market entry. The level of the fee shall depend on the quantity, length and type of numbers.
- (3) The Agency shall determine the level of payments pursuant to the first and second paragraphs of this Article with a tariff taking into account the necessary coverage of costs from the first paragraph of this Article and *mutatis mutandis* application of the fifth and sixth paragraphs of Article 6 of this Act.
- (4) Regardless of the provisions from the first paragraph, the operator will not be obliged to pay the Agency for the use of numbers transferred to another operator. The person liable for the payment for such numbers shall be the operator to whom these numbers were transferred.

- (6) Payment of an additional fee may be required for numbers allocated by a decision on the basis of a public tender to ensure optimal use of allocated numbers. Such fees shall create revenues for the national budget. The minimum level of such fees and the manner of their payment shall in this instance be determined upon the initiation of the public tender procedure. In decisions on such tender criteria as the minimum level of fees and the manner of payment thereof, account shall be taken of the supply and demand for tendered numbers, the development of the market to which the tendered numbers apply and the level of such payments in other states of the European Union, and it shall be ensured that they are not so high as to hinder the development of innovative services and market competition.

Article 71  
(number portability)

- (1) All operators of publicly available telephone services, including mobile services, shall be obliged to enable their subscribers to retain their number or numbers while changing operators in the following instances:
  1. in the case of geographic numbers, at a specific location;
  2. in the case of non-geographic numbers, at any location.
- (2) Irrespective of the provisions from the previous paragraph, numbers may not be ported from networks providing services at fixed locations to mobile networks and vice versa.
- (3) Operators may, for the porting of numbers to another operator, only charge subscribers a lump sum covering the costs of porting the number, while such sum may not be so high as to act as a disincentive for the use of such facilities.
- (4) The prices of interconnection in relation to ensuring number portability must be cost oriented.
- (5) Operators shall be obliged to bear the costs of adapting their networks so as to enable number portability and maintenance costs for such facilities. The operator of a network in which the call was generated covers the costs under the contract on interconnection to the operator of the network where the call to the ported number is received.
- (6) The Agency shall by general act govern in greater detail the manner of implementation of number portability and the technical and other conditions for compliance with the provisions of this Article.
- (7) The operator shall be obliged by 15 January to send the Agency the list of all numbers ported to other operators in the previous year and the list of all numbers ported to him in the previous year.

Article 72  
(emergency call numbers)

- (1) Operators of public telephone networks shall be obliged to ensure that users of publicly available telephone services, including users of public pay telephones, are able to call emergency call numbers free of charge.

- (2) Operators of public telephone networks or publicly available telephone services shall be obliged to make available free of charge, to bodies handling the single emergency call number “112”, number information and caller location information if technically feasible.
- (3) The minister, in agreement with the minister responsible for safety and rescue, shall prescribe the quality of service for the single European emergency call number “112” so that, in particular, he/she determines the quality parameters, their limit values and methods for measuring these parameters.

Article 73  
(non-geographic numbers)

- (1) Operators of public telephone networks or publicly available telephone services shall be obliged to ensure that users from other European Union member states are able to call non-geographic numbers determined in the numbering plan where technically and economically feasible.
- (2) Operators of public telephone networks or publicly available telephone services shall not be obliged to comply with the obligation from the previous paragraph where a called subscriber has chosen, for commercial reasons, to limit calls originating from specific areas of the European Union.

Article 74  
(supervision)

The Agency shall, within the framework of its authorisations, supervise the efficient use of the number space.

**VII. EXPROPRIATION AND RESTRICTION OF OWNERSHIP RIGHTS**

Article 75  
(withdrawal or restriction of ownership or other material rights)

- (1) The construction, installation, operation or maintenance of public communications networks and associated infrastructure is for the public good in accordance with regulations.
- (2) Public communications networks must be planned so as to minimise encroachments on private property.
- (3) Ownership or other material rights to real estate may be withdrawn or restricted for the public good where required, due to the construction, installation, operation and maintenance of public communications networks and associated infrastructure.

- (4) Ownership or other material rights to real estate shall be withdrawn or restricted under the procedure and in the manner laid down by the law governing the expropriation of real estate and the law governing material rights, unless otherwise stipulated by this Act.
- (5) It is understood that deciding on matters from this chapter of the Act is a matter of urgency within the meaning of the law governing the expropriation of real estate and restriction of ownership rights. The administrative body responsible for deciding on the basis of the law governing the expropriation of real estate and restriction of ownership rights must, in case of deciding not to act with urgency, in particular explain and justify their decision not to do so.

Article 76  
(expropriation and right of use)

Operators wishing to execute works from the first paragraph of the previous Article on the real estate of other parties may appear in the expropriation procedure as the eligible expropriator or propose establishment of the right of use.

Article 77  
(right of use)

- (1) Right of use pursuant to this Act shall be a material right, which for operators from the previous Article shall comprise the following entitlements:
  1. construction, installation and operation of electronic communications networks and associated infrastructure;
  2. access to the electronic communications network and associated infrastructure for the purposes of the operation and maintenance thereof;
  3. removal of natural barriers in the construction, installation, operation and maintenance of the electronic communications network.
- (2) Eligible parties shall be obliged to exercise the entitlements from the previous paragraph of this Article so as to cause minimal disturbance to the owner of the real estate (hereinafter: owner). If the owner of the real estate suffers material damage in the exercise of such entitlements, the responsible party shall be obliged to reimburse him.

Article 78  
(establishment of right of use)

- (1) To establish right of use, interested parties shall be obliged to submit a proposed contract to the owner of the real estate.
- (2) A mandatory component of the proposed contract shall be the amount of monetary compensation, which must be equal to the payment for equivalent right of use which they could receive in ordinary commercial transactions with regard to the type and scope of rights and the properties of the real estate without taking into account unusual or personal circumstances.

- (3) If the owner of the real estate fails to agree within ten (10) days of receipt of the proposed contract to sign it, the interested operator may request that the competent body decide under an emergency procedure on the establishment of right of use in accordance with the fourth paragraph of Article 75 of this Act.

#### Article 79

(conditions for the competent body's decision)

- (1) The competent administrative body shall, in deciding on the establishment of right of use, be obliged to determine and consider whether:
1. the acquisition of right of use is essential for the construction of the electronic communications network and associated infrastructure;
  2. the construction of the electronic communications network was planned so as to minimise encroachment on private property;
  3. the exercise of right of use will substantially hinder the owner of the real estate.
- (2) Substantial hindrance of the owner of the real estate from clause 3 of the previous paragraph shall be deemed to occur if:
1. access to the real estate by the owner of the real estate (to the land or structure thereupon) is prevented or rendered substantially more difficult;
  2. performance of activities by the owner of the real estate is prevented or rendered substantially more difficult;
  3. the value of the real estate (land or structure thereupon) is substantially reduced.

#### Article 80

(the competent administrative body's decision)

The competent administrative body shall decide to establish right of use to such an extent and for such a period of time as is essential for the construction, installation, maintenance or operation of the electronic communications network.

#### Article 81

(cessation of right of use)

- (1) Right of use shall cease on the basis of an agreement between the two parties or on the expiry of the period for which it was established.
- (2) Right of use may cease pursuant to a decision of the competent administrative body if it is determined that:
1. at the request of one of the parties, the right of use is no longer required;
  2. at the request of the owner of the real estate, the eligible party has failed within three (3) years to begin exercising the entitlements, unless reasonable grounds exist .

## Article 82

(relocation or alteration of other installations and subsequent construction of other installations)

- (1) Operators wishing to construct a public communications network may, in the request to establish right of use, ask for relocation or alteration of other existing installations, but only in instances where the public communications network could not be built and other installations could be relocated or altered without negative consequences for the use thereof, and where joint use of installations under the conditions of Article 8 of this Act is not possible.
- (2) The costs of relocation or alteration of installations must be covered in full by the operator that has requested relocation or alteration.
- (3) Subsequent construction of other installations must be executed so as to avoid disturbing influences on existing public communications networks and associated infrastructure.

## Article 83

(relocation and protection of existing public communications networks)

- (1) In instances where, due to the construction of public utilities and other structures, facilities and installations, it is necessary to relocate and protect the existing public communications network or associated infrastructure, the investor of the envisaged construction of public utilities and other structures, facilities and installations shall be obliged to notify the operator who is the owner of the public communications network or associated infrastructure that needs to be relocated and protected no less than thirty (30) days before the envisaged commencement of works, and enable the presence and professional supervision of the execution of works to the operator's authorised person. Otherwise the investor shall be responsible for any possible damage to the operator.
- (2) The relocation and protection from the first paragraph of this Article may, in agreement with the investor, be carried out by an operator providing the electronic communications network and who is the owner of the public communications network and associated infrastructure, or a contractor authorised by him/her.
- (3) The costs of the relocation and protection shall be charged to the investor of the construction of public utilities and other structures, facilities and installations.
- (4) The owner of the public communications network and associated infrastructure shall be obliged to provide information on the types and location of the networks and facilities to the extent that these are a part of associated infrastructure directly to the body responsible for land survey matters for the entry into the register of infrastructure networks and facilities in accordance with the regulation governing the entry into such register. Any change to such information is communicated to the competent body in the period of three (3) months from the occurrence thereof. Supervision of the implementation of this provision shall be carried out by the inspector in cooperation and in concerted action with the inspector responsible for spatial planning and building matters.

## VIII. RIGHTS OF USERS

### Article 84

(transparency and publication of information)

- (1) Transparent information on applicable prices and tariffs and on the general conditions of access to and use of publicly available telephone services must be published.
- (2) The Agency shall, in a general act harmonised with the legislation of the European Community relating to universal service in the area of electronic communications, prescribe in greater detail the information which operators of public telephone networks and/or publicly available telephone services must publish and which information the Agency must publish itself.

### Article 85

(subscriber contracts)

- (1) Operators providing connection or access to the public telephone network shall be obliged to establish a contract with end users which must contain at least:
  1. name and address of the operator;
  2. services provided, the offered service quality, as well as the time for the initial connection;
  3. the types of maintenance service offered;
  4. detailed information on prices and tariffs subject to this contract and entering into force on the conclusion of the contract, and information on the location and method of access to the latest information on all applicable prices and tariffs;
  5. the duration of the subscriber contract, and the conditions for extension and termination of the subscriber contract or provision of services;
  6. compensation and refunds for services not provided to the contractual quality level;
  7. method of initiating procedures for the settlement of disputes;
  8. the method for notifying subscribers of intended modifications to the conditions laid down in the subscriber contract and the method of exercising subscribers' right to terminate the contract in such instances;
  9. procedures in the event of non-payment for services.
- (2) If other operators establish subscriber contracts with end users, such contracts must also contain the elements listed in the previous paragraph.
- (3) Subscribers must be informed of all proposed modifications to the conditions laid down in the subscriber contract at least thirty (30) days prior to the proposed introduction of modifications, wherein subscribers must be informed that within the same interval they have the right, without notice or consequences, to terminate the subscriber contract if they do not agree with the proposed modifications.
- (4) The provisions from the previous paragraph do not affect and do not encroach upon the due unpaid liabilities of subscribers and into the liabilities of compliance with contractually agreed liabilities of subscribers.

#### Article 86

(quality of public communications services)

- (1) The Agency may, after consulting interested parties, require operators of public communications services to publish comparable, adequate and up-to-date information on the quality of their services, including the accuracy of the settlement of accounts. Operators shall be obliged on request to supply such information to the Agency prior to publication.
- (2) The Agency may by general act govern in greater detail issues arising in the implementation of this Article, in particular laying down the service quality parameters that must be measured and the content, format and manner of publication of information.

#### Article 87

(tone dialling and calling line identification)

The Agency may decide to require operators that provide public telephone networks to make available to their end users tone dialling and calling line identification, where technically feasible and economically viable.

#### Article 88

(radio and telecommunications terminal equipment)

- (1) Operators may not refuse for technical reasons a reasonable request to connect radio or telecommunications terminal equipment that complies with the requirements from the regulations governing radio and telecommunications terminal equipment.
- (2) Users may not connect to the public communications network radio or telecommunications terminal equipment that does not comply with the requirements from the regulations governing radio and telecommunications terminal equipment. The inspector supervises the implementation of this provision in the sense of monitoring the operation of the aforementioned equipment in operation. In so doing he/she cooperates in concerted action with the inspector responsible for the supervision of goods on the market and the Agency with the application of the third paragraph of Article 141 of this Act.

#### Article 89

(directories and directory enquiry services)

- (1) Subscribers to publicly available telephone services shall have the right to an entry in the universal directory from Article 12 of this Act.
- (2) Operators and resellers of their services that allocate telephone numbers to subscribers shall be obliged to approve all reasonable requests for the provision of publicly available

directory enquiry services and directories, including the universal directory enquiry service and the universal directory, along with relevant information in an agreed format and under fair, objective, cost-oriented and non-discriminatory conditions. In case of disputes, the Agency shall decide on the basis of Article 129 of this Act.

- (3) All end users of publicly available telephone services must have access to the universal directory enquiry services from Article 12 of this Act and to relevant directory enquiry services in other member states.

Article 90  
(operator assistance)

All end users with access to the public telephone network must have access to operator assistance.

Article 91  
(itemised billing)

- (1) All end users of publicly available telephone services must have access to a level of itemised billing that enables them to verify and control their use and the sum charged. Such itemisation may not cover calls to freephone numbers, including emergency call numbers.
- (2) The basic level of itemised billing shall be sent free of charge to subscribers and on the issuing of each bill unless the subscriber informs the operator that he or she does not wish to receive itemised bills.
- (3) At least the following elements must be separately stated in the basic level of itemised billing for publicly available telephone services at a fixed location:
  1. accounting period;
  2. connection fee;
  3. type and amount of all other possible lump sum payments in the accounting period for which the bill is issued;
  4. subscription fee;
  5. type and amount of all other possible monthly payments;
  6. number of calls, duration of such calls, number of accounting units, and amounts appearing separately for:
    - national calls,
    - international calls,
    - calls to mobile public communications,
    - premium services,
    - data transfer.
  7. type and amount of other services provided;
  8. total amount of the bill.

- (4) If the operator from the previous paragraph uses different tariffs for local and long-distance calls, the requested information from the first indent of clause 6 of the previous paragraph for local and long-distance calls must be shown separately.
- (5) For other operators of publicly available telephone services, provisions of the third paragraph of this Article shall be applied *mutatis mutandis*.
- (6) All higher levels of itemised billing offered by the operator must be defined in the general conditions. If the operator offers them for a fee, the prices must be set at the level of actual costs incurred by operators through the required additional itemisation.

Article 92  
(right of objection and complaint)

- (1) All end users shall have the right to object against decisions or actions of operators relating to access to or provision of services to the relevant body or a body established by the operator.
- (2) End users shall be obliged to submit their objections within fifteen (15) days from the day on which they learned of the decision or action objected to from the previous paragraph, wherein the objection shall also be deemed timely if submitted by registered mail on the last day of the complaint interval. If the interval would expire on a Saturday, Sunday, public holiday or non-working day, the objection shall be timely if submitted on the next working day.
- (3) Operators shall be obliged to define in their general conditions the method and procedure for dealing with the objections of end users.
- (4) If an operator fails to accept or decide on objections within fifteen (15) days of receipt thereof, users may, within fifteen (15) days of receipt of an unfavourable solution to their objection or after a fifteen (15) day period from the submission, submit a complaint to the Agency, which shall decide on the issue under the procedure from Article 129 of this Act.
- (5) Organisations that may file complaints under the law governing consumer protection may file objections due to violations of the general conditions and prices of operators in transactions with users and consumers, as well as act under the previous paragraph.

Article 93  
(restriction or interruption for reasons on the part of the operator)

- (1) Operators providing access to the public telephone network may, without the consent of users, temporarily restrict or terminate access to their services if required due to upgrading, modernisation or maintenance or in the event of faults or damage.
- (2) Operators shall be obliged to report restrictions or interruptions due to upgrading, modernisation or maintenance in public media at least one (1) day in advance and at the same time inform the Agency, and to inform users and the Agency of restrictions or interruptions due to faults or damage without delay.
- (3) Restrictions or interruptions may only last as long as necessary for the execution of relevant works or for the removal of faults or damage.

#### Article 94

(restrictions or disconnections for reasons on the part of the subscriber)

- (1) Operators providing access to the public telephone network may restrict access to their services and/or may disconnect subscribers and terminate the subscriber contract only if the subscriber fails to settle his or her liabilities or breaches other conditions laid down in the subscriber contract. The operator shall be obliged in the general conditions to stipulate which measures shall be taken for specific breaches and the interval within which they are implemented. The measure and interval selected must be proportionate to such breaches and non-discriminatory.
- (2) In the event of breaches, operators shall be obliged to send, in a reliable manner, a written warning stating the reasonable interval within which the subscriber must cease the breaches or settle his or her liabilities, and the measures to be taken by the operator if the subscriber, after the expiry of such interval, fails to cease the breaches or settle his or her liabilities.
- (3) Irrespective of the provisions of the previous paragraph, operators shall not be obliged to notify subscribers in advance of measures if the breach results in an immediate and serious threat to public order, public safety or public health or causes serious commercial or operational difficulties, and if such measure is envisaged in the general conditions. Non-payment of bills shall in no instances be deemed to be a breach requiring initiation of measures without prior notification.
- (4) If a subscriber pursuant to Article 92 of this Act submits an objection or complaint regarding the amount of the bill, the operator may not initiate measures from this Article until the final decision of the Agency if the subscriber, within the interval, settles the undisputed part of the bill or pays an amount equivalent to the average value of the last three undisputed bills.
- (5) If technically feasible, operators shall be obliged to restrict access only to those services with regard to which the user breaches the subscriber contract, except in instances of abuse, persistent late payment or non-payment of bills. Operators may not restrict access and use of the single European emergency call telephone number "112".

#### Article 95

(public influence)

- (1) The Agency and other state bodies shall be obliged, in formulating policy in the electronic communications market and prior to adopting measures that will significantly influence such market, and in the adoption of regulations, to obtain and take appropriate account of the opinions of interested parties.
- (2) The Agency and other state bodies shall be obliged, prior to adopting acts and regulations from the previous paragraph, to publish their proposals and to collect opinions within the published interval, which may not be shorter than thirty (30) days.
- (3) After the expiry of the interval from the previous paragraph and prior to the adoption of the act or regulation from the first paragraph of this Article, the Agency or other state body shall be obliged to publish on its website the opinions and comments obtained, and to state in such publication the manner in which they were taken into account or the

reasons why they were not taken into account. In so doing, information and data of a confidential nature shall not be published.

## **IX. STATE OF EMERGENCY**

### Article 96 (provision of services)

- (1) Operators providing access to the public telephone network and the use of publicly available telephone services shall be obliged to adopt a plan of measures to ensure the integrity of the public telephone network and to ensure access to the public telephone network and publicly available telephone services in the event of breakdown of the network, war or state of emergency, or natural and other disasters. Operators shall be obliged to implement such measures throughout the duration of the circumstances that led to their adoption.
- (2) The measures from the previous paragraph of this Article must primarily ensure uninterrupted access to and the use of emergency call numbers and in particular the single European emergency call number "112".
- (3) The minister may prescribe in greater detail the measures that must be governed by the plan from the first paragraph of this Article.

### Article 97 (measures in the event of a state of emergency)

- (1) Operators providing public telephone networks shall be obliged to adjust their networks so as to give priority to communications from certain network termination points over communications from other network termination points (hereinafter: priority function). The minister may also prescribe other measures that must be implemented in instances of war, states of emergency, or natural and other disasters.
- (2) The Government shall determine the groups of users with the right to priority network termination points in accordance with the first paragraph of this Article (hereinafter: priority fixed telephone connections). The priority function may only be used in instances of network breakdown, war, states of emergency, or natural and other disasters.
- (3) The Government shall by resolution decide on the use of the priority function in the circumstances from the previous paragraph and may require guaranteed operation of priority fixed telephone connections by terminating the operation of the rest of the telephone termination points wherein it must take into account the technological feasibility of such requirements. The Government may in such circumstances also stipulate by resolution other measures and restrictions or interruption of operation.
- (4) Resolutions of the Government issued pursuant to this Article must stipulate the extent and period of time essential for the removal of the emergency circumstances.

Article 98  
(strikes)

Universal service providers and/or operators obliged to undertake requirements pursuant to this section of this Act shall be obliged by resolution to stipulate those of its employees who must, during strikes, enable uninterrupted provision of universal service or obligations of the operator pursuant to this section.

Article 99  
(reimbursement of damages)

- (1) Operators that are obliged pursuant to this section of this Act to adapt their networks so as to enable the priority function shall have the right to reimbursement of eligible and justified costs for compliance with such obligations.
- (2) The Government shall decide on the level of reimbursement from the previous paragraph at the proposal of the minister.

Article 100  
(supervision)

The inspector supervises the implementation of provisions of this paragraph.

**X. PROTECTION OF SECRECY AND  
CONFIDENTIALITY OF ELECTRONIC  
COMMUNICATIONS**

Article 101  
(the term *user*)

For the purposes of this section, a user is a natural person who uses electronic communications services for private or commercial purposes without necessarily having subscribed to such service.

Article 102  
(protective measures)

- (1) Operators shall be obliged individually and jointly, where necessary, to adopt appropriate technical and organisational measures to ensure the security of their networks and/or services.
- (2) Measures must, taking into account technological development and the costs of implementation, ensure a level of security and protection appropriate to the risk envisaged.
- (3) Operators providing public communications services shall be obliged to inform their users of each particular risk to the security of the network and of all possible means by which the subscriber can reduce such risk, including a statement of the likely costs where the risk lies outside the scope of measures which the operator can take.

### Article 103

#### (confidentiality of communications)

- (1) Confidentiality of communications shall apply to:
  1. the content of communications;
  2. traffic data and location data relating to communications from the previous clause of this paragraph;
  3. the facts and circumstances of unsuccessful attempts to establish a connection.
- (2) The operator and all persons participating in the provision of their activities shall be obliged to protect the confidentiality of communications even after ceasing to perform the activities in which they were obliged to protect such confidentiality.
- (3) Those liable under the previous paragraph may obtain information on communications from the first paragraph of this Article only to the extent essential for the provision of specific public communications services, and may use or provide to others such information only for the provision of such.
- (4) If operators in accordance with the previous paragraph of this Article need to obtain information on the content of communications, or copy or store communications and related traffic data, they shall be obliged on conclusion of subscriber contracts or at the start of provision of public communications services to inform the user, and to erase the information on the content of communications or the communication as soon as technically feasible and no longer required for the provision of the specific public communications service.
- (5) All forms of surveillance or interception, such as listening, tapping, recording, storage and mediation of communications from the first paragraph of this Article shall be prohibited unless permitted in accordance with the previous paragraph of this Article or in accordance with Article 107 of this Act, or where such form of surveillance or interception is necessary for the conveyance of a message (e.g. fax message, electronic post, electronic mailbox, voice mail, SMS services).
- (6) Subscribers or users may record communications, but they shall be obliged to inform the sender or recipient of the communication thereof or adjust the operation of the recording device such that the sender or recipient of the communication is informed of its operation (e.g. answering machine).
- (7) Irrespective of the provisions of the fifth paragraph of this Article, recording of communications and the associated traffic data shall be permitted within the framework of lawful business practice with the objective of securing evidence of market transactions

or any other business communications, or within organisations receiving emergency calls, for their registration, identification and resolution.

- (8) The use of electronic communications networks to store data or to gain access to data stored in the terminal equipment of subscribers or users shall only be permitted if the subscriber or user was clearly and intelligibly informed in advance of the controller and purpose of processing of such data. Subscribers or users shall have the right to refuse such processing or to give his or her consent.
- (9) Irrespective of the provisions of the previous paragraph, technical storage of or access to data shall be permitted for the sole purpose of carrying out or facilitating the transmission of a message over an electronic communications network, or if essential for the provision of an information society service which the subscriber or user explicitly requested.

#### Article 104 (traffic data)

- (1) Traffic data relating to subscribers and users processed and stored by an operator must be erased or made anonymous as soon as it is no longer needed for the transmission of a message.
- (2) Irrespective of the provisions of the previous paragraph, operators may store and process traffic data required for billing and interconnection payments until payment for services.
- (3) Operators providing public communications services may, for the purpose of marketing electronic communications services or for the provision of value added services, process data from the first paragraph of this Article, to the extent and for the duration necessary for such marketing or services, but only on the basis of the subscriber's or user's prior consent. Subscribers or users must be informed of the types of traffic data processed and the duration of such processing prior to giving consent. Users or subscribers shall have the right to withdraw their consent at any time.
- (4) Operators shall be obliged, for the purposes from the second paragraph of this Article, to stipulate in general conditions the traffic data to be stored and processed and the duration thereof, and to declare that they shall handle them in accordance with the law governing the protection of personal data.
- (5) Traffic data may only be processed in accordance with the previous paragraphs of this Article by persons responsible who, under the supervision of the operator, are in charge of billing or traffic management, respond to customer enquiries, detect fraud, market electronic communications services, or provide value added services, wherein such processing must be restricted to what is necessary for the purposes of such activities.
- (6) Irrespective of the provisions of the first, second, third and fifth paragraphs of this Article, operators shall, at the written request of the competent body for the purposes of settling disputes relating to interconnection or billing, and in accordance with the valid legislation, inform such body of traffic data.

#### Article 105 (calling and connected line identification)

- (1) If an operator offers calling line identification, the calling user must, before each call, have the possibility, using simple means and free of charge, of preventing the presentation of the calling line identification. Subscribers shall be able to request this from the electronic communications service provider automatically and free of charge for all calls from their lines.
- (2) Irrespective of the provisions of the previous paragraph, operators shall be obliged to override the prevention of calling line identification for emergency calls.
- (3) If an operator offers calling line identification, the called subscriber must have the possibility, using simple means and free of charge for reasonable use of this function, of preventing calling line identification for incoming calls.
- (4) If an operator offers calling line identification and the calling line identification is possible prior to the line being established, the called subscriber must have the possibility, using simple means, of rejecting incoming calls where the calling line identification has been prevented by the calling user or subscriber.
- (5) If an operator offers connected line identification, the called subscriber must have the possibility, free of charge and using simple means, of preventing connected line identification to the calling user.
- (6) The first paragraph of this Article shall also apply to calls originating in member states of the European Union and ending in third countries. The third, fourth and fifth paragraphs of this Article shall also apply to incoming calls originating in third countries.
- (7) If a subscriber requests in writing that the operator trace malicious or nuisance calls, the operator may temporarily record the origin of all calls ending in the network termination point of such subscriber, including those for which prevention of calling line identification has been requested.
- (8) Data on tracing must be stored and supplied to the subscriber who requested tracing of malicious or harmful calls. Under the conditions and in the manner from Article 107 of this Act, they must also be supplied to the competent body.
- (9) Operators providing public communications services shall be obliged in their general conditions to publish the possibility of presentation and prevention of calling and connected line identification.
- (10) This Article shall apply to subscriber lines connected to digital exchanges and to analogue exchanges only if such requirements are technically feasible or would not cause disproportionate costs.

#### Article 106

(location data other than traffic data)

- (1) Location data other than traffic data relating to users or subscribers may be processed only in anonymous form or on the basis of the prior consent of the user or subscriber to the extent and for the duration necessary for the provision of a value added service. Users or subscribers may withdraw such consent at any time.
- (2) Prior to giving consent relating to the processing of data from the previous paragraph, users or subscribers must be informed:
  1. of the type of data to be processed,
  2. of the purpose and duration of such processing,

3. of the possibility of transmitting such location data to third parties for the purpose of providing the value added service.
- (3) Users or subscribers who have consented to the processing of data from the first paragraph of this Article shall have the possibility, using simple means and free of charge, of temporarily refusing the processing of such data for each connection to the network or for each transmission of a communication.
- (4) Data from the first paragraph of this Article may be processed in accordance with the previous paragraphs of this Article only by persons under the supervision of the operator or third parties providing a value added service, and must be restricted to what is necessary for the purposes of providing the value added service.
- (5) Operators shall be obliged to supply the location data from the first paragraph of this Article in relation to the single European emergency call number "112" immediately and without regard to the conditions from the first, second and third paragraphs of this Article to the competent body dealing with such calls.

#### Article 107

##### (lawful interception of communications)

- (1) Operators shall be obliged at their own expense to ensure adequate equipment and appropriate interfaces enabling lawful interception of communications in their networks.
- (2) Operators shall be obliged to begin lawful interception of communications at a particular point in the public communications network immediately on receipt of a copy of the order of the competent body stating the point in the public communications network on which lawful interception of communications is to be conducted, along with other data relating to the manner, scope and duration of such measure.
- (3) The copy of the order must be produced by the body issuing the order.
- (4) Operators shall be obliged to implement lawful interception of communications in the manner, scope and duration laid down in the copy of the order.
- (5) Operators together with competent bodies exercising control of communications shall be obliged to ensure non-erasable registration of lawful interception of communications and to protect such data as official secrets.
- (6) The minister, in agreement with the minister responsible for internal affairs (hereinafter: minister responsible for internal affairs), the minister responsible for defence (hereinafter: minister responsible for defence), and the director of the Slovenian Intelligence-Security Agency, shall prescribe the equipment and determine appropriate interfaces from the first paragraph of this Article.

#### Article 108

##### (automatic call forwarding)

- (1) Subscribers must have the possibility, using simple means and free of charge, of stopping automatic call forwarding by a third party to the subscriber's terminal.

- (2) This Article shall apply to subscriber lines connected to digital exchanges, whereas for analogue exchanges it shall apply only if implementation is technically feasible or would not cause disproportionate costs.

Article 109  
(Unsolicited communications)

- (1) The use of automated calling systems for making calls to the subscribers' telephone numbers without human intervention (e.g. automatic calling machines), facsimile machines or electronic mail, for the purposes of direct marketing, may only be allowed if subscribers have given their prior consent.
- (2) Irrespective of the provisions of the previous paragraph, natural persons or legal entities that obtain electronic mail addresses from the customers of their products or services may use such addresses for direct marketing of their similar products or services, but they shall be obliged to give their customers the possibility at any time, free of charge and using simple means, of preventing such use of their electronic address.
- (3) The use of means for direct marketing using electronic communications other than those laid down in the previous two paragraphs of this Article shall be permitted only with the consent of the subscriber.
- (4) The sending of electronic mail for the purposes of direct marketing disguising or concealing the identity of the sender on whose behalf the message is sent, or without a valid address to which the recipient may send a request that such communications cease, shall be prohibited.

Article 110  
(subscriber data)

- (1) Operators may collect the following data on their subscribers:
1. full name or title of subscriber and its organisational form;
  2. registration number;
  3. activity of the subscriber, at his request;
  4. address of the subscriber;
  5. subscriber number;
  6. at the request of the subscriber, academic title before, and occupational title after the name of the subscriber;
  7. on the basis of payment, additional data if so desired by the subscriber, provided that this does not encroach on the rights of third parties;
  8. tax number for natural persons, and tax and registration numbers for legal entities.
- (2) Data from the previous paragraph collected may only be used for:
1. the establishment, implementation, monitoring and termination of subscriber contracts;
  2. billing for services;
  3. the preparation and issuing of subscriber directories in accordance with this Act.

- (3) On termination of subscription, data from the first paragraph of this Article must be stored for a further one (1) year from the date of issue to the subscriber of the bill for services provided, and if during such interval an order is issued by the competent body for the storage and transmission of such data, for the period stipulated by the order of the competent body.

Article 111  
(directories)

- (1) Before their data are included in a printed or electronic directory available to the public or used by directory enquiry services, subscribers must be informed, free of charge, of the purposes of such directory and of any further usage possibilities of such data, particularly on the basis of search functions. The costs of informing shall be borne by the publisher of the directory.
- (2) Subscribers must have the opportunity to determine whether their personal data stipulated in clauses 1 to 5 of the first paragraph of the previous Article are included in a public directory, and if so, which. Subscribers may verify data or require their correction or erasure.
- (3) Refusal to be included in a public directory, and verifying, altering or erasing personal data from the previous paragraph must be free of charge.

Article 112  
(monitoring)

The Agency shall, within the framework of its authorisations, monitor the provisions of this section on the protection of secrecy and confidentiality of electronic communications.

**XI. DIGITAL RADIO AND TELEVISION  
BROADCASTING**

Article 113  
(digital radio and television broadcasting)

- (1) Public communications networks intended for the distribution of digital television services must be planned so as to be appropriate for the distribution of wide-screen television services and programmes.
- (2) Operators providing public communications networks from the previous paragraph of this Article shall be obliged in the receipt and redistribution of wide-screen television services or programmes to maintain their wide-screen format.

- (3) The Agency may decide to require operators providing electronic communications networks from the first paragraph of this Article to ensure access to application programme interfaces or electronic programme guides under fair, reasonable and non-discriminatory conditions.
- (4) The Agency shall by general act prescribe the conditions for interoperability of digital television equipment used by consumers.
- (5) The Agency shall within the framework of its authorisations monitor the implementation of provisions on digital radio and television broadcasting.

Article 114  
(conditional access systems)

- (1) Conditional access systems for digital television or radio services must have the necessary technical capability allowing the possibility for full control, by public communications network operators at local or regional levels, of the services using such conditional access systems.
- (2) Operators of conditional access services providing access to digital television and radio services that broadcasters depend on shall be obliged to offer to all broadcasters, under fair, reasonable and non-discriminatory conditions, technical services enabling their subscribers to access their services by means of decoders.
- (3) Operators from the previous paragraph shall be obliged to keep accounts for the provision of conditional access services separate from other activities.
- (4) Holders of industrial property rights to conditional access products and systems shall be obliged to grant licences to manufacturers of consumer equipment under fair, reasonable and non-discriminatory conditions. When granting licences, such holders may not under any condition prevent manufacturers from including in the same product common interfaces enabling connection to other access systems or elements specific to another access system, provided that they comply with the relevant and reasonable conditions ensuring the security of transactions of conditional access system operators.
- (5) The Agency shall, within the framework of its authorisations, monitor the implementation of the provisions on conditional access systems.

**XII. AGENCY**

Article 115  
(Agency)

- (1) The Agency shall be a legal entity of public law.
- (2) The name of the Agency shall read, "Telecommunications, Broadcasting and Postal Agency of the Republic of Slovenia".

Article 116

(Agency director)

- (1) The director shall run, present and represent the Agency and shall be appointed by the Government for a period of five (5) years pursuant to a public tender. Selection must primarily take into account the candidate's professional and international experience.
- (2) The director may appoint deputies for individual areas.
- (3) The director, his/her spouse or unmarried partner and direct relations up to and including the second branch, may not be members of the supervisory board of the organisation performing the activities directly subject to arrangements within the competence of the Agency, or hold equity in organisations engaged in activities directly subject to arrangements within the competence of the Agency or organisations with equity holdings in such organisations.
- (4) The Government shall dismiss the director:
  1. at the director's suggestion;
  2. if he/she is deemed incapacitated or medically unfit to perform his/her work;
  3. if he/she performs his/her work unconscientiously or unprofessionally, or proves, in terms of work or professional qualities, to be unsuited for the performance of work in the position of director;
  4. if the Agency fails to achieve satisfactory working results;
  5. if he/she is lawfully sentenced to jail for criminal offences;
  6. if in the performance of his/her duties he/she violates the provisions of this Act and of regulations adopted pursuant thereto.

Article 117

(operation of the Agency)

- (1) The Agency must operate independently of natural persons and legal entities providing electronic communications networks and/or services, and must be impartial towards them.
- (2) The organisation and operation of the Agency shall be governed by a statute issued by the director of the Agency and confirmed by the Government.
- (3) The director shall issue general acts and decide on individual matters within the competence of the Agency. In so doing, he/she may authorise persons within the Agency, complying with the conditions for deciding in general administrative procedures, for decisions in individual matters.
- (4) The Agency may by general act govern in greater detail issues arising in the implementation of individual provisions of this Act.
- (5) The Agency shall be obliged to publish the statute and general acts of the Agency issued for the exercise of public authorisation in the *Uradni List of the Republic of Slovenia* and in other official journals stipulated by valid legislation.

Article 118

(proceedings before the Agency)

- (1) The Agency shall manage procedures and issue decisions and other individual acts under the law governing the general administrative procedure unless otherwise stipulated by this Act. Where this Act stipulates that decisions or other individual acts are issued after a public tender, the Agency shall implement a public tender under this Act prior to initiating the administrative procedure.
- (2) Decisions or other individual acts of the Agency shall be final in the administrative procedure unless otherwise stipulated by this Act.
- (3) The Agency itself shall conduct administrative implementation of its enforceable decisions and in so doing may issue appropriate penalties and use enforcement measures prescribed by the General Administrative Procedures Act.

Article 119  
(judicial protection)

- (1) Judicial protection in an administrative case is ensured against a final decision or individual act of the Agency.
- (2) Suits in an administrative case shall be filed with the Administrative Court of the Republic of Slovenia in Ljubljana. The court based in Ljubljana shall rule on the case.
- (3) Procedures relating to suits in administrative cases under this Act shall be expeditious. The court shall rule on them under this Act with priority, which shall also apply to the appellate court.

Article 120  
(competences and objectives of the Agency)

- (1) The Agency shall undertake all tasks laid down by this Act, secondary legislation adopted pursuant thereto and other valid legislation.
- (2) The Agency shall be obliged in performing its tasks to adopt measures necessary for the achievement of objectives from the fourth, fifth and sixth paragraphs of this Article, wherein it must, within the scope of its authorisations, contribute to the realisation of policies intended for promoting cultural and linguistic diversity and media pluralism.
- (3) Measures adopted by the Agency must, as far as possible, be technologically neutral and proportionate to the objectives which the Agency wishes to achieve thereby. Prior to adopting measures, the Agency shall be obliged to undertake a careful review of the actual situation.
- (4) The Agency shall promote efficient competition in the provision of electronic communications networks, services, associated facilities and other services by, in particular:
  1. ensuring that users, including disabled users, take advantage in whole of the benefits in the sense of choice, price and quality;
  2. ensuring that there is no distortion or restriction of competition in the electronic communications sector;
  3. promoting efficient investment in infrastructure and supporting innovation;
  4. promoting efficient use of radio frequencies and number space and ensuring their efficient management.

- (5) The Agency contributes to the development of the internal market by, *inter alia*:
1. removing the remaining obstacles to the provision of electronic communications networks, associated facilities and services, and to the provision of electronic communications services at the European Union level;
  2. promoting the construction of pan-European networks, interoperability of pan-European services and end-to-end connectivity;
  3. ensuring that, in similar circumstances, there is no discrimination in the treatment of natural persons and legal entities providing electronic communications networks and services;
  4. cooperating with other regulatory authorities of the European Union member states (hereinafter: other regulatory authorities) and with the European Commission in a transparent manner that contributes to the development of consistent practice in their operation and consistent implementation of European Union legislation.
- (6) The Agency shall, *inter alia*, support the interests of the citizens of the European Union by, in particular:
1. ensuring access to universal service to all citizens;
  2. ensuring a high level of protection of consumers in their transactions with suppliers, particularly through access to simple and effective dispute resolution procedures through an institution that is independent of all parties involved;
  3. ensuring a high level of protection of personal data and privacy of users;
  4. ensuring access to clear information, in particular regarding transparency of tariffs and conditions for using public communications services;
  5. assessing the needs of users of electronic communications services with special needs;
  6. ensuring integrity and security of public communications networks.

#### Article 121

##### (openness of the work of the Agency)

- (1) The operation of the Agency shall be public.
- (2) In its statute, the Agency shall be obliged, for the purposes of implementing the provisions of the previous paragraph, to define in greater detail:
1. the rules of the procedure for collecting opinions pursuant to Article 95 of this Act in which it defines at least the method and place of publication of acts from the first paragraph of Article 95 of this Act and the results of consultations, and the form of accepting the opinions of interested parties;
  2. the method of access to data and information which the Agency is obliged to publish, and other public data and information;
  3. the form of cooperation with representatives of organisations of users of electronic communications services, and assistance in the formation and operation thereof.
- (3) The Agency shall be obliged to publish data and information on:
1. contracts established on interconnections of operators with significant market power;
  2. reference offers of those operators obliged to formulate and publish them;
  3. calculations of compensation and costs for universal service provision.

Article 122  
(supervision of the work of the Agency)

- (1) The Government shall issue consent regarding the plan of action and the financial plan of the Agency.
- (2) The Agency shall be obliged to keep accounts separate for individual areas of its regulation in accordance with the Accountancy Act and regulations issued pursuant thereto. An authorised auditor must review the accounting statements and business reports of the Agency.
- (3) The Agency shall be obliged each year to prepare a report on its work and a business report. The consent of the Government shall be required for both reports, and the National Assembly of the Republic of Slovenia (hereinafter: National Assembly) must be informed thereof.
- (4) The Agency shall publish the report on its work in the *Official Journal of the Republic of Slovenia*.
- (5) The ministry responsible for administration shall supervise the implementation of regulations on the administrative procedure.

Article 123  
(cooperation of the Agency and other competent state bodies)

Whenever other state bodies are also competent regarding specific areas for which the Agency is competent pursuant to this Act, the Agency and the other competent state bodies shall be obliged to cooperate and consult.

Article 124  
(cooperation of the Agency with the body responsible for protection of competition)

- (1) The Agency and the body responsible for the protection of competition shall be obliged to exchange the data and information they require to exercise their competences, wherein they shall be obliged to retain the level of confidentiality.
- (2) Data and information from the previous paragraph must be restricted to what is appropriate and proportionate to the purpose for which they were exchanged.
- (3) In the implementation of relevant market analyses and determination of significant market power pursuant to this Act, the Agency shall cooperate with the body responsible for the protection of competition without prejudice to such body's exclusive competence to adopt decisions in this field.

Article 125  
(cooperation of the Agency with competent regulatory authorities and with the European Commission)

- (1) The Agency shall be obliged to cooperate with other regulatory authorities and with the European Commission, and must consult with such authorities particularly regarding measures they wish to use to improve the operation of the electronic communications market.
- (2) The Agency shall be obliged to consult with other regulatory authorities and the European Commission prior to adopting measures relating to market determination or the market analysis procedure, or prior to imposing, amending or revoking specific obligations which would affect trade between European Union member states. To this end, it shall be obliged at the same time as initiating consultation pursuant to Article 95 of this Act to report the explained measure to other regulatory authorities and the European Commission, and to stipulate the interval within which they may report their comments. This interval must be equal to the interval for consultation pursuant to Article 95, and may not be shorter than thirty (30) days.
- (3) The Agency may, after the expiry of the interval from the previous paragraph, adopt the proposed measure, wherein it shall be obliged to take the utmost account of comments received from other regulatory authorities and the European Commission. It shall be obliged to send the measure adopted to the European Commission without delay.
- (4) Irrespective of the provisions from the previous paragraph, the Agency shall be obliged to delay for an additional sixty (60) days the adoption of the proposed measure from the second paragraph of this Article relating to the definition of a relevant market not contained in the recommendations of the European Commission, or to designation of an operator with significant market power, if the European Commission within the interval from the second paragraph reports that the measure as proposed would hinder the operation of the single market or indicates that it has serious doubts as to its compatibility with valid legislation of the European Community.
- (5) The European Commission may, within the interval from the previous paragraph, decide that the Agency may not adopt the proposed measure and at the same time propose amendments. Otherwise the Agency may accept the proposed measure and report it to the European Commission and other regulatory authorities.
- (6) If required for immediate protection of competition or the rights of users, the Agency may exceptionally and without consultation, in accordance with the second and/or fourth paragraphs of this Article, adopt an interim measure proportionate to the objectives sought. The Agency shall be obliged to report without delay the interim measure, together with the reasons for its adoption, to other regulatory authorities and the European Commission.
- (7) If the Agency wishes to render permanent or extend an interim measure from the previous paragraph, it shall be obliged to take account of the second and/or fourth paragraphs of this Article.

#### Article 126

##### (collection and provision of data and information)

- (1) All natural persons and legal entities providing electronic communications networks and/or services shall be obliged to make available to the Agency all information, including financial data, which the Agency requests to exercise its competences, and in particular:

1. systematic or case-by-case verification of compliance with requirements relating to financial contributions to universal service or the payment of fees on the basis of a notification for the use radio frequencies and numbers, and/or fees for the efficient use of a limited natural resource;
  2. case-by-case verification of compliance with the provisions of this Act or individual acts of the Agency where a complaint has been received or where the Agency has other reasons to believe that the provisions are not complied with, or in case of an investigation by the Agency on its own initiative of compliance with the provisions of this Act or individual acts of the Agency;
  3. procedures for and assessment of requests for granting rights of use of limited resources pursuant to this Act;
  4. publication of comparative overviews of quality and price of services for the benefit of consumers;
  5. clearly defined statistical purposes;
  6. market analysis.
- (2) Information requested must be proportionate to the purpose for which it will be used. The Agency shall be obliged in the request to state the intended use of the information requested.
  - (3) Persons from the first paragraph of this Article shall be obliged to supply the information to the Agency free of charge and to the extent and within the interval laid down in the request of the Agency.
  - (4) The Agency shall be obliged to send to the European Commission, after a reasonable request, the information which the European Commission needs to perform its tasks and which is proportionate to the performance of those tasks. If the Agency previously obtained the information requested from specific persons from the first paragraph of this Article, it shall be obliged to inform such persons thereof prior to providing such information, and to explain that the European Commission may forward this information to other regulatory authorities. If such persons reasonably oppose the forwarding of such data and information to other regulatory authorities, the Agency shall be obliged to inform the European Commission thereof.
  - (5) The Agency may make information obtained from persons from the first paragraph available to other regulatory authorities after a reasonable request.
  - (6) The Agency shall be obliged in the forwarding and/or use of confidential information to maintain the level of confidentiality. The Agency may only use confidential information obtained from another regulator for the purposes for which it was requested.
  - (7) The Agency may publish specific data and information if it believes that doing so would contribute to an open and competitive market, wherein it shall be obliged by general act to define in greater detail the method of access to such publication.

Article 127  
(official records)

- (1) The Agency shall keep official records of:
  1. operators,
  2. holders of decisions on the allocation of radio frequencies,

3. holders of decisions on the allocation of numbers.
- (2) The Agency shall keep the official records from the previous paragraph as an interconnected information database.
- (3) The Agency shall keep the following data in the official records of operators:
  1. name, address, and tax number for natural persons;
  2. title, principal office, registration number, and register number for legal entities;
  3. data on notification of public communications networks and/or public communications services;
  4. data on the date of commencement, alteration or cessation of the provision of public communications networks and/or services;
  5. data on decisions designating operators with significant market power;
  6. data on the settlement of obligations of operators arising from this Act;
  7. data on penalties for violations of the provisions of this Act.
- (4) The Agency shall keep the following data in the official records of holders of decisions on the allocation of radio frequencies:
  1. name, address, and tax number for natural persons;
  2. title, principal office, registration number, and register number for legal entities;
  3. data on the decision on allocation of radio frequencies, on the electronic communications network or service for which the allocated radio frequency is used, and date of expiry of such decision and other data from such decision;
  4. data on the settlement of obligations of holders of decisions on the allocation of radio frequencies arising from this Act;
  5. data on penalties imposed on holders of decisions on the allocation of radio frequencies due to violations of the provisions of this Act.
- (5) The Agency shall keep the following data in the official records of holders of decisions on the allocation of numbers:
  1. name, address, and tax number for natural persons;
  2. title, principal office, registration number, and register number for legal entities;
  3. data on the decision on allocation of numbers, on the electronic communications network or service for which the allocated numbers are used, and date of expiry of such decisions and other data from such decisions;
  4. data on the settlement of obligations of holders of decisions on the allocation of numbers arising from this Act;
  5. data on penalties imposed on holders of decisions on the allocation of numbers due to violations of the provisions of this Act.
- (6) The Agency may also obtain data listed in this Article from official records of other state bodies and through direct computer or electronic links.
- (7) The Agency shall retain the data from the third paragraph of this Article for as long as the operator provides a public communications network or service pursuant to this Act, and in the form of an archive for a further five (5) years thereafter. The Agency shall retain the data from the fourth and fifth paragraphs of this Article for as long as the natural person or legal entity has the right to use the radio frequency and/or number, and in the form of an archive for a further five (5) years after the expiry of such rights.

(financing the Agency)

The Agency shall be financed through revenues from fees stipulated by this Act and other acts governing the area of its operation.

### **XIII. DISPUTE RESOLUTION**

#### Article 129 (dispute resolution)

- (1) When so stipulated by this Act, the Agency shall resolve disputes between subjects in the electronic communications market in the Republic of Slovenia, such as disputes between operators and between operators and users.
- (2) The Agency shall initiate procedures *ex officio* or at the suggestion of a party.
- (3) Unless otherwise stipulated by this Act, the provisions of the law governing the general administrative procedure shall apply to the procedure for the resolution of disputes on the part of the Agency.
- (4) The deadline for the issuing of decisions shall be forty-two (42) days after receipt of the proposal to initiate the procedure. If necessary due to the scope of the investigation procedure, the deadline for the issuing of a decision shall be four months.
- (5) The Agency shall be obliged to decide pursuant to the law, secondary legislation and general acts, and in accordance with the objectives sought in the market pursuant to this Act, to ensure effective competition and the protection of users' interests.
- (6) The Agency shall be obliged to publish decisions relating to disputes between natural persons and legal entities providing electronic communications networks or services in a form which takes into account the prohibition on publication of the business secrets of parties.
- (7) In disputes between subjects in the electronic communications market arising in different member states of the European Union within the jurisdiction of one or more other regulatory authorities in addition to the Agency, the Agency shall be obliged to coordinate efforts to resolve the dispute in conjunction with them and in accordance with the objectives sought by the responsible bodies in the market. Where the dispute was referred to the Agency for resolution, and after coordination with other responsible regulatory bodies, the provisions of the previous paragraphs of this Article shall apply *mutatis mutandis*.

#### Article 130 (mediation and arbitration)

Subjects in the electronic communications market may agree in writing to resolve a specific dispute or all possible disputes by using the rules of the mediation or arbitration procedures.

Article 131  
(dispute resolution body)

Subjects in the electronic communications market may establish a special body to resolve disputes through mediation and arbitration (hereinafter: dispute resolution body).

Article 132  
(mediation procedure)

Mediation procedures shall be initiated with a written proposal by the party or parties which must be in accordance with the agreement from Article 130 of this Act.

Article 133  
(mediator)

- (1) The mediator (hereinafter: mediator) is an impartial person independent of the parties who attempts to help the parties reach agreement on the disputed matter, who is authorised to manage and guide joint and separate mediation hearings with the parties, and who proposes the dispute resolution method and the content of the resolution.
- (2) Parties shall by agreement appoint a specific person, who must be a third, impartial person independent of the parties, as the mediator.
- (3) If the parties are unable to agree within seven (7) days on the mediator, any party may request that the dispute resolution body appoint a mediator. The dispute resolution body shall appoint a mediator within seven (7) days of receipt of the request.

Article 134  
(mediation hearings)

- (1) Mediation hearings shall be confidential.
- (2) In general, parties and their authorised persons shall attend mediation hearings, while other persons may attend only with the explicit prior consent of the parties and the permission of the mediator.

Article 135  
(written proposed settlement)

- (1) Once the mediator concludes that he/she has adequately studied the dispute between the parties, he/she shall compile a written proposed settlement and deliver it to the parties.

- (2) If the parties accept the settlement, its contents shall be recorded in a memorandum signed by the parties and the mediator.
- (3) If the parties fail to settle, the mediation procedure shall be deemed to have failed.

Article 136  
(arbitration procedure)

- (1) The arbitration procedure shall be initiated through an agreed written proposal of the party or parties which must be in accordance with Article 130 of this Act.
- (2) The arbitration procedure shall be confidential.
- (3) The dispute resolution body, which adopts the standing orders of arbitration, shall define in greater detail the rules of the arbitration procedure.
- (4) Irrespective of the provisions of the previous paragraph, the parties may reach a different agreement regarding individual issues of the arbitration procedure.

Article 137  
(arbiters)

- (1) Arbiters shall be appointed for a period of five (5) years by the head of the dispute resolution body, and may be reappointed.
- (2) Persons with special knowledge and experience in legal, economic or technical fields may be appointed as arbiters.
- (3) All appointed arbiters must be and must remain impartial and independent of the parties in the procedure.
- (4) Arbiters shall be appointed on a special list managed by the dispute resolution body and from which in specific instances arbiters are appointed for specific disputes (hereinafter: list of arbiters).

Article 138  
(arbitration senate)

- (1) Disputes shall be resolved by an arbitration senate consisting of five (5) arbiters appointed from the list of arbiters.
- (2) Each of the parties shall appoint one arbiter to the arbitration senate within seven (7) days of the proposal for initiation of the arbitration procedure. The remaining three (3) arbiters shall be determined by agreement of the previously appointed arbiters within seven (7) days of their appointment. The remaining three (3) arbiters so determined shall no later than within seven (7) days of their appointment select one of their number as president of the arbitration senate.
- (3) If the parties fail within the intervals stated in the previous paragraph to appoint arbiters, or if the appointed arbiters are unable to agree on the remaining arbiters and the president of the arbitration senate, the head of the dispute resolution body shall perform

the necessary appointment within five (5) days of the expiry of the intervals from the previous paragraph.

Article 139  
(location of arbitration procedure)

Unless otherwise agreed by the parties, the principal office of the dispute resolution body shall be the location of the arbitration procedure.

Article 140  
(decision)

- (1) Arbitration procedures shall end with the issuing of an arbitration decision.
- (2) Arbiters shall adopt the arbitration decision by a majority of votes.
- (3) The arbitration decision must contain the operative part and an explanation.
- (4) The arbitration decision shall have the effect of a binding decision and shall be enforceable.
- (5) There shall be no appeals against the arbitration decision.

**XIV. SUPERVISION AND DECISION ON  
MISDEMEANOURS**

Article 141  
(supervision responsibility)

- (1) The Agency, as an independent regulatory authority within the framework of its authorisations, shall supervise the application of the provisions of this Act and regulations adopted pursuant thereto except in cases for which the inspector is responsible pursuant to this Act. The Agency shall supervise the implementation of individual acts and/or measures adopted within the framework of the authorisations it has under this Act and the regulations adopted pursuant thereto.
- (2) If the Agency or the inspector receive information on the breach of provisions of this Act, or regulations, individual acts or measures for which they are responsible, they shall immediately inform of their findings the natural person or legal entity responsible for the breach in the opinion of the Agency, and warn such party to end the breaches or issue a statement on the matter within an appropriate interval. The interval laid down may be shorter than thirty (30) days in the event of repeat breaches.
- (3) The Agency and inspectors are obliged to act in concert, notify one another of the supervision measures taken, supply information necessary for carrying out supervision to

one another and cooperate professionally. The Agency may also perform individual professional tasks from its authorisations or at the request of the inspector.

- (4) In the supervision procedure pursuant to this Act, provisions of the act governing inspection procedure shall apply *mutatis mutandis* unless otherwise stipulated by this Act.

Article 142  
(measures)

- (1) If in performing an supervision task within its authorisations, the supervision body establishes a breach of a regulation from the first paragraph of the previous Article, it shall have the right and duty:
1. to order adequate and proportionate measures to remedy all irregularities and deficiencies detected within an interval it sets;
  2. to carry out procedures in accordance with the Misdemeanours Act;
  3. to file criminal charges prosecuted *ex officio*;
  4. to propose the adoption of measures by the relevant body;
  5. in instances of severe and repeated breaches to temporarily prohibit further performance of activities not being conducted in accordance with the law;
  6. to verify the accuracy of data provided pursuant to this Act by natural persons or legal entities providing electronic communications networks or services.
- (2) Competent supervision bodies shall be obliged, in instances where they establish breaches of regulations from the first paragraph of the previous Article, to issue a written decision no later than within an interval of eight (8) days after establishing the breach.

Article 143  
(supervision of implementation of measures)

- (1) The Agency supervises the implementation of measures issued by decision or other general or individual legal acts.
- (2) In so far as the Agency determines in performing supervision that a natural person or legal entity providing electronic communications networks and/or services, or other natural person or legal entity, breaches or has breached the measures from the previous paragraph, it may additionally impose compliance with this measure or specific obligations within the framework of such measure or impose another appropriate and proportionate measure remedying such conduct, wherein the Agency sets an interval for compliance with the supervision measure no shorter than thirty (30) days, which may be shorter only in instances of repeated breaches.
- (3) In implementing this Article of this Act the Agency shall act in accordance with the responsibilities and authorisations it has pursuant to this section of this Act.

Article 144  
(interim supervision measure)

The relevant supervision body from the first paragraph of Article 141 of this Act may, prior to issuing a final decision or until the decision by the relevant authority is issued, through an interim decision prohibit the performance of activities, or seize items or documentation used by the person responsible for the breaches or arising from the breaches without previously establishing an interval for the remedy of the violations:

1. if there is a direct and serious threat to public order, health, human life, or public safety;
2. if other natural persons or legal entities providing electronic communications networks or services or users of electronic communications services would suffer serious economic or operational problems;
3. if a radio station broadcasts without a valid decision on the allocation of radio frequencies.

Article 145  
(authorised persons of the Agency)

- (1) Tasks of supervising the Agency pursuant to this section shall be performed by persons employed by the Agency and with the authorisation of the minister (hereinafter: authorised persons of the Agency).
- (2) The authorisation for the performance of supervisory tasks shall be demonstrated by an official card and badge issued by the minister.
- (3) Authorised persons of the Agency must fulfil the conditions stipulated by the law governing inspectors and inspection procedure.
- (4) Persons from the first paragraph of this Article independently perform the tasks of supervision pursuant to this Act, manage the administrative procedure, and issue decisions and conclusions in the administrative procedure. For other authorisations, responsibilities, procedures and actions, provisions of the act governing inspector procedure shall apply *mutatis mutandis*.

Article 146  
(legal remedy)

- (1) Appeals against the decisions of inspectors shall be submitted to the ministry responsible for electronic communications within fifteen (15) days of the delivery thereof. Appeals shall not stay the execution.
- (2) Appeals in an administrative suit against the final decision issued in the appeals procedure from the first paragraph of this Article shall be filed with the Administrative Court of the Republic of Slovenia in Ljubljana.
- (3) Procedures relating to suits in administrative cases under this Act shall be expeditious. The court shall rule on them under this Act with priority, which shall also apply to appeals.

Article 147  
(bodies for misdemeanours)

- (1) The Agency and the inspectorate responsible for electronic communications reach decisions on misdemeanours contravening this Act and regulations issued pursuant thereto in the capacity of the body for misdemeanours pursuant to the law governing misdemeanours, each in its own area of supervision.
- (2) The body for misdemeanours pursuant to this Act may impose any prescribed amount of fine. Unless otherwise provided by this Act, the body for misdemeanours shall use the provisions of the law governing misdemeanours.
- (3) Inspectors and persons of the Agency authorised for supervision are simultaneously authorised officers managing the procedure of the body for misdemeanours, and within it reaching decisions under the conditions laid down in the law governing misdemeanours.

## **XV. ELECTRONIC COMMUNICATIONS COUNCIL OF THE REPUBLIC OF SLOVENIA**

### 148. Article

#### (Electronic Communications Council of the Republic of Slovenia)

- (1) The Electronic Communications Council of the Republic of Slovenia (hereinafter: Council) shall be a body for monitoring and consulting in the guidance of the electronic communications market.
- (2) The Council shall have eleven (11) members appointed for a period of five (5) years by the National Assembly of the Republic of Slovenia from among various professionals engaged in the field of electronic communications.
- (3) Members of the Council shall appoint a president (hereinafter: president of the Council) and deputy president of the Council from among their number.
- (4) No more than one-third of the Council may be representatives employed by operators irrespective of the manner of their appointment. Affiliated companies may have only one representative.
- (5) Council members may not be members of the management of political parties, deputies in the National Assembly, local or state officials (hereinafter: officials), or workers (hereinafter: workers) employed in state bodies.
- (6) Council members shall have the right to refund of costs and to remuneration for their work. The level of remuneration shall be defined by the National Assembly. Assets, working conditions and information for the Council shall be provided by the Agency.

### Article 149

#### (operation of the Council)

- (1) The Council shall adopt its standing orders.

- (2) The Council must meet in session at least twice per year. Sessions shall be called if the director of the Agency so requests or if at least four (4) members request a session in writing. The president of the Council may call a session at any time.
- (3) The director of the Agency or authorised persons thereof and the minister or state official responsible for electronic communications may attend Council sessions.
- (4) A session of the Council shall be quorate if more than half of the members are present. Decisions shall be adopted by ordinary majority of members present. In the event of an inconclusive voting outcome, the proposal shall be rejected.

Article 150  
(tasks of the Council)

- (1) The Council shall issue opinions, recommendations and proposals regarding matters in the area of electronic communications and regarding the application of the provisions of this Act and secondary legislation issued pursuant thereto, and shall monitor the operation of the Agency.
- (2) The Council may request information, except for personal data, from the Agency, state bodies and other actors in the field of electronic communications.
- (3) The Agency shall publish opinions, recommendations and proposals from the first paragraph of this Article on its website.

## **XVI. PENALTY PROVISIONS**

Article 151  
(misdemeanours)

- (1) A fine of between SIT 5,000,000 and SIT 10,000,000 shall be imposed for misdemeanours on a legal entity that:
  1. fails to notify the Agency in writing of the commencement, alteration or cessation of the provision of public communications networks or services (first paragraph of Article 5);
  2. fails to provide electronic communications networks or services in a legally independent company or to keep separate financial accounts for activities associated with the provision or ensuring of electronic communications services or networks (Article 10);
  3. fails to provide universal service as required by a decision of the Agency (second paragraph of Article 13);
  4. fails to comply with the obligations imposed relating to ensuring transparency (Article 23);
  5. fails to comply with the obligations imposed relating to ensuring equal treatment (Article 24);

6. fails to comply with the obligations imposed relating to ensuring accounting separation (Article 25);
  7. fails to comply with the requirements relating to permitting access to and use of specific network facilities (Article 26);
  8. fails to comply with the obligations imposed relating to price control or cost accounting (Article 27);
  9. fails to comply with the obligations imposed relating to the regulation of services (Article 28);
  10. fails to comply with the obligations imposed relating to ensuring the minimum set of leased lines (Article 29);
  11. fails to comply with the obligations imposed relating to ensuring selection or pre-selection of a public communications service provider (Article 30);
  12. uses radio frequencies without a valid decision on the allocation of radio frequencies (first paragraph of Article 35);
  13. uses numbers without a valid decision on the allocation of numbers (Article 60);
  14. fails to submit information to the body responsible for land survey matters in accordance with the fourth paragraph of Article 83;
  15. undertakes surveillance or interception of communications in instances not explicitly permitted by this Act (fifth paragraph of Article 103);
  16. fails to ensure at its own expense adequate equipment and appropriate interfaces (first paragraph of Article 107);
  17. fails to commence lawful interception of communications after receipt of the copy of the order (second paragraph of Article 107);
  18. fails to implement lawful interception in the manner, scope and duration laid down in the copy of the order (fourth paragraph of Article 107);
  19. fails to ensure non-erasable registration of lawful interception or to protect such data as official secrets (fifth paragraph of Article 107);
  20. hinders authorised persons of the Agency and/or inspectors in performing tasks of supervision (Articles 141 to 144).
- (2) A fine of between SIT 250,000 and SIT 1,000,000 shall be imposed on sole traders and responsible persons of sole traders or legal entities who commit a misdemeanour from the previous paragraph.

Article 152  
(misdemeanours)

- (1) A fine of between SIT 2,000,000 and SIT 10,000,000 shall be imposed for misdemeanours on a legal entity if:
1. it fails to agree on joint use of property and/or facilities (second paragraph of Article 8);
  2. it fails to implement a decision of the Agency (fourth paragraph of Article 8);
  3. it fails to negotiate on interconnection (first paragraph of Article 9);
  4. it fails to protect the confidentiality of data (third paragraph of Article 9);
  5. it fails to implement a decision of the Agency (fourth paragraph of Article 9);

6. it provides a universal directory or universal directory enquiry service and discriminates in the treatment of data obtained from different operators of publicly available telephone services (fourth paragraph of Article 12);
7. it fails to set equal prices throughout the territory of the Republic of Slovenia for services provided as universal services (second paragraph of Article 14);
8. it fails to determine prices and general conditions in accordance with the fifth paragraph of Article 14;
9. it fails to respect a decision of the Agency (fourth and sixth paragraphs of Article 14);
10. the measured values of quality parameters for a universal service it provides are lower than the limit values at least three times in succession (seventh paragraph of Article 15);
11. it fails to pay its contributions to the provider of universal service within the interval and in the amount laid down by decision of the Agency (third paragraph of Article 17);
12. it fails within the interval stipulated by this Act to inform the Agency of revenues from the provision of public communications networks or services (fourth paragraph of Article 17);
13. it hinders the Agency in reviewing data and estimating revenues (fifth paragraph of Article 17);
14. it is the holder of a decision on the allocation of radio frequencies and transfers the right to use such radio frequencies without a decision of consent from the Agency (Article 52);
15. it allocates numbers to resellers of their services on the basis of a lawful transaction, and in so doing charges more than actual costs (seventh paragraph of Article 62);
16. it transfers a decision on the allocation of numbers (Article 66);
17. it fails to enable number portability for its subscribers (first paragraph of Article 71);
18. it charges a subscriber for the porting of a number to another operator in contravention of the third paragraph of Article 71;
19. the prices for interconnections are not cost oriented (fourth paragraph of Article 71);
20. it fails to enable its end users to call emergency call numbers free of charge (first paragraph of Article 72);
21. it fails, in breach of regulations, to publish transparent information on applicable prices and tariffs and on the general conditions of access to and use of publicly available telephone services (Article 84);
22. it fails to inform users and the Agency in accordance with the second paragraph of Article 93;
23. it restricts access to its services or disconnects a user and terminates the subscriber contract for reasons not stipulated in its general conditions (first paragraph of Article 94);
24. the measure implemented is not stipulated in the general conditions, is disproportionate to the breaches, or is discriminatory (first paragraph of Article 94);
25. it fails to warn a user in accordance with the second paragraph of Article 94;
26. it implements a measure from the third paragraph of Article 94 due to non-payment of bills without prior notification;
27. it implements a measure even though the subscriber has acted in accordance with the fourth paragraph of Article 94;

28. it fails to disconnect a user only from the unpaid or underpaid service even though such disconnection is technically feasible (fifth paragraph of Article 94);
29. it fails to adopt a plan of measures in the event of breakdown of the network, war, state of emergency, or natural and other disasters, or fails to implement such measures for the duration of the circumstances that led to their adoption, unless prevented from doing so by *force majeure* (first paragraph of Article 96);
30. it fails to provide uninterrupted access to and use of emergency call numbers (second paragraph of Article 96);
31. it fails to adjust its network so as to enable the priority function (first paragraph of Article 97);
32. it uses the priority function in contravention of the provisions of the third paragraph of Article 97;
33. it fails in instances of network breakdown, war, states of emergency, or natural and other disasters to use the priority function, or fails to implement other measures and/or restrictions or interruption of operation in accordance with a Government resolution (fourth paragraph of Article 97);
34. it fails by resolution to stipulate those of its employees who must during strikes enable uninterrupted provision of universal service and/or compliance with obligations of the operator in the event of states of emergency (Article 98);
35. it fails to adopt technical and organisational measures in a manner that ensures the security of its network and/or services (first paragraph of Article 102);
36. it fails to adopt such measures as would ensure a level of security and protection proportionate to the envisaged risk and costs and in accordance with technical and technological development (second paragraph of Article 102);
37. it fails to warn users of dangers, of possible protective measures and of the necessary assets (third paragraph of Article 102);
38. it fails to protect the confidentiality of electronic communications in accordance with the second paragraph of Article 103;
39. it acquires for itself or for another party information on the contents, facts and circumstances of transmitted messages in excess of the minimum necessary extent essential for the provision of specific electronic services, or fails to use such information solely for the provision of such services and compliance with contractual undertakings relating thereto (third paragraph of Article 103);
40. it fails to inform users in accordance with the fourth paragraph of Article 103;
41. it fails in a clear and intelligible manner to inform users of the controller and purpose of processing data, fails to offer the possibility of refusing such processing, and fails to obtain the consent of the user prior to processing data (eighth paragraph of Article 103);
42. it fails to erase traffic data or make such data anonymous after termination of the connection (first paragraph of Article 104);
43. it fails to obtain the prior consent of the subscriber and/or user in accordance with the third paragraph of Article 104;
44. persons not under its supervision process traffic data (fifth paragraph of Article 104);
45. it fails to act in accordance with the sixth paragraph of Article 104;
46. it fails to process location data in accordance with the first paragraph of Article 106;

47. it infringes the right of the user or subscriber to temporary rejection of data processing from the third paragraph of Article 106;
  48. persons not under its supervision process location data (fourth paragraph of Article 106);
  49. it uses the electronic address of a customer for direct marketing even though the customer has refused such direct marketing (second paragraph of Article 109);
  50. it uses electronic communications for direct marketing without the consent of the subscriber (first and/or third paragraphs of Article 109);
  51. it uses a false identity or false address in direct marketing with the use of electronic communications (fourth paragraph of Article 109);
  52. it fails on the basis of a decision of the Agency to ensure access to application programme interfaces or electronic programme guides, or fails to do so under fair, reasonable and non-discriminatory conditions (third paragraph of Article 113);
  53. it fails to respect the prescribed conditions for interoperability of digital television equipment used by consumers (fourth paragraph of Article 113);
  54. its conditional access systems for digital television or radio services fail to operate in accordance with the first paragraph of Article 114;
  55. it fails to ensure technical services under fair, reasonable and non-discriminatory conditions (second paragraph of Article 114);
  56. it fails to keep accounts for the provision of conditional access services separate from other activities (third paragraph of Article 114);
  57. it fails to grant to manufacturers of consumer equipment industrial property rights for conditional access products and systems under fair and non-discriminatory conditions (fourth paragraph of Article 114);
  58. through any condition it prevents a manufacturer from including in the same product common interfaces enabling connection to other access systems or elements specific to another access system (fourth paragraph of Article 114).
- (2) A fine of between SIT 50,000 and SIT 300,000 shall be imposed on sole traders and responsible persons of the sole traders or legal entities who commit a misdemeanour from the previous paragraph.

Article 153  
(misdemeanours)

- (1) A fine of between SIT 500,000 and SIT 10,000,000 shall be imposed for misdemeanours on a legal entity if:
1. it fails to act in accordance with the decision on the allocation of radio frequencies (Articles 48 and 49);
  2. it fails to send to the Agency all data on lawful transactions relating to allocated numbers (seventh paragraph of Article 62);
  3. it fails to act in accordance with the decision on the allocation of numbers (Articles 63 and 64);
  4. it fails to ensure that users from other European Union member states are able to call non-geographic numbers in the Republic of Slovenia where technically and economically feasible (first paragraph of Article 73);

5. it plans an electronic communications network in contravention of the second paragraph of Article 75;
6. it operates in contravention of the second paragraph of Article 77;
7. a subscriber contract does not contain all the prescribed elements (first and second paragraphs of Article 85);
8. it fails to inform its subscribers in accordance with the third paragraph of Article 85;
9. it fails to make available a level of itemised billing that enables verification and control of use and the sum charged (first paragraph of Article 91);
10. it fails to offer subscribers the basic level of itemised billing free of charge (second paragraph of Article 91);
11. it fails to respect subscribers' requests (second paragraph of Article 91);
12. the basic level of itemised billing does not contain the statutory elements (third and fourth paragraphs of Article 91);
13. it charges more than actual costs for additional itemised billing (sixth paragraph of Article 91);
14. it fails to stipulate in the general conditions the traffic data to be stored or processed or the duration thereof, and/or to declare that it shall handle them in accordance with the law governing the protection of personal data (fourth paragraph of Article 104);
15. it processes traffic data for marketing or the provision of value added services without prior consent of the user (third paragraph of Article 104);
16. it fails to ensure the possibilities laid down in the first to sixth paragraphs inclusive of Article 105;
17. it fails to ensure the possibility laid down in the seventh paragraph of Article 105 in accordance with the seventh and eighth paragraphs of Article 105;
18. it fails in its general conditions to publish the possibility of presentation and prevention of calling or called line and connected line identification (ninth paragraph of Article 105);
19. it fails to inform users prior to their consent of:
  - the type of location data to be processed;
  - the purpose and duration of processing of location data;
  - the type of location data to be transmitted to third parties (second paragraph of Article 106);
20. it fails to offer subscribers or users the possibility, using simple means and free of charge, of temporarily preventing the processing of location data (third paragraph of Article 106);
21. it uses for direct marketing automated calling systems, including facsimile machines and electronic mail, without the prior consent of the subscriber (first paragraph of Article 109);
22. it uses data collected in contravention of the second paragraph of Article 110;
23. it fails to inform subscribers in advance and free of charge of the purpose and further usage of a printed or electronic subscriber directory containing their personal data (first paragraph of Article 111);
24. it fails to provide subscribers with the opportunity to determine whether their personal data is included in a public directory (second paragraph of Article 111);
25. refusal to be included in a public subscriber directory and the verification, alteration or erasure of personal data is not free of charge (third paragraph of Article 111);

- 26. it fails to plan public communications networks intended for the distribution of digital television services so as to be appropriate for the distribution of wide-screen television services and programmes (first paragraph of Article 113);
  - 27. it fails to maintain the wide-screen format (second paragraph of Article 113).
- (2) A fine of between SIT 50,000 and SIT 200,000 shall be imposed on sole traders and responsible persons of sole traders or legal entities who commit a misdemeanour from the previous paragraph.

Article 154  
(misdemeanours)

- (1) A fine of between SIT 350,000 and SIT 500,000 shall be imposed for misdemeanours on a legal entity if:
- 1. it fails within the statutory interval to inform the Agency of changes to the data stipulated by law (fourth paragraph of Article 5);
  - 2. it fails to publish up-to-date information on the quality of universal service and/or to submit data and all changes thereto to the Agency (fourth paragraph of Article 15);
  - 3. it fails to send to the Agency within the interval an estimate of net costs, audited accounts and information used in the estimate of net costs of universal service provision (fourth paragraph of Article 16);
  - 4. it fails to report changes to data within the prescribed interval (third paragraph of Article 48 and second paragraph of Article 63);
  - 5. where technically possible it fails to report caller location to the relevant body (second paragraph of Article 72);
  - 6. it fails to cover the costs of relocation or alteration of installations although it requested such relocation or alteration (second paragraph of Article 82);
  - 7. it fails to publish or submit to the Agency adequate and updated information on the quality of their services (Article 86);
  - 8. it fails to make available to its users tone dialling and calling line identification, where technically feasible and economically viable (Article 87);
  - 9. it refuses to connect radio or telecommunications terminal equipment in contravention of the provision of the second paragraph of Article 88;
  - 10. it connects to an electronic communications network radio or telecommunications terminal equipment in contravention of the provision of the second paragraph of Article 88;
  - 11. it fails to enable all its subscribers to have an entry in a universal directory provided within the framework of universal services (first paragraph of Article 89);
  - 12. it fails to make available under fair, objective, cost-oriented and non-discriminatory conditions relevant data for the purposes of providing publicly available directories or directory enquiry services (second paragraph of Article 89);
  - 13. it fails to provide access to all users to the universal directory enquiry service or to relevant directory enquiry services in other countries (third paragraph of Article 89);
  - 14. it fails to enable access to operator assistance (Article 90);
  - 15. it fails in the provision of electronic communications services enabling automatic call forwarding, to enable subscribers for an individual call or connection, free of charge

and using simple means, to stop automatic call forwarding by a third party to the subscriber's terminal (first paragraph of Article 108).

- (2) A fine of between SIT 30,000 and SIT 100,000 shall be imposed on sole traders and responsible persons of sole traders or legal entities who commit a misdemeanour from the previous paragraph.

Article 155  
(misdemeanours)

A fine of between SIT 10,000 and SIT 100,000 shall be imposed for misdemeanours on a natural person if:

1. he/she uses radio frequencies without a valid decision on the allocation of radio frequencies (first paragraph of Article 35);
2. he/she fails to act in accordance with the decision on the allocation of radio frequencies (Articles 48 and 49);
3. he/she connects radio or telecommunications terminal equipment to the public communications network in contravention of the provision of the second paragraph of Article 88.

## XVII. TRANSITIONAL PROVISIONS

Article 156  
(existing licences)

- (1) Operators that, pursuant to the provisions of the Telecommunications Act (*Uradni List* RS 30/01 and 110/02-ZGO-1), shall be deemed to have notified the Agency in accordance with provisions of Article 5 of this Act on the day of the entry into effect of this Act.
- (2) Operators from the previous paragraph shall continue the performance of their activities in accordance with this Act. The Agency shall within three (3) months of the entry into force of this Act send a confirmation from the fifth paragraph of Article 5 of this Act.
- (3) The licenses issued in accordance with the provisions of the Telecommunications Act shall expire on the day of the entry into force of this Act.
- (4) The Agency shall, in addition to the confirmation from the second paragraph of this Article, also issue within the same interval a decision on the allocation of radio frequencies pursuant to this Act in which it shall summarise the provisions of the license, in so far as they are not in contravention of this Act, to operators to whom licenses were issued in accordance with Articles 29, 44 and 149 of the Telecommunications Act.
- (5) Irrespective of the provisions of the third paragraph of this Article, the licenses issued in accordance with Articles 29, 44 and 149 of the Telecommunications Act shall expire with the issue of the decision on the allocation of radio frequencies.

Article 157  
(existing notification)

- (1) The written notification from the first paragraph of Article 27 of the Telecommunications Act shall be deemed to be notification from Article 5 of this Act.
- (2) Natural persons and legal entities that have informed the Agency in writing pursuant to the first paragraph of Article 27 of the Telecommunications Act shall continue to perform their activities to the extent, in the manner and under the conditions laid down in this Act.
- (3) The Agency shall within three (3) months of the entry into force of this Act send to operators from the previous paragraph the confirmation from the fifth paragraph of Article 5 of this Act, or shall call on such operators to supplement the required data and evidence in terms of the sixth paragraph of Article 5 of this Act.

Article 158  
(procedures)

Procedures for the granting of licences pursuant to the second paragraph of Article 27 of the Telecommunications Act that have not been completed on the entry into force of this Act shall be suspended by resolution of the Agency and may be reinitiated pursuant to this Act.

Article 159  
(existing decision on universal service provision)

- (1) The Agency shall be obliged within three (3) months of the entry into force of this Act to commence the procedure for determination of universal service providers under this Act.
- (2) The current universal service provider shall continue to provide universal service under the conditions of the existing decision issued pursuant to the Telecommunications Act until it is revoked by a decision on universal service provision issued pursuant to this Act.

Article 160  
(decisions on allocation)

- (1) Decisions on the allocation of radio frequencies issued pursuant to the Telecommunications Act shall apply until their expiry, and may be extended under the procedure laid down by this Act.
- (2) Decisions on the allocation of numbers issued pursuant to the Telecommunications Act shall remain valid and may be amended, revoked or expire under the conditions and in the manner laid down by this Act.

Article 161

(operators with significant market power)

Decisions on significant market power issued pursuant to the Telecommunications Act shall remain in force only until their expiry, and they may be amended, revoked or expire under the conditions and in the manner laid down by this Act.

Article 162

(deadline for adoption of plan of measures)

Operators providing access to the public telephone network and the use of publicly available telephone services at a fixed location shall be obliged to adopt the plan of measures from the first paragraph of Article 96 of this Act within six (6) months of its entry into force.

Article 163

(deadline for ensuring the priority function)

Operators providing public telephone networks shall be obliged to adjust their networks in accordance with the first paragraph of Article 97 of this Act within one (1) year of its entry into force.

Article 163

(existing networks on land of third parties)

- (1) Owners of land on which electronic communications networks run, are constructed or installed must consent to further use of their land for the needs of construction, maintenance and operation of an electronic communications network if they themselves or their predecessors in title have expressed agreement with such use in writing.
- (2) The right of the operator resulting from the obligations of land owners from the previous Article shall contain entitlements contained in easement pursuant to this Act and must be exercised in accordance with provisions of Article 77 of this Act.

Article 165

(fees)

The provisions of Articles 6, 56, 70 and 128 regarding fees shall apply from 1 January 2005.

Article 166

(inspectorate)

On the entry into force of this Act, the inspectorate responsible for telecommunications shall continue to work as the inspectorate responsible for electronic communications.

Article 167  
(Agency)

- (1) The Telecommunications, Broadcasting and Postal Agency of the Republic of Slovenia established pursuant to the Telecommunications Act and the resolution on the establishment of The Telecommunications, Broadcasting and Postal Agency of the Republic of Slovenia (*Uradni List RS*, 60/01 and 52/02) shall continue to work as the Agency under this Act.
- (2) The Government shall within three (3) months of the entry into force of this Act adopt a resolution amending the resolution establishing the Telecommunications, Broadcasting and Postal Agency of the Republic of Slovenia (*Uradni List RS* 60/01 and 52/02).
- (3) The director and deputies of the Telecommunications, Broadcasting and Postal Agency of the Republic of Slovenia shall continue until the end of their mandates to work as the director and deputies under this Act.
- (4) The director of the Agency shall issue a statute in accordance with this Act within four (4) months of the entry into force of this Act.
- (5) The Agency shall be obliged to complete the first relevant market analysis pursuant to Article 21 of this Act no later than within nine (9) months of the entry into force of this Act.

Article 168  
(Council)

- (1) The Telecommunications Council shall continue to work as the Council under this Act. The name "Telecommunications Council" shall be amended to read: "Electronic Communications Council".
- (2) The National Assembly shall within three (3) months of the entry into force of this Act adopt a decree amending the decree on the establishment of the Telecommunications Council (*Uradni List RS* 56/01 and 13/03). Members of the Telecommunications Council shall continue to work as members of the Electronic Communications Council under this Act.

Article 169

(transitional issuing of monetary penalties and the application of provisions on bodies for misdemeanours)

- (1) Fines laid down by this Act shall be issued as monetary penalties in the amounts laid down in this Act until the Misdemeanours Act enters into use (*Uradni List RS* 7/03).
- (2) The provision of Article 147 (body for misdemeanours) of this Act shall begin to be applied on the day of the entry into use of the Misdemeanours Act.

- (3) Fines shall begin to be imposed on the responsible person of the sole trader on the day of the entry into force of the Misdemeanours Act.

Article 170  
(validity of regulations)

- (1) The interval for issuing secondary legislation and general acts of the Agency mandatory under this Act shall be no more than six (6) months after entry into force of this Act. Until the issuing of relevant secondary legislation and general acts pursuant to this Act, the following regulations issued pursuant to the Telecommunications Act (*Uradni List* RS 30/01 and 110/02-ZGO-1) and pursuant to the Telecommunications Act (*Uradni List* RS 35/97 and 45/97- Constitutional court decision, 13/98, 59/99- Constitutional court decision and 36/2000- Constitutional court decision) shall remain in force unless they contravene this Act:
1. general act on the value of points for the calculation of specific fees in the area of telecommunications (*Uradni List* RS 3/04),
  2. general act on the procedure and criteria for determination of an operator with significant market power (*Uradni List* RS 97/03),
  3. list of standards the use of which creates presumption of conformity of a product with the regulations on electromagnetic compatibility (*Uradni List* RS 77/03),
  4. list of standards the use of which creates presumption of conformity of a product with the regulations on radio and terminal equipment (*Uradni List* RS 77/03),
  5. Rules on the equipment and interfaces for lawful interception of telecommunications (*Uradni List* RS 73/03),
  6. general act on the joint use of parts of the UMTS/IMT network – 2000 (*Uradni List* RS 70/03),
  7. general act on operator selection and pre-selection (*Uradni List* RS 45/03),
  8. general act on the register of the Telecommunications, Broadcasting and Postal Agency of the Republic of Slovenia (*Uradni List* RS 111/02),
  9. Rules on the method for providing and billing special telecommunications services (*Uradni List* RS 88/02),
  10. Rules on the collection and use of data on the development of the telecommunications market (*Uradni List* RS 86/02),
  11. Decree on structures, facilities and installations comprising the secondary telecommunications network (*Uradni List* RS 84/02),
  12. Statute of the Telecommunications, Broadcasting and Postal Agency of the Republic of Slovenia (*Uradni List* RS 77/02),
  13. general act on the plan of use of radio frequencies (*Uradni List* RS 32/02),
  14. Decree on the methodology for calculation of prices of public telecommunications services and networks (*Uradni List* RS 25/02),
  15. general act on fixed public telecommunications networks and services (*Uradni List* RS 18/02),
  16. general act on itemised billing (*Uradni List* RS 18/02),
  17. general act on shared use of structures and installations (*Uradni List* RS 11/02),
  18. Rules on the numbering plan (*Uradni List* RS 2/02 in 40/03),
  19. Rules on the method of calculation of specific fees in the area of telecommunications (*Uradni List* RS 2/02 and 35/02),

20. Decree on the plan of allocation of radio frequency bands (*Uradni List* RS 98/01),
  21. Decree on radio frequencies for which no decision on the allocation of radio frequencies is required (*Uradni List* RS 91/01),
  22. Rules on the annulment of regulations in the telecommunications sector (*Uradni List* RS 85/01),
  23. Rules on electromagnetic compatibility (EMC) (*Uradni List* RS 84/01 and 32/02),
  24. Rules on universal service quality (*Uradni List* RS 82/01),
  25. Instructions for the implementation of telecommunications traffic monitoring (*Uradni List* RS 78/01),
  26. Rules on radio and telecommunications terminal equipment (R&TTE) (*Uradni List* RS 77/01 and 40/03),
  27. Resolution on the establishment of the Telecommunications, Broadcasting and Postal Agency of the Republic of Slovenia (*Uradni List* RS 60/01 and 52/02),
  28. Rules on the contents of applications and the contents of decisions on the allocation of radio frequencies (*Uradni List* RS 60/01),
  29. Rules on the conditions for the issuing of decisions on the allocation of numbers (*Uradni List* RS 60/01),
  30. Rules on the conditions for the issuing of licences to provide fixed public telephone services (*Uradni List* RS 60/01),
  31. Rules on the conditions for the issuing of licences to provide mobile public radio services (*Uradni List* RS 60/01),
  32. Rules on mandatory components and other elements of general conditions for the provision of services of fixed public telephone networks and mobile public radio networks (*Uradni List* RS 77/01),
  33. Rules on the types of amateur radio stations and technical and conditions for their use (*Uradni List* RS 41/98).
- (2) The Act governing public procurement shall not apply for contracts awarded by operators.

## **XVIII. FINAL PROVISIONS**

### Article 171

(cessation of validity)

- (1) The Telecommunications Act (*Uradni List* RS 30/01 and 110/02-ZGO-1) shall cease to apply on the date of entry into force of this Act.
- (2) Irrespective of the provisions of the previous paragraph, the provisions of Section IX (radio and terminal equipment) and Section X (electromagnetic compatibility (EMC)), and of Section XVII (supervision) in the part relating to the aforementioned sections, shall apply until the adoption of relevant regulations issued by the minister responsible for the economy within six (6) months of the entry into force of this Act.
- (3) Irrespective of the provisions of the first paragraph of this Article, the provisions of Articles 35 (with the exception of the fifth paragraph thereof), 50, 104, 109, 115, 116 and

the sixth paragraph of Article 117 of the Telecommunications Act shall apply until 31 December 2004.

- (4) On the day of entry into force of this Act, the following shall expire:
1. Decree on granting concessions for the use of the radio frequency spectrum for mobile telephony services GSM (*Uradni List* RS 49/97 and 24/2000),
  2. Decree on granting concessions for the use of the radio frequency spectrum for the provision of personal satellite communications services (*Uradni List* RS 68/99),
  3. Decree on granting concessions for the use of the radio frequency spectrum for the provision of mobile telephony services NMT (*Uradni List* RS 53/99),
  4. Decree on granting concessions for the use of the radio frequency spectrum for the provision of mobile telephony services of personal calls in the ERMES system (*Uradni List* RS 53/99),
  5. Decree on granting concessions for the use of the radio frequency spectrum on 1800 MHz for mobile telephony services (*Uradni List* RS 79/99 and 72/00).

Article 172  
(entry into force of the Act)

This Act shall enter into force on 1 May 2004.

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