

Consolidated Act No. 955 of 17 June 2022

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

## **Act on Electronic Communications Networks and Services (Consolidated Act)<sup>1)2)</sup>**

This is an Act to consolidate the Act on Electronic Communications Networks and Services, cf. Consolidated Act No. 128 of 7 February 2014, as amended by section 2 of Act No. 741 of 1 June 2015; section 16 of Act No. 1567 of 15 December 2015; section 3 of Act No. 203 of 28 February 2017; section 19 of Act No. 503 of 23 May 2018; section 1, nos. 1-7 and 9 of Act No. 1531 of 18 December 2018; section 1 of Act No. 1830 of 8 December 2020; section 1, nos. 1-68 and 70-86 of Act No. 1833 of 8 December 2020; section 72 of Act No. 285 of 27 February 2021; section 4 of Act No. 1176 of 8 June 2021; section 20 of Act No. 2601 of 28 December 2021; section 5 of Act No. 2605 of 28 December 2021; and section 2 of Act No. 291 of 8 March 2022.

The amendments following from section 1 of Act No. 1676 of 26 December 2017 amending the Act on Electronic Communications Networks and Services (Access by public institutions to establish wi-fi hotspots) have not been incorporated in this Consolidated Act as the amendments have subsequently been repealed, cf. section 5(3) of Act No. 1176 of 8 June 2021.

The amendments following from section 1, no. 8, of Act No. 1531 of 18 December 2018 amending the Act on Electronic Communications Networks and Services (Municipal subsidies for deployment of electronic communications networks, allocation of codes for machine to machine communication (m2m communication) and repeal of rules on the broadband guarantee scheme) have not been incorporated in this Consolidated Act as the date of implementing these amendments is determined by the Minister for Climate, Energy and Utilities, cf. section 2(2) of Act No. 1531 of 18 December 2018.

The amendments following from section 1, no. 69, of Act No. 1833 of 8 December 2020 amending the Act on Electronic Communications Networks and Services; the Act on Radio Frequencies, and various other Acts (Implementation of Directive establishing the European Electronic Communications Code (Recast) etc.), have not been incorporated in this Consolidated Act, as the date of implementing these amendments is determined by the Minister for Climate, Energy and Utilities, cf. section 7(2) of Act No. 1833 of 8 December 2020.

### **Chapter I**

#### **Purpose and definitions**

##### **Part 1**

##### *Purpose of the Act*

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

(2) In performing their tasks under this Act, the authorities shall pursue the following objectives for the benefit of end-users:

- 1) Promote connectivity and access to, and take-up of, very high capacity networks.
- 2) Promote competition in the provision of electronic communications networks and services, including efficient infrastructure-based competition.
- 3) Promote regulatory predictability by ensuring a consistent regulatory approach through cooperation with the authorities of other Member States, the Body of European Regulators for Electronic Communications (BEREC), the Radio Spectrum Policy Group (RSPG) and the European Commission.
- 4) Ensure that there is no discrimination in the treatment of providers of electronic communications networks and services.
- 5) Apply Union law in a technologically neutral way, unless this is contrary to other objectives under this Act.
- 6) Promote efficient investments and innovation in new and enhanced infrastructures.
- 7) Take due account of local conditions for infrastructure, competition and the circumstances of end-users in various geographic areas, including the ownership and basis for management of local infrastructure.
- 8) Impose ex ante regulatory obligations only to the extent necessary to secure effective and sustainable competition in the interest of end-users and relax or lift such obligations as soon as that condition is fulfilled.

## Part 2

### *Definitions*

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

- 1) *Provider*: Anyone who makes products, electronic communications networks or services governed by this Act available to other parties with commercial purposes.
- 2) *Commercial provider*: A provider who, for commercial purposes, offers products, electronic communications networks or services governed by this Act as its main service or as a non-accessory part of its business.
- 3) *End-user*: User of electronic communications networks or services who does not make such electronic communications networks or services available to other parties on a commercial basis.
- 4) *Electronic communications network*: Transmission systems, whether or not based on a permanent infrastructure or centralised administration capacity, and, where applicable, switching or routing equipment and other resources, including network elements which are not active, which permit the conveyance of signals by wire, radio, optical or other electromagnetic means, including satellite networks, fixed (circuit- and packet-switched, including internet) and mobile networks, electricity cable systems, to the extent that they are used for the purpose of transmitting signals, networks used for radio and television broadcasting, and cable television networks, irrespective of the type of information conveyed.
- 5) *Public electronic communications network*: An electronic communications network used wholly or mainly for the provision of electronic communications services available to the public which support the transfer of information between network termination points.
- 6) *Very high capacity network*: An electronic communications network which consists wholly of optical fibre elements at least up to the distribution point at the serving location, or an

electronic communications network which is capable of delivering, under usual peak-time conditions, similar network performance in terms of available downlink and uplink bandwidth, resilience, error-related parameters, and latency and its variation. Network performance can be considered similar regardless of whether the end-user experience varies due to the inherently different characteristics of the medium by which the network ultimately connects with the network termination point.

- 7) *Radio local area network*: Low-power wireless access system, operating within a small range (RLAN), with a low risk of interference, as defined in the Act on Radio Frequencies, with other such systems deployed in close proximity by other users, using, on a non-exclusive basis, harmonised radio spectrum.
- 8) *Network termination point*: Physical point at which an end-user is provided with access to a public electronic communications network, and which, in the case of networks involving switching or routing, is identified by means of a specific network address, which may be linked to an end-user's number or name.
- 9) *Electronic communications service*: Service consisting wholly or mainly in electronic conveyance of communications in the form of sound, images, text or combinations thereof, by means of radio or telecommunications techniques, between network termination points, including two-way and one-way communications.
- 10) *Public electronic communications service*: Service as mentioned in no. 9 made available to a number of end-users or providers of electronic communications networks or services who have not been specified in advance.
- 11) *Information and content service*: Any form of electronic provision of information or content to which other end-users get access via electronic communications networks or services on the basis of an individual request.
- 12) *Voice communications service*: Publicly available electronic communications service available to end-users for originating and receiving, directly or indirectly, national or national and international calls through a number or numbers in a national or international telephone numbering plan.
- 13) *Network access*: Access to a provider's electronic communications networks or services and associated facilities for another provider for the purpose of providing electronic communications networks or services.
- 14) *Interconnection*: A form of network access established between providers of public electronic communications networks or services, consisting of physical and logical linking of electronic communications networks, used by the same or a different undertaking to allow communication or get access to electronic communications services.
- 15) *Subscriber number*: Any number included in the overall Danish numbering plan and which can be reassigned to an end-user.
- 16) *Conditional access system*: Any technical measure or arrangement whereby access to a protected radio or television broadcasting service in intelligible form is made conditional upon subscription or another form of prior individual authorisation.
- 17) *Application program interfaces (APIs)*: Software interface between applications, made available by broadcasters or service providers, and the facilities in set-top boxes intended for connection to television sets or integrated digital television sets which are able to receive digital interactive radio and television services.
- 18) *Multiplex operator*: Provider of electronic communications networks or services or owner of electronic communications networks who operates a terrestrial digital television platform.

- 19) *Gateway*: Terrestrial technical installation used in connection with communication between a group of end-users specified in advance one or more of whom are connected to a satellite-based network.
- 20) *Number-independent interpersonal communications service*: A service normally provided for remuneration that enables direct interpersonal and interactive exchange of information via electronic communications networks between a finite number of persons, whereby the persons initiating or participating in the communication determine its recipient(s). The service does not include services which enable interpersonal and interactive communication merely as a minor ancillary feature that is intrinsically linked to another service. The service does not connect with publicly assigned numbering resources, namely, a number or numbers in national or international numbering plans, and does not enable communication with a number or numbers in national or international numbering plans.
- 21) *Public safety answering point (PSAP)*: A physical location where an emergency communication is first received under the responsibility of a public authority.
- 22) *Most appropriate PSAP*: The PSAP to cover emergency communications from a certain area or for emergency communications of a certain type.
- 23) *Emergency communication*: Communication established via an electronic communications service between an end-user and the PSAP with the goal to request and receive emergency relief from emergency services.
- 24) *Emergency service*: A service that provides immediate and rapid assistance in situations where there is, in particular, a direct risk to life or limb, individual or public health or safety, to private or public property, or the environment.

## **Chapter II**

### **End-user aspects and universal service obligation etc.**

#### Part 3

##### *Basic end-user rights*

**3.** The Minister for Climate, Energy and Utilities may lay down rules for the purpose of obliging owners of electronic communications networks and providers of electronic communications networks or services to ensure end-users access to free emergency communication to the public emergency service, and making calls to the directory enquiry services, the text telephone service, and any other electronic communications services vital to society.

**4.-(1)** The Minister for Climate, Energy and Utilities may lay down rules for the purpose of obliging providers of electronic communications networks or services and providers of number-independent interpersonal communications services to ensure a number of basic end-user rights in connection with agreements on delivery of electronic communications networks or services to end-users, including:

- 1) Information requirements.
- 2) Public-interest information.
- 3) Contract duration and termination.
- 4) Bundled offers.
- 5) Special functions and facilities.
- 6) Availability requirements and compensating services for persons with disabilities and information requirements in connection with these services.

- 7) Availability requirements in connection with emergency communication for persons with disabilities.
- 8) Handling of complaints by the provider.

(2) In laying down rules under subsection (1), the Minister for Climate, Energy and Utilities may determine that these should only apply to certain types of contractual relationships, including agreements with non-commercial end-users, and that it should not be possible to depart from such rules by agreement. Furthermore, the Minister for Climate, Energy and Utilities may lay down specific rules for the extent to which the Danish Agency for Data Supply and Infrastructure may grant exemptions from the requirements.

(3) Rules laid down pursuant to subsection (1) shall not apply to microenterprises that provide number-independent interpersonal communications services unless they also provide electronic communications services.

**4a.**-(1) The Danish Agency for Data Supply and Infrastructure may lay down rules for the purpose of obliging providers of electronic communications networks or services and providers of number-independent interpersonal communications services to ensure a number of basic end-user rights in connection with agreements on delivery of networks or services, including rules on:

- 1) Transparency, comparison of offers and publication of information.
- 2) Quality of service.
- 3) Switching between providers of internet access services.
- 4) Blocking and withholding of revenues in case of fraud and misuse.
- 5) Prohibition of unilaterally restricting end-users from accessing radio local area networks etc.

(2) Rules laid down pursuant to subsection (1) shall not apply to microenterprises that provide number-independent interpersonal communications services unless they also provide electronic communications services.

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

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

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

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

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

(2) The provisions of sections 152, 152a and 152d-152f of the Penal Code shall apply correspondingly to persons who are or have been in the service of an owner of electronic communications networks or a provider of electronic communications networks or services and number-independent interpersonal communications services, or who are or have been engaged otherwise in tasks carried out by agreement with these.

**8.**-(1) The Minister for Industry, Business and Financial Affairs shall lay down rules for providers of public electronic communications networks or services and number-independent interpersonal communications services about minimum requirements for handling personal data in electronic communications networks and services and number-independent interpersonal communications services.

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

- 1) Suitable technical and organisational measures for the purpose of managing the risks posed to the security of personal data in electronic communications networks and services and number-independent interpersonal communications services and ensure a level of security appropriate to the risk presented.
- 2) Notification of the Danish Business Authority in case of breach of the security of personal data. The obligation may include notification of parties other than the Danish Business Authority in special circumstances.

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

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

(4) The Minister for Industry, Business and Financial Affairs shall lay down specific rules about supervision of compliance with rules laid down pursuant to subsection (1), including supervision of the security of personal data.

**8a.** (Repealed)

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

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

- 1) that the technical equipment and the technical systems used by the provider are arranged in such a manner that the police may have access to information about telecommunications traffic and to intervening in the secrecy of communications in the form of historical telecommunications data and historical extended telecommunications data, forward-looking telecommunications data, forward-looking extended telecommunications data, interception and telecommunications observation, cf. Parts 71 and 74 of the Administration of Justice Act, including, in the case of forward-looking telecommunications data and extended telecommunications data, the ability of the police to have access directly after recording of this data;
- 2) that the technical equipment and the technical systems used by the provider are arranged in such a manner that it is possible, following a request by the police, to carry out interception and immediate transmission of telecommunications to another contracting state under Article 18(5)(a), cf. (2)(a) and (c), of the Convention of 29 May 2000 on Mutual Assistance in Criminal Matters between the Member States of the European Union;
- 3) that the gateways used by the provider are arranged in such a manner that providers of electronic communications services in other contracting states using the gateways have direct access to these so that it will be possible, via such providers, to carry out direct interception of communications at the gateways in respect of subjects present in the contracting state concerned, cf. Article 19 of the Convention of 29 May 2000 on Mutual Assistance in Criminal Matters between the Member States of the European Union; and
- 4) that the provider has direct access to gateways located in other contracting states and used by the provider, so that the police are able, via the provider, to carry out direct interception of communications at the gateway in respect of subjects present in Denmark, cf. Part 71 of the Administration of Justice Act and the Convention of 29 May 2000 on Mutual Assistance in Criminal Matters between the Member States of the European Union.

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

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

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

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

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

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

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

13. (Repealed)

Part 3a

*(Repealed)*

Part 4

*Universal service obligation (USO)*

*USO services*

14.-(1) The universal service obligation is intended to ensure access to basic electronic communications services on reasonable terms and at affordable prices.

(2) The Minister for Climate, Energy and Utilities may lay down rules about access to the following USO services:

- 1) A voice communications service at a fixed location.
- 2) An adequate broadband internet access service.
- 3) Special USO services for certain defined groups of persons with disabilities.
- 4) An exhaustive directory containing all numbers in the overall Danish numbering plan assigned to end-users.

(3) Subject to a documented need, the Minister for Climate, Energy and Utilities may lay down rules prescribing that the universal service obligation should remain for services that were subject to the universal service obligation on 20 December 2018.

(4) The Minister for Climate, Energy and Utilities may lay down rules prescribing that the universal service obligation should include services other than those mentioned in subsection (2).

(5) The Minister for Climate, Energy and Utilities may lay down rules prescribing that one or more generally available USO services or parts thereof provided for under subsections (2)-(4):

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

(6) The Minister for Climate, Energy and Utilities may lay down rules about:

- 1) the extent of USO services cf. subsections (2)-(4), including the facilities and functions to be made available; and
- 2) the extent of the delivery obligation, cf. section 16; and about
- 3) whether the universal service obligation should apply to consumers, microenterprises, small and medium-sized enterprises and not-for-profit organisations or all end-users.



**15.-(1)** The Minister for Climate, Energy and Utilities shall lay down rules about the following:

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

(2) On the basis of rules laid down pursuant to subsection (1), no. 2, the Danish Agency for Data Supply and Infrastructure shall designate one or more undertakings as USO providers who are required to provide USO services as mentioned in section 14(2) or (3), or laid down pursuant to section 14(4).

(3) On the basis of rules laid down pursuant to subsection 1(3), the Danish Agency for Data Supply and Infrastructure shall specify terms on how the providers designated pursuant to subsection (2) should handle their universal service obligation.

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

(2) A decision made by the USO provider not to deliver USO services may be appealed to the Danish Agency for Data Supply and Infrastructure.

*Maximum prices for USO services*

**17.-(1)** The Minister for Climate, Energy and Utilities may specify rules about the following:

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

(2) The Minister for Climate, Energy and Utilities may determine that the Danish Agency for Data Supply and Infrastructure should determine maximum prices for one or more of the USO services mentioned in section 14(2) or (3), or laid down pursuant to section 14(4). The Danish Agency for Data Supply and Infrastructure shall fix maximum prices on the basis of proposals from the USO providers and according to rules laid down pursuant to subsection (1).

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

(4) If the Minister for Climate, Energy and Utilities considers that retail prices for the services listed in section 14(2), nos. 1 and 2, are not affordable for consumers with a low income or are not economically accessible for consumers with special social needs, the Minister may lay down rules to ensure that such consumers can pay for an adequate broadband internet access service and voice communications services at least at a fixed location.

#### *Financing of the universal service obligation*

**18.**-(1) USO providers designated under section 15(2) to handle USO services falling within section 14(2) or (3) or laid down pursuant to section 14(4) shall be entitled to be compensated for any documented net costs incurred in providing universal service, the net costs of USO services falling within section 14(2) or (3) being covered only to the extent that the Danish Agency for Data Supply and Infrastructure considers that the provision of universal service may represent an unfair burden on the designated USO provider. The net costs shall be calculated on an overall basis for the USO services falling within section 14(2) or (3) and individually for the USO services laid down pursuant to section 14(4). Net costs shall be calculated as the USO provider's loss in providing and delivering the USO services that the individual USO provider is obliged to provide by virtue of the designation under section 15(2), deducting the value of any intangible benefits derived by the USO provider from handling the universal service obligation. Net costs shall not be covered if the USO provider's prices are abnormally low in relation to the service.

(2) The Minister for Climate, Energy and Utilities may specify rules about the compensation mentioned in subsection (1), including the following:

- 1) Calculation of the compensation referred to in subsection (1).
- 2) Requirements for USO providers' presentation of accounts and documentation of the net costs referred to in subsection (1).
- 3) Time limits for calculation and payment of contributions towards coverage of the costs, cf. subsection (4).
- 4) Collection of contributions, cf. subsection (4), and the duty to give information resting on the obliged providers in connection therewith.
- 5) Identification of the group of providers of public electronic communications networks or services obliged under subsection (4) to contribute towards covering any net costs.
- 6) Notification schemes for the purpose of prior registration of the providers of public electronic communications networks or services that will be obliged, under subsection (4), to contribute towards covering any net costs.
- 7) The possibility of withdrawing the designation of an existing USO provider in connection with a public tender as mentioned in subsection (7).

(3) On the basis of rules laid down under subsection (2), the Danish Agency for Data Supply and Infrastructure shall make a decision on determination of and compensation for the net costs, including the following:

- 1) whether the USO provider has presented sufficient documentation to justify the compensation for the net costs as mentioned in subsection (1);

- 2) whether the universal service obligation is considered by Danish Agency for Data Supply and Infrastructure to represent an unfair burden, cf. subsection (1), 1st sentence, on the designated USO provider; and
- 3) whether the USO provider's prices are considered by the Danish Agency for Data Supply and Infrastructure to be abnormally low in relation to the service.

(4) If the net costs, cf. subsection (1), have arisen from providing USO services as mentioned in section 14(2) or (3), or as laid down pursuant to section 14(4), to the extent that these obligations fall within Directive 2018/1972/EU, the Danish Agency for Data Supply and Infrastructure's decision under subsection (3) shall release an obligation on providers of public electronic communications networks or services that provide services corresponding to the USO services mentioned in section 14(2), nos. 1 and 2, or subsection (3) or laid down pursuant to section 14(4) to co-finance the USO provider's net costs. To cover this, the Danish Agency for Data Supply and Infrastructure shall determine and collect contributions from the providers concerned.

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

(6) Contributions as mentioned in subsections (4) and (5) shall be determined in the Finance Act and be announced by the Danish Agency for Data Supply and Infrastructure.

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

(8) If net costs under subsection (1) have arisen from providing USO services as mentioned in section 14(4), the Danish Agency for Data Supply and Infrastructure's decision under subsection (3) shall release an obligation on the State to cover the USO provider's net costs to the extent that the services are not included in the obligations in Directive 2018/1972/EU.

#### *Notification obligation*

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

#### Part 5

#### *Supervision*

**20.**-(1) The Danish Agency for Data Supply and Infrastructure shall supervise compliance with the rules in sections (3)-(6), section 10(1) and (2), and sections (11) and (14)-(19), and rules and terms issued in pursuance thereof.

(2) The Danish Business Authority shall supervise compliance with the rules in sections (7)-(9) and rules issued in pursuance thereof.

### **Chapter III**

#### **Numbering**

##### **Part 6**

###### *Administration and use of the overall Danish numbering plan*

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

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

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

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

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

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

- 1) The public emergency service.
- 2) A common telephone line to public authorities.

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

(2) Providers of electronic communications networks or services may not, as an integral part of charging calls to subscriber numbers, collect non-traffic-related payments from the calling end-user on behalf of third parties, including the called end-user, in connection with calls to numbers other than those mentioned in subsection (1), nos. 2-4 and 6, and section 21(2), no. 5.

**23.** The Danish Agency for Data Supply and Infrastructure may lay down rules on the use of numbers, number series, codes and addresses from the overall Danish numbering plan when these are linked with domain names.

**24.-(1)** Within the framework of the rules laid down pursuant to section 21, the Danish Agency for Data Supply and Infrastructure shall, when requested, assign numbers, number series, codes and addresses to any party that provides electronic communications networks or services or USO services on a commercial basis.

(2) The Danish Agency for Data Supply and Infrastructure may specify rules about the assignment of codes, cf. subsection (1), to public authorities and enterprises that use electronic communications services for machine to machine communication (m2m communication) via an electronic communications network as an element in the performance of their tasks.

#### *Number charges*

**25.-(1)** The Danish Agency for Data Supply and Infrastructure shall collect number charges from providers who, under section 24(1), have been or are being assigned numbers, number series, codes or addresses by the Agency, and from the public authorities and enterprises that have been or are being assigned codes by the Agency, cf. rules laid down pursuant to section 24(2).

(2) Charges as mentioned in subsection (1) shall be determined annually in the Finance Act and be published by the Danish Agency for Data Supply and Infrastructure.

(3) The duty to pay the number charges mentioned in subsection (1) shall at all times rest on the provider to whom the Danish Agency for Data Supply and Infrastructure has assigned the numbers, number series, codes or addresses in question, irrespective of whether the use of such numbers, number series, codes or addresses, individually or in blocks, has been left to end-users or to other providers of electronic communications networks or services. The duty to pay the number charges mentioned in subsection (1) shall also rest on the public authority or enterprise that the Danish Agency for Data Supply and Infrastructure has assigned codes for the use of m2m communication via an electronic communications network.

### *Number portability*

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

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

(3) Providers of electronic communications networks or services shall ensure that an end-user terminating a subscriber agreement may retain the right to number porting of a number from the national numbering plan to another provider for at least one month after the date of termination, unless the end-user has waived such right.

**26a.** The Minister for Climate, Energy and Utilities may lay down rules prescribing that providers of electronic communications networks or services that provide machine-to-machine communications services shall support the capability of end-users to switch between providers on a wireless basis.

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

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

(3) In the case of failure of the porting process, the transferring provider of electronic communications networks or services shall reactivate the number and related services of the end-user until the porting is successful. The transferring provider shall continue to provide its services on the same terms and conditions until the services of the receiving provider are activated. The loss of service during the process of provider switching and the porting of numbers shall not exceed one working day.

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

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

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

(3) Providers of electronic communications networks or services who transfer numbers as an element in number porting may not charge other providers a fee for this in excess of the costs

directly incurred by the provider in transferring the numbers plus current payment of the number charge.

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

**28a.** Providers of electronic communications networks or services receiving numbers as an element in number porting, cf. section 26(1), shall lead the switching and porting processes. Providers shall not delay or abuse the switching and porting processes, nor shall they port numbers or switch providers without the end-users' explicit consent. The end-users' contracts with the transferring provider shall be terminated automatically upon conclusion of the switching process.

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

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

## Part 8

### *Access to numbers and agreements on routing of calls*

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

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

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

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

## Part 9

*Framework for utilising number information data*

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

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

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

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

(5) Notwithstanding subsection (4):

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

(6) Information as mentioned in subsection (5), no. 2, may exclusively be passed on by the USO provider's nationwide directory enquiry service when required by public emergency services, the police, public prosecutors, the Danish Patient Safety Authority, individual courts of law, the Danish Prison Service, or the authority in charge of collecting arrears.

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

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

Part 10

*Supervision of compliance with rules on numbering*

**32.**-(1) The Danish Agency for Data Supply and Infrastructure shall supervise compliance with the provisions of this Chapter and rules issued in pursuance thereof, subject to subsections (2)-(4).



(2) Providers who, under the provision in section 24(1), have been assigned numbers, number series, codes or addresses in the overall Danish numbering plan shall ensure compliance with rules laid down under section 21 and terms laid down in accordance therewith, irrespective of whether the use of such numbers, number series, codes or addresses, individually or in blocks, has been left to end-users or to other providers of electronic communications networks or services.

(3) The public authorities and enterprises assigned codes pursuant to section 24(2) shall ensure compliance with rules laid down under section 21 and terms laid down in pursuance thereof.

(4) The Danish Agency for Data Supply and Infrastructure shall not carry out supervision as to the amount of compensation paid under section 27(4).

## **Chapter IV**

### **Sector-specific competitive regulation**

#### **Part 11**

##### *Common provisions on network access and interconnection*

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

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

(3) The Danish Business Authority may lay down rules prescribing that providers of number-independent interpersonal communications services which reach a significant level of coverage and user uptake can be placed under obligations necessary to ensure connections between end-users.

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

(2) Notwithstanding subsection (1), providers of public electronic communications networks or services on whom obligations have been imposed under section 33(2), section 35a or section 41 or binding commitments under section 47a, section 47c, section 47d or rules issued pursuant to section 49, shall offer other providers of public electronic communications networks or services agreements on network access and interconnection on terms and conditions consistent with the obligations imposed on the provider.

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

#### **Part 11a**

*Network access to wiring in the outermost part of electronic communications networks*

**35a.**-(1) Provided that the conditions in subsection (2) have been met, the Danish Business Authority may, upon a reasonable and well-founded request from a provider of electronic communications networks or services, impose on any provider or owner of electronic communications networks an obligation to grant access to wiring, cables and associated facilities inside buildings or up to the first concentration or distribution point located outside the building.

(2) The Danish Business Authority may impose network access under subsection (1) when justified because a parallel establishment of such network elements will be economically inefficient or physically impracticable.

(3) Provided that the conditions of subsection (4) have been met, the Danish Business Authority may extend the obligation under subsection (1) to a point in the network located after the first concentration or distribution point. The Danish Business Authority shall determine the point located closest to the end-users, capable of hosting a sufficient number of end-user connections to be commercially viable for efficient access seeking providers of electronic communications networks or services.

(4) Where the Danish Business Authority concludes, having regard to the obligations resulting from relevant market analyses, cf. section 37, that obligations imposed in accordance with subsection (1) do not, or will not, sufficiently address high and non-transitory economic or physical barriers to establishment of parallel networks which underlie or will result in a competitive situation significantly limiting the competitive outcomes for end-users, the Danish Business Authority may impose obligations under subsection (3).

(5) An obligation under subsection (1) or (3) may include obligations on:

- 1) network access to physical network elements and associated facilities and associated services;
- 2) transparency;
- 3) non-discrimination; and
- 4) requirements for designating the costs of access, which, where appropriate, shall be adjusted to take into account risk factors.

(6) In addition to the obligations listed in subsection (5), an obligation under subsection (3) may also include network access to active or virtual network elements if this is justified for technical or economic reasons.

(7) The Danish Business Authority may not impose obligations under subsection (3) when:

- 1) the provider or owner of an electronic communications network makes a viable and similar alternative means of reaching end-users available to any provider of electronic communications networks or services by providing access to a very high capacity network on fair, non-discriminatory and reasonable terms and conditions; or
- 2) the imposition of obligations would compromise the economic or financial viability of a new network deployment, in particular by small local projects.

(8) When imposing obligations under subsection (1) or (3), formulating obligations under subsection (5) and assessing the possibility of exemption under subsection (7), no. 1, the Danish

Business Authority shall consider in particular whether the provider or the owner of an electronic communications networks:

- 1) has the characteristics listed in section 47 b;
- 2) has received public financing for deployment or operation of the relevant network;
- 3) has published a reference offer for access to the relevant network;
- 4) is using standardised terms and conditions agreed in an industry forum or used as a de facto standard in the market;
- 5) offers a long-term obligation to grant network access;
- 6) offers access to alternative access products, including passive or active network access or network access to civil engineering infrastructure; or
- 7) offers fair and reasonable prices taking due account of investments and associated risks and possible cost differences arising as a result of scale or business models.

## Part 12

### *Technical regulation of network access*

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

## Part 13

### *Reviews of the competitive situation*

**37.**-(1) The Danish Business Authority shall carry out analyses of the competitive situation in the telecommunications market (market reviews) at regular intervals for the purpose of assessing the need for, and possibly imposing, obligations under section 41.

(2) Market reviews under subsection (1) shall be carried out within one of the following periods:

- 1) Within five years from the adoption of a previous analysis in the market concerned. However, in exceptional cases this period may be extended by up to one year subject to approval by the European Commission.
- 2) Within three years from the European Commission's adoption of a revised Recommendation on relevant product and service markets in case of markets not previously analysed.

(3) The Danish Business Authority shall carry out updates of already completed market reviews when the Authority considers that this is necessary in the light of market-related aspects such as commercial agreements, including agreements on co-investment that have an impact on competitive dynamics, or factual conditions.

(4) Providers with significant market power on whom obligations have been imposed, cf. section 41, shall notify the Danish Business Authority of decisions about organisational or structural changes essential to the obligations imposed.

(5) In cases where the Danish Business Authority cannot carry out a market analysis as mentioned in subsection (1) within the timescale set by current EU regulation, the Authority may request assistance from the Body of European Regulators for Electronic Communications.

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

#### *Market definition*

**38.**-(1) As an element in the market reviews, cf. section 37, the Danish Business Authority shall define the markets that fall within the European Commission's Recommendation on relevant product and service markets, appropriate to Danish circumstances.

(2) Subject to the consent of the European Commission, the Danish Business Authority may furthermore define product and service markets other than those mentioned in subsection (1) that should be subjected to a market review.

#### *Market analysis*

**39.** As an element in the market review, cf. section 37, the Danish Business Authority shall analyse the markets defined under section 38 for the purpose of assessing whether these markets are effectively competitive.

#### *Identification of providers with significant market power*

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

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

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

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

### Part 14

#### *Obligations for the purpose of regulating providers with significant market power*

##### *Market decisions*

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

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

- 1) Access to civil engineering, cf. section 41 a.
- 2) Network access, cf. section 42.
- 3) Non-discrimination, cf. section 43.
- 4) Transparency, cf. section 44.
- 5) Accounting separation, cf. section 45.
- 6) Price control, cf. section 46.
- 7) Functional separation, cf. section 47.

(3) In special cases and subject to the European Commission's consent being obtained, the Danish Business Authority may impose obligations other than those mentioned in subsection (2) on providers with significant market power.

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

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

(6) The Danish Business Authority may impose obligations under subsection (2), no. 2, solely when competition and end-user interest cannot be promoted either by imposing obligations under subsection (2), no. 1, or through obligations on related wholesale markets.

(7) A provider on whom an obligation under section 41 a or section 42 has been imposed shall notify the Danish Business Authority in advance and in a timely manner of its plans to decommission or replace with a new infrastructure parts of a network falling within the obligation.

(8) If necessary in order to ensure competition and end-user rights, the Danish Business Authority shall impose on the provider, cf. subsection (1), an obligation to prepare a detailed description of its plans for transitional periods and terms, and what comparable access products are offered instead.

#### *Obligation regarding access to civil engineering*

**41a.** An obligation regarding access to civil engineering infrastructure means an obligation to meet reasonable requests for access to and use of civil engineering infrastructure, including but not limited to, buildings, entries to buildings, cables in buildings, including building wiring, antennas, poles, masts, cable ducts, conduits, inspection chambers, manholes, cabinets, towers and other supporting constructions.

#### *Network access obligation*

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

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

(2) In determining obligations for network access, the Danish Business Authority shall take account in particular of the following:

- 1) whether the rate of market development makes it technically and economically feasible to use or install competing facilities, taking into account the nature and type of the network access and interconnection arrangements involved;
- 2) the expected technological evolution affecting network design and management;
- 3) the need to ensure technology neutrality enabling the parties to design and manage their own networks;
- 4) whether it is practically feasible to provide the network access proposed, in relation to the capacity available;
- 5) the initial investment by the facility owner, taking account of any public investment made and the risks involved in making the investment, with particular regard to investments in, and risk levels associated with, very high capacity networks;
- 6) the need to safeguard the free competition in the long term, with particular attention to economically efficient infrastructure-based competition and innovative business models that support sustainable competition, including infrastructurebased competition based on co-investment;
- 7) any relevant intellectual property rights; and
- 8) the provision of pan-European services.

*Obligation of non-discrimination*

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

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

(3) As an element in an obligation of non-discrimination, cf. subsection (1), the Danish Business Authority may require providers with significant market power to deliver access products and services to all undertakings, including to itself, on the same timescales, terms and conditions, including those relating to price and service levels, and by means of the same systems and processes as those applicable to the provider's own departments.

(4) In relation to imposing an obligation of non-discrimination under subsection (1), the Danish Business Authority may require the provider with significant market power to document, via a test, that other providers of public electronic communications networks or services can technically replicate new or significantly changed retail products from the provider with significant market power based on the network access products specified in a market decision, cf. section 41. In this connection the Danish Business Authority may require the documentation to be available within a reasonable time before the launch of a new or significantly changed retail product and at any time thereafter.

(5) If the provider with significant market power fails to meet an obligation of documentation imposed under subsection (4), the Danish Business Authority may order this provider to postpone the launch of a retail product until the obligation to be met under subsection (4) has been fulfilled if such non-fulfilment is deemed to be of significant detriment to competition.

#### *Obligation of transparency*

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

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

(3) A provider with significant market power on whom an obligation as mentioned in section 41(2), no. 1 or 2, has been imposed shall publish a reference offer to this effect, specifying key performance indicators, where relevant, as well as corresponding service levels. Such reference offer shall take utmost account of the BEREC guidelines on the minimum criteria for a reference offer.

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

#### *Obligation of accounting separation*

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

(2) Subject to the rules on confidentiality, including the rules of the Public Administration Act, Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and the Data Protection Act, the Danish Business Authority may publish accounting data, including data on revenues.

#### *Obligation of price control*

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

(2) Obligations as mentioned in subsection (1) may be imposed if a market analysis indicates that as a result of insufficient competition a provider with significant market power might sustain prices at an excessively high level, or sustain a price squeeze, to the detriment of end-users where a relevant limitation of the retail price does not exist. In its assessment, the Danish Business Authority shall take into account the need to promote competition and long-term end-user interests related to the deployment and take-up of next-generation networks, and in particular of very high capacity networks.

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

(4) Where an obligation regarding price control is imposed, it shall be ensured that any cost recovery mechanism or pricing methodology that is mandated serves to promote the deployment of new and enhanced networks, efficiency and sustainable competition and maximises sustainable end-user benefits.

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

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



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

(8) The Danish Business Authority shall lay down specific rules as to what price control methods may be adopted, and about the preparation, use and updating of price control methods, including rules determining when and to what extent the industry should be involved.

**46 a.** If the European Commission makes a decision to impose a maximum termination rate for voice calls in mobile networks or fixed networks, or both, the Danish Business Authority cannot determine other prices under a price control obligation, cf. section 46.

#### *Obligation of functional separation*

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

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

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

(3) An obligation of functional separation may include:

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

#### Part 14 a

#### *Relaxation of obligations on providers with significant market power*

#### *Co-investment*

**47 a.**-(1) A provider designated as having significant market power can make an offer for co-investment in connection with the deployment of a new network consisting of optical fibre elements covering the section up to the end-user's premises or base station.

(2) In assessing co-investment offers under subsection (1) the Danish Business Authority shall decide if the provider's offer complies with the following conditions:

- 1) The co-investment offer is open to any provider of electronic communications networks or services at any time over the lifetime of the network.
- 2) The co-investment offer enables co-investors to compete effectively and sustainably in the long term in underlying markets where the provider is active, on terms that are fair, reasonable and non-discriminatory and gives access to the full capacity of the network.
- 3) The co-investment offer has been published in due time by the provider, which, apart from wholesale-only undertakings, cf. section 47 b, means at least six months before deployment of the new network, unless the Danish Business Authority considers that national circumstances may justify an extension of the period.
- 4) Other providers not participating in the co-investment can from the outset benefit from network access with the same quality, speed, conditions and end-user reach as were available before the deployment. The co-investment offer shall ensure that network access is adapted over time in light of developments on the associated retail markets so that incentives to participate in the co-investment are maintained. The co-investment offer shall enable the Danish Business Authority to obtain an insight into, and supervision of, subsequent adjustments of network access.
- 5) The co-investment offer is made in good faith and complies, as a minimum, with the criteria indicated in Annex 1.

(3) If the Danish Business Authority concludes that the co-investment commitment made pursuant to subsection (1) meets the conditions set out in subsection (2), and if the Authority finds that at least one potential co-investor has entered into a co-investment agreement with the provider, the Authority shall make the co-investment commitment binding for a period of at least seven years. During this period the Danish Business Authority may not impose further obligations under section 41 on the relevant part of the network.

(4) Notwithstanding subsection (3) the Danish Business Authority may, in duly justified circumstances, impose, maintain or adapt obligations under sections 41 a-46 to address significant competition problems on specific markets, where, given the specific characteristics of these markets, those competition problems would not otherwise be addressed.

(5) The Danish Business Authority may require the provider who has made a co-investment offer under subsection (1) to submit annual compliance statements confirming that the conditions in subsection (2) have been met.

#### *Wholesale-only undertakings*

**47 b.**-(1) The Danish Business Authority shall assess if a provider appointed as having significant market power in one or more wholesale markets, cf. section 40, and who is not active in any retail market for public electronic communications services, meets the following conditions:

- 1) All companies and business units within the provider, all companies that are controlled but not necessarily wholly owned by the same ultimate owner, and any shareholder capable of

exercising control over the provider, only have activities, current and planned for the future, in wholesale markets for electronic communications services and therefore do not have activities in any retail market for electronic communications services provided to end-users in the EU.

- 2) The provider is not bound to deal with a single and separate provider operating downstream that is active in any retail market for public electronic communications services provided to end-users, because of an exclusive agreement, or an agreement which de facto amounts to an exclusive agreement.

(2) If the Danish Business Authority concludes that the conditions laid down in subsection (1) are fulfilled, a decision by the Authority under section 41 may impose on that provider only obligations as mentioned in sections 42 and 43 or obligations on fair and reasonable pricing if justified on the basis of a market analysis under section 39, including a prospective assessment of the likely behaviour of a provider with significant market power.

(3) If the Danish Business Authority concludes that the conditions laid down in subsection (1) are no longer met, the Authority shall review the obligations imposed, cf. subsection (2), and, to a relevant extent, impose obligations as mentioned in sections 41 a-46. The provider shall, without undue delay, inform the Danish Business Authority of any change of relevant circumstances, cf. subsection (1).

(4) The Danish Business Authority shall review the obligations imposed, cf. subsection (2), or impose one or more of the obligations mentioned in sections 41 a or 44-46 if on the basis of evidence of terms and conditions offered by the provider to its downstream customers, the Authority concludes that competition problems have arisen or are likely to arise to the detriment of end-users which require the imposition of further obligations or the amendment of existing obligations.

#### *Voluntary functional separation*

**47c.**-(1) A provider designated as having significant market power in one or several relevant markets shall inform the Danish Business Authority at least three months before any intended transfer of its local access network assets or a substantial part thereof to a separate legal entity under different ownership, or establishment of a separate business entity in order to provide all retail providers, including its own retail divisions, with fully equivalent access products.

(2) A provider may offer commitments regarding access conditions applicable to the provider's network during the implementation period and after the termination of the separation mentioned in subsection (1). The offer of commitments shall include sufficient details, including in terms of the timing and framework of implementing the commitment and the duration thereof.

(3) As an element in its assessment of the planned separation together with any commitments offered, the Danish Business Authority shall conduct an analysis of the different markets related to the access network.

(4) On the basis of its analysis, cf. subsection (3), the Danish Business Authority shall impose, maintain, amend or withdraw obligations under section 41, and may, in its decision, make the commitments binding, wholly or in part, for the entire period for which they are offered.

(5) The Danish Business Authority may extend binding commitments under subsection (4).

### *Commitments*

**47 d.**-(1) Providers designated as having significant market power may offer to the Danish Business Authority commitments regarding conditions for corporative agreements, third-party access, or co-investment. The offer of commitments shall include sufficient details, including in terms of the timing and framework of implementing the commitment and the duration thereof.

(2) As an element in the Danish Business Authority's assessment of commitments offered pursuant to subsection (1), the Authority shall perform a market test, in particular regarding the offered terms, by conducting a public consultation, unless the commitments offered are clearly insufficient. When assessing the commitments offered, the Danish Business Authority shall have particular regard to the evidence underlying the commitments, the openness of these to all market participants, the timely availability of access under fair, reasonable and non-discriminatory conditions, before the launch of related retail services, the overall adequacy of the commitments to enable sustainable competition on downstream markets and to facilitate cooperative deployment and take-up of very high capacity networks in the interest of end-users.

(3) The Danish Business Authority shall communicate to the provider its preliminary conclusions as to whether the commitments offered meet the objectives and criteria and comply with the procedures set out in this provision and in sections 41, 47 a or 47 c, and under which conditions the Authority may consider making the commitments binding.

(4) The provider may revise its offer of commitment to take account of the preliminary conclusions of the Danish Business Authority.

(5) Notwithstanding section 47 a-(3), the Danish Business Authority may issue a decision to make the commitments binding, wholly or in part, and notwithstanding section 37(3) the Authority may make some or all commitments binding for a specific period.

(6) The Danish Business Authority may extend the commitments under subsection (5).

### Part 15

#### *Digital radio and television services*

**48.** Following negotiation between the Minister for Climate, Energy and Utilities and the Minister for Culture, the Danish Agency for Data Supply and Infrastructure may lay down rules requiring multiplex operators to offer access to application program interfaces (APIs) and to electronic programme guides (EPGs) on a fair, reasonable and non-discriminatory basis to the extent that this is necessary to ensure access by end-users to digital radio and television broadcasting services.

**49.** The Danish Agency for Data Supply and Infrastructure shall lay down rules about:

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

**50.**-(1) The Danish Agency for Data Supply and Infrastructure may conduct market analyses using the procedure in Part 13 and, following negotiation between the Minister for Climate, Energy and Utilities and the Minister for Culture, decide to maintain, amend or withdraw terms and conditions

laid down pursuant to section 49 for providers who, according to the market analysis, do not have significant market power in the market concerned.

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

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

**50 a.** The Minister for Climate, Energy and Utilities may lay down specific rules on the Danish Agency for Data Supply and Infrastructure's supervision of the rules in sections 48-50, rules and terms issued in pursuance thereof, and rules on dispute resolution in connection with digital radio and television services.

## Part 16

### *Requirements for providers of cable TV*

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

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

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

## Part 16 a

### *Sector-specific merger control*

**51 a.**-(1) A merger, cf. section 12 a of the Competition Act, between two or more commercial providers of electronic communications networks in Denmark shall be notified to the Danish Business Authority by the participating enterprises if these have a combined aggregated annual turnover in Denmark of at least DKK 900 million and the merger includes a public electronic communications network, cf. however subsection (2).

(2) Subsection (1) shall not be applicable if the merger is subject to an obligation to give notice under the rules on merger control in the Competition Act.

(3) The Danish Business Authority shall refer a merger notified to the Authority under subsection (1) for consideration by the Danish Competition and Consumer Authority according to the rules of the Competition Act on merger control, if the conditions in subsection (1) have been met.

(4) A merger falling within subsection (1) may not be implemented, either before its was notified to the Danish Business Authority or during the Authority's consideration of the merger notice. This shall not prevent the implementation of a public takeover bid or a series of transactions in securities, including those that can be converted to other securities traded on a market such as a stock exchange whereby different sellers acquire control, when the merger is notified immediately to the Danish Business Authority, and the purchaser does not exercise the voting rights associated with the securities concerned, or only does so to retain the full value of its investment.

(5) The employees of the Danish Business Authority must not disclose information about matters concerned with merger notices received under subsection (1) to parties other than the Danish Competition and Consumer Authority.

(6) Calculation of the turnover referred to in subsection (1) shall be made in accordance with rules laid down under section 12(4) of the Competition Act.

(7) The Minister for Climate, Energy and Utilities may specify rules on notification of mergers, cf. subsection (1), and procedures and deadlines for the Danish Business Authority's handling of a notified merger.

## Part 17

### *Supervision etc.*

**52.**-(1) The Danish Business Authority shall supervise compliance with the rules in this Part and Parts 11-14 a, 16, 16 a and 18, and rules issued in pursuance thereof.

(2) The Danish Business Authority shall supervise compliance with the termination rates set by the European Commission for voice calls in fixed networks and mobile networks.

**53.**-(1) If a complaint is submitted to the Danish Business Authority in respect of an agreement falling within this Part and Parts 11-14 a, 16, 16 a and 18 or rules issued in pursuance thereof between a provider of public electronic communications networks or services resident in Denmark and a similar provider resident in another EU or EEA country, the Danish Business Authority shall request the Body of European Regulators for Electronic Communications (BEREC) to issue an opinion on the dispute.

(2) The Danish Business Authority shall await an opinion under subsection (1) before taking any action to resolve the dispute. In exceptional circumstances, in order to safeguard competition or protect the interests of end-users, the Danish Business Authority may, either at the request of the parties or on its own initiative, adopt interim measures under section 55.

(3) Any obligation imposed on a provider by the Danish Business Authority as part of the resolution of the dispute shall be imposed within one month of the opinion.

### *Reasonable requests for network access and interconnection*

**54.**-(1) The Danish Business Authority may decide whether there is a reasonable request in specific cases for establishing or amending an agreement on network access or interconnection in accordance with obligations imposed under section 33(2), section 35 a, section 41, binding offers of commitment under section 47 a, section 47 c, or section 47 d. The request shall be made by a

provider of public electronic communications networks or services who may invoke, or falls within, section 34(2).

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

(3) Instead of making a decision under subsection (1), the Danish Business Authority may decide that cases as to whether there is a reasonable request in specific cases for establishing or amending an agreement on network access and interconnection shall be transferred to alternative dispute resolution if the Authority deems that this will be the most appropriate way of solving the dispute. The Minister for Climate, Energy and Utilities may specify rules about alternative dispute resolution.

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

*Provisional decisions etc.*

**55.**-(1) If, in dealing with a case under the rules of this Part and Parts 11-14 a, 16, 16 a and 18, or rules issued in pursuance thereof, the Danish Business Authority has not received the information or the material required by the Authority, cf. section 73(1), the Authority may make a decision on the existing basis.

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

(3) The Danish Business Authority may change a provisional decision made under subsection (2).

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

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

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

*Other aspects*

*Accounting aspects*

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

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

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

(3) The Danish Business Authority shall lay down specific rules on fulfilling obligations under subsection (1), including requirements for formats, accounting methods and auditing.

*Consultation*

**57.** The Minister for Climate, Energy and Utilities shall lay down specific rules on consultations, including what decisions shall be subjected to extended consultation and on procedures for the Danish Business Authority's conduct of consultations.

**Chapter V**

**Co-location, facility sharing and municipal site leasing etc.**

Part 19

*Co-location and sharing of network elements and associated facilities*

**58.**-(1) The Minister for Climate, Energy and Utilities may lay down rules requiring providers of electronic communications networks to give other providers of electronic communications networks access to co-location and sharing of network elements in electronic communications networks and associated facilities. Rules regulating co-location and sharing of network elements in electronic communications networks and associated facilities shall be objective, transparent, non-discriminatory, proportionate and justified in the light of the purpose referred to in section 1 and the considerations in subsection (2).

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

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

- 1) Co-location and sharing of existing network elements and associated facilities.



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

(4) The Minister for Climate, Energy and Utilities may lay down rules on the apportioning of costs connected to co-location and sharing of network elements in electronic communications networks and associated facilities under subsection (1) and on specifying terms for co-location and sharing of network elements in electronic communications networks and associated facilities under subsection (1). In addition, the Minister for Climate, Energy and Utilities may lay down rules on the public consultation and the duration thereof, cf. subsection (2), inspection of agreements, supervision, alternative dispute resolution, imposition of enforcement fines, and complaints procedures in connection with rules laid down under subsection (1).

#### Part 20

*(Repealed)*

**59.** (Repealed)

#### Part 21

*Duty to provide information*

**60.**-(1) The Minister for Climate, Energy and Utilities may lay down rules on the duty of owners of, or holders of rights in, network elements and associated facilities governed by section 58 to give information about the nature, availability and geographical location of network elements and associated facilities.

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

#### Part 21a

*Leasing of sites etc. by public authorities*

**60a.**-(1) A public authority may enter into agreements on market terms with providers of electronic communications networks on leasing of sites, buildings, high structures, masts etc. for the purpose of deploying radio communications networks.

(2) The Danish Agency for Data Supply and Infrastructure shall conduct supervision to ensure that the agreements of public authorities, cf. subsection (1), have been made on market terms, and that public authorities comply with rules laid down pursuant to subsection (5).

(3) The Danish Agency for Data Supply and Infrastructure may require public authorities to supply all information and all material deemed relevant by the Agency in connection with such supervision, cf. subsection (2).

(4) The Danish Agency for Data Supply and Infrastructure may lay down rules on such supervision, cf. subsection (2), including how to conduct the supervision, the decisions that can be made by the Agency, deadlines for the Agency's review of cases as part of its supervision, and the duty to submit information for the use of supervision.

(5) The Minister for Climate, Energy and Utilities may lay down rules about methods to decide the market terms on which public authorities may enter into agreements under subsection (1).

#### Part 21b

##### *Ability of public authorities to make wireless internet access available to the public*

**60b.**-(1) As a supplement to a service provided by the authority, public authorities may, via a radio local area network, make wireless internet access available to the public at the locations of the authority and in public areas close to the locations of the authority.

(2) Public authorities can let their radio local area networks, cf. subsection (1), be included in a common network consisting of different end-users' radio local area networks for the purpose of making wireless internet access available to each other or to the public.

(3) In special cases the Minister for Climate, Energy and Utilities may lay down rules restricting wireless internet access according to subsection (1).

**60c.**-(1) Apart from the cases mentioned in section 60b, municipal councils may provide free wireless internet access to the public at outdoor locations where there are activities focusing on international tourism, subject to subsections (3)-(5).

(2) Apart from the cases mentioned in section 60b, public authorities may provide free wireless internet access to the public at the locations of the public authority or at outdoor locations accessible to the public, where:

- 1) the public authority has obtained full or partial support for establishing internet access from the European Commission, subject to subsections (3) and (4); or
- 2) the public authority has applied for support to establish internet access from the European Commission and has met the criteria for this, but has not obtained support, subject to subsections (3), (4) and 6.

(3) Wireless access to the internet as mentioned in subsections (1) and (2) shall not enable the creation of a contiguous network in a major area.

(4) The public authority shall purchase the establishment and operation of the wireless internet access, cf. subsections (1) and (2), from a private provider of electronic communications networks and services.

(5) Internet access under subsection (1) must not be given for a period longer than one hour per 24 hours per unit of equipment.

(6) To be able to make wireless internet access available under subsection (2), no. 2, the public authority shall notify the Minister for Climate, Energy and Utilities thereof within 45 days after it has been ascertained that the authority has not obtained full or partial support from the European Commission.

(7) The Minister for Climate, Energy and Utilities may lay down rules restricting wireless internet access according to subsection (2), including restrictions bearing on time or data volumes.

#### Chapter VI

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

### Part 22

#### *Vital electronic communications in emergency situations and other extraordinary situations*

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

- 1) arrange mutual routing and coordination of the delivery of emergency communication to the most appropriate PSAP, including a duty on one or more providers of electronic communications networks or services to handle coordinated delivery of emergency communication and location information from other providers and owners of networks;
- 2) make caller location information available free of charge to the end-user and the most appropriate PSAP;
- 3) give assistance when PSAP's alert the police, rescue units, ambulance services and other emergency services;
- 4) at the request of the PSAP or the police, block emergency communication to 112 or similar vital services; and
- 5) take all necessary measures to ensure uninterrupted access to emergency services.

(2) The Minister for Climate, Energy and Utilities may lay down specific rules for the charging, coordination, routing and delivery of emergency communication, including location information.

(3) The Minister for Climate, Energy and Utilities may lay down regulations as mentioned in subsections (1) and (2) for similar communication with the police, health authorities etc.

(4) The Danish Agency for Data Supply and Infrastructure may lay down minimum requirements for the accuracy and reliability of caller location information.

**62.**-(1) On behalf of emergency management authorities, providers of electronic communications services in mobile networks and providers of mobile networks shall transmit public warnings regarding imminent or developing major emergencies and disasters to the end-users concerned. The providers shall transmit public warnings to the end-users who, during the warning period, are located in specific geographic areas, immediately upon receiving a request for this. No charge shall be imposed on the end-users concerned in connection with the reception of warnings.

(2) The Ministry of Defence will refund any necessary, documented expenditure incurred by the providers in connection with the development, establishment and operation of the technical solution used for transmitting public warnings.

(3) The technical solution established for transmitting public warnings must not be used for other purposes.

(4) The Minister of Defence may lay down specific rules on the transmission of public warnings under subsection (1). In that context, requirements may be set as to the technical solution employed for transmitting public warnings; and rules specifying the emergency management authorities on

whose behalf public warnings are to be transmitted; when providers need to have established the technical solution; the procedure for transmitting public warnings; the length of the warning period; and participation by the providers in developing, establishing and operating the technical solution.

**63.** (Repealed)

**64.**-(1) The Danish Agency for Data Supply and Infrastructure shall supervise compliance with rules laid down pursuant to section 61. The Danish Business Authority may lay down specific rules on performance of its supervision, including the duty to give information and the duty to submit material to be used for such supervision.

(2) The Danish Agency for Data Supply and Infrastructure may make decisions in relation to providers of electronic communications networks or services and owners of electronic communications networks who are connected to public electronic communications networks or services, on compliance with rules laid down pursuant to section 61.

**64a** (Repealed)

### Part 23

#### *Unauthorised access to information and content services*

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

### Part 24

#### *Delegation and preclusion from giving instructions*

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

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

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

**66a** (Repealed)

**67.**-(1) The Minister for Climate, Energy and Utilities shall not be in a position to give official orders to the Danish Agency for Data Supply and Infrastructure on the Agency's handling of authority functions in concrete cases; on handling and decision of individual cases; on the Agency's issue of administrative regulations in areas where the Agency is authorised by statute to do so; or on other supervisory activities of the Agency for the purpose of ensuring compliance with this Act and administrative regulations issued in pursuance thereof.

(2) The Minister for Climate, Energy and Utilities may not grant exemptions from administrative regulations issued by the Minister under this Act.

(3) The Minister for Climate, Energy and Utilities may specify rules for appointing and discharging members of authorities empowered to handle tasks under this Act, subject to subsection (4).

(4) The Minister for Industry, Business and Financial Affairs may specify rules for appointing and discharging members of authorities empowered to handle tasks under Parts 11-14a and 16-18.

## **Chapter VII**

### **Telecommunications Complaints Board<sup>3)</sup>**

#### Part 25

##### *Setting up of the Board*

**68.**-(1) The Minister for Industry, Business and Financial Affairs shall set up a Telecommunications Complaints Board.

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

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

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

#### Part 26

##### *Activities of the Board*

**69.**-(1) The Minister for Industry, Business and Financial Affairs shall lay down specific rules for the Telecommunications Complaints Board's activities and case administration, including rules on the following:

- 1) Collection of fees for cases dealt with by the Board.
- 2) Appeals against a decision made by the Danish Business Authority shall be submitted to the Telecommunications Complaints Board within specific time limits.

(2) The Ministry of Industry, Business and Financial Affairs shall make secretarial assistance available to the Board.

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

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

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

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

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

## **Chapter VIII**

### **Publication of decisions**

#### Part 27

##### *Rules for publication*

**72.**-(1) The Danish Business Authority and the Telecommunications Complaints Board shall publish decisions made under section 33(2) and sections 38-41 and 47d of this Act.

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

(3) Publication under subsections (1) and (2) shall be made within the framework of current confidentiality rules, including rules in the Public Administration Act and Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and the Act on Processing of Personal Data.

## **Chapter IX**

### **Duty to provide information**

#### Part 28

##### *Information to be used for supervision etc.*

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

- 1) providers of electronic communications networks or services;
- 2) providers of number-independent interpersonal communications services;
- 3) owners of electronic communications networks;
- 4) providers of information or content services;
- 5) providers of number information databases and registers;

- 6) natural and legal persons as mentioned in section 9 and in rules laid down in pursuance thereof;
- 7) third parties as mentioned in section 30(4);
- 8) providers of payphones;
- 9) providers of telecommunications terminal equipment used for mobile communications services;
- 10) providers of conditional access services;
- 11) holders of the ownership of conditional access products and systems;
- 12) end-users; and
- 13) enterprises notifying a merger, cf. section 51a(1).

(2) From the parties obliged under subsection (1), nos. 1-8 and 10-12, the Danish Agency for Data Supply and Infrastructure may request information for the purpose of forwarding it on to the European Commission or the national regulatory authorities in other EU member states to enable these to meet their tasks in relation to commitments under the Treaty or commitments under Community law. The Danish Agency for Data Supply and Infrastructure shall notify the parties from whom information has been requested prior to passing it on to the European Commission or national regulatory authorities in other EU member states.

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

(4) The Telecommunications Complaints Board and the Danish Agency for Data Supply and Infrastructure may prescribe how and in what form such information and material shall be submitted.

#### Part 28a

##### *Geographical surveys of network deployments*

**73a.**-(1) The Danish Agency for Data Supply and Infrastructure shall conduct at least every third year a survey of existing electronic communications networks.

(2) The Danish Agency for Data Supply and Infrastructure's survey under subsection (1) shall be sufficiently detailed to be used for the following:

- 1) Market surveys and analyses under Chapter IV.
- 2) Identification of addresses qualified for funding under EU State aid rules.
- 3) Consumer information.
- 4) Analyses in relation to the universal service obligation under Part 4.
- 5) Spectrum management under the Act on Radio Frequencies.
- 6) Policy support for the purpose of ensuring coverage.

(3) The Danish Agency for Data Supply and Infrastructure or the Danish Business Authority may conduct supplementary surveys of existing infrastructure, ownership structure, deployment plans etc. in case this is necessary to implement the tasks mentioned in subsection (2).

(4) The Danish Agency for Data Supply and Infrastructure or the Danish Business Authority may require all information deemed relevant by the respective Agency or Authority in connection with a

survey under subsection (1) or (3) of providers of electronic communications networks or services and owners of electronic communications networks.

(5) The Danish Agency for Data Supply and Infrastructure and the Danish Business Authority may pass on the results of surveys under subsection (1) or (3) to other authorities; the Body of European Regulators for Electronic Communications; authorities in other member states, or the European Commission, in case the receiving authority can guarantee the same degree of commercial confidentiality as the transferring authority.

(6) The Danish Agency for Data Supply and Infrastructure and the Danish Business Authority shall make the data from surveys under subsection (1) or (3) which is not subject to commercial confidentiality available to the market in a form that enables the data to be reused.

(7) Taking account of any commercial confidentiality, the Danish Agency for Data Supply and Infrastructure shall ensure the publication of surveys under subsection (1) or (3) to offer proper consumer information.

#### Part 29

##### *Information from other EU countries*

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

#### Part 30

##### *Statistics etc.*

**75.**-(1) The Danish Agency for Data Supply and Infrastructure shall prepare and publish current statistics and documentation on various matters within the telecommunications market deemed relevant by the Agency. The purpose is to make it possible to assess and compare the overall provision of electronic communications networks and services and number-independent interpersonal communications services, and to provide an overview of how competition is working in the telecommunications market.

(2) The Danish Agency for Data Supply and Infrastructure may demand that providers of electronic communications networks or services and number-independent interpersonal communications services deliver all such material and all such information, including information on the providers' competitive situation, market shares etc., as is deemed necessary for preparing documentation and statistics as mentioned in subsection (1).

#### Part 30a

##### *Communication*

**75a.**-(1) The Minister for Climate, Energy and Utilities may lay down rules prescribing that any written communication to and from the Danish Agency for Data Supply and Infrastructure and to and from the Telecommunications Complaints Board on matters governed by the Act or rules issued in pursuance thereof shall be conducted digitally.



(2) The Minister for Climate, Energy and Utilities may lay down more detailed rules on digital communication, including the use of specific IT systems, special digital formats, and digital signatures etc.

(3) A digital message is regarded as having arrived when accessible to the addressee of the message.

(4) Following negotiation with the Minister of Justice, the Minister for Climate, Energy and Utilities may lay down rules prescribing that written communication to and from the Central Data Section of the Danish National Police on matters falling within section 12(1) shall be conducted digitally. Subsections (2) and (3) shall apply correspondingly.

**75b.** The Minister for Climate, Energy and Utilities may lay down rules under which the Danish Agency for Data Supply and Infrastructure and the Telecommunications Complaints Board may issue decisions and other documents under this Act without signature, with a signature reproduced automatically or in a similar manner or using a technique to ensure unique identification of the party issuing the decision or document. Such decisions and documents shall have the same status as decisions and documents with a personal signature.

**75c.**-(1) Where it is required under this Act or rules issued in pursuance of this Act that a document issued by parties other than a public authority, cf. section 75a(1) and (4), shall be signed, this requirement may be met by using a technique to ensure unique identification of the party issuing the document, subject to subsection (2). Such documents shall have the same status as documents with a personal signature.

(2) The Minister for Climate, Energy and Utilities may specify rules about departure from signature requirements. In this connection it may be decided that the requirement for a personal signature cannot be departed from for certain types of documents.

## **Chapter X**

### **Right of appeal**

#### Part 31

#### *Appeals*

**76.**-(1) The Danish Business Authority's decisions made under this Act or rules issued in pursuance thereof as well as case administration in connection therewith may be appealed to the Telecommunications Complaints Board, subject to subsection (2).

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

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

#### Part 32

*Suspensive effect*

**78.**-(1) Appeals against the Danish Business Authority's decisions under Chapter IV of this Act or rules laid down in pursuance thereof cannot be given any suspensive effect, subject to subsection (2).

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

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

(4) The Minister for Climate, Energy and Utilities shall lay down specific rules on the ability of the Danish Agency for Data Supply and Infrastructure and the Telecommunications Complaints Board to give an appeal a suspensive effect in areas other than those mentioned in subsection (1) and on the effect thereof.

## **Chapter XI**

### **Sanctions and penalty provisions**

#### Part 33

*Enforcement fines*

**79.**-(1) In case the parties obliged under section 73(1), nos. 1-8, 10, 11 and 13, fail to submit the information that the Danish Agency for Data Supply and Infrastructure or the Telecommunications Complaints Board may require under this Act, or to comply with decisions from the authorities concerned made under this Act or rules laid down in pursuance thereof, the authorities concerned may impose enforcement fines on the party to whom the duty to give information or the decision is addressed, for the purpose of enforcing compliance therewith.

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

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

#### Part 34

*Application of regulations*

**80.** The Minister for Climate, Energy and Utilities may lay down such rules as might be necessary to apply regulations issued by the European Communities in the field of telecommunications

legislation, including rules on financial penalties or enforcement fines for failure to comply with regulations.

## Part 35

### *Penalties*

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

- 1) anyone who violates section 7(1), section 10(3) and (4), section 31(4)-(7), section 35 or 51a(1) and (4) or section 62(1) and (3);
- 2) any provider of electronic communications networks or services who undertakes number porting or provider switching without the end-user's express consent, cf. section 28a;
- 3) any provider who fails to comply with an obligation as mentioned in section 41(2), nos. 3 and 4, imposed on the provider pursuant to a decision made under section 41(1);
- 4) anyone who wilfully or grossly negligently violates section 65; or
- 5) the USO provider who, in special circumstances, fails to comply with rules, terms and obligations mentioned in section 16, or maximum prices determined under section 17(1) and (2),

(2) Rules laid down under section 3, section 8(1), and sections 9, 61 and 62(4) may prescribe penalties in the form of fines for violating the rules.

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

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

(5) In assessing the penalty under subsection (1), no. 3, the amount of the fine, besides being determined under the general rules of Part 10 of the Penal Code, shall also take into account the legal person's turnover during the last year before the judgment is obtained or a fine is imposed.

## Chapter XII

### **Coming into force and transitional provisions, etc.**

## Part 36

### *Coming into force and transitional arrangements*

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

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

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

## Part 37

*Applicability to the Faroe Islands and Greenland.*

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

(2) (Repealed)

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Act No. 741 of 1 June 2015 (Sharing of passive physical infrastructure, preparation of buildings for high-speed networks, requirements to ensure increased non-discrimination protection when launching new or significantly modified retail products, sector-specific merger control, and free wifi for tourism purposes etc.)<sup>4)</sup> contains the following commencement provision:

**Section 4**

(1) This Act shall come into force on 1 July 2015, subject to subsection (2).

(2) (Omitted)

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Act No. 1567 of 15 December 2015 on Network and Information Security<sup>5)</sup> contains the following commencement provision:

**15.** This Act shall come into force on 1 July 2016.

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Act No. 203 of 28 February 2017 (Judgments in default, service and use of digital communication in criminal cases etc.)<sup>6)</sup> contains the following commencement provisions:

**Section 4**

(1) This Act shall come into force on 1 March 2017.

(2)-(3) (Omitted)

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Act No. 503 of 23 May 2018 (Consequential amendments due to the Data Protection Act and the Data Protection Regulation, and application of the Editorial Responsibility Act to publicly available databases etc.)<sup>7)</sup> contains the following commencement provisions:

**Section 32**

(1) This Act shall come into force on 25 May 2018, subject to subsection (3).

(2)-(3) (Omitted)

**Section 33**

(1) Sections 4-25 and 29 of the Act shall not apply to the Faroe Islands, but sections 4, 8, 17 and 18, section 20, nos. 1-3, and sections 22 and 24 may brought into force, in whole or in part, by Royal Decree for the Faroe Islands subject to any variations necessitated by Faroese conditions.

(2)-(5) (Omitted)

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Act No. 1531 of 18 December 2018 (Municipal subsidies for deployment of electronic communications networks, allocation of codes for machine to machine communication (m2m communication) and repeal of rules on the broadband guarantee scheme)<sup>8)</sup> contains the following commencement provisions:

### **Section 2**

(1) This Act shall come into force on 1 January 2019, cf. subsection (2).

(2) The Minister for Climate, Energy and Utilities shall decide the date for coming into force of section 1, no. 8.

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Act No. 1830 of 8 December 2020 (Establishment of mobile-based warning system)<sup>9)</sup> contains the following commencement provisions:

### **Section 2**

This Act shall come into force on 21 December 2020.

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Act No. 1833 of 8 December 2020 (Implementation of Directive establishing the European electronic communications code (recast) etc.)<sup>10)</sup> contains the following commencement provisions:

### **Section 7**

(1) This Act shall come into force on 21 December 2020.

(2) The Minister for Climate, Energy and Utilities shall decide the date for coming into force of section 1, no. 69.

(3) (Omitted)

### **Section 8**

This Act shall not apply to the Faroe Islands and Greenland, but section 2 of the Act may be brought into force, in whole or in part, by Royal Decree for Greenland subject to any variations necessitated by Greenland conditions.

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Act No. 285 of 27 February 2021 on Epidemics etc.<sup>11)</sup> contains the following commencement provision:

**68.**-(1) This Act shall come into force on 1 March 2021.

(2)-(4) (Omitted)

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Act No. 1176 of 8 June 2021 (Adjustment of supervisory powers etc. in accordance with Regulation (EU) 2019/1020 of the European Parliament and of the Council of 20 June 2019 on market surveillance and compliance of products and amending Directive 2004/42/EC and Regulations (EC) No. 765/2008 and (EU) No. 305/2011 etc.)<sup>12)</sup> contains the following commencement provisions:

### **Section 5**

- (1) This Act shall come into force on 1 July 2021, subject to subsection (2).
- (2) (Omitted)
- (3) Act No. 1676 of 26 December 2017 Amending the Act on Electronic Communications Networks and Services shall be repealed.
- (4)-(6) (Omitted)

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Act No. 2601 of 28 December 2021 (Implementation of initiatives in agreement on the economy of the police and public prosecutor 2021-2023, including establishment of the national Special Crime Unit)<sup>13)</sup> contains the following commencement provision:

### **Section 23**

This Act shall come into force on 1 January 2022.

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Act No. 2605 of 28 December 2021 (Tariffs, phasing out of PSO, simplification of funding requirements for renewable energy, adjustment of financial regulation of network operators, follow-up of competition analysis, return of digital TV equipment, etc.)<sup>14)</sup> contains the following commencement provisions:

### **Section 6**

- (1) This Act shall come into force on 1 January 2022, subject to subsection (2).
- (2)-(8) (Omitted)

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Act No. 291 of 8 March 2022 (Readjustment of rules on registration and storage of information about telecommunications traffic (logging) etc.)<sup>15)</sup> contains the following commencement provision:

### **Section 3**

- (1) The Minister of Justice shall decide the date of coming into force of this Act.
- (2)-(5) (Omitted)

*Danish Agency for Data Supply and Infrastructure, 17 June 2022*

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## Annex 1

### **Criteria for assessing co-investment offers, cf. section 47a(2), no. 5**

When assessing a co-investment offer pursuant to section 47a(2) the Danish Business Authority shall verify whether the criteria of this Annex have at a minimum been met.

The Danish Business Authority may consider additional criteria to the extent that they are necessary to ensure accessibility of potential investors to the co-investment, in light of specific local conditions and market structure.

Under section 47a(2), no. 5, the Danish Business Authority is to verify that the co-investment offer meets at least the following criteria:

- 1) The co-investment offer shall be open to any provider over the lifetime of the network built under a co-investment offer on a non-discriminatory basis. The provider designated as having significant market power may include in the offer reasonable conditions regarding the financial capacity of a provider, so that for instance potential co-investors need to demonstrate their ability to deliver phased payments on the basis of which the deployment is planned, the acceptance of a strategic plan on the basis of which medium-term deployment plans are prepared, and so on.
- 2) The co-investment offer shall be transparent, which means that:
  - a) the offer shall be available and easily identified on the website of the provider designated as having significant market power;
  - b) full detailed terms shall be made available without undue delay to any potential bidder that has expressed an interest, including the legal form of the co-investment agreement and, when relevant, the heads of term of the governance rules of the co-investment vehicle; and
  - c) the process, like the road map for the establishment and development of the co-investment project shall be set in advance, shall be clearly explained in writing to any potential co-investor, and all significant milestones shall be clearly communicated to all providers without any discrimination.
- 3) The co-investment offer shall include terms to potential co-investors which favour sustainable competition in the long term, in particular:
  - a) All providers shall be offered fair, reasonable and non-discriminatory terms and conditions for participation in the co-investment agreement relative to the time they join, including in terms of financial consideration required for the acquisition of specific rights, in terms of the protection awarded to the co-investors by those rights both during the building phase and during the exploitation phase, for example by granting indefeasible rights of use for the expected lifetime of the co-invested network and in terms of the conditions for joining and potentially terminating the co-investment agreement. Non-discriminatory terms in this context do not entail that all potential co-investors shall be offered exactly the same terms, including financial terms, but that all

variations of the terms offered shall be justified on the basis of the same objective, transparent, non-discriminatory and predictable criteria such as the number of end-user lines committed for.

b) The offer shall allow flexibility in terms of the value and timing of the commitment provided by each co-investor, for example by means of an agreed and potentially increasing percentage of the total end-user lines in a given area, to which co-investors have the possibility to commit gradually and which is set at a unit level enabling smaller co-investors with limited resources to enter the co-investment at a reasonably minimum scale and to gradually increase their participation while ensuring adequate levels of initial commitment. The determination of the financial consideration to be provided by each co-investor needs to reflect the fact that early investors accept greater risks and engage capital sooner.

c) A premium increasing over time shall be considered to be justified for commitments made at later stages and for new co-investors entering the co-investment after the commencement of the project, to reflect diminishing risks and to counteract any incentive to withhold capital in the earlier stages.

d) The co-investment agreement shall allow the assignment of acquired rights by co-investors to other co-investors, or to third parties willing to enter into the co-investment agreement subject to the transferee provider being obliged to fulfil all original obligations of the transferor under the co-investment agreement.

e) The co-investors shall grant each other reciprocal rights on fair and reasonable terms and conditions to access the co-invested infrastructure for the purposes of providing services downstream, including to end-users, in accordance with transparent conditions which are to be made transparent in the co-investment offer and subsequent agreement, in particular where co-investors are individually and separately responsible for the deployment of specific parts of the network. If a co-investment vehicle is created, it shall provide access to the network to all co-investors, whether directly or indirectly, on an equivalence of inputs basis and in accordance with fair and reasonable terms and conditions, including financial conditions that reflect the different levels of risk accepted by the individual co-investors.

4) The co-investment offer shall ensure a sustainable investment likely to meet future needs, by deploying new network elements that contribute significantly to the deployment of very high capacity networks.

### Official Notes

<sup>1)</sup> The Act contains provisions implementing parts of Directive 2002/58/EC of the European Parliament and of the Council of 12 July 2002 concerning the processing of personal data and the protection of privacy in the electronic communications sector (Directive on Privacy and Electronic Communications), Official Journal 2002, no. L 201, p.37; parts of Directive 2009/136/EC of the European Parliament and of the Council of 25 November 2009 amending Directive 2002/22/EC on universal service and users' rights relating to electronic communications networks and services; Directive 2002/58/EC concerning the processing of personal data and the protection of privacy in the electronic communications sector; and Regulation (EC) No 2006/2004 on cooperation between national authorities responsible for the enforcement of consumer protection laws, Official Journal 2009, no. L 337, p.11; and parts of Directive (EU) 2018/1972 of the European Parliament and of the Council of 11 December 2018 establishing the European Electronic Communications Code (Recast), Official Journal 2018, no. L 321, p.36.

<sup>2)</sup> Under Royal Decrees dated 28 June 2015 and 25 January 2016, the area of responsibility involving the Act on Electronic Communications Networks and Services (Telecommunications Act) was transferred from the Ministry of Industry, Business and Financial Affairs to the Ministry of Climate, Energy and Utilities, cf. Royal Decree of 27 June 2019, apart from sections 7-9 and the tasks regarding sector-specific competition regulation which, under Chapter IV of the Telecommunications Act,



are handled by the independent telecommunications authority, including performance of market surveys, ensuring interconnection, and supervision of sector-specific merger control under Parts 11-14 and 16-18.

It follows from the Royal Decrees with subsequent agreements between the ministries involved identifying the specific responsibilities, as well as subsequent statutory amendments, that both ministries, or the Danish Agency for Data Supply and Infrastructure and the Danish Business Authority, within their respective fields of operation have authority according to the following provisions of the Act: Section 66, section 67(1)-(2), section 69(1), no. 2, section 70(2), section 72(2), section 73(1)-(2) and (4), section 75a(1)-(2), section 75b(1), section 75c(2), section 76(1), section 78(1) and (4), section 79(1), and section 80. In specifying the name of the minister or agency in the provisions concerned, where authority is shared, the approach has been to state the Minister for Climate, Energy and Utilities or the Danish Agency for Data Supply and Infrastructure in the provisions. It lies implicitly in the transfer of provisions that also other provisions of the Act which are relevant to the issue and administration of rules under the provisions transferred can be used both by the Minister for Industry, Business and Financial Affairs and by the Minister for Climate, Energy and Utilities. This applies for example to provisions about purpose, definitions, supervision and penalties.

<sup>3)</sup> By Royal Decree of 8 June 2016, the area of responsibility of the Telecommunications Complaints Board, including Chapter VII of the Act on Electronic Communications Networks and Services was transferred, with effect from 1 January 2017, from the Minister for Climate, Energy and Utilities to the Ministry of Industry, Business and Financial Affairs.

<sup>4)</sup> The amendment relates to section 43(3) and (4), section 51a, section 60b, section 73(1), nos. 10-12, section 79(1), section 81(1), no. 1, Part 16a and the footnote to the title of the Act.

<sup>5)</sup> The amendment relates to section 8a, section 20(1) and (3), sections 62, 63, 64a and 66a, section 73(3)-(5), section 75a(5), section 75b(1), 1st sentence, section 75b(2), section 75c(1) and (2), section 76(1) and (2), section 79(1), section 81(1), no. 1, and section 81(2).

<sup>6)</sup> The amendment relates to section 31(6).

<sup>7)</sup> The amendment relates to section 31(6), section 45(2) and section 72(3).

<sup>8)</sup> The amendment relates to section 24(2), section 25(1), section 25(3), section 32(1)-(4), section 81(2), Part 3a and Part 21c.

<sup>9)</sup> The amendment relates to section 62, section 81(1), no. 1, and section 81(2).

<sup>10)</sup> The amendment relates to section 1(2), section 2, nos. 4-8, no. 12, no. 14 and nos. 20-24, section 3, section 4, section 4a, section 7(1), 1st sentence, and (2), section 8(1) and (2), no. 1, section 14, section 15(2), section 17(2), 1st sentence, section 18(1), 1st sentence and 2nd sentence, (4), 1st sentence, (5) and (8), section 17(4), section 18(7), section 19, 1st sentence and 2nd sentence, section 20, section 21(2), no. 6, and (3), section 26a, section 27(2), section 28a, section 31(3), section 32(4), section 33(3), section 34(2), Part 11a, section 37(2) and (3), section 41(2), no. 1, and (6)-(8), section 41a, section 42(1), nos. 1-2, and (2), nos. 2-3 and 5-6, section 43(3), section 46(2) and (4), section 46a, Part 14a, section 50a, section 52(1) and (2), section 53, section 54(1), 1st sentence, (2), (3), 1st sentence, (4), section 55(1), (2) and (3), section 58(1), 2nd sentence, (2), 2nd sentence, and (4), 2nd sentence, Part 2, section 60(1), the heading of Part 21a, section 60a, the heading of Part 21b, sections 60b and 60c, Part 21c, section 61(1), nos. 1-5, (2)-(3), section 67(3)-(4), section 72(1), section 73(1), no. 2, (2), 1st sentence, Part 28a, section 75(1), 2nd sentence, and (2), section 79(1), section 81(1), nos. 2 and 5, (5), section 83(2), Annex 1, and the footnote to the title of the Act.

<sup>11)</sup> The amendment relates to section 31(6).

<sup>12)</sup> The amendment relates to section 43(5), section 52(1), section 53(1), section 55(1), and section 67(4).

<sup>13)</sup> The amendment relates to section 12(1) and section 75a(4).

<sup>14)</sup> The amendment relates to section 81(1), no. 3.

<sup>15)</sup> The amendment relates to section 13 and section 81(1), no. 1.