

ACT C OF 2003
ON ELECTRONIC COMMUNICATIONS*

In order to further improve the electronic communications infrastructure of the information society, provide consumers with reliable and safe electronic communications services of proper quality at the lowest possible prices, promote efficient competition in the electronic communications market regardless of the technology applied, and to comply with the legislation of the European Community, Parliament hereby enacts the following Act on electronic communications:

PART ONE

GENERAL PROVISIONS

CHAPTER I

THE SCOPE, OBJECTIVES AND BASIC PRINCIPLES OF THE ACT

Article 1

(1) The scope of this Act shall cover the following:

a) electronic communications activities performed in, or directed to, the territory of the Republic of Hungary and all other activities in the course of which radio-frequency signals are generated,

b) natural persons, legal entities or other organisations without legal entity and their leading officers performing activities or providing services defined in, or in connection with, subparagraph a),

c) users, consumers and subscribers,

d) domestic or foreign natural persons, legal entities or other organisations without legal entity and their leading officers pursuing activities or providing as well as requesting services defined in, or in connection with, subparagraph a).

(2) This Act shall apply in respect of telecommunication networks, being distinct due to their purpose (closed networks), used exclusively for meeting special government, national security, justice, law enforcement and national defence requirements, with the differences specified under separate acts and other legislation.

Article 2

The objectives and basic principles of this Act:

a) establishment of a reliable and transparent regulatory framework that facilitates the development of the electronic communications infrastructure of the information society and the promotion of services and new technologies related to it, enhancing competition

* Act was adopted by Parliament at its session of 24 November 2003.

regardless of the technology applied;

b) protection of consumers' interests in their relationship with all players of the electronic communications market, ensuring, in particular, that

ba) all communications services be available to consumers required for them to have access to all information and content provided by content providers accessible through means of electronic communications, subject to authorisations;

bb) consumers be able to have a free choice of electronic communications networks, electronic communications service providers (hereinafter: service providers) and services, and be able to decide which network, service provider or service to use;

bc) consumers be able to communicate with other consumers by way of electronic communications irrespective of the fact whether such consumers have a contractual relationship with the same, or other service providers;

bd) consumers be able to choose freely between the service providers and services used, irrespective of the service providers;

be) consumers be able to use electronic communications services under publicly available, defined and equitable terms and conditions disclosed to the public, for the lowest price and at the highest quality;

bf) consumers be able to receive reliable, transparent and up-to-date information concerning the features of electronic communications services and the conditions concerning their use;

bg) consumers be able to have access to high quality protection in their disputes with service providers in order to settle such disputes simply and quickly;

c) provision of universal access to high quality and efficient electronic communications services defined in accordance with the interests of the entire society;

d) greater consideration of the needs of certain social groups, in particular the disabled and low-income users;

e) elimination of factors that distort or restrict competition in the unifying electronic communications market, and enhancement of the further development of efficient competition;

f) creation of a legal and economic environment to ensure the freedom, rights, obligations, equal opportunities for and the enforcement of the interests of market players, and granting access to the markets for new market players, as well as counterbalancing – in a differentiated manner – the influence of those with significant market power to the extent necessary for the evolution and maintenance of efficient market competition so that market actors pursue their activities in compliance with the norms of fair play, giving due respect to their competitors' interests;

g) safeguarding the undisturbed and successful operation of the electronic communications market and the interests of those pursuing electronic communications activities and of the user, and maintenance of fair and efficient competition;

h) provision of procedures and services enforcing the principle of equal treatment in the unifying electronic communications markets by supervising the behaviour of organizations and persons pursuing electronic communications activity;

i) facilitating and implementing data protection measures in connection with electronic communications;

j) enforcement of environmental protection measures in respect of electronic communications;

k) promoting transfer of cultural, scientific and societal values by appropriate regulation of broadcasting as electronic communications service, in particular to ensure access to the public service radio and television programs, and to specify the basic public-service tasks in connection with the quality and continuity of these services

l) maintenance of the integrity and safety of the public electronic communications networks;

m) efficient management of radio-frequencies and identifiers;

n) facilitating the use of radio-frequencies free of harmful interference;

o) ensuring free trade of electronic communications services in accordance with the international treaties of the Republic of Hungary and the fulfilment of the international commitments of the Republic of Hungary, including the provision of cross-border services at the lowest possible price;

p) integration of the Hungarian electronic communications markets into the unifying electronic communications market of the European Community, with special regard to the establishment and development of trans-European networks, and the promotion of the interoperability of pan-European services and establishing end-to-end connectivity;

q) specifying the basic rules and regulations regarding the duties of the state with respect to electronic communications, with special regard to the safety of, and the dangers jeopardising electronic communications and the order for making preparations for state of emergency, martial law or period of jeopardy (hereinafter jointly referred to as qualified period).

Article 3

(1) Those performing electronic communications activities shall cooperate with one another in the performance of activities under the scope this Act.

(2) Electronic communications networks shall be operated vis-à-vis one another within a coordinated technical framework so that they constitute a uniformly functioning system directly or with the insertion of the appropriate interfaces, network elements, units of equipment and services required for the establishment of the necessary connection in the cases stipulated under the provisions of law or in international agreements.

PART TWO

DUTIES OF THE STATE ASSOCIATED WITH ELECTRONIC COMMUNICATIONS

CHAPTER II

DUTIES OF THE GOVERNMENT AND THE MINISTER

Duties of the Government

Article 4

(1) The Government shall

a) develop the electronic communications policy, the radio spectrum policy, the basic principles and conditions for information technology (IT) activities, services and the management of frequencies and identifiers, as well as the government programs aimed at improving the infrastructure of information society;

b) provide for the publication of the National Table of Identifier Allocation (NTIA)

that contains the allocation of the entirety of the identifiers to individual activities and services, the type, structure and scope of the identifiers and its review as and when necessary, but at least every three years,

c) manage the performance of functions associated with membership in the European Union and other international functions concerning electronic communications and IT;

d) provide for the enforcement of consumers' interests through the minister responsible for the government's tasks in the field of consumer protection and, acting independently, provide for exceptional support for groups of consumers specified under the provisions of legislation;

e) provide for the national allocation of frequency bands, and the review of this allocation as and when necessary, but at least every three years, and in the course of this activity, provide for the protection of frequency bands used in relation to Hungary's membership in the North-Atlantic Treaty Organisation;

f) provide for the organisation, operation and management as well as the functions and the financing of the authority responsible for non-civilian frequency management and stipulate the order of non-civilian frequency management and the organizations that fall within the scope of its authority;

g) specify the fundamental principles associated with the security of electronic communications and the regime of making preparations for qualified periods, putting in place the conditions for the duties to be performed by public administration;

h) specify the conditions for the protection of the interests of national security in the area of electronic communications and the rules for monitoring of their implementation;

i) perform other functions associated with electronic communications, defined in legislation.

(2) The Government shall reconcile draft legislation designed to govern the market of electronic communications with the interested parties by applying, *mutatis mutandis*, the provisions of Article 36.

Duties of the Minister

Article 5

(1) Pursuant to this Act and other legislation providing for his responsibilities and powers, the minister for informatics and communications (hereinafter: the minister) shall

a) submit proposals for communications policy to the Government, and provide for the implementation of the relevant resolution;

b) provide for the preparation of legislation on electronic communications;

c) elaborate concepts and programs for the development of electronic communications activities, and provide for their implementation;

d) facilitate the improvement of the standards of electronic communications services by promoting standardization and research and development;

e) make preparations for the international activities of the Government relating to electronic communications and IT, ensure compliance with international obligations, represent the Republic of Hungary in international organizations for electronic communications and IT and enter into international cooperation agreements not requiring authorization by the Government;

f) liaise with the European Commission and with the regulatory authorities of its Member States concerning matters within the minister's powers, and the minister may

delegate his powers to the National Communications Authority concerning certain groups of matters;

g) exercise the owner's rights of the state in respect of radio-frequencies and identifiers, and direct the management thereof for civilian purposes;

h) provide for the appropriate operation of the institutional system, within this – unless otherwise stipulated by law – supervise the organisation and operation of the electronic communications authority, oversee its proper operation, receive reports from and instruct the chairman of the Board of the National Communications Authority in order to ensure implementation of the Government's decisions, in case of inappropriate operation, call upon him to eliminate the deficiencies, and approve the Statutes of the National Communications Authority;

i) stipulate annually, acting jointly with the National Communications Authority, the tasks associated with technical preparatory functions;

j) stipulate in a decree the principles to be applied during market definition and market analysis and when establishing the obligations of service providers with significant market power;

k) perform, in agreement with the minister of finance, the duties associated with official price control;

l) monitor the status of the provision of universal electronic communications services (hereinafter: universal service) and adopt the necessary measures to ensure the provision of service; manage the procedures related to the appointment of universal service providers, and enter into contract with the universal service providers; manage the Support Fund for Universal Electronic Communications Service;

m) be involved in – pursuant to separate legislation – the performance of national security and defence tasks associated with electronic communications;

n) designate the electronic communications service providers to be involved in the performance of national defence and disaster management tasks, identify the tasks to be carried out in preparation for qualified periods;

o) coordinate the civilian, governmental, national security, justice, law enforcement and defence related activities associated with electronic communications;

p) designate the organizations to be in charge of the testing, inspection and certification of the conformity of electronic communications services and equipment and – unless otherwise provided by law – IT products;

q) perform the activities pertaining to the concession contracts in effect;

r) provide for the operation of the statistical information system related to his duties and powers;

s) stipulate, within the framework of the national allocation of frequency bands, the rules concerning the use of the frequency bands that can be allocated for civilian and common purpose, which shall cover the requirements of frequency management for radio systems and radio equipment and the conditions for the use of frequency bands in relation to frequency licensing and utilisation;

t) perform – in agreement with the minister of defence – the ministerial functions associated with international obligations in connection with non-civilian frequency management, with the exception of the obligations arising from Hungary's membership in the North-Atlantic Treaty Organisation;

u) perform other functions assigned to him as part of his duties and powers by other legislation.

(2) In the case of a qualified period or in order to ward off its consequences, the minister shall issue a resolution– on the basis of the decision of the National Defence Council, the President

of the Republic or the Government – to temporarily restrict or suspend the electronic communications activity.

Article 6

(1) The minister shall reconcile draft legislation intended to regulate the electronic communications market with the interested parties by applying, *mutatis mutandis*, the provisions of Article 36.

Article 7

Unless otherwise provided by this Act, non-civilian frequency management functions shall be performed – in agreement with the minister – by the minister responsible for the functions involved in the management of non-civilian frequencies.

Article 8

The minister shall manage the identifiers and their ranges, required for the operation of the electronic communications networks, the provision of electronic communications services and the interworking of electronic communications networks and electronic communications services.

CHAPTER III

THE FUNCTIONS AND THE STRUCTURE OF THE NATIONAL COMMUNICATIONS AUTHORITY

The National Communications Authority

Article 9

(1) The National Communications Authority (hereinafter: the authority) is an entity of public administration with legal personality and national competence. The authority shall be directed by the Government and supervised by the minister.

(2) The tasks of the authority – in compliance in particular with the objectives and basic principles stated in Articles 2–3 herein – shall be to facilitate the smooth and successful operation and development of the electronic communications market, to protect the interests of the entities both performing and using electronic communications activities, and to promote the establishment and maintenance of fair and efficient competition in the electronic communications industry, and to supervise compliance by the organizations and persons performing electronic communications activities with the provisions of the law.

(3) The authority shall perform its functions and exercise its powers independently, in accordance with the provisions of the law and the decisions of the Government.

(4) The authority shall be an independent central budgetary entity pursuing its own financial management, covering the expenditures incurred in the course of the performance of its duties from its revenues.

(5) The revenues of the authority, which shall be spent on its efficient operation at a high professional standard shall include a specific, by the Budget Act as effective from time to time stipulated portion of the fees paid for the assignment and use of frequencies, as well as the fees paid for the reservation and use of identifiers, for the procedures of the authority, and the market surveillance fee..

(6) Electronic communications service providers shall pay a market surveillance fee to the authority in order to cover the costs incurred in relation to the activities of the authority. The amount of the fee shall be no more than 0.35% of the net revenue of the electronic communications service provider derived from such services in the preceding year; if no revenue was generated in the preceding year, the base of the fee shall be equivalent to the revenue in the year in question, prorated to the whole year. The amount of the market surveillance fee shall be stipulated by the minister within the limits specified by law.

(7) The market surveillance fee shall be paid to the authority on a quarterly basis by the end of each quarter.

(8) If, in a fiscal year, the revenues of the authority defined in this Act exceed the total expenditure for the performance of its tasks specified by law, the surplus shall be credited, after the approval of the annual report of the authority, to the next year's market surveillance fees in proportion to, and not exceeding, the market surveillance fees payable in the year following the reporting year.

(9) The organizational units of the authority shall be the Board of the National Communications Authority (hereinafter: the Board) and the Office of the National Communications Authority (hereinafter: the Office).

Article 10

(1) The authority shall

a) make statements, about the need to create or modify the legislation on electronic communications in connection with its powers as and when required, but at least once a year, and participate in the preparation of legislation in connection with its powers;

b) hold public hearings;

c) prepare annual reports on competition in the electronic communications industry in Hungary for the Government and the competent committee of Parliament; disclose this report and publish a summary of the report in a national daily newspaper;

d) assess and continuously analyse the communications market and the closely related IT market in order to lay the grounds for regulatory, professional, market development and procurement decisions;

e) continuously evaluate the status of the communications market in order to lay the methodological foundations for decisions and analyses concerning regulations and communications policy as well as to guarantee user-friendly transfer of information in the communications industry, and produce comparative analyses thereof;

- f) define the relevant markets in accordance with the provisions of this Act, analyse competition on the relevant markets and its efficiency, identify market actors with significant market power and specify the obligations of market actors with significant market power;
- g) act in relation to the fulfilment and violation of obligations imposed on service providers with significant market power;
- h) act upon request or *ex officio* if the rules of electronic communications are violated, and in the case of procedures initiated in connection with disputes concerning the execution of contracts;
- i) act in cases concerning price squeeze regarding network services;
- j) disclose records, data and decisions defined in the provisions of legislation;
- k) establish the market surveillance fee for each electronic service provider as stipulated in the minister's decree;
- l) coordinate the implementation of the tasks and the related data provision duties connected with electronic communications stipulated under the provisions of separate legislation concerning defence, law enforcement, national security and defence preparation functions and operate the duty service of the IT and communications sector;
- m) act with regard to the notification of electronic communications services, and official matters concerning civilian frequency management, the management of identifiers, the maintenance of statutory records prescribed by law, the elimination of interference, market surveillance, the use of real estate, licensing electronic communications structures and the supervision of construction works;
- n) act with respect to the management of civilian frequencies outside the scope of authority of the government or the minister;
- o) reconcile matters with network administrators in case of establishing, interconnecting, developing and updating closed networks;
- p) oversee the designated inspection, verification and certification bodies;
- q) act as the technical authority for electronic communications;
- r) handle the tasks concerning the management of the Support Fund for Universal Electronic Communications Service as stipulated under the provisions of law;
- s) perform other functions defined under the provisions of law.

Article 11

(1) To ensure implementation of the radio communications and radio spectrum policy, the authority and the authority responsible for non-civilian frequency management functions (hereafter together: the frequency management authorities) shall prepare technical plans in order to prepare regulations for

- a) the reallocation or rearrangement of frequency bands;
- b) the assignment of frequencies (channel assignment plans);
- c) the conditions applicable to specific radio applications;
- d) the conditions of frequency usage.

(2) To ensure the utilization of frequencies free of harmful interference and compliance with international obligations, operating international frequency coordination shall be carried out as required.

(3) The frequency management authorities shall perform the functions associated with international radio monitoring, control, detection and the inspection and elimination of interference based on national and international agreements on frequency utilization, whereby

they are entitled to monitor the technical and traffic parameters of radio transmissions and record them according to conditions specified by law.

(4) In order to protect communications, to ensure the efficient utilization of frequencies and their exemption from harmful interference and compliance with electromagnetic compatibility (EMC) requirements, the frequency management authorities shall operate radio measurement and interference elimination services of their own.

Article 12

(1) In connection with frequency management, the authority shall

- a)* publish the requirements and the conditions of utilising and allocating radio-frequency bands concerning the usage of radio-frequencies;
- b)* publish the conditions for obtaining the right to use radio-frequencies, procedural rules and information about fees and levies;
- c)* publish the decisions concerning the allocation of rights to use radio-frequencies and the use of identifiers for the supply of services; and
- d)* provide for the up-to-date recording of information under points a)–c) and the development of the relevant database.

Article 13

(1) The authority shall notify the European Commission of regulated interfaces that, however, have not been notified pursuant to separate legislation on the transfer of information in the field of technical standards and regulations.

(2) The authority shall notify the European Commission of the types of interfaces offered by the operators of the public electronic communications networks.

(3) The authority shall inform the European Commission when it determines that certain equipment meets the marketing requirements, but it may

- a)* cause severe damage to the network or generate harmful radio-frequency interference,
 - b)* have a harmful impact on the network or its operation,
- and therefore it has issued authorization to refuse interconnection, to abolish the connection of the equipment, or to withdraw it from operation.

The Board

Article 14

(1) The Board shall

- a)* be responsible for the implementation of the provisions of legislation and government decisions concerning electronic communications;
- b)* perform the management of the National Communications Authority;
- c)* perform its functions arising from the powers defined in Article 10 a)–i);
- d)* adopt the annual market surveillance plan and supervise its execution;

e) propose the authority's annual budget plan and its semi-annual and annual budget report;

f) make proposals for modifying electronic communications law.

(2) The Board shall have seven members. Six members of the Board shall be appointed by the minister for 5 years upon recommendation by a technical nominating body, constituted of members invited by the minister.

(3) The member to chair the Board shall be appointed by the prime minister for five years upon recommendation from the minister.

(4) Members of the Board shall have at least three years of professional experience in the communications industry, holding a degree. The chairman of the Board shall have at least five years of professional experience in the communications industry, applicable while resolving matters within the scope of competence of the Board.

(5) If the mandate of a Board member terminates before the end of the period stipulated in paragraph (2), the minister shall appoint a new member for the remainder of the period stipulated in paragraph (2) within two months from the end of the mandate.

(6) The members or the Chairman of the Board can be reappointed with no restriction on the number of times after the mandate referred to in paragraph (2) and the period referred to in paragraph (5) have terminated.

(7) Beyond the rules of conflict of interest as specified in Article 21 (1), (3) and (5) of Act XXIII of 1992 on the legal status of civil servants, the members of the Board and their close relatives – pursuant to the provisions of Article 685 b) of Act IV of 1959 (the Civil Code) – shall not be members of any business undertaking or cooperative obliged to make personal contribution, or hold any ownership stake therein, or serve as a leading officer or member of the supervisory board in any business undertaking that performs communications activities or in a business undertaking that has regular commercial contact with such an organisation.

(8) The members of the Board shall not be given instructions with respect to their actions and decisions associated with the fulfilment of their functions.

Article 15

(1) The mandate of the members of the Board shall terminate upon

a) expiry of their mandate,

b) their resignation,

c) their death, and

d) discharge by the minister as described in paragraph (4).

(2) In addition to the cases according to paragraph (1), the mandate of the Chairman of the Board may also be terminated by recall.

(3) The mandate may be terminated by recall if the Chairman of the Board fails to perform his duties according to his mandate for reasons attributable to him. The prime minister shall exercise the right of recall, upon the proposal of the minister. The reasons for the recall shall

be given.

(4) The minister shall discharge the member of Board, if

a) the member of the Board cannot fulfil his/her functions continuously for more than 90 days;

b) conflict of interest according to Article 14 (7) is not terminated within 30 days from the date of appointment or the date on which the grounds for conflict of interest were identified;

c) after a criminal procedure against the member of the Board, the court establishes in its final decision that a crime was committed by him/her, or the member of the Board otherwise became unworthy of the position.

(5) For one year after the termination of their mandate, the members of the Board shall not

a) establish any employment relationship or any other legal relationship for the performance of work with a business undertaking,

b) establish regular commercial contact with a business undertaking when acting as the leading officer or owner of a business undertaking,

c) shall not acquire a stake in a business undertaking, the rights or rightful interests of which were affected by his/her decision while serving as the member of the Board. Following the termination of the mandate pursuant to paragraph (1) *a)* or *b)*, the member of the Board shall be eligible to severance pay equivalent to twelve-times the monthly amount due to him/her upon termination of his/her membership. If the member of the Board served for a period not longer than three years, the prohibition described in this paragraph shall prevail for six months from the termination of his/her mandate for which period the member of the Board shall be eligible to severance pay equal to the amount due to him/her for six months.

(6) The provisions of paragraphs (1), (4)-(5) shall be applied also to the Chairman of the Board as appropriate, with the differences set forth in this Act.

Article 16

The chairman of the Board shall

a) convene and chair the meetings of the Board and provide for the preparation of the meetings,

b) the Office to the minister, and apart from appointment and dismissal, exercise the employer's rights vis-à-vis the director general,

c) nominate the Representative of the Rights of Communications Users and exercise employer's rights vis-à-vis the representative,

d) with the exception of the right to nomination and removal, exercise employer's rights vis-à-vis the members of the Board,

e) produce the Statutes of the authority and submit it to the minister for approval,

f) represent the authority, in particular when liaising with the European Commission and the regulatory authorities of the Member States and during conciliation according to Article 65,

g) by February 28 every year, publish the annual work plan and the major figures of the budget plan of the authority, and by June 30 every year, publish the annual evaluation of its management, so that market actors can receive information about the activities and the management of the authority,

- h)* stipulate the tasks with respect to technical preparatory work annually, acting jointly with the minister,
- i)* indicate to the minister circumstances jeopardising the safety of communications and make recommendations concerning measures that he believes necessary,
- j)* act vis-à-vis international organisations when authorised,
- k)* prepare and enter into a cooperation agreement every year with the General Inspectorate for Consumer Protection (hereinafter: consumer protection authority) and the competition authority based on a decision by the Board,
- l)* act as second- instance authority concerning the administrative matters of the Office.

The Office

Article 17

(1) The Office shall be headed by the director general, appointed for a term of five years by the minister upon the proposal of the chairman of the Board.

(2) The Office shall act in the name of the authority concerning the matters specified in Article 10 m)-s), and handle the functions assigned to it by law or by the chairman of the Board within the framework of this Act.

(3) The Office provides technical support to the Board and its members for the performance of the Board's functions.

(4) The experts involved in making technical preparations in the matters submitted to the Board shall participate in the Board meetings upon invitation from the chairman of the Board with the right of being consulted.

(5) The director general shall not be a member of a Board.

Article 18

The director general shall

- a)* provide the organisational and technical management of the Office,
- b)* act concerning matters stipulated in Article 10 j)-l),
- c)* provide for the efficient operation and organisation of the authority,
- d)* nominate and remove his deputies with the agreement of the chairman of the Board and exercise employer's rights vis-à-vis his deputies and the employees of the Office,
- e)* publish the official journal of the authority in printed and electronic format (on the authority's web site) and provide for the publication of information stipulated in this Act,
- f)* participate in the Board meetings upon invitation by the chairman of the Board with the right of being consulted,
- g)* ensure that the Office provide technical support for the Board and its members in performing their functions to the extent and in the manner stipulated by the chairman of the Board,
- h)* handle the functions and powers assigned to him by provisions of legislation and the chairman of the Board within the framework of this Act.

The Employees of the Authority

Article 19

(1) The employees of the authority shall be civil servants who are subject to the provisions of the Act on Civil Servants with the differences stipulated in this Act with the provision that the ratio stipulated in Article 30/A (1) of the Act on Civil Servants shall be 35% and that the rate of supplementary compensation due to civil servants with secondary education stipulated in Article 44 (1) shall be 35%, with the exception of the chairman and the members of the Board.

(2) The chairman of the Board shall receive compensation and benefits equivalent to the remuneration paid to permanent secretaries, while the compensation and benefits due to the members of the Board and to the director general shall be equivalent to the remuneration payable to under-secretaries.

Co-operation with the Gazdasági Versenyhivatal*

Article 20

(1) In order to consistently safeguard competition and to promote the uniform application of legislation, the authority and the competition authority shall closely cooperate with one another concerning matters affecting competition in the electronic communications market, in particular in procedures concerning

- a) the definition of the relevant markets of electronic communications,
- b) the analysis of competition in the relevant markets,
- c) the identification of service providers with significant market power and the prescription of obligations that bind them,
- d) the elaboration of a methodology to analyse the price squeeze and the analysis of the price squeeze.

(2) When defining the relevant markets in electronic communications, analysing competition in the relevant markets and identifying service providers with significant market power, the authority shall put the technical opinion of the competition authority into the focus; whenever it deviates from this technical opinion, it shall inform the competition authority about its reasons for doing so.

(3) In the course of their cooperation, the authority and the competition authority shall ensure that their procedures be in line with the regulations concerning data protection and interests with regard to business secret are not violated. Within this, the authority transferring data to the other authority shall inform the supplier of the data about the transfer of the data and the authority receiving the data shall ensure that the data be given at least the same level of protection as at the transferring authority.

(4) The authority and the competition authority shall specify the details of their cooperation, review them annually and make them available to the public at large, including the methodologies developed in the course of their cooperation.

* Gazdasági Versenyhivatal: Economic Competition Office

Cooperation with the Fogyasztóvédelmi Főfelügyelőség**

Article 21

(1) The authority and the consumer protection authority shall cooperate in matters affecting consumers concerning the electronic communications market.

(2) In the course of their cooperation, the authority and the consumer protection authority shall ensure that the provisions of Article 20 (3) apply *mutates mutandis*.

(3) The general terms and conditions of contract issued by electronic service providers obligated to compile such a document shall be transferred by the authority in the course of its market surveillance activities to the consumer protection authority requesting it to state its opinion on its provisions concerning consumer protection.

(4) The authority shall forward its decision prohibiting the marketing and distribution of electronic communications equipment and other electric and electronic equipment generating high frequency signals or side-effects to the consumer protection authority.

(5) The authority and the consumer protection authority shall enter into an agreement with regard to the detailed rules of their cooperation, which shall be reviewed annually. The agreement shall be made accessible to the public by the authority and the consumer protection authority.

(6) The consumer protection authority shall process complaints received by it concerning communications, information provided to consumers and the general terms and conditions of contract in accordance with the provisions stipulated in the agreement entered into according to paragraph (5).

Cooperation with the Authority Responsible for the Management of Non-Civilian Frequencies

Article 22

(1) The authorities managing frequencies shall cooperate with one another as and when required by the nature of the task at hand.

(2) The fields of cooperation shall include in particular:

- a) international activities;
- b) frequency coordination between the authorities managing frequencies;
- c) activities concerning radio measurement services and the elimination of radio interference;
- d) provision of data.

(3) In the course of their cooperation, the authorities managing frequencies shall ensure that the provisions of Article 20 (3) apply *mutatis mutandis*.

(4) The authorities managing frequencies shall stipulate the detailed terms and conditions and rules of their cooperation in an agreement to be reviewed annually.

** Fogyasztóvédelmi Főfelügyelőség: Inspectorate for Consumer Protection

CHAPTER IV
GENERAL RULES CONCERNING THE PROCEDURES OF THE AUTHORITY

Applying the General Rules of the Public Administration Procedure

Article 23

Unless otherwise provided for in this Act, the authority shall act in accordance with the provisions of Act IV of 1957 on the General Rules of Public Administration Procedure (hereinafter: the Public Administration Act).

Principles of the Procedure

Article 24

In the course of its activities, the authority shall apply the following principles:

- a)* the rule of law;
- b)* equal treatment;
- c)* objectivity;
- d)* transparency;
- e)* proportionality;
- f)* accessibility to the public;
- g)* acting in a well-grounded and justified manner;
- h)* impartiality;
- i)* efficiency.

Electronic Documents and Deeds

Article 25

(1) The authority may formulate its decisions in electronic documents pursuant to the provisions of Act XXXV of 2001 on Electronic Signature and it shall accept electronic documents in the course of its procedures.

(2) The authority shall deliver its decisions in the form of electronic documents if the electronic mail address of the service provider has been notified to the authority; in this case, the date of delivery shall be the date when the electronic document becomes accessible to the addressee, and the authority receives feedback about the successful delivery of the document.

Exclusion

Article 26

(1) Whoever had a legal relationship with the client according to Article 27 or the notifying entity according to Article 28 as described in point a), or with an organisation controlled by or operating under joint control with the client or the notifying entity within one year prior to the commencement of the procedure, or whose relative

a) has an employment relationship or other legal relationship for the performance of work with, or is a member of, the client or the notifying entity or is a leading officer thereof;

b) holds a stake in the client or in the notifying entity;

c) has an employment relationship or other legal relationship for the performance of work, or is a member or leading officer of a legal entity or an organisation without legal entity or an individual, or holds a stake therein, which maintains regular commercial contacts with the client or the notifying entity;

d) has a legal relationship for the performance of work with an organisation which is the supervisory or subordinated organisation of the client or the notifying entity, or has provided any support or exclusive authorisation to the client or the notifying entity

shall not be involved in handling the merits of the case beyond the provisions of Article 19 of the Act on Public Administration.

(2) The employee acting on behalf of the authority or the member acting on behalf of the Board shall report immediately to the director general and to the chairman of the Board, respectively, if they are subject to exclusion. The employee acting on behalf of the authority and the member acting on behalf of the Board shall bear disciplinary and financial liability for their failure to make such notification or for delaying it.

(3) Clients may notify grounds for exclusion in any part of the procedure; however, the authority may recognise such grounds for exclusion following the initiation of the procedure only if it is presumed at the same time that information of the fact underlying the notification was obtained just then.

(4) If the notification by the client concerning exclusion is obviously unfounded or an unfounded notification against the same person in the same procedure is repeated, a fine may be imposed in the decision refusing to enforce the exclusion.

(5) Decision about exclusion shall be made by the chairman of the Board or by the full meeting of the Board in case the chairman of the Board is implicated and, if necessary, an employee to act in the name of the authority and a member to act in the name of the Board shall be designated.

(6) If the employee acting in the name of the authority or the member acting in the name of the Board reported grounds for exclusion, he/she shall not act in the matter until the notification is processed. In all other cases, he/she may act in the matter but he/she shall not participate in adopting decisions, which result in the closure of the matter. This restriction shall not apply in case an unfounded notification is made by the client repeatedly against the same person.

(7) If grounds for exclusion are notified by the client, he may take exception to the decision refusing to enforce the exclusion in the appeal against the decision on the merits of the case.

(8) In case the employee acting in the name of the authority or the member acting in the name of the Board is excluded – except for the provisions of paragraph (6) – the period used

for processing the exclusion shall be disregarded when calculating the period open for processing the case.

Clients and Notifying Entities

Article 27

Client means anyone against whom a procedure is initiated *ex officio*, or the applicant or the entity whom the application concerns. With regard to procedures concerning the maintenance of records, the issuance of individual authorisations and the elimination of interference, client means those stipulated as such in the Act on Public Administration.

Article 28

(1) When noting behaviour in conflict with the regulations concerning electronic communications or in case of some significant circumstance, which provides grounds for specifying or reviewing an obligation concerning a service provider with significant market power, those whose rights or rightful interests are affected by the matter, or whose rights stipulated in the relevant legislation on electronic communications were violated or perceived an imminent threat of such violation, as well as social organisations representing consumer interests may submit notifications to the authority (hereinafter: the notifying entity).

(2) The notifying entity does not have the rights assigned to clients and does not bear their obligations. The notification shall contain the data of the notifying entity, the circumstance giving rise for action by the authority, as well as the activity or behaviour on the basis of which violation of the rule concerning electronic communications is perceived together with the circumstances, on the basis of which the conditions stipulated in paragraph (1) above are presumed.

(3) Acting on the notification, the authority may initiate a procedure *ex officio* at its own discretion. If the authority initiates a procedure *ex officio*, it shall notify the notifying entity accordingly. If the authority does not initiate a procedure on the basis of the notification, its decision thereof shall be sent to the notifying entity. An appeal may be submitted against the decision stating refusal to initiate the procedure.

(4) The notifying entity may request that its identity be withheld together with the fact that the procedure was initiated *ex officio* on the basis of notification. In this case, the authority may prohibit perusal of the notification.

(5) The authority shall forward its decision to the notifying entity about closing the procedure.

Confidentiality

Article 29

(1) Persons who have or had a legal relationship concerning civil service or other legal relationship for the performance of work with the authority shall maintain the confidentiality of personal data, state, service or business secrets and all data, facts or circumstances, which

were communicated to them concerning the activities of the authority, and which the authority does not have to disclose to the public at large according to the provisions of law during the existence and after the termination of such legal relationship.

(2) The persons listed in paragraph (1) above shall not disclose data, facts or circumstances communicated to them in relation to the performance of their tasks without authorisation thereto, neither shall they use, nor make them available to third parties.

Business Secret

Article 30

(1) Persons involved in handling a case, who have a legal relationship of civil service or other legal relationship for the performance of work with the authority, are entitled to receive unrestricted information about business secrets.

(2) The client and the other parties involved in the procedure (in particular, the notifying entity) may request – with the exception of public data and data that cannot be qualified as business secret according to the provisions of the law with regard to the public interest – restriction of perusal of documents and their copying or the preparation of notes with reference to the protection of commercial interest. In this case, the client and other participants of the procedure shall produce a version of the documents, which does not contain such business secrets.

(3) Data or any version thereof processed with regard to any aspect cannot be qualified as a business secret, if the client is obligated by legislation to disclose such data.

(4) In procedures concerning reference offers, the part of the reference offer, which the mandated service provider would, in general, make available pursuant to the provisions of the law to third parties during contract execution (in particular, the price, the interconnection points and facility sharing, as well as the conditions for co-location) shall not qualify as business secret.

(5) If justified with regard to the enforcement of the client's rights involved in the procedure, the authority may call upon the client holding the business secret to declassify the item with immediate effect. If the client holding the business secret does not declassify the item, thereby hindering the assessment of the merits of the case, the authority may obligate the client to disclose the business secret to the other party to the extent necessary to conduct the procedure.

(6) The client holding the business secret may seek redress with a delaying force at the Budapest Municipal Court against the decision of the authority referred to in paragraph (5) above concerning the classification of the business secret. The Court shall decide in 15 days in a non-litigation procedure on the matter, after hearing the parties, if necessary. There shall be no right of appeal against the order by the Budapest Municipal Court.

(7) In the absence of an application according to paragraph (2), the other parties involved in the procedure may peruse the documents of the case, make copies or notes thereof with the permission of the authority only if they have a rightful interest in getting to know the documents and the perusal of the documents is not in conflict with the provisions of

legislation concerning the protection of secrets, and is not in violation of business secrets. Within 15 days from the issue of the decision, the authority shall enable the notifying party – upon request – to peruse the documents of the case and make notes thereof, taking into account the restrictions stipulated in paragraph (2).

(8) If requested by a foreign authority, its answer given to a request shall be treated in whole or in part as business secret and the provisions of paragraph (3) shall apply to the management of such business secrets.

Clarification of the Facts of the Case

Article 31

(1) In order to perform its functions stipulated by law, in addition to those stipulated in the Act on Public Administration, causing as little disturbance or incapacity in the operations of the entity affected by the measure, the authority shall be entitled to

a) peruse the documents concerning electronic communications activities – even containing business secrets – or request presentation of information stored on data media in a readable and copyable form or the provision of access to such information in some other manner,

b) enter the business establishment, headquarters, commercial units or warehouses of natural and legal persons or business organisations without legal entity subject to the scope of this Act, associated with their electronic communications activities,

c) take samples and control samples,

d) make test purchases,

e) get to know business secrets,

f) make a site visit at the client, enter any of its facilities, including the inspection of vehicles and any other area used for business activities and obligate the client, its representative (including in particular, its auditor), its employee or former representative or former employee to transfer data verbally or in writing in a format stipulated and suitable for comparison, to supply information, or to obtain information on site in other ways,

g) make copies or abstracts of documents and data media and possess them for this purpose for a maximum of eight days,

h) perform measurements and inspections,

i) seize or confiscate evidence.

(2) If information needs to be obtained from persons or organisations other than the client in order to clarify the facts of the case, such person or organisation shall be obligated to supply the necessary information and make the documents associated with the subject matter of the investigation available .

(3) The authority shall – in relation to the business activity subject to investigation – be entitled to obtain the personal data of the client and others involved in the procedure.

(4) In the course of its procedure aimed at establishing whether the law was violated, the authority shall inform the client about the presumed violation and the facts subject to the investigation at a time enabling the client to make a statement concerning its opinion thereof.

(5) Making available deeds, data, documents or any other information that may be used as evidence against the supplier shall not be denied; however, the client or the person making a statement is not obligated to admit the violation of the law.

(6) With the exception of the test purchase, the employee of the authority, who has a legal relationship concerning civil service and takes action in order to clarify the facts of the case, shall identify himself by producing a service ID or letter of assignment upon commencement of the inspection to prove his entitlement to perform the inspection.

Article 32

(1) In order to clarify the facts of the case, the authority may seize or confiscate the original deeds, data media and other physical evidence of the procedure in exceptional cases, or if any dire suspicion of the violation of the law arises and there is reason to fear that the content of the document or the data medium may be falsified or destroyed.

(2) Deeds, data media or other evidence held or kept by the client shall not be seized, if it can be established beyond any doubt without providing evidence thereto from some sign they bear, or from any other circumstance that they are not in the client's ownership, or they contain data, which cannot be associated with the case in relation to which the confiscation is to take place.

(3) The authority shall issue a decision about the seizure or confiscation against which the client may seek redress with a delaying force at the Budapest Municipal Court. The Court shall decide about the case in a non-litigation procedure within 15 days after hearing the parties, if necessary. There shall be no right of appeal against the order of the Budapest Municipal Court.

(4) The seizure or the confiscation shall be lifted immediately, if it is no longer necessary for the sake of the procedure.

Fines

Article 33

(1) The authority may impose a fine on those who violate the rules concerning electronic communications and the general terms and conditions of contract in accordance with the provisions of this article. The amount of the fine shall be specified by the authority with regard to the impact of the infringement on the electronic communications market, the users whose rights or assets were injured or threatened by the infringement, the extent of the violation of interests and the pecuniary advantage achieved by the electronic communications service provider or the user of the frequency through the infringement, taking into account that the fine imposed should be capable of deterring those committing the violation as well as others from committing further violations.

(2) The maximum limit of the fine shall equal

a) 0.25 percent of the sales revenue of the entity committing the violation in the cases according to Article 68 (3) *a)*, *b)*, *d)* and *e)*;

b) five times the net procurement value of each item of electronic communications equipment marketed or distributed in violation of the law;

- c) ten times the fee payable for the frequency in case the frequency is used in contravention of the rules or without a license thereto;
- d) 0.5 percent of the sales revenue of the entity committing the violation in case the prohibition concerning the price squeeze is violated;
- e) 0.5 percent of the sales revenue of the entity committing the violation in case of failure to submit the draft reference offer, transfer data concerning the maintenance of separate accounting records and cost calculations for network services and other obligations imposed on a service provider with significant market power in a decision or in the case of the late or inappropriate fulfilment of these obligations; and
- f) 0.1 percent of the sales revenue of the entity committing the violation in case of other matters according to Chapter V, when violating the rules concerning electronic communications.

(3) In cases not regulated under paragraph (2), the authority may impose

- a) a fine equivalent up to 0.05 percent of sales revenues, but at least Ft 100,000,
- b) in a procedure concerning frequency utilisation, a fine equivalent to 50 percent of the fee for the frequency but at least Ft 20,000 on the entity involved in the procedure for violating the rules of the procedure – which shall be imposed on a mandatory basis in case of recurrent violations – in particular, if erroneous or falsified data are stated or data are withheld which are material with regard to the assessment of the case, information is not provided or not within the deadline specified therefor, or the review of the documents concerning electronic communications activities is prevented or the procedure is otherwise hindered.

(4) In case of violating the obligations associated with the National Security Service as stipulated in this Act, the amount of the fine shall be equivalent to 0.5 percent of the sales revenue of the service provider that committed the violation.

(5) In the cases according to paragraphs (2)–(4), the authority may impose a fine in addition to those specified therein ranging from Ft 50,000 to Ft 3 million on the leading officer of the entity committing the violation; the imposition of the fine shall be mandatory in case the violation was recurrent.

(6) The fine can be imposed several times in case of multiple violations of the law.

(7) For the purposes of this article, sales revenue shall mean the net sales of the entity involved in the procedure and generated in the previous business year from sales related to communications activities; if no sales revenue is available for the previous year, the amount of the fine shall be at least Ft 100,000 but shall not exceed Ft 10 million.

Public Hearing

Article 34

(1) The authority may hold a public hearing whenever it is justified in its opinion with regard to Article 1 *b)-d)*, to secure the cooperation of organisations protecting consumers' interests and to learn about their professional views and opinions, but at least semi-annually, in order to develop an appropriate practice on behalf of those applying the law concerning the implementation of legislation on electronic communications and to learn about professional views and opinions concerning the practice of applying such legislation.

(2) The authority shall publish information about the public hearing, its date, venue and subject matter at least 30 days before the hearing.

(3) The authority shall publish preparatory information concerning the subject matter of the public hearing – with the exception of business secrets – at least 15 days before the hearing.

Article 35

(1) Views, recommendations and other comments may be presented verbally or in writing at the public hearing at the latest. Materials submitted to the authority as electronic documents not later than five days before the date of the public hearing shall be published by the authority on its Internet site.

(2) The authority shall produce a summary of the public hearing, which shall comprise the comments and proposals submitted and stated with the exception of the data classified as business secret by the entity making the comment or recommendation. The summary shall be published by the authority within 30 days and archived in accordance with the provisions of separate legislation.

(3) The authority shall publish the details of the public hearing.

Conciliation concerning Significant Matters with Stakeholders

Article 36

(1) With the exception of the data qualified as business secret by those concerned, the authority shall publish the draft of the decision at least 30 days before making the decision, together with related preparatory documents

a) concerning the identification of relevant markets, the identification of service providers with significant market power and the specification of obligations to be imposed in accordance with this Act on service providers with significant market power and other service providers and the approval of reference offers,

c) otherwise requiring conciliation with those considered as affected in the authority's opinion.

(2) Those whose rights or rightful interests may be affected by the decision, may submit their opinion, proposal or other comment concerning the proposed decision to the authority in writing within 20 days from the date of publication of the draft decision according to paragraph (1) (hereinafter: the comment).

(3) To the extent possible, the authority shall take into consideration the comments received while adopting the decision according to paragraph (1). Upon a justified request from the party affected by the decision or acting *ex officio*, the authority may also hear the parties affected, presenting their comments verbally. In its explanation attached to the decision, the authority shall indicate comments taken into consideration and disregarded, together with the reasons for doing so.

Appeal and Review of the Decision by the Courts

Article 37

(1) An appeal may be lodged with the chairman of the Board against the first- instance decision of the Office made in the name of the authority excluding decisions according to Articles 30 (5) and 152 (1).

(2) Persons whose rights or rightful interests are violated by the decisions concerning the merits of the case adopted by the chairman of the Board in matters according to this chapter acting as the second-tier authority may petition the court requesting its review.

(3) The filing of a complaint has no delaying force. The court shall decide about the suspension or enforcement by issuing an order upon request or *ex officio* thereto.

CHAPTER V PROCEDURE BY THE BOARD

General Provisions

Article 38

Whenever the Board acts in the name of the authority, the provisions of Chapter IV shall apply with respect to the procedure with the differences contained herein.

Composition and Quorum

Article 39

(1) Unless otherwise stipulated in this Act, decisions by the Board shall be adopted by its full meeting. The full meeting shall be quorate if five members are present. Decisions by the Board shall be adopted by simple majority except for decisions about determining relevant markets, the identification of service providers with significant market power and the establishment of obligations to be imposed on service providers with significant market power and other service providers according to this Act, which can be adopted by the votes of at least two-thirds of the members present. In the case of a tie vote, the vote of the chairman of the Board shall decide.

(2) In matters concerning legal dispute, a three-member council shall act, which shall adopt its decisions by simple majority. If at the discretion of the chairman of the Board with respect to matters is of minor significance concerning the judgement of the case, one member of the Board shall act in such matters of minor significance (hereinafter: the acting council).

(3) The member presenting a case and the members and the chairman of the acting council shall be designated by the chairman of the Board.

Initiating the Procedure

Article 40

(1) With the exception of the decision on legal disputes, the identification of service providers as service providers with significant market power and the termination of their status as such, the procedure shall be requested or initiated within two months from the date on which knowledge was obtained about the circumstance giving rise to the procedure or within four months from the date on which the circumstance arose.

(2) Failure to comply with the deadline stipulated in paragraph (1) shall mean that the right to request or initiate the procedure shall be forfeited. If, in the course of the procedure, the Board learns about the infringement of rights in addition to those subject to investigation, requested or initiated by the entity entitled to do so within the above deadlines, it may take action *ex officio* until a decision is adopted even if the newly identified event took place more than four months ago but within one year, provided that the infringement was committed by an organisation (person) identical with the organisation (person) subject to the investigation.

Article 41

(1) If the procedure is launched upon request, the application shall contain the following:

- a) the name and seat (address) of the applicant;
- b) the name and seat (address) of the possible entities involved in the procedure, as known to the applicant;
- c) the subject matter of the case and the exact description of the rule concerning electronic communications;
- d) the date when the event giving rise to the procedure took place and when the applicant learned about it;
- e) what action the applicant expects the Board to take and what are the reasons therefor.

(2) Evidence and other documents, material with regard to the assessment of the case, available to the applicant, and evidence of having paid the administrative charge shall be attached to the application.

(3) If the application does not contain the data specified in paragraph (1), or the administrative charge according to separate legislation is not paid, the Board shall call upon the applicant to make up for the deficiencies in eight days.

(4) If the Board establishes that the deficiencies are not eliminated according to paragraph (3) or the application is not submitted by the entity entitled to do so, or it is not submitted within the specified deadline, it shall make its decision on the basis of the data available to it or discontinue the procedure.

Article 42

(1) The Board shall launch the procedure *ex officio*, if the notification is accepted, the procedure is initiated in accordance with the provisions of paragraph (2) and the fact giving rise to the procedure is noted by the Board itself.

- (2) The Board shall launch the procedure *ex officio*, if
- a) the minister,
 - b) the chairman of the competition authority,
 - c) the director general of the consumer protection authority,
 - d) the data protection ombudsman,
 - e) the chairman of the National Radio and Television Body, and
 - f) the European Commission

learns about the violation of a rule concerning electronic communications, or the need to identify an entity as a service provider with significant market power or the need to review obligations specified for service providers with significant market power and request the initiation of a procedure.

(3) If, in the course of a procedure initiated within the deadline stipulated in Article 40 (1), the Board learns about a violation of rights in addition to those already subject to investigation, it may act *ex officio* with respect to these violations before making its decision. The parties and those concerned shall be informed either in writing or during the hearing about the facts concerning the new violation of rights about which the Board has just obtained information and they shall be given an opportunity to state their opinion in respect of such violations.

Article 43

(1) An administrative charge stipulated under separate legislation shall be payable for the procedure by the Board. In case of procedures launched upon request, the administrative charge shall be payable upon the commencement of the procedure.

(2) The Board shall inform the parties and those involved in the case without delay when launching the procedure by forwarding them the application thereto and the document initiating the procedure, and call upon them to submit their comments and documents available to them without delay but not later than 15 days.

The Period Open for the Completion of the Procedure

Article 44

(1) Unless otherwise stipulated in this Act, the Board shall make its decision in 45 days from the date of receipt of the application or the initiation of the procedure in accordance with the provisions of this Act.

(2) In the case of procedures requiring conciliation with those concerned, the period open for completion shall be 75 days.

(3) In justified cases, the deadline may be extended by a maximum of 15 days on one occasion, about which the parties shall be notified before the expiration of the original deadline.

(4) The procedures concerning the identification and the analysis of markets and the specification of obligations to be imposed on service providers with significant market power according to Articles 52-55 shall be governed exclusively by the deadlines according to paragraph (5).

(5) The authority shall adopt its decision or decisions according to Articles 52-55 for the first time by 1 September 2004 at the latest; for the second time, by 1 January 2006; and thereafter, by 1 January each year.

Decisions by the Board

Article 45

- (1) In its decision, the Board
- a)* shall reject unfounded applications;
 - b)* shall establish the fact of the violation of rights;
 - c)* shall obligate the perpetrator of the violation to show behaviour in line with the provisions of legislation;
 - d)* shall determine the relevant markets and the service provider with significant market power and prescribe at least one obligation for it within the framework of this Act;
 - e)* may prescribe obligations for service providers without significant market power within the framework of this Act;
 - f)* shall approve the reference offer, stipulate its contents, modify the content of reference offers previously adopted, or require that the reference offer be modified;
 - g)* shall approve fulfilment of other obligations stipulated for the service provider with significant market power;
 - h)* shall impose a fine or measure proportionate to the gravity of the violation of rights within the framework of this Act;
 - i)* may obligate the perpetrator of the violation to bear the administrative charge and the costs incurred in relation to the procedure;
 - j)* may prescribe obligations when establishing some violation of the provisions of legislation;
 - k)* may specify the content of the contract in case an obligation exists to enter into contract, and there is no agreement between the parties with respect to the content of such contract;
 - l)* may call for temporary measures;
 - m)* shall in the cases stipulated in Article 49 (4) – (6) terminate the procedure if not competent.

(2) In case of a legal dispute concerning compensation for network services, the Board may, in addition to those stipulated in paragraph (1), prohibit the further application of the compensation and at the same time stipulate the legitimate price and obligate the service provider to apply such legitimate price.

(3) If the Board notices some circumstance during its procedure, which is indicative of the violation of the provisions of some other legislation, it shall indicate the circumstance to the competent authority, in particular to the competition authority, or the consumer protection authority.

(4) The Board may apply one or more of the legal consequences described in paragraphs (1) and (2).

(5) The decision shall be delivered to the parties and the other entities concerned and it shall be published.

Review of the Board's Decision by the Court

Article 46

(1) There shall be no right of appeal against the decision of the Board made in the cases described in this chapter. Those whose rights or rightful interests are violated by the Board's decision on the merits of a case, or its decision concerning refusal to initiate the procedure according to Article 28 (3), may request the Budapest Municipal Court in a petition to review that decision.

(2) Submission of the petition has no delaying force concerning the implementation of the decision.

(3) The Board may publish its decision concerning the merits of a case even if a petition was submitted to the court for review of the decision provided that this circumstance is also included in the announcement.

(4) Chapter XX of Act III of 1952 on Civil Procedure (hereinafter: the Act on Civil Procedure) shall apply with the differences according to this Act to court procedures initiated on the basis of a petition submitted for the review of a decision by the Board.

Article 47

(1) The petition shall be submitted to the Board in 15 days from the date of delivery of the decision. The petitioner shall state in his petition whether he wishes to have a hearing in the case.

(2) The Board shall forward the petition – together with the documents of the case and its statement according to Article 331 of the Act on Civil Procedure to the court within five days from the date of receipt of the petition. The Board shall state in its statement whether it wishes to have a hearing in the case.

Article 48

- (1) Persons shall be excluded from handling a case and they shall not be involved in it as judges, if they are not allowed to assess the case pursuant to the provisions of Article 26 (1).
- (2) The petition shall be delivered by the court within eight days and at the same time the court shall
 - a) inform the petitioner in writing about the statement by the Board;
 - b) call upon the parties concerned and involved in the procedure aimed at seeking redress to make a statement by designating a deadline thereto and inform them about the possibility of intervention concerning which the decision of the Board contained any provision.
- (3) If the parties requested no hearing in the case, the court shall process the case without a hearing.
- (4) The court procedure shall be conducted out of order.
- (5) The court may change the Board's decision and it may take action according to Article 45 (1) a)-h) and paragraph (2) a)-b).
- (6) The Board shall publish the court's decision while respecting the rights of those concerned to the protection of personal data.
- (7) An appeal against the decision of the first-instance court handling the case initiated on the basis of a petition requesting review of the decision concerning a case of electronic communications may be submitted in eight days from the date of the disclosure of the decision.

Action by the Board in a Legal Dispute

Article 49

- (1) A service provider whose rights or rightful interests concerning electronic communications stipulated in a regulation concerning electronic communications or in a contract concluded on its basis are violated by another service provider (hereinafter: legal dispute), may, at its own discretion,
 - a) go to litigation,
 - b) notify the authority, or
 - c) turn to the Permanent Communications Arbitration Court of subject to the provisions of a contract concerning arbitration signed by the parties.
- (2) Either the court or the Permanent Court of Arbitration of Electronic Communications shall notify the authority immediately about the request to launch a procedure about the legal dispute pursuant to paragraph (1) (petition).
- (3) Upon request, the Board shall act on legal disputes related to the violation of regulations concerning electronic communication.
- (4) If a court procedure according to paragraph (1) a) or a procedure by the authority according to point b) is in progress, or was closed with a decision concerning the merits of the

case, no other basic procedure concerning the same right arising from the same set of facts shall be initiated except for the procedure stipulated in paragraph (6).

(5) If a procedure is launched, both before the courts and the authority at the same time concerning the same right arising from the same set of facts between the same parties, the court shall discontinue its procedure either upon request from the parties, or *ex officio* for having no competence.

(6) If the parties have a contract in force about resorting to arbitration, or they enter into a contract to that effect in 15 days from the date of submission of an application initiating a procedure by the Board, the authority shall discontinue its procedure either upon request from the parties, or *ex officio*.

Article 50

(1) In addition to the provisions of Article 41 (1)-(2), the applicant may submit a motion for the presentation of evidence in his application.

(2) The application shall be forwarded without delay to the other client after its receipt by the Board and it shall call upon it by designating a maximum deadline of 15 days to submit its comments and evidence and forward them directly to the applicant.

(3) In case of legal disputes, the Board shall hold a hearing where the parties and those concerned can participate either in person or through their representatives, make statements and comments and present their evidence before the hearing is closed.

(4) The date of the hearing shall be specified by the chairman of the acting council. The hearing shall not be public.

(5) If the Board adopts the motion concerning the presentation of evidence, it may conduct the presentation of evidence accordingly. If the presentation of evidence is disregarded, the reasons for doing so shall be explained in the decision on the merits of the case. Failure to provide proof shall be evaluated against the party supplying evidence.

(6) Upon the motion of the party supplying evidence, the Board may obligate the party to supply data and information (including business secrets). If the provision of data or information is done on account of a motion for the presentation of evidence and they are not presented by the party obliged to do so or not as required, failure to present evidence shall be evaluated against the party supplying such evidence. In such cases, the Board shall make its decision by evaluating evidence available to it.

(7) If the party hinders the procedure, in particular, the presentation of evidence by *male fide* action, the Board may impose a fine and take action against that party.

(8) If the circumstances of the legal dispute, in particular, the presentation of evidence so requires, the Board may postpone the hearing. The deadline for the continuation of the hearing shall be specified immediately by the Board about which the parties present will be informed in an announcement.

(9) Upon request or acting *ex officio*, the Board may take temporary measures in cases before it, in particular as specified in Article 68 (5) a), if it can be established that rights and interests would be seriously and unavoidably impaired or a threat thereof would emerge in the absence of such temporary measures due to the violation of the provisions of law, in particular, its basic principles and the disadvantage due to the temporary action does not exceed the advantages to be achieved through it.

(10) The client may submit an application for redress with a delaying force to the Budapest Municipal Court against the decision of the Board referred to in paragraph (9) to have the temporary measure annulled. The court shall decide about the case within 15 days in a non-litigation procedure after hearing the parties. There shall be no right of appeal against the order of the Budapest Municipal Court.

(11) In case of legal disputes concerning the reference offer or contracts to be concluded between the mandated and the entitled service provider concerning access and interconnection on the basis of the reference offer or outside its scope, the Board shall act with the differences stipulated under separate legislation.

Article 51

(1) If in a legal dispute arising between service providers, the electronic communications authority of a Member State is also involved in addition to the authority, the authority shall request the opinion of the other electronic communications authorities of the Member States involved in the legal dispute.

(2) With a view to settling the legal dispute, the authority shall co-operate with the electronic communications authority of the Member State requesting it to do so.

Identification of Markets and Service Providers with Significant Market Power and the Stipulation of Obligations

Article 52

(1) The Board shall identify relevant markets; analyse competition and its effectiveness in relevant markets, and, when competition is found insufficiently effective, it shall identify the service provider or service providers with significant market power in the relevant markets; and stipulate at least one of the obligations incorporated in Chapters XI–XIV for the service provider or service providers with significant market power warranted by the impediments to competition explored on the basis of market analysis and proportionate thereto, or maintain or amend at least one obligation set forth in legislation prior to first implementation of the market analysis according to this paragraph, or thereafter in the decision of the authority for the service provider with significant market power.

(2) With a view to market identification and market analysis, electronic communications service providers shall be subject to a reporting obligation. In the event of the non-

performance or inadequate performance of the reporting obligation, the Board shall levy a fine according to Articles 33 (3) – (5).

(3) The Board shall carry out market identification and market analysis based on the criteria announced by the minister by decree in accordance with the relevant principles of competition law.

Article 53

(1) Based on a market analysis, the Board shall identify the service provider which, on its own or together with another service provider, holds dominant market position in an effective market where economic competition is insufficiently effective, that is, it is in an economic position enabling it to pursue its activities largely independently of competition, buyers and, ultimately, consumers.

(2) When identifying the service provider with significant market power, the Board shall take into account that the service provider with significant market power in a given market may also qualify as such in a neighbouring market (that is, a market closely related to it) when, as a result of the relationship between the given market and the neighbouring market, the service provider may transfer its economic power in one of the markets to the other, thereby reinforcing its economic power.

(3) When based on the market analysis the Board does not designate a service provider with significant market power at the time of the commencement of the market analysis as such, it shall in its decision terminate the identification of this service provider as one having significant market power.

(4) In the case of a market between Member States, also affecting the geographical area of the Republic of Hungary, defined in a decision of the European Commission, the Board shall identify the service provider with significant market power in co-operation with the electronic communications authorities of the Member States concerned.

Article 54

(1) In markets where a service provider has significant market power, the Board shall provide for one or more obligations to be imposed on identified service providers with significant market power from among those specified under Chapters XI–XIV as warranted by the impediments restricting competition as explored by the market analysis and in proportion to such impediments, or it shall maintain such obligations in force, or modify the obligation previously provided for the service provider with significant market power.

(2) In the case of a market between the Member States, also affecting the geographical area of the Republic of Hungary, defined in a decision of the European Commission, the Board shall determine the obligations, maintain them in force, and amend or repeal them in co-operation with the electronic communications authorities of the Member States concerned.

Article 55

(1) When the Board terminates the identification of a service provider as having significant market power, it shall also terminate – in its decision – the application of all the obligations imposed on the service provider in view of its identification as having significant market power stipulated by the Board or legal regulation in force at the time of the initial market analysis and the commencement of the procedure related to the specification of the obligations.

(2) In its decision concerning the modification or termination of the obligation on the service provider with significant market power, the Board may keep in force the obligation to be amended or terminated for an appropriate transitory period (of at least 30 days but not exceeding 120 days).

Article 56

When in an exceptional and warranted case, the Board wishes to prescribe an obligation related to access or interconnection, other than those specified under Chapters XI–XIV for the service provider with significant market power, it shall send the draft of its decision concerning this to the European Commission for advance approval together with a detailed explanation. The procedure of the Board shall be suspended from the date of sending the draft decision to the European Commission until it brings its decision according to Article 65 (5).

Article 57

(1) The Board shall carry out regular market analyses in the relevant markets, to be repeated at least within a year from the completion of the preceding market analysis and the procedure related to the determination of obligations.

(2) When the authority learns about a circumstance of significance for the evaluation of competition in a relevant market, the Board shall carry out the analysis of the relevant market or markets concerned without delay.

(3) When on the basis of the results of the market analysis carried out it becomes necessary

- a)* to define a new relevant market or new relevant markets, or
- b)* to terminate the identification of a market or markets as a relevant market, or
- c)* to identify or terminate the identification of a service provider as one having significant market power, or
- d)* to specify, modify or terminate obligations for a service provider with significant market power,

the Board that carries out the procedures according to Articles 36 and 52 shall bring its decision without delay.

Acceptance of the Reference Offer

Article 58

(1) A service provider under obligation to publish a reference offer pursuant to the decision of the Board or the provisions of legislation (for the purposes of Articles 58 – 61: mandated service provider) shall submit its draft reference offer compiled with the content specified in this Act and in separate legislation to the Board for approval.

(2) The following shall be attached to the draft reference offer submitted to the Board:

a) all data and documents relevant for the network and other conditions of operation of the mandated service provider as well as any other data and documents needed by the Board to establish whether the content of the draft reference offer, in particular, the prices applied therein, meet the rules concerning electronic communications,

b) the master contract concerning interconnection and access,

c) the data sheet developed by the mandated service provider for initiating the conclusion of contracts and the necessary data provision,

d) verification of payment of the administrative charge.

(3) The data and documents enclosed in accordance with paragraph (2) *a)* and *d)* do not constitute part of the reference offer.

(4) The Board shall determine the due date for submitting the draft reference offer.

(5) When the service provider is subject to an obligation to draw up a statement of accounting separation, the draft reference offer – unless otherwise stipulated by the Board – shall be drawn up on the basis of the statement of accounting separation approved by the Board.

Article 59

(1) The Board shall examine the draft reference offer submitted for approval by the mandated service provider for compliance with the rules concerning electronic communications.

(2) If the Board establishes that the draft reference offer submitted to it is deficient and cannot be evaluated or otherwise fails to comply with the rules concerning electronic communications, or the data prescribed have not been enclosed with it, it shall not approve the draft reference offer.

(3) In case of doubt, the burden of proof concerning whether or not the content of the draft reference offer complies with the rules concerning electronic communications shall rest with the service provider.

(4) When the Board does not approve the draft reference offer, it shall notify the mandated service provider thereof, stating its detailed reasons.

(5) In the case according to paragraph (4), the service provider shall submit a new draft by the date specified by the Board but within 30 days at the latest. In the event of the delayed performance of this obligation, the Board shall levy a fine.

(6) When even the new draft reference offer fails to comply with the rules concerning electronic communications, the Board shall stipulate the content of the reference offer in its decision.

(7) The Board shall publish its decision brought on approval and disclose the reference offer in its Internet website. The Board in its decision brought on approval shall provide for the time of entering into force of the reference offer, or part of it. The service provider concerned shall publish the reference offer approved by the Board in its Internet website within 5 days.

(8) In warranted cases, the Board shall be authorised to prescribe modification of an approved reference offer *ex officio*.

(9) When the service provider fails to submit its draft reference offer after the expiry of the due date according to Article 58 (4) in spite of being called upon to do so, the Board, upon the expiry of the due date specified in the call, shall prescribe its content.

Article 60

(1) The rules of the procedure concerning the approval of the reference offer shall be applied to the procedure related to the modification of the reference offer by request with the differences according to this Article.

(2) The service provider obligated to publish the reference offer shall, in the application for modifying the reference offer, specify

- a) the reasons for modifying the reference offer,
- b) the parts to be modified and the substance of the modification.

(3) The data and documents related to the parts of the reference offer to be modified and the version of the reference offer incorporated in a uniform structure including the modifications shall be enclosed with the application for the approval of the modification of the reference offer.

(4) In the course of the procedure according to Article 59 (8), the rules concerning the modification of the reference offer by the service provider need not be applied.

(5) The procedures related to the amendment of contracts concluded on the basis of the original reference offer may be commenced only after the entry into force of the modification of the reference offer. The prices specified in the modified reference offer shall be applied by the parties from the date of the entry into force of the modification of the reference offer.

Article 61

(1) When the Board determines in its decision that a service provider previously qualified as a mandated service provider is no longer subject to the obligation to publish a reference offer, the service provider shall no longer be under the obligation to conclude a contract according to the reference offer from the effective day of this decision even if it was initiated by another service provider prior to that effective date.

(2) The mandated service provider may terminate the contracts concluded pursuant to the reference offer on the day according to paragraph (1) or, if concluded for an indefinite period, with a notice of at least 90 days. When a period of more than six months remains from a contract concluded for a specific period, the mandated service provider may exercise its right of termination also with a notice of 90 days.

Approval of the Statement of Accounting Separation

Article 62

(1) The service provider subject to an obligation to keep separate accounting records (hereinafter: accounting separation) shall submit the statement on accounting separation compiled in the structure and with the content specified in this Act and in separate legislation to the Board for approval every calendar year by the end of the sixth month from the closing of the business year.

(2) When the Board establishes that the accounting statement submitted to it is deficient and cannot be evaluated or otherwise fails to comply with the rules concerning electronic communications, or the required data are not enclosed with it, it shall call upon the mandated service provider to make up for deficiencies setting an appropriate due date. Following the expiry of the period open for making up for deficiencies, the Board shall make a decision of merit on the approval of the statement of accounting separation.

(3) In case of doubt, the burden of proof concerning whether or not the contents of the statement of accounting separation and the related documents comply with the rules concerning electronic communications shall rest with the service provider.

(4) The Board is authorised to require the service provider to supply additional data to support the data presented in the statement of accounting separation.

(5) The Board shall not approve the statement of accounting separation and notify the mandated service provider thereof, stating its detailed reasons if

- a)* the content of the statement of accounting separation fails to comply with the provisions of the rules concerning electronic communications, or
- b)* it deems that the methodology of cost allocation submitted in relation to the statement of accounting separation is inadequate.

(6) In the case according to paragraph (5), the service provider shall submit a new draft to the Board by the date specified but within 30 days at the latest; in the event of the delayed or inappropriate performance of this obligation, the Board shall levy a fine.

Procedure in the Course of Price Squeeze Examination

Article 63

(1) The Board shall take action to examine price squeeze either upon request or *ex officio* or upon the initiative of the persons listed under Article 42 (2) a)-c).

(2) Using the data received through data delivery called for in its decision, the authority shall examine whether a price squeeze may evolve as a result of the compensation requested by the service provider for its network services.

(3) When the Board establishes that a price squeeze obtains, the Board shall examine whether such compensation for the network service is adjusted to the magnitude of the costs incurred in relation to the supply of the service. The burden of proof concerning this shall rest with the service provider.

(4) If, in spite of the fact that a price squeeze obtains, the compensation for the network service is adjusted to the costs incurred in relation to the supply of the network service, the Board shall refer the case to the competition authority with a view to establishing whether or not the price setting for the output subscriber service constitutes a violation of Article 21 of the Act No. LVII of 1996. on the Prohibition of Unfair and Restrictive Market Practices (hereinafter: Act on Competition). The Board shall co-operate in the procedure of the competition authority.

(5) When based on a new circumstance that has come to the knowledge of the Board, it cannot be established that the compensation for the network service according to Article 116 (1) is adjusted to the magnitude of the costs incurred in relation to the supply of the network service, the Board shall, in its decision,

a) specify the mandatory minimum of the difference between the price of the network service and the price of the output subscriber service and obligate the service provider to appropriately reduce the price of the network service, and

b) by setting a due date of 15 days, obligate the service provider to modify the reference offer containing the price causing a price squeeze as a result of the compensation not being adjusted to costs; following the unsuccessful expiry of the due date, it shall modify the reference offer in accordance with the legitimate price by adopting a decision within 15 days, and

c) within the limits specified in this Act and separate legislation, it may apply a fine or a measure proportionate to the severity of the breach of the law.

Procedures related to Obligations to be Prescribed Irrespective of Market Power

Article 64

(1) The only obligations the Board may prescribe for service providers without significant market power are those specified under Chapter XI.

(2) When a procedure is initiated *ex officio*, the rules of the procedure governing the determination of the obligations for the service provider with significant market power shall apply to the prescription, modification, maintenance in force or abolition of the obligation

according to paragraph (1) with the difference that the Board is not under obligation to carry out market identification or market analysis.

(3) When the procedure is initiated by an application, the rules of the procedures of legal dispute shall apply as appropriate.

Consultation with the European Commission and the electronic communications authorities of its Member States

Article 65

(1) Following the reconciliation with the interested parties, the Board shall send the draft of its decision concerning

- a)* the identification of the relevant markets,
- b)* the identification of service providers with significant market power and the prescription, modification, maintenance in force or withdraw of obligations,
- c)* prescription or abolition of obligations for service providers not having significant market power

to the European Commission and the electronic communications authorities of its Member States together with a detailed explanation provided that the planned decision could have an impact on trade among Member States.

(2) When the European Commission or the electronic communications regulatory authority of a Member State makes an observation on the draft of the decision of the authority within 30 days from its receipt, the authority shall issue or bring its decision taking these observations into account.

(3) If the European Commission raises an objection to the draft decision sent by the Board which

- a)* identifies markets other than those specified by the European Commission or applies an ‘relevant market’ definition other than that employed by it; or
- b)* refers to the identification of service providers as ones having significant market power or the termination of such a status, and
- c)* this may have an impact on trade among the Member States,

as, in its view, this could be an impediment to the single market or its compliance with Community law is highly doubtful, the Board shall not disclose the draft decision affected by the objection as a decision for 60 days from the receipt of the objection of the European Commission.

(4) When within the period according to paragraph (3), the European Commission obligates the Board to withdraw the draft decision or to modify it while providing a proposed text in its decision with detailed reasons, the Board shall act in accordance with the decision of the European Commission.

(5) If the European Commission does not approve the draft decision of the Board according to Article 56, the Board shall act in accordance with the provisions of the decision of the European Commission. In the event of approval by the European Commission, the Board

shall bring its decision according to Article 56 in accordance with the content of the draft decision sent to the European Commission.

(6) In exceptionally urgent cases, with a view to the protection of competition and consumer interests, the Board may bring a temporary decision in cases according to paragraph (1). The temporary decision shall be implemented immediately. In this case, the Board shall send its temporary decision immediately to the European Commission and the electronic communications authorities of the Member States together with its detailed reasons. The Board shall decide on the maintenance of the temporary decision based on the observations, objections and decision according to paragraphs (2)–(5) within 15 days from the receipt of the observations or objection in a decision of merit.

CHAPTER VI

INDIVIDUAL PROCEDURES OF THE AUTHORITY

The Management of Records

Article 66

(1) In the course of carrying out its official duties, the authority shall keep official records.

(2) The authority shall, in particular, keep records of:

- a)* electronic communications and service providers and the services provided by them;
- b)* interface notifications required for carrying out electronic communications activities through electronic communications networks or the provision of such services;
- c)* the data required to oversee universal communications service providers;
- d)* the facility sharing of electronic communications structures by several service providers;
- e)* individual licences specified in separate legislation;
- f)* the lists of inspectors of construction work and responsible technical managers;
- g)* reference offers and network contracts submitted to the authority;
- h)* non-identifiable call numbers (electronic records);
- i)* the domestic marketing of radio equipment using non-harmonised frequencies or frequency bands;
- j)* other data to be registered pursuant to the provisions of legislation.

(3) Anyone may have access to the data of public interest included in the official records except when legislation expressly restricts access thereto.

(4) Within its tasks assigned to its scope of authority by legislation, the authority shall keep other records of the data specified by the director general in accordance with legislation concerning the protection of data and secrets and public access to data of public interest.

Market Surveillance

Article 67

(1) The authority shall, with a view to the smooth and successful operation of the electronic communications market, the protection of the interests of those performing in electronic communications activity and the users, the promotion of fair and efficient market competition and the implementation of the other objectives of this Act, carry out market surveillance activity within its official sphere of authority.

(2) In the course of its market surveillance activities, the authority shall monitor and analyse the operation of the electronic communications market, compliance with relevant legislation, its decisions and the execution of the subscriber contracts.

(3) The authority shall continuously monitor the prices of network services and output subscriber services applied by service providers with significant market power from the viewpoint of the evolution of a price squeeze under its market surveillance activities.

(4) The authority may collaborate with other organisations or persons authorised by other legislation thereto in the course of these activities.

(5) Taking into account the findings of the control in the preceding year, the authority shall draw up an annual market surveillance plan by the 1st day of December of the year preceding the year in question, and publish it in its Internet website within 15 days. The Board shall approve the market surveillance plan. The plan may be reviewed on the basis of the experience of the first half-year at the end of the period and, when necessary, it may be modified with the Board's approval. The authority shall publish the modified market surveillance plan in its Internet website within 15 days from the approval of the modification.

(6) The authority shall draw up reports on the performance of the content of the market surveillance plan, the results of market surveillance activity, the findings of the analyses according to paragraph (2), and the amendments to legislation recommended by it on that basis, which shall be published within 15 days.

(7) Acting *ex officio* or upon request, the authority shall also carry out market surveillance activities outside its market surveillance and control plan.

Article 68

(1) In the event of a violation of the law explored in the course of a market surveillance procedure, the authority shall apply sanctions proportionate to the violation of the law, following the principle of progressivity.

(2) Setting a deadline of 30 days, the authority shall call upon the entity engaged in the activity, the service provider, the marketing entity or distributor to act in compliance with the law. In warranted cases, the authority may set a different due date, which may be 15 days longer at the most or, in the event of repeated violations of the law, shorter than this.

(3) Under its market surveillance activities, the authority may apply sanctions in particular in the cases of the following violations of the law:

- a) deviation from the provisions of legislation, the decisions of the authority, notifications, the official licence or the general terms and conditions of contract;
- b) use of a radio frequency or identifier illegally, differently from the provisions of the licence or without a licence;
- c) irregular marketing, distribution or operation of electronic communications equipment and electric and electronic equipment that generate high-frequency signals or side-effects;
- d) failure to comply with the obligation of notification;
- e) non-performance or inadequate performance of the obligation of providing data.

(4) When the service provider fails to comply with the call of the authority, the authority shall be entitled, pursuant to the provisions of the Act on Public Administration, this Act and separate legislation:

- a) to obligate the entity violating the law to reimburse the costs of the procedure when – in the course of the official supervisory procedure conducted *ex officio* – the authority establishes the fact of the violation of the law;
- b) to levy a fine of a magnitude set forth in legislation;
- c) to obligate the entity engaged in electronic communications activity or the marketing entity or the distributor to publish the information specified by the authority,
- d) to take measures according to paragraph (5);
- e) to obligate the service provider to credit or repay the price difference when it fails to comply with its obligations according to Article 138 (6), and
- f) to apply other sanctions specified in legislation.

(5) The authority shall be authorised to take the following measures:

- a) to determine the conditions of carrying out an activity;
- b) to prohibit the behaviour in violation of the law;
- c) to publish the information obtained pursuant to Article 31 (1) with a view to informing consumers in the warranted cases specified in this Act;
- d) to publish its decision establishing the violation of the law in a national daily at the cost of the entity found to be in violation of the law, particularly when this serves the purpose of preventing or mitigating severe injury to consumer interests;
- e) to obligate the service provider to publish a rectifying communication when the information or statement by the service provider is suitable for misleading a wide range of consumers;
- f) to seal or seize the facility or equipment used for an activity in violation of the law or without authorisation in accordance with the procedure specified in separate legislation.

(6) In the event of severe and repeated violations of obligations – provided that the other legal consequences specified in this Article have not been successful – the authority may suspend or prohibit the electronic communications activity, or it may suspend or withdraw the individual licences for the use of radio frequencies and identifiers.

(7) The authority shall publish its decision. A request for the court review of the decision shall not impede its publication. The fact of an appeal lodged against the decision published and the decision brought in the course of the court review shall also be published.

(8) In the course of the market surveillance procedure, the authority may apply the measures according to paragraph (5) *a*) and *b*) as temporary measures with a view to the protection of life and health, the prevention of bodily harm, the protection of the environment and public security or the prevention of any danger affecting a wide range of consumers threatening with particularly severe damage or threatening the management or operation of other service providers or users severely and directly. The authority may withdraw the temporary measure when the reason for its adoption has ceased, otherwise, the temporary measure shall remain in force until the decision of merit becomes final.

(9) In the course of the market surveillance procedure, the authority may provide for the immediate execution of the decision brought with a view to the protection of life and health, the prevention of bodily harm, the protection of the environment or public security or the prevention of any damage affecting a wide range of consumers threatening with particularly severe damage.

Individual licences

Article 69

(1) In the cases specified by legislation, the right to use radio frequencies may be acquired pursuant to the decision of the authority (frequency assignment and radio licence). The authority shall grant the frequency assignment or radio licence for the use of civilian-purpose frequencies as well as the authorisation to use frequencies in the case of auctions or tenders, while the authority performing non-civilian purpose frequency management tasks shall grant non-civilian purpose frequency assignments and radio licences. Unless otherwise provided by legislation, the rules stipulated in this Act shall be applied to the procedures of the authority in charge of the non-civilian purpose frequency management tasks.

(2) The authority shall decide on the granting the right of frequency use on the basis of open, objective, transparent and non-discriminatory rules in the course of its official procedure related to the right of frequency use. Separate legislations shall provide for the detailed rules of the official procedure related to the right of frequency use.

(3) The period open for the official procedure related to the right of frequency use shall be 42 days. In the case of frequencies that may be acquired by way of tender or auction, this period may be extended by eight months at the most.

(4) The procedure of the frequency management authority regulated in this Act may be suspended until the completion of the technical examinations required for deciding the case and international co-ordination.

(5) With a view to the efficient and appropriate use of the radio frequency spectrum, to avoid harmful interference and on the basis of public health criteria specified in separate legislation, the authority may restrict or refuse frequency use.

(6) Priority shall be given to the application of the public broadcaster while granting authorisation for frequency use required to comply with the public service obligations imposed on the public broadcaster.

(7) The frequency management authority shall reject the application for frequency use, when

a) complying with the request is not possible for technical or frequency management reasons;

b) the use of the frequency would give rise to harmful radio frequency interference in the existing or planned frequency use;

c) the applicant has overdue frequency fee payment obligation outstanding vis-à-vis the authority.

(8) Upon request from the holder of the right to frequency use, the right of frequency use must be withdrawn; the other conditions of withdrawal shall be specified by the minister by decree.

Article 70

(1) In the course of identifier management, smooth and unambiguous access shall be ensured to services, equal opportunity for market actors and the efficient use of identifiers asserting the interests of both users and service providers.

(2) The authority shall authorise the acquisition of the exclusive right of use to the sub-domains of allocated identifiers at a later date (commitment licence) and the use of committed identifiers by specific sub-domains or as individual identifiers (assignment licence).

(3) The authority shall bring its resolution taking into account the resource and time requirements for the implementation of the services.

(4) The authority shall control the use of identifiers; the rules of the licensing and control procedures shall be set forth in separate legislation.

Interference prevention

Article 71

(1) Electronic communications equipment, high-frequency equipment, and all other equipment (machine, device, wire, vehicle or other facilities), which in the course of its operation generates high-frequency signals or side-effects, and the equipment containing electric or electronic components (hereinafter jointly referred to as electric or electronic equipment), which is capable of causing electromagnetic interference, or whose operation may be affected by such interference, shall be operated so as not to generate any interference in the operation of other electric or electronic equipment otherwise found to be compliant with regard to sensitivity to interference.

(2) The operator of the equipment causing interference in the operation of the communications equipment shall prevent or eliminate such interference generated.

(3) The authority shall call upon the operator of the electric or electronic equipment generating interference to eliminate it. When the operator fails to eliminate the interference within the period inevitably required from a technical point of view in spite of being called upon to do so, the authority may require anti-interference filtering of the equipment, its relocation or the limitation of its period of operation or the elimination of interference in some other way by its decision.

(4) A decision according to paragraph (3) is called for also when the electric or electronic equipment causing the interference is found compliant from the viewpoint of generating interference and its use is in accordance with the law unless the interference can be eliminated free of charge or at low cost by the relocation or alteration of the components of the electric or electronic equipment that is otherwise compliant from the viewpoint of sensitivity to interference.

(5) The cost of interference prevention shall be borne by the operator of the electric or electronic equipment generating the interference if it is found non-compliant or its use was illegal, and by the operator of the electric or electronic equipment affected by such interference if such equipment is non-compliant with regard to sensitivity to interference.

CHAPTER VII

THE PERMANENT COURT OF ARBITRATION FOR COMMUNICATIONS

Article 72

(1) The Permanent Court of Arbitration for Communications shall be set up by the Board.

(2) The provisions of Act LXXI of 1994 on arbitration (Arbitration Act) shall apply to the powers of and the procedure by the Permanent Court of Arbitration for Communications, with the differences set forth in paragraphs (3)–(6).

(3) The procedure of the Permanent Court of Arbitration for Communications is called for in legal disputes according to Article 49 (1) of this Act provided that the parties have stipulated the arbitration procedure in a contract on arbitration and they may freely provide for the subject matter of the procedure.

(4) In the cases according to paragraph (3), the procedure of the Permanent Court of Arbitration for Communications may be stipulated exclusively, including the cases qualified as international pursuant to Article 47 of the Arbitration Act; any agreement concerning the procedure by another court of arbitration shall be replaced by agreeing to the procedure of the Permanent Court of Arbitration for Communications. The exclusivity shall obtain with regard to permanent courts of arbitration with a seat in Hungary.

(5) The stipulation of the procedure by the Permanent Court of Arbitration for Communications according to this Article shall not affect the validity of an eventual provision concerning the stipulation of the competence of the Permanent Court of Arbitration attached

to the Hungarian Chamber of Commerce and Industry in an individual contract concluded prior to the entry into force of this Act. Pursuant to such provisions, the Permanent Court of Arbitration attached to the Hungarian Chamber of Commerce and Industry shall continue to have competence for the settlement of legal disputes by way of arbitration in the absence of different provisions by the parties.

(6) Based on a proposal by the director general, the members of the body of arbitrators of the Permanent Court of Arbitration for Communications shall be appointed by the Board for a specific term. Neither members of the Board nor any employees of the authority shall be members of the body of arbitrators of the Permanent Court of Arbitration for Communications.

(7) The Permanent Court of Arbitration for Communications shall be a legal entity. Its seat shall be Budapest.

(8) The Permanent Court of Arbitration for Communications shall gain its status as legal entity as of the day of the publication of its deed of foundation in the official journal of the authority. The minister shall order its disclosure pursuant to the notification of the Permanent Court of Arbitration for Communications. The deed of foundation shall be enclosed with the notification.

(9) The Permanent Court of Arbitration for Communications shall be authorised also to conduct conciliatory procedures in accordance with the rules of Act LV of 2002 concerning mediation.

Article 73

(1) The deed of foundation of the Permanent Court of Arbitration for Communications shall set forth:

- a)* the statutes of the court of arbitration,
- b)* the rules of appointing the members of the presidium,
- c)* the order of representing the court of arbitration,
- d)* the responsibilities and powers of the presidium,
- e)* the amount of the founders' contribution.

(2) Funding for the operation of the Permanent Court of Arbitration for Communications shall consist of:

- a)* founders' contributions,
- b)* arbitration fees,
- c)* the yield of its assets,
- d)* other receipts.

(3) The organisation of the Permanent Court of Arbitration for Communications shall consist of the body of arbitrators, a presidium consisting of at least three, at most five members appointed from the members of that body and the Finance Office.

(4) The presidium shall be the general steering body of the Permanent Court of Arbitration for Communications. The deed of foundation and the rules of the Permanent Court of

Arbitration for Communications shall contain the rules of the appointment and operation of the presidium.

(5) The Permanent Court of Arbitration for Communications shall be represented vis-à-vis third persons and before the courts and the authorities by the members of its presidium or persons authorised by them in the manner specified in its rules.

(6) The Permanent Court of Arbitration for Communications shall determine its own rules. The rules of procedure that shall include the rules of bearing fees and costs shall be made public.

(7) The assets of the Permanent Court of Arbitration for Communications may not be sequestered, they shall be used exclusively for the operation and development of arbitration in accordance with the provisions of its deed of foundation.

(8) The activities of the Permanent Court of Arbitration for Communications shall be restricted exclusively to arbitration and the operation of the organisation; it may not engage in economic or business activities.

(9) The Permanent Court of Arbitration for Communications may invest its free funds exclusively into government papers. The Permanent Court of Arbitration for Communications may acquire real property exclusively with a view to purchasing its headquarters.

(10) The financial management of the Permanent Court of Arbitration for Communications shall be audited by the State Audit Office.

(11) The reporting and accounting obligations of the Permanent Court of Arbitration for Communications shall be set forth in separate legislation.

PART THREE

RULES PERTAINING TO ELECTRONIC COMMUNICATIONS SERVICES AND ACTIVITIES

CHAPTER VIII

CONDITIONS OF THE COMMENCEMENT OF ELECTRONIC COMMUNICATIONS ACTIVITY

Authorisation to provide Electronic Communications Services

Article 74

(1) Any natural person, legal entity or organisation without a legal entity shall be entitled to operate an electronic communications network and provide services through electronic communications network in the territory of the Republic of Hungary when the conditions set forth in this Act and in separate legislation are met.

(2) The electronic communications service provider shall be entitled to operate an electronic communications network, to provide electronic communications services through electronic communications networks, and to submit application to the authorities with a view to obtaining an individual licence for the use of radio frequencies and identifiers or to acquire authorisation for the building of electronic communications structure.

(3) If, pursuant to separate legislation, no individual licence of use is required for the acquisition of the right of use of the radio frequencies necessary to provide a service, the service may be provided freely.

(4) The electronic communications service provider shall set the charges for the electronic communications services provided by it within the limits of the rules applicable to electronic communications, with the exceptions provided for in paragraph (5).

(5) The minister shall stipulate the maximum charges for

- a) the universal electronic communications service,
- b) the broadcasting service,
- c) the portion of the charge for electronic communications service transferred by the electronic communications service provider to the Internet service provider in case of providing Internet services on fixed telephone networks, pursuant to the provision of Act LXXXVII of 1990 on price setting.

Specific Conditions of the Commencement and Performance of Individual Electronic Communications Activities

Article 75

If the operator of the electronic communications network wishes to operate a program distribution network based on wire (cable), it shall set up a separate business organisation for this purpose if

- a) it has special rights or is subject to control by the state,
- b) it holds a dominant position in a substantial part of the (common) market of the European Union in the field of operating public electronic communications networks and phone services, and
- c) it operates a broadcasting network based on wire (cable) in the same geographical area, which was established on the basis of special or exclusive rights.

Notification of Electronic Communications Service

Article 76

(1) The electronic communications service provider shall notify the authority of its intention to commence the provision of an electronic communications service as well as the planned date of commencement with a view to registration.

(2) The notification shall contain the following data:

- a)* name (company name), address (seat) of the notifying entity;
- b)* the trade registry number or other official registry number or identification code of the undertaking specified in separate legislation;
- c)* the name (company name), address (seat) of the representative of the notifying entity as well as of the person designated to maintain contact with the authority;
- d)* designation of the electronic communications service and, when the notifying entity operates an electronic communications network, the designation and short description of the electronic communications network; the geographical area of providing the service;
- e)* the planned date of the commencement of the provision of the service.

(3) The authority shall register the notifying entity in accordance with the data disclosed in the notification in its records of electronic communications networks and electronic communications service providers and it shall confirm the fact of registration within eight days from the date of the notification and at the same time issue a certificate upon the written request of the communications service provider that the service provider is entitled to pursue the activities according to Article 74 (1).

(4) Based on the description according to paragraph (2) *d)* provided by the service provider, the authority shall enter the service provider in its records in accordance with the classification developed and published by the authority for the categorisation of electronic communications networks and electronic communications services.

(5) The authority shall refuse registration in the event that the data in the notification are not suitable for the identification of the electronic communications service provider or the activity that it wishes to pursue or for registration, and it shall at the same time obligate the service provider to re-submit the notification within 8 days.

(6) The electronic communications service provider shall notify the authority of any changes in the data disclosed in the notification and the termination of the supply of the electronic communications services within 3 days.

(7) The records kept by the authority shall be authentic, the authority shall make them available to the public and anyone may inspect them.

(8) Simultaneously with the notification of the authority, the electronic communications service provider shall also inform the National Security Special Service of the content of the notification and thereafter, by the date specified in separate legislation, arrive at an agreement with the National Security Special Service on the conditions of gathering intelligence and the means and methods of the covert acquisition of data.

Commencement of the provision of the electronic communications service

Article 77

(1) After the notification, the electronic communications service provider may commence the provision of the electronic communications service.

(2) If, in its notification, the service provider does not specify the date of the commencement of the electronic communications service accurately, it shall notify the authority of the date of the commencement of the service in order to have the relevant data registered, in writing, in accordance with the conditions applicable to notification within 30 days following the commencement; in the event of failing to comply with this obligation, the authority shall levy a fine.

(3) When this Act stipulates additional conditions to be met prior to the commencement of the provision of an electronic communications service, the service provider may commence the provision of service only after the relevant conditions are met.

(4) Those engaged in electronic communications activities shall pay the fee for the official procedures related to notification and registration, the granting of individual licenses for the use of radio frequencies and identifiers, and the supervision of compliance with individual obligations generally levied on the service providers in accordance with the terms and conditions set forth in separate legislation.

Termination of the Provision of the Electronic Communications Service and Liquidation of the Electronic Communications Service Provider

Article 78

In the event of the termination of the provision of the electronic communications service or the liquidation or death of the electronic communications service provider, the authority shall delete the electronic communications service provider from the registry of electronic communications networks and services, withdraw the licences granted to it for the use of identifiers and it shall disclose the fact of deletion.

Distribution of electronic Communications Equipment

Article 79

(1) Electronic communications equipment that complies with the basic requirements provided for in Article 80 (1) – (3) may be freely distributed if they satisfy other conditions set forth in separate legislation.

(2) The manufacturer shall notify the authority of its intention to put on the domestic market radio equipment using a non-harmonized frequency or frequency band. This obligation concerning notification may be met by the non-Hungarian producer of the radio equipment or by the agent thereof, provided the radio equipment does not have an importer in Hungary. The list of radio equipment of radio applications using a harmonized band is contained in separate legislation regarding the rules of the use of frequency bands.

(3) Radio equipment subject to non-civilian purpose frequency management can be put on the market as specified in separate legislation, with the differences stipulated therein.

Article 80

(1) Electronic communications equipment may not jeopardize the life and health of users and other persons, cause bodily injury and threaten their safety (basic safety requirements); and they shall also comply with electromagnetic compatibility (EMC) requirements as well as the requirements stipulated in legislation concerning health and environment protection.

(2) In addition to the provisions of paragraph (1), radio equipment shall be designed by the manufacturer or applied by the user so as to efficiently utilize the frequency spectrum allocated to terrestrial and satellite radio communications and satellite orbits, in addition to avoiding harmful radio interference.

(3) In respect of radio and electronic communications terminal equipment, classified into certain categories, as defined in separate legislation, one or more additional requirements listed below may also be prescribed. According to these requirements, the given type of equipment shall be suitable for

- a)* interworking with other devices through electronic communications networks, and connecting to adequate type of interfaces in the European Union;
- b)* causing no harmful interference in the electronic communications network or its operation, and avoiding any misuse of the available resources of such networks, by which it would induce unacceptable restrictions of service;
- c)* protecting users' and subscribers' rights regarding their personal data and privacy;
- d)* preventing abuse;
- e)* providing access to emergency services;
- f)* being used by disabled persons.

(4) Compliance of radio or electronic communications terminal equipment with basic requirements shall be certified by a declaration of compliance issued upon compliance assessment procedures prescribed in separate legislation.

(5) Existence of the declaration of compliance and documents produced in the course of, or prescribed by, the compliance assessment procedure (in particular, technical documentation and compliance certificate issued by a designated certification body), and compliance with the basic requirements shall be checked by the authority in the course of a market surveillance procedure.

Article 81

High-frequency equipment and electric and electronic equipment shall be manufactured so that electromagnetic interference generated by it shall not exceed the level which would hinder the normal operation of electric communications equipment and other electric or electronic equipment.

Notification of Interfaces

Article 82

(1) The operator of the electronic communications network or the service provider shall be

required to notify the authority of the properties of any interfaces used for the performance of electronic communications activities or for the provision of the service through that network, and make the properties of such interfaces available to the public.

(2) Notification of interfaces shall be made upon the commencement of service provision at the latest.

(3) In case of interfaces that comply with a standard or standard-type document, the document applied shall be referred to in the notification, stating any possible options; in other cases, the precise technical specification of the interfaces, as set out in separate legislation, shall be attached to the notification.

(4) The authority shall enter the interface notifications in its records which shall be available to the public for inspection.

Licensing the Building of Electronic Communications Structures

Article 83

(1) Unless otherwise provided by legislation, a license by the authority shall be required for the, building use, continued use, refurbishment and dismantling of electronic communications structures. With the exception of the antennas, support structures for antennas and related structures, the license shall be issued by the authority.

(2) Unless otherwise provided by legislation, no license by the authority shall be required for building an electronic communications structure, which is used by a business undertaking or an individual exclusively for its own purposes, or through which the internal electronic communications traffic of a closed group of users is handled, and the structure does not extend beyond the boundaries of the undertaking's or the person's own plot of land.

Right to Use Radio Frequencies and Identifiers

Article 84

(1) In the cases defined by legislation, installation of radio equipment, radio stations, radio networks and radio electronic communications networks shall be subject to frequency assignment, while to operate for a definite time specified in separate legislation radio equipment, radio stations and radio electronic communications networks shall be subject to radio license.

(2) The operation of radio equipment of radio applications with harmonized frequency or frequency band shall not be subject to an individual license.

(3) Frequency utilization of the radio equipment shall be in compliance with legislation concerning the national allocation of frequency bands and the rules for the utilization of frequency bands – except for experimental operations and those not exceeding 30 days and where equipment distributed in the Hungarian market but not used for normal operation is tested – as well as regulations concerning public health, emission of and protection against

interference.

(4) In the course of exercising the right to frequency use pursuant to Article 69 (6), the public broadcaster shall ensure compliance with the public service obligations imposed on it in relation the general accessibility and quality of the public broadcasts. Thus, in particular, it shall ensure the continuity of broadcasting and maintain specific quality in the reception area stipulated in its license to broadcast, in accordance with the detailed conditions set forth in the license granting the right to frequency use.

(5) The right to frequency use can be transferred in the cases and under the conditions specified in separate legislation.

(6) A fee specified in legislation shall be payable for the use of civilian-purpose radio frequencies upon frequency assignment and during frequency use.

(7) The frequency usage fee shall be established so that the fee reflect the need to ensure the optimal use of resources. Fees shall have to be established so that they be objective, transparent and non-discriminatory and proportionate with respect to the goal to be achieved, and they should serve the goals of frequency management.

(8) If the right to frequency use is revoked as a result of amendment to legislation, in particular an international commitment promulgated by law, the licensee shall be entitled to indemnification, to be remitted from the central budget, which shall not cover unrealised profit.

(9) In case of legal succession, frequency use can be continued on the basis of the notification of the authority within 30 days from such legal succession. The authority may refuse to acknowledge the notification if the radio license should be withdrawn.

Article 85

(1) Internet Protocol (IP) and electronic mail addresses as well as domain names are not subject to exclusive state ownership.

(2) With the exception of those specified in paragraph (1), identifiers may only be used subject to assignment licenses. Assignment of individual identifiers or ranges of identifiers shall be subject to prior reservation.

(3) For the usage and reservation of identifiers, an identifier reservation and usage fee shall be payable, and for the related and statutory procedure of the authority an administrative charge shall be payable as defined by legislation.

(4) The minister shall specify the identifier reservation and usage fee in accordance with Article 84 (7).

CHAPTER IX

GENERAL RULES OF PERSUING ELECTRONIC COMMUNICATIONS ACTIVITY

General Rules

Article 86

(1) With respect to the operation of public electronic communications networks, interconnection of networks and access thereto, electronic communications service providers are obliged to:

a) operate with each other electronic communications networks fulfilling a negotiated set of technical conditions so that they constitute a unified system, in cases set forth by law or international agreement, when required for establishing the necessary connection either directly or by way of inserting interfaces, parts of networks, elements, equipment and services. To this end, those pursuing electronic communications activities shall cooperate in good faith, ensuring equal opportunity for all, and granting each other access to all the technical data necessary;

b) cooperate in laying down the technical, contractual and economic framework conditions enabling the shared use of electronic communications facilities;

c) ensure the safety of the public electronic communications networks against unauthorized access;

d) cooperate with other service providers in qualified periods as stipulated in separate legislation;

e) comply with rules regarding the use of area and real property;

f) comply with the provisions of legislation regarding the protection of the environment, human life and health and protection against bodily injury and electromagnetic radiation;

g) pay special attention to the protection of consumers at all times.

(2) Those operating electronic communications networks shall be entitled to, and if required by other services providers, be obligated to conduct negotiations in good faith about the interconnection of networks.

(3) Business secrets obtained by service providers in the course of or in relation to their negotiations about network contracts shall be used by them only in connection therewith; and the business secret shall not be disclosed to any other person or line of business if its disclosure might result in unfair advantage in competition.

Separation of Activities

Article 87

(1) Electronic communications service providers, pursuing activities in other sectors pursuant to exclusive or special rights, shall keep separate accounts and records of their costs, expenditures and revenues associated with the supply of electronic communications services, as if these activities were carried out by separate legal entities.

(2) The universal service provider shall keep separate accounts of its revenues, costs and expenditures and assets and liabilities associated with universal services.

The Scope of Network Contracts and Common Rules Thereof

Article 88

(1) Electronic communications service providers may enter into network agreements in compliance with the terms and conditions set forth in legislation concerning electronic communications.

(2) Network agreements shall be drawn up in writing, and the parties shall provide for the following therein:

- a)* the subject matter and the objective of the agreement;
- b)* the service to be rendered, the quality thereof, and agreed deadlines for performance;
- c)* the consideration payable;
- d)* the maintenance of the operability of the networks;
- e)* interoperability of services;
- f)* the cases of contract termination, expiry in case of agreements concluded for a definite term, and the term of notice in case of an agreement concluded for an indefinite term;
- g)* the mode of data protection in the course of service provision;
- h)* the legal consequences in the case of breach of contract;
- i)* liability and the degree thereof with respect to services rendered to third parties.

(3) Network agreement between an entity pursuing electronic communications activity and another service provider controlled by it, controlling it or being controlled together with it, concluded subsequent to the entry into force of this Act, shall be submitted by the parties to the authority with a view to provide information, within 15 days from the conclusion of such agreement.

(4) The parties shall duly inform each other of matters, including but not limited to, material modifications to the agreement intended in the following six months in the course of the implementation of the agreement.

(5) Unless otherwise stipulated in this Act, the relevant provisions of the Civil Code shall apply with respect to the nullity of the network agreement and any liability that exists with regard thereto.

(6) The electronic communications service provider shall compensate the user for any damage done to its assets, except for unrealised profit, in case network contracts are performed with a delay or deficiency.

(7) The statutory limitation on claims arising from electronic communications network contracts shall be two years.

Multiplex Service Agreement

Article 89

(1) A multiplex service provider shall be required to enter into an agreement if it receives an offer thereto from an organization authorized to broadcast on a frequency, the right of use of which had been granted to a broadcast disseminator which, in order to provide services on the given frequency, has a contract with a multiplex service provider.

- (2) The contract shall cover the frequency served by the multiplex service provider and
- a)* the conditions,
 - b)* quality, and
 - c)* the charge payable for the service.

Shared Use of Facilities

Article 90

(1) Service providers having proprietary or utilisation rights to electronic communications structures shall be required to conclude an agreement for facility sharing including collocation required for this purpose, if requested by a service provider for which no other alternative access is available due to environmental, public health, public security or constructional reasons. This obligation does not apply to buildings open to customer service with respect to such sections of the building.

(2) Service provider having proprietary or utilisation rights to electronic communications structures shall not be subject to the requirement to enter into an agreement if any of the following circumstances exists:

- a)* fulfilment of the provisions of the offer hinders safe or normal use;
- b)* the applicant does not agree to bear verified costs necessary for the establishment and operation of facility sharing;
- c)* the establishment of facility sharing materially violates reasonable private interests arising from other legal relationship;
- d)* the service provider having proprietary or utilisation rights is unable to ensure facility sharing due to the nature of normal operation of the electronic communications structure or devices as well as due to unrealisable collocation needed for it.

(3) If, in order to facilitate facility sharing according paragraph (1), an electronic communications structure must be reconstructed, the costs of the reconstruction shall be borne by the new user, with the exception of the verified costs of reasonable refurbishment. The costs for the shared use of the facilities shall be shared between the parties in proportion to their respective use.

(4) If a service provider having proprietary or utilisation rights to electronic communications structures may be exempt from the requirement to enter into an agreement for facility sharing in accordance with paragraph (2) *d)*, the service provider making an offer for facility sharing may propose that the electronic communications structure be made suitable for facility sharing. The parties shall come to an agreement about bearing the verified costs assigned to joint usage in proportion to their interest in such shared use.

(5) If the parties are unable to agree with one another regarding the offer for facility sharing, its costs and the burden of maintaining the facility sharing, the rules governing the resolution of legal disputes shall apply.

Uniform Use of Identifiers

Article 91

- (1) In order to achieve operation of networks under a uniform numbering system, service providers shall use identifiers in the technical systems within their networks as set forth in NTIA.
- (2) In order to achieve operation of networks under a uniform numbering system, service providers shall accept reasonable identifier extensions, carried out within each other's spheres of interests, within the framework of NTIA, and facilitate their realization using their own means without discrimination.
- (3) All disputes arising in connection with the obligation defined in paragraph (2) shall be subject to the rules concerning legal disputes.

Cooperation in Intelligence Information Gathering, Covert Acquisition of Data and in Qualified Periods and in the Interest of National Defence

Article 92

- (1) Electronic communications service providers shall be required to cooperate with organizations authorized to perform intelligence information gathering and covert acquisition of data.
- (2) Simultaneously with the commencement of the provision of their services, service providers shall provide the conditions for the application of the means and methods of intelligence information gathering and the covert acquisition of data in respect of the equipment and premises used and operated by them and the co-operating persons in accordance with the provisions of separate legislation concerning dispatches, communications and data handled by the service provider. In addition to the above, the service provider shall, upon request from the National Security Special Service, provide the means of intelligence information gathering and covert acquisition of data up to the exit point in connection with the service launched.
- (3) The service provider shall set up an appropriate technical system that meets the requirements specified in paragraph (2) – in particular a basic monitoring subsystem – and ensure accessibility thereto in its network for the National Security Special Service up to the exit point, within six months from the data on which it obtains knowledge thereof in writing. Service providers shall bear all the costs of basic monitoring subsystems.
- (4) Data to organizations authorized for intelligence information gathering and the covert acquisition of data shall be disclosed free of charge via direct electronic data link on a surface agreed with the National Security Special Service.
- (5) In cases defined by legislation, electronic communications service providers shall cooperate with operators of closed networks.
- (6) For the elimination of breakdowns attributable to technical and traffic conditions, disasters

or other danger, the service provider shall have contingency plans and plans for the elimination of breakdowns and disasters, whose content is defined in separate legislation, to be revised and updated on a regular basis, and it shall also have reserves in a volume and of a composition required to fulfil the responsibilities as set forth by legislation.

(7) In the interest of preparing and executing action plans applicable in the event of qualified periods, electronic communications service providers shall cooperate, in a manner defined in separate legislation, with one other and the competent organizations.

(8) Electronic communications service providers shall be entitled to reimbursement of their eligible costs incurred in connection with their measures taken in accordance with the action plans or the electronic communications services provided according to relevant legislation in the course of qualified periods.

Use of Space Segments

Article 93

The space segment service provider shall be entitled to inspect if the terrestrial station, used in connection with the service provider's space segment, is in compliance with the terms and conditions of use published for the space segment capacity used by the relevant service provider.

CHAPTER X

PROVISION OF CERTAIN CONDITIONS FOR ELECTRONIC COMMUNICATIONS SERVICES BY THIRD PARTIES

Use of real property and the shared use of structures

Article 94

(1) When doing settlement planning and development, road and public utilities construction and rehabilitation projects, and the implementation and refurbishment of other constructions and structures, provision shall be made, in accordance with separate legislation, for the installation of electronic communications structures as well.

(2) Electronic communications structures shall be installed primarily in public areas or by means of the shared use of existing electronic communications structures or in facilities owned by a public utility service provider. If it is not possible, the installation of the building may also be resolved by using a private area.

(3) Electronic communications structures may be installed in a public area owned by the local government if no state-owned public area is available for such purpose, or if the installation in the latter area is not possible for technical reasons or subject to the provisions of legislation imposing a prohibition thereto. The local government may refuse to grant the necessary owner's approval for the installation of the building in a public area owned by it and its permit

for the usage of the area only if such refusal is based on the special, reasonable interest of the settlement or the inhabitants, or if granting permit for the usage of the area is forbidden by law.

(4) The builder (installer) of an electronic communications structure shall be required to restore the original status of the environment upon completion of the construction work. The owner of another installation, private property or public area owned by the local government used for the installation of the electronic communications structure may agree with the builder so that the environment be restored to a standard better than the original if the owner assumes the costs exceeding those necessary for the restoration of the original status.

Article 95

(1) If no agreement has been made by the owner of a real property and the builder, the authority may restrict, in the interest of the public, the use of the property by its owner (manager or user) who refused to grant its approval, in order to enable the electronic communications service provider to install the electronic communications structure on, above, below or within the property, structure or facility.

(2) The owner of the real property shall be entitled to indemnification corresponding to the restriction. In addition to the above, the owner may exercise his rights under Article 108 (2) of the Civil Code.

(3) In respect of the installation of electronic communications structure on the real property and electronic communications structure already installed on real estate, the authority may, by resolution and with regard to public interest, establish a right of way or other right of utilization upon request from the service provider.

(4) The authority may restrict, for public interest, the use of a property by the owner (manager, user) who refused to grant his approval in order to enable a duly authorized representative of the electronic communications service provider to enter, subject to prior notice, the property for purposes of checking the electronic communications structure, and for maintenance and necessary repairs.

Article 96

(1) If an electronic communications structure installed by a service provider enables the users living or located in the immediate vicinity thereof to access services under conditions that are more favourable than normal service conditions or supplementary services, the service provider shall not demand compensation either in the subscriber contract or in any other way.

(2) The electronic communications structure shall be located on real properties so as not to disturb the owners of the adjoining real properties in exercising their rights, or to cause the least possible disturbance to them under the given circumstances; in such cases, the location and operation of the installation shall not be considered as unnecessary disturbance as defined in the Civil Code.

Article 97

(1) Should the removal or relocation of a lawfully installed structure become necessary, such

work shall be carried out at the cost of the party in whose interest the operation shall be carried out. A structure shall be considered as having been lawfully constructed if a permit for its continued existence was issued according to the provisions of Article 48 of Act LXXVIII of 1997 on the design and protection of the man-made environment.

(2) If the relocation entails modernization or development of an existing structure, related costs shall be allocated to the parties interested in proportion to their interest.

Article 98

Builder of electronic communications structure shall be entitled to use waterways, canals, natural lakes and the beds and channels thereof together with the airspace above the area of the country for electronic communications purposes.

The obligations of the owner of the property in the public interest in relation to the protection of electronic communications

Article 99

(1) The owner or holder of the property shall remove the trees, bushes branches and roots endangering electronic communications, to protect its operation. The costs related to such removal shall be borne by the electronic communications service provider concerned.

(2) The electronic communications service provider concerned shall call upon the owner of the property in writing to meet his obligation according to paragraph (1). If the owner fails to take action within 15 days from the written call thereto, the authority may obligate the owner in its decision, issued upon request from the service provider, to have the work carried out.

PART FOUR

OBLIGATIONS OF THE ELECTRONIC COMMUNICATIONS SERVICE PROVIDER

CHAPTER XI

OBLIGATIONS THAT MAY BE PRESCRIBED FOR ELECTRONIC COMMUNICATIONS SERVICE PROVIDERS

Article 100

(1) In the absence of a different provision in this Act, the authority may neither provide for, nor maintain in effect any obligation other than those set forth in this chapter for service providers that do not have significant market power.

(2) To ensure interconnection between subscriber access points, the service provider providing subscriber access shall interconnect its network with the networks of other service providers in accordance with the provisions of the decision of the authority. In relation to this, the authority may prescribe obligations according to Articles 104, 106 and 107 and other obligations specified in this Act for the service provider.

(3) In order that end users be able to access digital radio and television broadcasts, the service provider shall guarantee access to the facilities specified in the decision of the authority within the range set forth in separate legislation to other service providers under fair, reasonable and non-discriminatory conditions.

(4) When a service provider fails to meet the provisions of the decision of the authority, the authority may *ex officio* or upon request obligate the service provider to do so.

Article 101

When prescribing the obligations according to Article 106, the authority may specify technical and operating requirements mandatory both for the mandated and the entitled service providers that are necessary because of the integrity of the network.

CHAPTER XII OBLIGATIONS OF SERVICE PROVIDERS WITH SIGNIFICANT MARKET POWER IN THE MARKET OF WHOLESALE SERVICES

Transparency

Article 102

(1) In its decision, the authority may prescribe obligations guaranteeing transparent operation for the service provider with significant market power in relation to interconnection or access; also, it may prescribe that the service provider disclose specific information, in particular, accounting and technical information, network features and the terms and conditions of providing and using the service and its prices.

(2) In relation to obligations stipulated on the basis of the principle of equal treatment, the authority may prescribe that the service provider with significant market power submit its network contracts relevant to these obligations to the authority within eight days from their conclusion.

Article 103

(1) With a view to ensuring transparency, the authority may, *inter alia*, prescribe that a reference offer of adequate breakdown and detail as laid down in its decision be drawn up, specifying the range of data to be disclosed and the mode of their disclosure.

(2) If, pursuant to this Act or – after the date specified under Article 168 – pursuant to the decision of the authority, the service provider is subject to an obligation to grant access to the local loop with regard to the metallic twisted wire, the service provider with significant market power must publish a reference offer with at least the content set forth in separate legislation.

(3) The service provider subject to the obligation to draw up a reference offer (for the purposes of this Article: the mandated service provider) shall be bound by the reference offer

published with the conditions set forth in legislation or, following market analysis, specified by the authority during its period of validity vis-à-vis any service provider requiring interconnection or access (for the purpose of this Article: entitled service provider), and may not deviate from the conditions of the reference offer in its network contracts even with the agreement of entitled service provider.

(4) The mandated service provider shall provide the services according to its reference offer to the entitled service provider

- a)* transparently,
- b)* in accordance with the principle of equal treatment,
- c)* in accordance with the requirements of fair trade, and
- d)* by breaking down services provided to basic services meeting market requirements in accordance with the provisions of legislation or the decision of the authority brought after market analysis.

(5) The detailed rules pertaining to reference offers shall be set forth in separate legislation.

Equal treatment

Article 104

(1) In its decision, the authority may prescribe obligations pertaining to equal treatment in relation to interconnection or access for the service provider with significant market power.

(2) The obligations pertaining to equal treatment shall guarantee first and foremost that the service provider with significant market power shall

- a)* apply substantially the same conditions with respect to other service providers providing substantially the same services under substantially the same circumstances,
- b)* provide services and information in at least the same quality to others under at least the same conditions that it applies to its own services and the services of any other service provider subject to it.

(3) For the purposes of this Act, behaviour violating the principle of equal treatment shall mean, in particular, if the service provider with significant market power

- a)* links the provision of a network service unjustifiably to technical conditions, which can only be satisfied by a single or a small number of service providers;
- b)* when setting the compensation payable for the network service, it applies pricing conditions including discount on traffic—whereby the most favourable conditions become available only to a single or a small number of service providers;
- c)* applies unjustifiable conditions in its contracts with subscribers, as a result of which any change in the legal relationship of the subscriber to the service provider would, at the same time, endanger the performance of the agreement existing or being set up between the subscriber and another electronic communications service provider in relation to electronic communications services;
- d)* apply conditions in its subscriber contracts which exclude the use of the services of another electronic communications service provider.

Accounting separation

Article 105

(1) In its decision, the authority may prescribe additional detailed obligations concerning accounting separation going beyond the provisions of Article 87 in relation to specific activities related to interconnection or access for the service provider with significant market power.

(2) In relation to accounting separation, the authority may, *inter alia*, prescribe that the service provider with significant market power render its wholesale and transfer prices transparent and other additional obligations related to transparent operation and equal treatment as well as the provision of data required for checking the prohibition on price squeeze.

(3) Within the limits set forth in separate legislation, the authority may specify the principles, forms and methods to be applied to accounting separation and the content of statements for the service provider having significant market power.

(4) An auditor, independent of the service provider, shall audit the statement on accounting separation annually at the cost of the service provider with significant market power and attest compliance with the rules concerning electronic communications. The report of the auditor shall be disclosed to the public.

(5) The authority may use the data presented in the statement on accounting separation for the performance of its tasks without restriction and, to the extent necessary, may make them available to the competition authority notifying the service provider at the same time.

Obligations related to access and interconnection

Article 106

(1) The service provider with significant market power shall guarantee access to specific network elements and services, as well as the related facility sharing if there is demand thereto which is justified economically and technically in accordance with the provisions of the decision of the authority.

(2) The authority may prescribe the obligation according to paragraph (1) in particular if refusal or withdrawal of access previously granted or setting unreasonable conditions having a similar effect would, according to the consideration of the authority, impede the development of efficient market competition in the field of subscriber services and consequently lead to a result contrary to the interests of subscribers.

(3) When prescribing the provisions according to paragraph (1), the authority may obligate the service provider in particular:

a) to provide access to specific network elements and devices, including local loop unbundling and bit stream access;

b) to conduct negotiations in good faith with those requesting access;

- c) not to withdraw access previously granted to services and devices;
- d) to provide specific network services for third parties with a view to resale them, *inter alia*, the Internet call origination service and the flat rate Internet call origination service;
- e) to provide free access to interfaces, protocols or other key technology elements, which are indispensable for the interoperability of the services;
- f) to enable co-location or other forms of facility sharing, including the joint use of electronic communications structures;
- g) to provide specific services required to guarantee for users the mutual interoperability of services between termination points, including access to equipment used for intelligent network services or roaming in mobile radio telecommunications networks;
- h) to provide access according to adequate safety and application conditions to operation support systems or similar software systems which, in the course of providing services, are required to guarantee fair competition;
- i) to interconnect or connect networks or network facilities.

(4) In its decision, the authority shall specify the detailed conditions of meeting the obligations according to paragraph (1) and stipulate technical and operating conditions mandatory for both the mandated and the entitled service providers, which are needed for network integrity.

(5) When prescribing the obligations according to paragraph (1), the authority shall, in particular, take the following criteria into account:

- a) the technical feasibility and economic rationality of the user installation of competing facilities depending on the rate of development of the market, taking into account the nature and type of the interconnection and access concerned;
- b) the feasibility of ensuring access as a function of available capacities;
- c) the initial investment of the owner of the facility in view of the risks related to the investment;
- d) the necessity of protecting competition in the long run;
- e) eventual rights to intellectual property;
- f) ensuring pan-European services.

(6) Separate legislation shall set forth the detailed conditions of interconnection or access contracts and the procedural rules related to the relevant offer and negotiation.

(7) The service provider with significant market power may not render the provision of access to a network service or device dependent on using another service or asset not required for the use of the given network service.

Particular rules of joint use of facilities and co-location

Article 107

(1) The service provider with significant market power who has been obligated by the decision of the authority to joint use and of facilities co-location (for the purposes of this Article, the obligated service provider) shall, over and above its obligations according to Article 90, provide the entitled service provider with the data according to this Article and cooperate with the entitled service provider according to the following rules.

(2) With respect to co-location, the following shall, in particular, be defined:

- a)* information pertaining to the network locations concerned of the mandated service provider;
- b)* data concerning the possibilities of co-location at the locations indicated in the point above (including physical, distant and virtual co-location);
- c)* in the event of virtual co-location, the parameters of the equipment and the restrictions;
- d)* the order of entry to, and staying, in real property and within it the premises or parts of premises containing equipment, network parts or switches;
- e)* the rules of authorisation for the installation, maintenance and repair of equipment used by the entitled service provider and held by it or by the mandated service provider;
- f)* the security standards applied;
- g)* the conditions of the examination of places of co-location refused for objective technical reasons by the entitled service provider and the rules of appeal;
- h)* the conditions of access to information systems, in particular the conditions of access to the operation supporting system, information systems and databases of the mandated service provider in the event of advance order, supply, order, request for maintenance and repair and billing;
- i)* the mode of co-operation needed between the parties in the course of co-location or equipment use and the data protection and reporting rights and obligations vis-à-vis one another in view of this.

(3) Co-location shall be implemented on the basis of the least cost principle of the available options.

(4) The mandated service provider shall, at the cost of the entitled service provider, provide the following for the equipment of the entitled service provider, in particular:

- a)* adequate power supply;
- b)* possibility of connection to the network of the mandated service provider.

(5) Requirements in relation to the equipment used by the entitled service provider may be specified exclusively with a view to the following objectives:

- a)* protection of human life and protection from bodily harm;
- b)* avoidance of electromagnetic incompatibility;
- c)* ensuring compliance with the relevant interface specification of the mandated service provider;
- d)* ensuring compliance with the cable network parameters of the mandated service provider;
- e)* equipment configuration adjusted to the dimensions of place made available in the course of co-location;
- f)* fire protection requirements.

(6) Separate legislation shall contain the detailed rules of co-location related to access and interconnection, in particular bearing related costs.

(7) If the service provider is subject to an obligation to apply a reference offer, the issues contained in this Article shall be indicated in the reference offer.

Cost-based prices and the controllability of fees

Article 108

(1) To promote efficiency and sustainable competition and to enforce consumer advantages, the authority may – if according to the findings of the market analysis the absence of efficient competition could result in the application of unjustifiably high fees or price squeeze by the concerned service provider – stipulate

a) an obligation to apply cost-based fees,

b) an obligation to apply a specific method of cost calculation and, furthermore,

c) apply a method of cost calculation to control the costs of the efficient service different from that otherwise applied by the service provider

with regard to certain interconnection and access services for the service provider with significant market power.

(2) When bringing its decision according to paragraph (1), the authority shall take into account the investment of the efficient service provider, the related risks and a fair return on capital invested as well as the prices available on comparative competitive markets and, in the course of this, consider the prices applied by service providers who are in a situation similar to that of the service provider with significant market power.

(3) In the case of an obligation according to paragraph (1) *a)*, the burden of proof that fees are based on costs shall be borne by the mandated service provider. When evaluating whether cost-based fees are justifiable, the coverage of costs incurred in relation to the provision of the service may be taken into account only insofar that they do not exceed the requirement of the efficient service provider for a fair return on investments required for the provision of the given service and the risks undertaken with the investment.

(4) In the case according to paragraph (1) *c)*, the description of methodology used for control shall be made public to a level of detail at least such that the rules concerning the development of the major cost groups and cost allocation and the period of such allocation can be known.

(5) The authority may obligate the service provider to change the fees and determine the ratio of compensation payable for the network service provided by the service provider relative to the subscriber fee applied by the service provider or the fee to be applied to the network service.

CHAPTER XIII OBLIGATIONS OF THE SERVICE PROVIDER WITH SIGNIFICANT MARKET POWER IN THE RETAIL SERVICE MARKETS

Obligations related to the fees of subscriber services

Article 109

(1) When, based on market analysis, the authority establishes that competition is insufficiently efficient in a retail service market identified by it and the objectives of this Act could not be implemented by prescribing the obligations according to Articles 102-108 and 111, with a view to the protection of consumer interests and the promotion of efficient competition, it may, in its decision, prohibit that the service provider with significant market power in the given retail service market apply

a) unjustifiably high fees,

- b) unjustifiably low prices impeding market entry or competition, not based on efficiency greater than that of competitors,
- c) unjustifiable discrimination against certain consumers, or
- d) unjustifiable bundling.

(2) The prohibition according to paragraph (1) shall be proportionate to the objective it wishes to achieve.

(3) The authority may require in its decision that the service provider having significant market power keep statements of cost calculation required for controlling the performance of the obligation related to fees whereby the authority may specify, *inter alia*, the principles, forms and methods to be applied and the contents of the statements.

(4) When the authority believes that, with a view to achieving the objectives according to paragraph (1), it is necessary to specify the highest level for the price of subscriber services, it shall initiate that this be specified at the minister and, at the same time, submit a proposal concerning the highest level of subscriber service prices.

Ensuring the minimum set of leased-line services

Article 110

(1) By its decision, pursuant to paragraph (1) the authority may specify obligations set forth in separate legislation for the service provider having significant market power in the leased-line market with respect to the minimum set of leased-line services.

(2) In its decision, the authority may provide for the transmission capacity and technical parameters of the leased line within the minimum set of leased-line services.

Carrier selection

Article 111

(1) The service provider with significant market power in any market related to subscriber access to fixed telephone networks and their use identified by the Board as relevant market shall enable carrier selection for its subscriber in a manner specified in separate legislation by way of carrier pre-selection or call-by-call carrier selection for all types of call in the fixed telephone network, including Internet calls.

(2) Based on its procedure related to market analysis and the stipulation of obligations, the authority may in its decision prescribe that the service provider with significant market power in a market other than the market according to paragraph (1) be subject to the obligation of making carrier selection possible in accordance with paragraph (1) or under different conditions as specified by the authority. The authority may stipulate the obligations according to this paragraph on the basis of the criteria set forth in Article 106 (2) and (5).

(3) The service provider providing subscriber access subject to the obligation to ensure carrier selection shall ensure carrier selection in accordance with the provisions of paragraph (4)

- a) under carrier selection by call origination, and

b) under carrier selection by call termination.

(4) The service provider entitled to enter into a network contract with the service provider providing subscriber access shall be entitled to choose with respect to every interconnection point offered by the service provider providing subscriber access whether it intends to enter into an interconnection contract enabling carrier selection with the service provider providing subscriber access with respect to the option according to paragraph (3) *a)* or paragraph (3) *b)* or both. If the service provider entered into an interconnection contract for both options with regard to a type of call, the subscriber may use carrier selection either way.

(5) In the case according to paragraph (3) *b)*, the subscriber traffic fee of the call administered using a carrier service provider shall be set by enforcing the principle of equal treatment, in such a way so as to assert the difference between the fee for the access or interconnection service provided by the carrier service provider and the fees arising without carrier selection in the case of calls of the same termination in the subscriber traffic fee at the latest upon the entry into force of the interconnection or access contract or from the first day of the month following the entry into force of the access or interconnection service fees modified by the parties. In the event of the breach of this obligation, the carrier service provider may initiate a legal dispute procedure. The authority shall monitor compliance with this obligation under its market surveillance procedures.

(6) The service provider with significant market power in a relevant market shall develop the compensation for the network service provided in relation to carrier selection on a cost basis.

(7) The service provider shall ensure carrier selection as set forth in the subscriber contract and in the course of the conclusion and performance of its network contracts.

(8) In the event of carrier selection, the service provider providing subscriber access may, when in agreement with the carrier service provider, bill to the subscriber and collect the fees specified by the carrier service provider.

(9) The service provider subject to the obligation to ensure carrier selection may neither exclude, nor restrict carrier selection in its subscriber contracts.

(10) The costs incurred per carrier service provider and subscriber in relation to the implementation of carrier selection shall be borne by the carrier service provider, while the costs required for rendering the network of the service provider providing subscriber access suitable for ensuring carrier selection shall be borne by the service provider providing subscriber access.

CHAPTER XIV OTHER RULES APPLICABLE TO THE SERVICE PROVIDERS HAVING SIGNIFICANT MARKET POWER

Special rules facilitating the spreading of Internet access

Article 112

(1) A service provider with significant market power in a market related to the access to Internet services through fixed telephone networks (for the purposes of this Article: the mandated service provider) shall make an offer for the provision of Internet call origination service and flat rate Internet call origination service against a cost-based fee in its reference offer.

(2) The mandated service provider shall provide flat rate Internet call origination service according to paragraph (1) only where and when the mandated service provider is unable to provide a broadband service to the given subscriber for technical reasons.

(3) When setting the fee for the Internet call origination and flat rate Internet call origination service, the mandated service provider shall apply the rules of cost calculation with the appropriate deviations and additions in view of the different nature of these services relative to the call origination service implemented through fixed telephone networks (particularly with respect to the longer hold time in the event of Internet call origination service).

Article 113

(1) With a view to forwarding subscriber Internet calls, the mandated service provider shall co-operate with the electronic communications service provider, which has a network contract concerning forwarding subscriber Internet calls with the Internet service provider (for the purposes of this Article: the carrier service provider) and with the Internet service provider first and foremost so that

a) the carrier service provider selected by the subscriber by way of carrier selection shall take action to have the subscriber Internet call transmitted to the network access point of the Internet service provider by making use of the Internet call origination or flat rate Internet call origination service of the mandated service provider (call origination model); or

b) the mandated service provider shall, in the event of subscriber Internet calls directed at the given Internet service provider, transfer the call to the carrier service provider transmitting the subscriber Internet call to the network access point of the Internet service provider pursuant to an agreement with the Internet service provider even in the absence of carrier selection and the carrier service provider shall make use of the Internet call origination or flat rate Internet call origination service of the mandated service provider (number translation model).

(2) When the carrier service provider itself provides the Internet service, the provisions of paragraph (1) shall apply as appropriate with the exception of the agreements between the carrier service provider and the Internet service provider.

(3) In the cases of according to paragraph (1), the fee of the subscriber call shall consist of the fee paid to the mandated service provider on the Internet call origination and the fee due to the carrier service provider. In the case of the flat rate Internet call origination service, the carrier service provider and the Internet service provider co-operating with it shall set subscriber fees; the flat rate payable to the mandated service provider shall not be directly linked to the subscriber fee. The carrier service provider and the Internet service provider, when they are not identical, shall agree on the distribution of the part of the fee due to the carrier service provider on a business basis.

(4) When the carrier service provider makes use of the Internet call origination or flat rate Internet call origination service of the mandated service provider, in the event of an agreement with the carrier service provider, the mandated service provider may bill to the subscriber and collect the fees payable by the subscriber due to the carrier service provider or the fees due to the Internet service provider that has a network contract with the carrier service provider.

Article 114

(1) The mandated service provider shall apply the models described under Article 113 (1) and the rules according to Article 113 (3) to its own business lines as well as the service providers controlled by it, controlling it or subject to common control with it ensuring the equality of transfer prices and the cost-based prices of network services provided to third parties. When applying this paragraph, carrier service provider shall mean the business line, which is responsible for forwarding the call to the network access point of the Internet service provider or to the business line providing Internet service.

(2) When the parties agree on forwarding subscriber Internet calls differently from the provisions of Article 113 (1), the mandated service provider shall provide the same cost-based interconnection and access services as the transfers between its own business lines or between service providers controlled by it, controlling it or subject to the same control as it to those requiring it, ensuring the equality of transfer prices and the cost-based prices of network services provided to third parties.

Article 115

In case of obligations set forth in Articles 112-114, the provisions of Article 168 shall be applied as appropriate.

Prohibition to apply price squeeze

Article 116

(1) The service provider having significant market power in any of the markets concerned shall set the counter value of the network service provided in this market so as not to give rise to a price squeeze in view of the prices of the output subscriber services.

(2) The service provider subject to the obligation to disclose its reference offer shall, simultaneously with reducing the price of the output subscriber service by it or by the undertaking controlled by it, controlling it or subject to the same control appropriately reduce the prices specified in its reference offer in order to enforce the provisions of paragraph (1), to notify the authority thereof and to make this accessible to the public in the same way as the reference offer.

(3) The provisions of paragraph (2) need not be applied if the price reduction may affect at most 10% of the subscribers of the given service subject to the price reduction, or the impact of the price reduction may not exceed 5% of net sales arising from the supply of output subscriber services affected by the price reduction relative to the net annual sales of the service provider with significant market power or the undertaking controlled by it, controlling it or subject to common control with it, weighted with the volume of output subscriber

services in the previous year affected by the price reduction and calculated with the reduced fee.

(4) In the event of the reduction of the price of the output subscriber service according to paragraph (2), the service provider subject to an obligation to disclose a reference offer shall, simultaneously with the announcement of the price reduction, notify the price reduction to the authority also presenting its envisaged impact in detail and sending the data substantiating this in order to enable the authority to check the compliance of the fees in the reference offer with the provisions of paragraph (3).

(5) When setting the compensation for the network service, the coverage of the costs incurred in relation to the provision of the service may be taken into account only to the extent that it does not exceed the requirement of the efficient service provider for the fair return of its investment required for providing the given service and the risk undertaken with the investment.

PART FIVE

ENSURING ADEQUATE SUPPLY FOR USERS AND THE IMPLEMENTATION OF OTHER OBJECTIVES OF PUBLIC INTEREST IN ELECTRONIC COMMUNICATIONS

CHAPTER XV UNIVERSAL ELECTRONIC COMMUNICATIONS SERVICE

The content of the universal electronic communications service

Article 117

The following services provided pursuant to the universal service contract at affordable fees shall jointly belong in the range of universal electronic communications service:

a) access to the telephone network at a place according to the permanent residence, seat or premises of the user enabling the origination and reception of domestic and international calls, fax messages and data transmission calls through a subscriber access point at a fixed location, access to emergency call services and Internet access at a data transmission speed of at least 9,600 bit/s and an error rate not exceeding 10^{-4} bits;

b) the operation of one public payphone per thousand inhabitants and in each settlement with a lower number of residents and, at least 3% of the mandatorily installed public payphones shall be such as to be accessible to those with impaired hearing or movement;

c) providing a nation-wide directory enquiry service;

d) making the directory of subscribers accessible.

Article 118

(1) The universal service provider shall enable the subscriber to bar outgoing calls of a specific type or initiate barring numbers of a specific type free of charge upon request to the service provider.

(2) With respect to the universal service according to Article 117 *a*), the universal service provider shall – with the exception set forth in legislation – subject to an obligation to conclude a contract for the provision of one access per user with the user having his permanent residence, seat or premises in the area specified in its universal service contract when the user reports his intention to use the universal service in a manner specified by legislation.

(3) Subsidies may be provided from the central budget to subscribers specified in legislation (low-income or disabled subscribers) to use the universal electronic communications service. Separate legislation shall set forth the conditions of using the subsidy.

(4) The service provider shall not be subject to the obligation to conclude the contract or provide the service when the user

a) owes fees outstanding against any universal service provider arising from the use of the universal electronic communications service in excess of 3 months, or

b) the user's earlier subscriber contract was cancelled within six months prior to making the offer for reasons of cancellation specified in legislation.

Universal service providers and the designation of the universal service provider

Article 119

(1) The universal service provider shall be designated by the minister.

(2) When designating the universal service provider, the minister shall ensure the coverage of the entire territory of the country with universal services, and the least distortion to competition in the electronic communications market, so that universal service be provided by the service provider able to do so the most efficiently and at the least net avoidable cost.

(3) In designating the universal service provider and concluding the universal service contract, the minister shall guarantee that the price of the universal service be affordable. When the universal service provider, with a view to rendering the universal service affordable, develops a fee package for its subscribers by assuming a part of the cost of the service, it may not claim the subsidy according to Article 121 (1) to mitigate its burden arising from this.

(4) The minister shall designate a different universal service provider, if

a) there is a substantial change in the range of universal services and the procedure aimed at amending the contract is not successful,

b) the former universal service provider does not provide service in accordance with the universal service contract, or

c) the former universal service provider intends to abandon the pursuance of universal service activity or the contract is terminated for any other reason.

Article 120

(1) The minister shall enter into a universal service contract with the designated service provider in which the parties shall agree on at least the following:

a) the subject matter of the universal service;

- b)* the geographical location and mode of providing the universal service;
- c)* the period of providing the universal service;
- d)* the financial, quality and other terms and conditions of providing the universal service;
- e)* the mode of amending the contract;
- f)* the mode of terminating the contract and its legal consequences;
- g)* the magnitude of the penalty applicable in the event of the deficient performance of the contract and its other legal consequences;
- h)* the rights due to the minister and the authority taking action pursuant to his authorisation in relation to controlling compliance with the contract.

(2) The universal contract shall be made public by the minister.

Financing the universal service

Article 121

(1) The universal service provider shall be entitled to a subsidy to mitigate its warranted and recognised financial burden constituting unfair additional burden relative to its expenditure and revenue, estimated when applying solely business criteria, arising from the provision of the universal service in accordance with the provisions of Article 122 and the universal service contract. The extent of the subsidy shall not exceed the net avoidable cost of providing the universal service.

(2) The universal service provider claiming the subsidy according to paragraph (1) shall submit a statement specified by separate legislation containing the net avoidable costs of the universal service provided by it, audited by an independent auditor, to the minister. by the 15th day of June of the year following the year in question at the latest The minister shall publish the audited statement in a manner specified by separate legislation.

(3) Based on the statement according to paragraph (2), the minister shall consider whether the provision of the universal service constitutes an unfair burden for the universal service provider.

Article 122

(1) To mitigate the financial burden arising from providing the universal service, a Universal Electronic Communications Support Fund (hereinafter: the Fund) may be established. The detailed rules applicable to the establishment, operation, funding, supervision, use and termination of the Fund shall be stipulated by the Government.

(2) The Fund shall be a legal entity with its seat in Budapest. The Fund shall be managed by the minister.

(3) The equity of the Fund may not be distributed, it shall not be required to pay any corporate tax, business tax or levy on its net assets, revenues and income, its funds may neither be withdrawn, nor used for any purpose other than that specified under paragraph (7). No VAT payment obligation shall arise on payments to and from the Fund.

(4) The finances and accounting of the Fund shall be audited by the State Audit Office.

(5) Payments to the Fund shall be effected by the 15th day of August of the year following the year in question at the latest, payments from the Fund shall be effected by the 30th day of September of the year following the year in question at the latest. In case of non-payment, following a period of grace of one month, the Fund shall take immediate action to collect its claim.

(6) Electronic communications service providers, irrespective of the technology applied, shall pay a part of their net annual sales to the Fund, arising from the provision of telephone service, Internet service provided by using the telephone service within the framework of the universal service and related supplementary services as set forth in separate legislation, based on the financing requirement, as specified in legal regulation. The payment shall not exceed 0,5 percent of the payer's yearly revenue from sales. The service providers whose annual sales calculated in this way do not reach the annual magnitude specified by the minister by decree and the business undertakings founded without a legal predecessor, in whose case two years have not yet passed from the date of foundation to the date of the establishment of the payment liability, shall not be required to make payments to the Fund.

(7) The revenues of the Fund may be used exclusively to subsidise the universal service and to cover the extraordinary expenditures arising owing to the transitory measures required owing to withdrawal from the market and the costs serving the operation of the Fund and for no other purpose whatsoever.

Control, modification and termination of the universal service

Article 123

(1) The authority shall control the universal service providers with regard to the execution of the activity and performance of the contract on an ongoing basis. The authority shall notify the minister when it identifies any breach of the obligations undertaken in the contract. The universal service provider shall submit the data required for controlling compliance with its obligations to the authority on an ongoing basis. The data providing evaluation on compliance with the obligations shall be publicly available.

(2) When the universal service provider fails to meet the service quality values specified in the contracts for an extended period, the Authority may order their inspection by an independent expert and prescribe that the service provider concerned pay the costs thereof.

(3) When the universal service provider violates its obligations undertaken in contract, the minister shall take action to have a new universal service provider designated so that the service provider in breach of the contract shall provide universal service only until the contract with the new service provider is executed.

(4) The minimum period of notice in the event of the termination of the contract concluded for the provision of the universal service by the service provider shall be one year.

(5) The service provider may suspend the universal service—with the exception of the cases according to Article 136 (1) *b*) and *c*) only with the prior written consent of the minister and the timely and appropriate information of the users affected.

(6) When the range of universal services and the related legal requirements are modified, the contracting parties shall review the universal service contract.

Article 124

The minister shall specify in a decree the detailed conditions of the designation procedure and the provision of the universal service, the principles of calculating the net avoidable cost, and the detailed rules of compensation for and distribution of the financial burden related to the universal services by decree.

Co-operation of universal service providers in the field of the telegram service

Article 125

(1) The universal service provider providing universal electronic communications service and the business undertaking qualified as universal postal service provider designated pursuant to separate legislation shall provide domestic telegram service.

(2) The universal electronic communications service provider and the designated universal postal service provider shall ensure the use of the domestic telegram service in a manner accessible to all in accordance with the detailed terms and conditions set forth in separate legislation.

(3) The service providers according to paragraph (1) shall, with a view to providing the domestic telegram service, co-operate and enter into contract with one another on their co-operation (telegram service contract).

CHAPTER XVI

PROVISIONS RELATED TO THE INTERESTS AND RIGHTS OF SUBSCRIBERS

The Representative of Communications Consumer Rights

Article 126

(1) The Representative of the Communications Consumer Rights (hereinafter: the representative) shall be a civil servant of the authority.

(2) Any subscriber, consumer or social organisations representing consumer interest may lodge a report with the representative when, in their view, the consumer suffered injury in relation to his rights set forth in a rule related to electronic communications or in the subscriber contract or a direct threat thereof obtains as a result of the activity, service, product, procedure or measure brought in the course, or the omission of such procedure of a service provider, seller or distributor.

(3) The representative may take action *ex officio* to eliminate the violation of the law related to the rights of subscribers or consumers set forth in a rule pertaining to electronic communications when the conditions according to paragraph (2) obtain.

(4) The representative shall examine the report submitted to him. The representative shall himself choose the measure regarded as expedient within the limits of this Article. The representative shall, on the basis of the submission:

a) inform the person lodging the report of his rights and obligations set forth in the rule concerning electronic communications, or the subscriber contract and the procedures and legal remedy available to him,

b) call upon the service provider to terminate the breach of the rule concerning electronic communications, or the subscriber contract and to take the necessary action,

c) may initiate the *ex officio* procedure of the authority,

d) may initiate the commencement of the appropriate procedure by another authority.

(5) The representative shall sort the reports lodged with him and, in the event of cases affecting a large number of subscribers or other cases which he regards as significant he shall submit a proposal for action to the authority containing the statements required for its *ex officio* procedure.

(6) In the course of the procedure, the representative may request data, information and explanation from any service provider, seller or distributor in relation to the breach of the rights of subscribers or consumers set forth in a rule concerning electronic communications.

(7) When the representative requests data (clarification, explanation or information), the service provider shall satisfy the request within the due date set forth by the representative, but at the latest within 15 days.

(8) The representative shall notify the person lodging the report about the findings of the examination conducted and any eventual measures taken.

(9) The representative shall transfer the submission concerning a case not within his scope of authority to the competent agency while also notifying the person lodging the report.

The subscriber contract

Article 127

(1) The service provider, the subscriber or applicant (hereinafter jointly: the parties) shall enter into a subscriber contract on the provision of the subscriber service, which shall consist of the general terms and conditions of contract and the individual subscriber contract.

(2) The provisions of the Civil Code concerning contracts shall be applied to the subscriber contracts with the deviations and amendments incorporated in this Act.

(3) The service provider may deviate from the provisions of this Act in the general terms and conditions of contract only when the Act expressly permits such deviation.

(4) The parties may deviate from the provisions of this Act and the general terms and conditions of contract in favour of the subscriber by mutual will in the individual subscriber contract.

(5) Separate legislation shall set forth the additional conditions of the subscriber contract related to the protection of consumers, the quality of service, the authenticity of pricing and the rights and obligations of the parties.

Article 128

(1) Pursuant to the subscriber contract, the subscriber shall be entitled to make use of the given service at any time during the period of the contract and to connect electronic communications terminal equipment that complies with the essential requirements to the subscriber interface provided in the network.

(2) Including the case according to paragraph (3), the electronic communications service provider shall not make the use of a subscriber service dependent on the use of another subscriber service not indispensable for the former subscriber service or from the purchase or use of any other service or product not indispensable for the given subscriber service.

(3) The electronic communications service provider shall be entitled, pursuant to the subscriber contract concluded with the subscriber in accordance with the provisions of legislation and the general terms and conditions of contract to onsell and bill the goods and services purchased in its own name together with the use of the electronic communications service provided by it in the manner set forth in the subscriber contract and to charge their value to the subscriber in the subscriber's bill for to the electronic communications service or to debit his prepaid claims.

(4) The electronic communications service provider shall unambiguously indicate
a) the possibility of the onselling of goods and services in the subscriber contract, and
b) the fact of onselling in the bill issued by it.

The coming into being of the subscriber contract

Article 129

(1) The parties may conclude the subscriber contract in writing, verbally or by indicative behaviour, in particular, through using the subscriber service. The service provider supplying public subscriber services shall conclude the subscriber contract in accordance with its general terms and conditions of contract. Over and above the provisions of Article 118 (2), the service provider is not under an obligation to enter into contract insofar as the conclusion of subscriber contracts is concerned.

(2) In the case of accessing an Internet service through the telephone network, the subscriber contract shall come into being also by indicative behaviour between the subscriber originating the call and the service provider having a network contract with the called Internet service provider concerning the transmission of traffic to the Internet service provider.

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(3) When the parties conclude the subscriber contract in writing, the service provider shall, simultaneously with the execution of the contract, make available the individual subscriber contract, the extract of the general terms and conditions of contract and, when the subscriber so requests, a copy of the general terms and conditions of contract to the subscriber. In the

case of concluding the contract in any other way, the service provider shall inform the subscriber of the accessibility of the general terms and conditions of contract.

(4) When the parties conclude the subscriber contract in writing, the subscriber who is a natural person shall, upon contract conclusion, make a statement whether he wishes to make use of the subscriber service as a residential subscriber or not. When the subscriber contract is not concluded in writing, the service provider shall provide an opportunity for the subscriber to make his statement concerning his capacity as residential subscriber simply and free of charge. Otherwise, the general terms and conditions of contract of the service provider shall set forth the mode of making the statement and its due date.

(5) During the period of validity of the subscriber contract, the subscriber may withdraw or amend the statement according to paragraph (4) in the manner set forth in the general terms and conditions of contract.

(6) The individual subscriber contract concluded in writing shall contain at least the following provided that the specific features of the service make this possible:

a) name and address of the electronic communications service provider, accessibility and opening hours of the customer service and the fault repair service, and the address of its Internet website;

b) name, residence, place of stay or seat of the subscriber;

c) in the case of a natural person subscriber, the name (maiden name) of the subscriber, his/her mother's name, and place and date of birth;

d) in the case of a subscriber that is not a natural person, the trade registry number or other registration number of the subscriber and its bank account number;

e) consent by the subscriber to handling his data other than those in the database according to Article 157 (2) and the use of his data in the database for purposes other than those set forth in this Act;

f) the period of the contract;

g) the due date for the commencement of the service or the setup up of the connection;

h) the magnitude of the fees governing the service and other related fees and charges, due date and mode of payment of the fees;

i) conditions for and reference to the points of general terms and conditions of contract which contain the conditions of suspension and the restriction of the service;

j) reference to the points of general terms and conditions of contract which contain the legal consequences of breach of contract, in particular, the rights to which the subscriber is entitled in the event of breach of the provisions concerning the quality and suspension of the service, the order of fee reimbursement, and the magnitude of the penalty due to the subscriber;

k) the possible order of reporting fault reports and complaints related to bills, reference to the points of general terms and conditions of contract which contain order of administering fault reports and complaints related to bills and information concerning provision of maintenance service;

l) the conditions of contract amendment, the rights of the subscriber in the event of contract amendment;

m) information about the fact that in the event of a legal dispute the subscriber has the right to refer the dispute to the authority further reference to the points of general terms and conditions of contract which contain an accurate description of the competent authorities and indicating their accessibility;

n) the place of installing the subscriber terminal equipment when it is fixed and the calling number of the subscriber. The parties shall, in the individual subscriber contract concluded in

writing, specify the place of installation of the subscriber access point constituting the limit of the liability of the service provider. With respect to the specification of the subscriber access point, the point usually designated by subscribers shall govern, which may be installed outside the premises of the subscriber only upon the express request of the subscriber;

o) statements and data concerning the carrier service provider selected by pre-selection;

p) a statement concerning a request for a n itemised enclosure with the bill,

q) accessibility of the general terms and conditions of contract and the statement of the subscriber according to which he is acquainted with and accepts the provisions of this contract.

(7) When the natural person subscriber has limited legal capacity, the subscriber contract concerning services whose fee is paid subsequently shall also contain the data of the legal representative of the natural person subscriber according to paragraph (7) *b)-c)*.

General terms and conditions of contract

Article 130

(1) The electronic communications service provider that supplies subscriber services shall draw up its general terms and conditions of contract for subscriber services. The general terms and conditions of contract shall be incorporated in writing.

(2) The service provider shall make its general terms and conditions of contract and their extract available at its customer service and in its Internet website. The service provider shall make its general terms and conditions of contract and its extract available to its subscribers free of charge.

(3) The general terms and conditions of contract shall be made public and accessible in the service provider's customer service or website free of charge and shall be sent to the authority; this shall be effected in the event of every amendment to the general terms and conditions of contract 30 days prior to the entry into force of the amendment. Apart from sending the amendment to the authority, the service provider need not apply the provisions of this paragraph to those amendments of the general terms and conditions of contract when such an amendment becomes necessary because of the introduction of a new service and the amendment does not affect the general terms and conditions of contract applicable to the services already provided.

(4) The authority shall examine compliance of the general terms and conditions of contract regularly under its market surveillance activity.

Article 131

The general terms and conditions of contract of subscriber services shall contain at least the following:

a) name and address of the service provider;

b) accessibility of its customer service (address, phone number, opening hours), and address of its Internet website;

c) specification of the subscriber services provided by the service provider;

d) the procedure concerning the conclusion of the subscriber contract, the mode and conditions of using the subscriber services, the eventual time and geographical limitations of using the service;

e) the period agreed for the installation of the subscriber access point and its putting into operation ensuring the use of the service (target value), in the event of mobile radio telecommunications services, the due date for connecting the terminal equipment to the network end point calculated from notification of the demand;

f) the quality target value of the services, the interpretation of the quality target values and the method of measuring their performance;

g) the list of subscriber data required for conclusion of the subscriber contract, the coming into being of the legal relationship of subscription, the minimum contract period;

h) individual cases of subscriber contract amendment and the conditions of such amendment, the right of the service provider to amend the contract unilaterally, the rights due to the subscriber in the events of unilateral contract amendment by the service provider, the mode of informing the subscriber in the event of a unilateral contract amendment, the cases of contract amendment linked to fee payment and the magnitude of the fee payable, the due dates for performing re-relocation and transfer of subscription;

i) cases of suspending the subscriber service, the maximum period of suspension that may be requested by the subscriber, cases of suspension linked to fee payment and the magnitude of the fee payable;

j) the cases and conditions of restricting subscriber service, in particular the restriction of traffic originated by the subscriber or terminating at the subscriber, the deterioration of the quality or other parameters of the subscriber service;

k) cases and conditions of terminating the subscriber contract, indicating the due date by which the subscriber may meet his fee payment obligation without the service provider terminating the contract;

l) accessibility of the fault repair service, the fault repair target values undertaken, the procedure for registering fault reports;

m) operation of the customer service, administration of subscriber reports and complaints (administration of fee complaints, claims for penalty and compensation). The accessibility of the customer service shall be indicated at the beginning of the general terms and conditions of contract, in a properly identifiable manner;

n) the rights of the subscriber in the event of the deficient performance of the subscriber service, the magnitude of the penalty due to the subscriber, the magnitude of the fee reduction due to the subscriber in the event of the transitory or lasting impossibility to repair the fault, the mode of settling disputes related to the subscriber service;

o) the conditions of the connection of the subscriber's terminal equipment;

p) the types of the data handled by the service provider, the purpose and period of their storage and eventual forwarding, ensuring the forwarding of data, data security and information on the rights and obligations of the subscriber or user in relation to data handling;

q) the fee of the subscriber services, including the non-recurrent fees, regular fees and traffic fees given unambiguously in terms of figures, fee payment periods, discounts and services free of charge, in the event of the loss of eligibility to a discount, conditions of the repayment of the discount, the mode and due dates of fee payment and billing, the rules concerning the prepayment of the fee when the subscriber so requires;

r) in the case of telephone service providers, the detailed rules of the procedure related to number portability;

s) the detailed rules of the procedure related to carrier selection in accordance with the interconnection contracts ensuring carrier selection;

t) address and phone number of the supervisory agency;

u) accessibility of the general terms and conditions of contract.

Amendment to the subscriber contract

Article 132

(1) The rules of concluding a subscriber contract shall apply to the amendment of the individual subscriber contract also. The general terms and conditions of contract may enable the amendment of the individual subscriber contract according to paragraph (2).

(2) The service provider is entitled to unilaterally amend the subscriber contract only in the following cases:

a) in the event of the amendment of the conditions incorporated in the individual subscriber contract or the general terms and conditions of contract with the provision that unless legislation or a rule pertaining to electronic communications otherwise provides, the amendment may not result in a substantial amendment in the conditions of contract;

b) the amendment is warranted by change in legislation or a decision by the authority, or

c) the amendment is warranted by a substantial change in circumstances.

(3) Changes concerning the conditions of using the service or its quality target values shall, in particular, qualify as substantial amendment.

(4) When the service provider is entitled to unilaterally amend the general terms and conditions of contract in the cases specified therein, it shall inform subscribers of the amendment at least 30 days prior to its entry into force in accordance with the provisions of this Act together with information concerning the conditions of termination available to the subscribers. In such cases, the subscriber shall be entitled to terminate the contract with immediate effect within 8 days following the notification sent concerning the amendment.

(5) When the amendment contains provisions disadvantageous to the subscriber, the subscriber shall be entitled to terminate the subscriber contract within 15 days from notification without any further legal consequence. The subscriber may not terminate the subscriber contract in such a case when he has undertaken a commitment to make use of the service for a specified period and entered into the subscriber contract in view of the discounts arising from this and the amendment does not affect the discount granted. When the amendment affects the discounts granted and the subscriber terminates the subscriber contract, the service provider may not demand the amount of the discount for the period following the termination of the contract from the subscriber.

(6) The service provider is not under an obligation to apply the notification deadlines according to paragraphs (4) and (5) for those amendments in the general terms and conditions of contract when the amendment of the general terms and conditions of contract was necessitated by the introduction of a new service and the amendment does not affect the general terms and conditions of contract applicable to the services already provided, or when only a subscriber fee is decreased by the modification.

(7) The service provider shall specify the detailed conditions of amending the general terms and conditions of contract within the limits provided for in this Article in the general terms and conditions of contract.

(8) Failure to make a statement as indicative behaviour shall qualify as acceptance except in cases set forth in separate legislation. In case of dispute, the burden of proof concerning whether it had notified the subscriber in the manner and at the time provided for in the Act shall rest with the service provider.

Article 133

Upon request from the subscriber (or his heir in the event of death), the service provider may amend the individual subscriber contract only in accordance with the general terms and conditions of contract when there is a change in the person of the subscriber as a result of legal succession by contract, inheritance or other legal heading (transfer of subscription).

Termination of the subscriber contract

Article 134

(1) The subscriber shall be entitled to terminate the subscriber contract concluded for an indefinite period with a notice of at most 8 days at any time without additional legal consequences.

(2) With the exception of the provisions of paragraphs (6)–(7), the period of notice for terminating the subscriber contract by the service provider shall not be less than 60 days.

(3) The service provider shall send the notice of termination of the subscriber contract in writing by registered mail, receipt acknowledged, except when it is unable to notify the subscriber of the termination because, as a result of the specific features of the service, the service provider does not have the data required for notifying the subscriber in this way. In the latter case, the service provider may also notify the subscriber of the termination of the contract in other ways according to Article 144 (2).

(4) When the reason for termination is breach of contract on the part of the subscriber and the subscriber eliminates the breach of contract during the period of notice, the subscriber contract shall not be terminated through termination by the service provider. The service provider shall immediately notify the subscriber thereof.

(5) Termination by the service provider shall list

- a)* the reasons for termination,
- b)* the period of notice, the day of expiry of the period of notice, and
- c)* information to the subscriber concerning the provisions of paragraph (4), when the reason for termination is breach of contract by the subscriber.

(6) In the event of breach of the subscriber contract, the service provider may terminate the subscriber contract in accordance with the conditions set forth in paragraphs (3)–(5) with a notice of 15 days, if

a) the subscriber impedes or jeopardises the regular operation of the network of the service provider and the subscriber fails to eliminate this breach of contract within 3 days from the notification warning him of the legal consequences,

b) the subscriber fails to enable the service provider to carry out the on-site inspections required for the examination and prevention of a fault reported or detected by the service provider even after the notification warning him of the legal consequences, or

c) the subscriber using the universal service re-sells the subscriber service to a third person even after the notification warning him of the legal consequences,

d) the subscriber uses the service in a manner or for purposes in conflict with the law.

(7) The service provider may terminate the subscriber contract with a notice of 30 days, when the subscriber fails to settle the fees due even after receiving a second notification at least 15 days after the first notification warning him of the legal consequences. The service provider shall not have the right to terminate the contract when the amount of fees owed does not exceed the amount of one month subscription fee, in the lack of monthly subscription fee, or if the monthly subscription fee is more than Ft 5,000, does not exceed Ft 5,000, or when the subscriber disputes the amount of the fees owed and has submitted an application to the authority or another organisation entitled to adjudge the legal dispute with a view to the settlement of the dispute provided that the subscriber regularly pays the non-disputed fees and the non-disputed additional fees due on the use of the service.

(8) The subscriber contract concluded with the subscriber of the service provider providing subscriber access shall be terminated simultaneously with the entry into force of its contract concluded with another service provider concerning unbundled access to the local loop, of which the service provider shall notify the subscriber 15 days prior to termination.

(9) When the service provider provides the subscriber service pursuant to a contract concluded with another service provider concerning unbundled access to the local loop, it shall notify the subscriber of the termination of the contract concerning the unbundled access to the local loop with immediate effect.

(10) Instead of contract termination, the service provider shall be entitled to request collateral or to restrict the range or use of services in accordance with the conditions of Article 137. The termination is not prevented by the restriction if the subscriber does not conclude the ground of restriction within 30 days, and the conditions of termination otherwise exist.

(11) The conditions for certain cases of the termination of the subscriber contract not regulated under paragraphs (1)–(9) shall be specified by the service provider in the general terms and conditions of contract.

(12) Upon request from the other service provider, the service provider shall terminate the subscriber contract, when the electronic communications network of the service provider is used by another service provider, or it collects the fee instead of another service provider, and

a) the conditions according to paragraphs (6) or (7) are met, and

b) the third service provider is not entitled to or not able to restrict or terminate the service.

(13) The service provider shall be entitled to terminate the subscriber contract for program distribution with a notice of 15 days also when the subscriber receives the programme signal while unauthorised to do so, illegally transmits the arriving programme signal to a third person or decrypts the encrypted programme signal while unauthorised to do so even after the notification warning him of the legal consequences.

Suspension of the service

Article 135

(1) The service provider shall suspend the subscriber service upon request from the subscriber provided that this is facilitated by the specific features of the service.

(2) The service provider may, in its general terms and conditions of contract, specify the maximum period of suspension that may be requested which, however, shall not be less than 6 months in the case of an residential subscriber.

(3) When the subscriber service is suspended upon request from the subscriber, only the payment of a reduced, warranted and fair fee indicated in the subscriber contract may be required from the subscriber for the period of suspension.

Article 136

(1) The subscriber service may be suspended:

a) owing to the transformation, renewal, replacement or maintenance of the network, when other economical technical solution not requiring suspension is not available, which shall not exceed one day per calendar month, provided that the subscriber is notified in advance, at least 15 days prior to the suspension;

b) in the event of some unforeseeable and unpreventable external reason (force major),

c) to protect the defence, national security, economic and public security interests of the Republic of Hungary (in particular, prevention of terrorism, combating drug trafficking) in the manner set forth in legal regulations.

(2) When suspension is effected for some reason under the control of the service provider, excluding regular maintenance specified in the general terms and conditions of contract, or the reason for suspension is outside the control of both parties, the subscriber shall not be obligated to pay the fee for the period of suspension. When suspension exceeds 48 hours in a given calendar month, the service provider shall reimburse the subscription fee due for that month.

(3) The fee need not be reimbursed when the reason for suspension is force major, provided that the service provider furnishes proof of having done everything that could be expected of it to eliminate the reason that gave rise to the suspension within the due date.

(4) The other cases and conditions of suspending the subscriber service, i.e. the cases when the service provider applies suspension subject to the payment of a fee, shall be specified in the general terms and conditions of contract.

The restriction of the service

Article 137

(1) The service provider shall be entitled to restrict the use of the subscriber service, in particular to restrict traffic generated by the subscriber or terminated at the subscriber (traffic aimed at the access point of the subscriber) or to reduce the quality or other parameters of the subscriber service in the following cases simultaneously notifying the subscriber:

a) the subscriber impedes or jeopardises the regular operation of the network of the service provider, in particular, when the subscriber connected a terminal equipment without a certificate of conformity or an appropriate interface to the subscriber access point;

b) the subscriber using the subsidised universal service on-sells the subscriber service to a third person without the consent of the service provider or uses it for the purposes of providing network service;

c) the subscriber owes fees even after the expiry of the due date of at least 30 days indicated in the notification concerning the fees owed and the subscriber did not furnish financial collateral to the service provider as specified in the general terms and conditions of contract to secure payment of the debt on fees.

(2) Even if restricting the subscriber service, the telephone service provider shall guarantee

a) the callability of the subscriber,

b) the transmission of emergency calls,

c) the accessibility of the customer service of the service provider,

d) the accessibility of the fault report service.

(3) The broadcaster providing broadcast transfer be entitled to restrict the use of the service also when the subscriber receives the programme signals without authorisation thereto, transmits the received programme signal illegally to a third person or decrypts the encrypted programme signal when unauthorised to do so.

(4) The service provider - except for the cases of Article 118 (4) - shall restart the provision of service upon request from the subscriber if the ground of restriction is concluded. The service provider may charge justifiable and reasonable fee, laid down in the subscriber contract for the renewed availability of the service.

Handling of subscriber reports and complaints by the service provider

Article 138

(1) The electronic communications service provider providing subscriber service shall operate a customer service to deal with subscriber and user reports, to investigate and remedy complaints and to inform subscribers and users by access through the phone network, when possible, through Internet access and, when the number of subscribers exceeds one thousand, in premises open to customers.

(2) The service provider shall inform the subscriber through announcements displayed at its customer service, on its Internet website or in the subscriber contract about the following:

a) the conditions under which the subscriber may lodge reports and complaints related to the provision of the subscriber service at the service provider, the various consumer protection agencies or the competent authorities,

b) the period within which it shall examine individual complaints received by its customer service and the period within which, and the mode of, notifying the subscriber of the results of the examination,

c) the consumer protection agencies, organisations, authorities or courts to which the subscriber may turn with a view to the settlement of disputes related to the provision of the subscriber service.

(3) When the subscriber disputes the amount of the fee charged by the service provider, the service provider shall immediately register the report (fee complaint) and investigate it at most within 30 days. In case of failure to comply with this due date, the service provider shall not be entitled to terminate the subscriber contract according to the provisions of Article 134 (7) until the completion of the examination of the complaint.

(4) When the subscriber lodges his complaint with the service provider prior to the expiry of the due date for payment, and the service provider does not reject the complaint within 5 days, the due date for the payment of the fee shall be extended with the period of the investigation of the fee complaint with regard to the fee item concerned in the complaint.

(5) The service provider that has a closed billing system attested by the attesting organisation designated by the minister shall be entitled to apply the termination according to Article 134 (7), when the subscriber lodges the complaint according to paragraph (3) prior to the expiry of the due date for payment. The due date for payment shall not be extended with the period of the examination of the fee complaint even if the service provider does not reject the complaint within 5 days.

(6) When the service provider admits the complaint, it shall credit the difference in fees and the interest thereon due from the day of the payment of the fee to the account of the subscriber in a single amount or repay the difference in fees and interest thereon in a single amount to the subscriber in accordance with the choice of the subscriber on the occasion of the next monthly settlement in the case of a monthly fee payment obligation, otherwise within 30 days from the evaluation of the complaint. The rate of interest due to the subscriber in the event of crediting or repayment of the difference in fees shall be at least the interest rate due to the service provider in the event of fee payment delay by the subscriber.

(7) When the subscriber disputes the amount of the fee demanded by the service provider, the proof of burden that its network is protected from unauthorised access and its billing system is closed and the billing and setting of the fee had been correct shall rest with the service provider. A separate burden of proof shall not rest with the service provider with regard to the closed nature of his billing system when that is attested by an attesting organisation designated by the minister until the contrary is proved.

(8) The procedure to be followed in the event of a rejection of a subscriber complaint shall otherwise be specified in the general terms and conditions of contract of the service provider, taking into account Article 38 (3) of Act CLV of 1997 on consumer protection.

(9) Upon request from the subscriber, the service provider, taking into account the rules of data handling, shall ensure that the subscriber be able to inspect the statement concerning

traffic and billing data required for the calculation of the fee payable until the deletion of the data handled free of charge.

Quality requirements of the performance of subscriber services

Article 139

The service provider shall specify the quality target values for the subscriber services in its general terms and conditions of contract in the manner according to Article 131 (1) *e*) and *f*) and separate legislation. The service provider shall regularly disclose the information concerning performance of the quality target values with the content and form and in the manner set forth in legislation so as to enable subscribers to have comprehensive, transparent, comparable, user-friendly and up-to-date information.

Article 140

(1) The service provider shall guarantee access to the customer service accessible through the telephone network also by a fee not higher than the lowest calling fee.

(2) When the technical conditions of service obtain at the service provider providing subscriber access, it shall ensure access to its customer service from its own network free of charge.

(3) The subscriber may report a fault in the subscriber service at the fault report service provided by the service provider, which the service provider shall render accessible either through its customer service or directly at conditions identical with the accessibility of the customer service.

Article 141

(1) The service provider shall record fault reports, the results of the fault localisation procedure and the measures taken to eliminate the fault in a traceable manner by sound recording or other electronic way and shall keep such records for at least a year observing the rules of data handling.

(2) The service provider shall confirm receipt of the fault report to the subscriber and, in addition to recording it, it shall also register it. The register shall contain

- a*) the notification address or other identifier of the subscriber;
- b*) the subscriber call number or other identifier;
- c*) a description of the faulty phenomenon;
- d*) the time and date of the fault report (year, month, day, hour);
- e*) the measures taken to demarcate the cause of the fault and the results thereof;
- e*) the reason for the fault;
- f*) the mode and time and date of repairing the fault (year, month, day, hour), its result (its lack of success and the reason thereof);
- g*) the mode and time and date of notifying the subscriber.

Enclosure of itemised bill

Article 142

(1) With the exception of prepaid subscriber services, the service provider shall – in an enclosure annexed to the bill issued to the subscriber – indicate the fees payable by the subscriber in a breakdown specified in separate legislation. Calls, which are free of charge for the calling subscriber, including the calls originated to call numbers designated by the authority as “unidentifiable call numbers” may not be indicated in the bill and the enclosure to the bill of the calling subscriber.

(2) Upon request from the subscriber, the service provider shall enclose an enclosure to the bill more detailed than that specified under paragraph (1) (call details), which shall include the statement containing the traffic and billing data required for the calculation of the fee.

(3) The service provider may not require the payment of a separate fee for the issue of the bill enclosure – for residential subscribers in electronic or in printed form, for other subscribers in electronic form - according to paragraphs (1) or (2).

Liability for the performance of subscriber contracts

Article 143

(1) In the case of the delayed or faulty performance of subscriber contracts, the electronic communications service provider shall compensate the user for the damage done to its assets, apart from unrealised profits.

(2) The statutory limitation on claims arising from subscriber contracts shall be one year to be calculated from the occurrence of the delay or faulty performance in the cases according to paragraph (1).

(3) In the event of a breach of the subscriber contract, the electronic communications service provider shall pay a penalty at a rate set forth in separate legislation.

Informing subscribers

Article 144

(1) When legal regulation provides for the disclosure of the general terms and conditions of contract or any other information (for the purposes of this paragraph: information) at the customer service of the service provider, the service provider may meet this obligation by doing the following:

a) putting the information on display at the premises of the customer service or, in the absence of this, on its Internet website, and

b) making the customer service accessible through a phone service providing information verbally thereof.

(2) When legislation requires the notification of the subscriber, the service provider may meet the notification obligation in the following ways:

a) through the direct written notification of the subscriber (notification by mail);

b) in electronic mail;

c) through other electronic communication; or
d) depending on the range of subscribers to be notified, by way of an announcement posted in a national or county daily on at least two occasions simultaneously with which the service provider shall put the notification on display also at its customer service.

(3) The modes of notification according to paragraph (2) *b)*–*c)* may be applied by the service provider when it is able to record in a permanent manner that

a) the subscriber took note of the verbal notification, or
b) the notification incorporated in an electronic document according to Article 2 (12) of Act XXXV of 2001 on electronic signature was sent to the subscriber who had made a statement previously on the acceptance of electronic notifications.

(4) The service provider may apply the mode of notification according to paragraph (2) *d)* only in the event of notifications according to Article 136 (1) and Article 132 (4) of this Act.

(5) In order that consumers have adequate information on the quality of services, prices and fees and be able to compare individual services and make rational decisions in accordance with the freedom of choice, the authority may require communications service providers to provide data on the quality, accessibility and price of the services provided by them to the authority or to disclose such data.

(6) The authority shall publish comparative data on the basis of the information submitted by communications service providers.

Emergency call number

Article 145

(1) The telephone service provider shall guarantee free access to emergency call services, including access to the single European emergency call number “112” for its subscribers or the users of its services, which in the case of public payphones shall mean access without the use of any means of payment.

(2) With a view to answering emergency calls, the telephone service provider shall make the data for the identification of the calling party or the identification of the caller location available to the emergency call services upon their request—in a manner set forth in separate legislation—even in the case when the calling party has prohibited the display of his identification or when he has not given his consent or has withdrawn his consent to the handling of data concerning location identification.

Directory service

Article 146

The telephone service provider shall guarantee that the subscriber be able to use any national directory service and shall, depending on the consent of the subscriber, provide such directory service providers with the name and the part of address of the subscriber disclosed to the service provider with a view to publication and its call number. The provision of such information to the inquiry service provider according to Article 117 *c)* shall be free of charge.

The information transferred may only be used for the purposes of the universal directory service.

Article 147

An inquiry service may be provided

- a)* by areas
 - aa)* across the entire territory of the country, or
 - ab)* in a specific area,
- b)* by call number,
 - ba)* for the call numbers of every telephone service provider, or
 - bb)* for the call numbers of individual service providers.

Accessibility of non-geographic numbers

Article 148

(1) The telephone service provider shall enable access by end users of other Member States of the European Union to the non-geographic numbers used in the area of the service when that is technically and economically feasible.

(2) The telephone service provider may restrict accessibility of a subscriber having a non-geographic number by users originating calls from specific geographic areas for commercial reasons.

Tone dialling and calling number identification

Article 149

When technically feasible and economically not unreasonable, the telephone service provider shall enable its subscribers to use tone dialling throughout the network in signal transmission from end point to end point and a service providing calling number identification.

Ensuring number portability

Article 150

(1) The subscriber providing subscriber access shall enable the subscriber to

- a)* retain his geographic subscriber number in the case of fixed telephone services when the subscriber changes the service provider providing subscriber access without changing the geographic location of use;
- b)* to retain his non-geographic subscriber number in the case of services available through non-geographic numbers when the subscriber changes the service provider;
- c)* to retain his mobile subscriber number in the case of mobile radio phone services, when the subscriber changes the mobile radio phone service provider (hereinafter: ported number).

(2) The telephone service provider providing subscriber access (donor provider), whose subscriber transfers his subscriber number to another telephone service provider (recipient

provider) shall agree on number portability with the recipient provider, when the recipient makes an offer compliant with legal regulations applicable to interconnection contracts.

(3) The fee for calls directed at ported numbers shall be determined in accordance with the actual call or service set up fee. The calling party shall be given the possibility to obtain information prior to the commencement of the call about the service provider in whose network the call will be terminated and its tariffs.

(4) The service provider responsible for call or signal routing specified in separate legislation shall bear the costs of call and signal routing and the ancillary additional costs of call and signal transmission.

(5) The fee for the use of the identifier payable by the service provider shall be the same with regard to ported numbers and non-ported numbers.

(6) The donor provider for the use of number portability service may specify a non-recurrent fee for each ported number, which shall be payable by the recipient provider to the donor provider. The fee payable shall not exceed the justified costs incurred in relation to porting telephone numbers. The recipient provider may debit this non-recurrent fee or a part thereof to the subscriber making use of number portability.

(7) In accordance with the consent of the subscriber, the recipient provider shall take action to have the ported subscriber number disclosed in the subscriber registry and the directory service.

(8) The detailed rules of ensuring number portability shall be set forth in separate legislation.

CHAPTER XVII RULES OF DATA HANDLING

Data delivery

Article 151

(1) By its decision, the authority may require the entity engaged in electronic communications activity to transmit data concerning electronic communications service and activity, which are needed for the use of the services, the implementation of network services, and the performance of the tasks referred to the responsibility of the authority even when they qualify as business secrets.

(2) An appropriate deadline shall be specified for data delivery. When data delivery is required for the purposes of market identification or market analysis, the period open for data delivery shall be 30 days.

(3) When the service provider fails to make the requested data available to the authority by the specified deadline or does so deficiently or not in compliance with the truth, the authority may apply the legal consequences according to Article 33 (3).

(4) The service provider shall make the data specified in legislation accessible to the public.

(5) In the course of data delivery according to paragraphs (1)-(3), the provider of the data shall be liable for the adequacy, timeliness, credibility, accuracy, controllability and correctness of the contents of the data.

(6) The authority shall render the data according to paragraph (1) available to the competition authority notifying the provider of the data at the same time. The competition authority may use the data made available to it by the authority exclusively for the performance of its tasks set forth in this Act.

Article 152

(1) The authority may prescribe a reporting obligation for those subject to this Act by decision indicating the deadline with a view to the provision of the data required for the performance of its tasks and, upon request by the minister, to produce the surveys, analyses and evaluations required for the performance of the minister's task.

(2) The authority shall inform the provider of the data of the handling of the data specified by it, their use and the objective of data handling as set forth in legal regulation together with the prescription of the reporting obligation.

(3) For its tasks related to market survey, analysis and evaluation, the authority may use the data provided by those engaged in electronic communications activities to the ministry under the National Statistical Data Collection Programme.

(4) With a view to enabling the minister to perform his tasks, the authority may transfer to him

- a) the data handled in relation to its tasks of market surveillance;
- b) the data handled in relation to its tasks of market survey, analysis and evaluation.

(5) The authority shall satisfy requests from the Ministry of Informatics and Communications (hereinafter ministry) for data delivery subject to this Act or other legislation and requests for any further processing of data provided pursuant to this Act or other legislation and on that basis for the production of analysis without delay and shall inform thereof the service provider affected in the data delivery.

(6) The authority may not conduct market surveillance procedures on the basis of the data reported and transferred on a mandatory basis for the performance of its activities of market analysis and evaluation pursuant to paragraphs (1) and (3)-(4) and may not use such data against the data provider in any other way. The authority shall notify the provider of the data of this simultaneously with prescribing the reporting obligation.

(7) There shall be a legal remedy with special postponing effect against the decision according to paragraph (1). The court shall decide the issue when needed after hearing the parties in an extra judicial procedure within 15 days. There shall be no appeal against the verdict of the Budapest Court of Justice.

Data delivery to the European Commission, the electronic communications regulatory authorities of the Member States and the international organisations of electronic communications

Article 153

(1) The ministry and the authority shall satisfy any requests for data delivery from the European Commission subject to this Act without delay and inform those concerned by the data delivery.

(2) When meeting the data delivery obligation according to paragraph (1), the ministry or the authority may request the European Commission not to forward the data provided to the authorities of other Member States.

(3) When the request according to paragraph (2) is initiated by the data provider affected in the data delivery, the ministry or the authority shall make the decision on submitting the request on the basis of a consideration of all the circumstances of data delivery.

(4) When the obligation for data delivery in the request according to paragraph (1) affects the data of a service provider qualified as business secrets, the data provider concerned shall be informed 3 days prior to meeting the reporting obligation.

(5) The ministry and the authority shall answer requests for data and information concerning the Hungarian communications sector from international organisations dealing with electronic communications after reconciliation with one another.

Protection of personal data

Article 154

(1) The service provider may handle the personal data necessary and sufficient for the identification of the user or subscriber with a view to the conclusion of the electronic communications service contract, the specification of its contents, its amendments, the monitoring of its performance, the billing of the fees originating from it and the enforcement of the related claims.

(2) With a view to billing fees, the service provider may handle the personal data related to the use of the electronic communications service necessary and sufficient for the determination of the fee and billing, thus in particular, the data concerning the time and date, duration and location of the use of the service.

(3) With a view to providing the service, the service provider may handle, in addition to the identification and other personal data referred to under paragraphs (1) and (2) of this Article the personal data which are technically inevitable for the provisions of the service.

(4) The service provider may choose and in every case operate the electronic communications equipment employed in the course of providing the electronic communications service only so as to ensure that personal data are handled only when this is inevitably necessary for the provision of the service and the achievement of the other objectives specified in this Act.

(5) The service provider shall delete the personal data handled immediately following learning of the handling of the data when that is carried out for a purpose not mentioned in paragraphs (1)-(3) of this Article.

(6) The provision of an electronic communications service shall not be made dependent on the consent of the user to the handling of his data for a purpose other than those mentioned in paragraphs (1)-(3) of this article.

(7) In addition to the information specified in the Act on the protection of personal data, the service provider shall guarantee that the user be able to learn what personal data are handled by the service provider and for what purpose prior to and in the course of the use of the electronic communications service at any time whatsoever.

Article 155

(1) The service provider shall—when needed, together with other service providers—take the necessary technical and organisational measures to ensure the prevention of the unauthorised interception, storage or surveillance of the transmitted communication and the traffic data related to the communication and the unauthorised or accidental access to the communication and the traffic data related to the communication (confidentiality of communication).

(2) The service provider may choose and in every case operate the electronic communications facilities applied in the course of providing the service only so as to guarantee the confidentiality of communication.

(3) The service provider may learn of and store the transmitted communications only to the extent that is technically inevitable for the provision of the service.

(4) Information may be stored in an electronic communications terminal equipment and the information stored there may be accessed using an electronic communications network exclusively on the basis of the consent of the user or subscriber following his clear and full information.

(5) The national security services and the investigating authorities may, in accordance with the provisions of a separate act and the frequency management authorities may, in the course of exercising their powers according to Article 11 (3), survey, intercept and store communications or may intervene with the item or communication with a view to their surveillance in other ways.

(6) The service provider with the exception the provision and inspection of data as stipulated in Article 42 of Act CXXV of 1995 on national security services shall inform the national security service concerned of any requests for the provision of data affecting the protected telephone numbers of the service qualified as top secret.

(7) In the event of a well-grounded suspicion of a threat to life or bodily harm or property or blackmail, the investigating authority may, in accordance with the provisions of separate law, upon the written request of the subscriber or user, learn and store the personal data of those

performing communication by way of talks, sending messages or email correspondence or in other ways via the terminal equipment used by the subscriber or the user within the time limits according to the request.

Article 156

(1) The service provider shall, when needed together with other service providers, take technical and organisational measures to ensure the protection of the security of the service provided.

(2) The technical and organisational measures shall, taking into account the best practice and the costs of the measures to be taken, provide a security level corresponding to the risks appearing at the service provider in relation to the provision of the service.

(3) The service provider shall inform the subscriber of the known risks jeopardising the security of the service remaining in spite of the technical and organisational measures taken by the service provider and the measures that can be taken by the subscriber with a view to protection. The information shall extend to the possibility of using software and applying solutions of encryption by the user or subscriber to protect the confidentiality of the communications transmitted.

(4) When as a result of an event affecting or jeopardising the security of the service a new, hitherto unknown security risk appears, the service provider shall immediately notify the subscriber of that unknown, new security risk, the measures that the subscriber may take with a view to protection and the expected costs thereof. The service provider may not claim any additional fee for the information provided to the subscriber. The information provided by the service provider shall not exempt it from the obligation to take the necessary measures to re-establish the usual level of security of the service.

(5) In addition to the obligations of the service provider related to the protection of personal data, the confidentiality of communications transmitted in the course of providing the service and the security of the service as specified in this Act, separate legislation shall set forth the detailed rules of the handling of personal data, the special conditions concerning the protection of the confidentiality of communications and postal items forwarded in the course of providing the service as well as the conditions of identifier display and call rerouting.

(6) When for the provision of a value-added service location data are needed in addition to the traffic data, the service provider shall inform the user or subscriber of the type of these data, the objective and period of data handling and the fact whether or not it is necessary to forward these data to third parties.

(7) The service provider may handle the location data related to the user or subscriber other than the traffic data exclusively with the consent of the user or subscriber and only to the extent and for the time period that is required for the provision of the value-added service.

(8) The user or subscriber may withdraw the consent according to paragraph (7) at any time.

Traffic and billing data

Article 157

(1) After the performance of the service, electronic communications service providers shall delete the personal data of the subscribers and users which they process with a view to building up calls (including anonymisation) with the exception of those according to paragraphs (2) and (7).

(2) With a view to billing and collecting the related fees from subscribers and users and monitoring subscriber contracts, the electronic communications service provider may handle the following data:

- a)* the data according to Article 129 (7) *b)-d)*;
- b)* the number of the subscriber station or its other identifier;
- c)* the address of the subscriber and the type of the station;
- d)* the number of the total units that may be charged during the settlement period;
- e)* the calling and the called subscriber numbers;
- f)* the type, direction, starting time of the call or other service and the duration of the call or the size of the data transmitted in the case of the mobile radio phone service, the network and cell providing the service and the individual identifier of the device employed to use the service (IMEI¹), and, in the case of IP networks, the identifiers applied;
- g)* the date of the call or other service;
- h)* data related to the payment of fees and debts on fees;
- i)* in the case of leaving a debt, the events related to the termination of the subscriber contract;
- j)* in the case of telephone service, the data related to other non-electronic communications services available to the subscribers and users, particularly those pertaining to its billing.

(3) The data according to paragraph (2) *a)* may be handled until the termination of the contract, the data according to points *b)-j)* for the period of statutory limitation of the claims arising from the subscriber contract according to Article 143 (2) unless some other act provides for a different due date for the handling of data. The service provider shall delete the files containing the data according to paragraph (2) *f)* generated in its system (CDR) within 30 days after one year following the statutory limitation on the bill issued on that basis in accordance with Article 143 (2). In the event that a separate act has such a provision, the service provider may handle the data only for the purpose according to the provisions of this separate act and shall immediately terminate the handling of data according to this Act in accordance with this paragraph.

(4) The electronic communications service provider may, with the express prior consent of the subscriber, handle the data according to paragraph (2) for the purposes of its own business acquisition.

(5) Of the data according to paragraph (2), those which are needed for the purpose of data handling may be transferred:

- a)* to those who, pursuant to the assignment of the electronic communications service provider carry out billing, claims management, distribution management and customer information;

¹ International Mobile Equipment Identity

b) to the agencies authorised by legal regulation to settle legal disputes related to billing and distribution;

c) with a view to the protection of national security, defence and public security, and the prosecution of criminal acts subject to public prosecution and the prosecution of unauthorised or illegal use of the electronic communications system to the national security agencies and investigation authorities having the necessary competence, the public prosecutor and the court;

d) to the bailiff according to the provisions of the act on distraint by the court.

(6) In relation to the data transferred pursuant to paragraph (5), the recipients of the data shall have the same confidentiality obligation as the service provider.

(7) With a view to ensuring the data specified under paragraph (5) *c)*, the electronic communications service provider shall keep

a) the data according to paragraph (2) *a)* until the termination of the contract,

b) the data according to paragraph (2) *b)-j)*

for three years.

(8) For the purpose of data delivery stipulated in paragraph (5) *c.)* the electronic communications service provider may, for no more than three years handle the data originated in and available from the electronic communications network concerning subscriber terminal equipment used for illegal access to or for an effort thereon particularly when the owner officially prohibited it.

Article 158

(1) With a view to the prevention of the evasion of fee payment and other obligations arising from the contract and in the event when the conditions according to Article 118 (4) obtain with a view to refusing the conclusion of the contract, the electronic communications service providers may transfer or receive the data required for the identification of the subscriber from the range of data that can be legally handled according to Article 157 together with the information about the reasons for the transfer of the data according to paragraph (3) hereof to or from another electronic communications service provider and to set up a joint database containing such data.

(2) For the purposes according to paragraph (1), the service provider may only transfer the subscriber data according to Article 129 (7) *b)-f)*.

(3) The data of the subscriber may be transferred and may be placed in the joint database in the event that the conditions according to Article 118 (4) obtained and when

a) the service provider has terminated the contract or restricted the possibility to use the service by the subscriber in part or in full owing to a debt on bills, or

b) owing to the debt on bills, the service provider has initiated a court or official procedure against the subscriber, or when the place of stay of the subscriber is unknown, or

c) the applicant or the subscriber has, with a view to causing damage, misled the service provider or is endeavouring to do so (in particular, when the document serving to identify him is obviously false, forged or invalid).

(4) The service provider shall immediately notify the subscriber of the fact of having transferred his data.

(5) Article 157 (3) shall be applied to the handling of the joint database with respect to its period. The data may be used exclusively for the purpose of paragraph (1).

(6) As soon as the conditions for the legal handling or transfer of the data cease, the service provider shall take immediate action to have the data of the subscriber deleted from the joint database and notify the service providers earlier notified and the subscriber concerned of the fact of deletion.

(7) The following may ask for data from the database:

a) the electronic communications service provider exclusively for the purpose according to paragraph (1),

b) the agency or authority according to Article 157 (5),

c) any consumer with regard to the question of what data concerning him are contained in the registry.

(8) Those concerned shall agree in writing on the establishment of the joint database, the assignment of the person of the manager and processor of the data and their rights and obligations.

Article 159

(1) Upon concluding the subscriber contract, the applicant shall be expressly and unambiguously informed of:

a) the handling of his data according to Article 157 (2);

b) the cases in which the data handled may be transferred and to which electronic communications service providers;

c) the kind of decisions that the electronic communications service providers may bring on the basis of these data;

d) the legal remedy available to the applicant;

e) the person managing and processing the joint database and the place (address) of data handling and processing.

(2) The subscriber shall be immediately informed of any changes taking place in the circumstances according to paragraph (1) *b)-e)*.

Lists of subscribers', directories and address books

Article 160

(1) The service provider shall register the data required for the identification of the subscriber and the service used by him whose handling by the service provider is enabled by this Act or separate legislation in the list of subscribers.

(2) The service provider shall draw up a directory of all its subscribers annually in a printed form (telephone directory) or in an electronic format. The electronic communications service provider or other information service provider may create address books in which the data of the subscribers are arranged in specific groups.

(3) The directories or address books may—without the voluntary and unambiguous consent of the subscriber—contain only those data of the subscribers that are indispensable for their identification.

(4) The subscriber shall have the right without incurring extra charges that upon his request

- a) he be omitted from the printed or electronic directory;
- b) it be indicated in the directory that his personal data may not be used for the purposes of direct business acquisition;
- c) his address be indicated in the directory only in part.

(5) The subscriber may receive the directory according to Article 117 d) free of charge under the condition specified by legal regulation.

Article 161

(1) The electronic communications service providers may use the data in the directory and in the address book to provide information out of their data as a service. Under providing this service, they shall not disclose more data than those published in the directory of subscribers and in the address books, except when the person concerned has consented to the provision of additional data.

(2) The security of querying directory of subscribers and address books and the prevention of abusing them shall be guaranteed by technical solutions, particularly the unauthorised downloading of data or the downloading of an unjustifiable amount of data.

(3) The linkage of the data in the electronic directory of subscribers and address books with other data or registry shall be prohibited except when that is necessary for the electronic communications service provider for reasons of operation.

The use of the data for the purposes of direct business acquisition or information

Article 162

(1) Automated calling system not requiring human intervention may be used for the purposes of direct business acquisition or information with regard to the subscriber only when the subscriber gave his consent to this in advance.

(2) Communication serving the purpose of direct business acquisition or the provision of information may not be transmitted by phone or other means of electronic communications to the subscriber who has made a statement that he has not wished to receive such communications. This provision does not affect the rights due to the user pursuant to Act CVIII of 2001 concerning certain issues of electronic commercial services and services related to information society.

(3) The item with a purpose of direct business acquisition from which the identification data of the sender cannot be established may not be transmitted in spite of the express consent of the subscriber.

(4) Providers of electronic communications services aimed at voice telephony shall – depending on the consent of the subscriber - deliver the universal service provider those subscribers data which are necessary for the provision of services pursuant to Article 177 c) and d). The delivered subscriber data shall not be used for purposes other than this.

PART SIX

CLOSING PROVISIONS

Miscellaneous provisions

Article 163

(1) The fees and fines stipulated in legal regulation issued pursuant to the authorisation of this Act and pursuant to this Act payable to budget or to the authority and the payments to the Universal Electronic Communications Fund shall qualify as public debt to be collected as taxes.

(2) In the case of subscriber contracts concerning the use of the universal service in force at the time of the entry into force of this Act, the universal service provider shall ensure carrier selection according to Article 112 by way of carrier pre-selection or call-by-call carrier selection.

(3) In the case subscriber contracts concerning the use of the universal service in force at the time of the entry into force of this Act, these services may be continuously provided to the existing subscribers at unchanged conditions and the provisions of Act LXXXVII of 1990 concerning price setting shall be applied to subscriber fees with the provision that the rules according to this Act shall be applied to the eventual claim of subsidy by the universal service provider.

(4) The financial resources granted for the performance related to the duties of the State specified in this Act and other legislation issued pursuant to the authorisation given in this Act shall be determined by the chapter-administered appropriation of the Act providing for the annual State budget

(5) As a contribution of the state for the developments mandated in legislation a subsidy can be granted for the service providers on the account of the chapter-administered appropriation defined in paragraph (4)

Entry into force

Article 164

(1) With the exception of the provisions according to paragraphs (2)-(3), this Act shall enter into force on the 1st day of January 2004.

(2) Article 182 of this Act shall enter into force on the day of the promulgation of this Act.

(3) Articles 13, 51, 75, 148, 150 (1) *b*) and *c*) and 153 of this Act shall enter into force simultaneously with the entry into force of the act promulgating the international agreement concerning the accession of the Republic of Hungary to the European Union.

(4) Articles 53 (4), 54 (2), 56 and 65 of this Act shall be applied from the date according to paragraph (3). When in the course of certain procedures according to this Act procedural acts need to be carried out in accordance with these provisions, these procedures shall be suspended until the date according to paragraph (3).

Article 165

(1) Simultaneously with the entry into force of this Act, the following shall lose effect:

- a*) Act XL of 2001 on communications (hereinafter: Act on Communications),
- b*) Government Decree 248/2001 (XII. 18) Korm. on the Communications Authority and the fines that may be levied by the agencies of the Communications Authority,
- c*) Government Decree 252/2001 (XII. 18) Korm. concerning the notification of the provision of telecommunications services.

(2) Article 1 (1) *k*) of Act XVI of 1991 on concession shall lose effect simultaneously with the entry into force of the act promulgating the international agreement concerning the accession of the Republic of Hungary to the European Union.

Article 166

Simultaneously with the entry into force of this Act, Article 126 (1) of Act I of 1996 on radio and television shall lose effect.

Article 167

(1) The authority shall be the legal successor of the Communications Authority.

(2) The provisions of this Act shall also be applied to cases in progress. The Council shall take action in cases in progress in front of the Communications Arbitration Committee and the Office shall take action in the cases in progress in front of the Communications authority and the Regional Office of Communications at the time of the entry into force of this Act. Original procedural deadlines shall be extended by 30 days in these procedures.

(3) The authority shall take over the registries of its legal predecessor and shall take action to make up for the deficiencies of these registries.

(4) The mandate and legal relationship as civil servant of the president of the Communications authority shall be terminated on the day of the entry into force of this Act.

As severance pay, the president shall be entitled to an amount corresponding to six-month's basic pay as president due on the 30th day following the entry into force of this Act, except when he enters into another legal relationship of civil service with the authority within 30 days from the entry into force of this Act.

(5) The membership of the members of the Communications Arbitration Committee appointed pursuant to the Act on Communications shall cease on the day of the entry into force of this Act.

Transitory provisions

Article 168

(1) The obligation imposed on the service provider with significant market power in a decisive market at the time of the entry into force of this Act, specified herein or in other legal regulation in force on 31st of December 2003 or entering into force later in view of its identification as such service provider, shall be applied with the deviations according to this Act until the date when, the transitory period according to Article 55 (2) incorporated in the decision of the authority imposing an obligation on any service provider with significant market power in all of the markets concerned – specified by the authority according to Article 52, which replaces the given decisive market, for the first time after the entry into force of this act – expires.

(2) The provisions of paragraph (1) shall not affect the right of the authority according to Article 56 to prescribe the obligations earlier to be applied pursuant to legislation by decision under this Act.

Article 169

(1) The government shall review and, in particular with a view to the commitment and use of identifiers with equal opportunity and to ensure the expansion of services, appropriately amend NTIA by the 1st day of July 2005.

(2) Upon the first appointment of the members of the Board, following the entry into force of this Act, the minister shall appoint 3 members who shall serve for a term of three years, and 4 members, , who shall serve for 5 years.

(3) The agreements according to Article 20 (4), Article 21 (5) and Article 22 (4) shall be concluded for the first time within 3 months following the entry into force of this Act.

(4) The deed of foundation of the Permanent Court of Arbitration for Communications shall be drawn up by the 31st day of March 2004.

Article 170

(1) By the date specified under Article 168 (1), the service providers having significant market power at the time of the entry into force of this Act shall set the fee payable pursuant to the network contracts on the basis of objective conditions following the principles of transparency and equal treatment in a controllable manner.

(2) The service provider with significant market power in the market of telephone services and the service provider with significant market power in the market of mobile radio phone services at the time of the entry into force of this Act shall be subject to an obligation of accounting separation. These service providers shall—in accordance with the rules according to Article 105 (3) and (4)—present the revenues, costs, assets and liabilities of the individual business lines related to electronic communications activity separately in their accounting statements by applying transfer prices commensurate with the prices of services provided to third parties calculated using the method according to Article 105 (3) and paragraph (4) of this Article as if these activities had been carried out by a separate business undertaking.

(3) The service provider subject to the obligation of separation upon the entry into force of this Act shall submit the accounting statement according to this Act to the authority based on its audited accounting data of 2003 for the first time by 31 May 2004.

(4) The authority shall specify the detailed rules related to the accounting statements and the minister shall specify the rights and obligations of the mandated service provider related to accounting separation by decree by the date according to Article 168 (1)

(5) Upon the entry into force of this Act,

a) the service provider with significant market power in the telephone service market shall develop the amount demanded pursuant to the agreement

aa) on access and interconnection, and

ab) granting access to the local loop,

b) the service provider with significant market power in the leased-line service market shall develop the amount demanded pursuant to the contracts on interconnection,

c) the service provider with significant market power in the interconnection market shall develop the amount demanded pursuant to the interconnection of electronic communications networks from the fix location telephone service provider

by the separate presentation of the revenues, costs, assets and liabilities of the services in a controllable manner by the date according to Article 168 with the provision that in the case of the services according to *aa)*, *b)* and *c)* the cost calculation method of long run incremental costs (LRIC), while in the case of the service according to *ab)*, the method of cost calculation of fully distributed costs based on historical costs (HCA-FDC) shall be applied. Prior to application, the electronic communications service provider shall submit counter values to the authority even if it does draw up a reference offer.

(6) The method of cost calculation to be applied until the date according to Article 168 (1) is contained in separate legislation.

Article 171

Until the date according to Article 168 (1), the service providers with significant market power at the time of the entry into force of this Act, shall meet their obligations taking into account Articles 103, 107, 111 and 112-115.

Article 172

(1) The service provider with significant market power in the telephone market and in the market of leased-line services by the date according to Article 168 (1) and the service

provider having the electronic communications network required for the provision of these services prior to this date shall draw up a reference offer concerning interconnection in compliance with the provisions of Article 112 (1) and shall submit it to the authority by the 15th day of January 2004 and for the year 2005, on the basis of accounting separation, by the 31st day of August 2004 for the purpose of approval.

(2) The service provider according to paragraph (1) shall take action according to the provisions of Article 107 by the date according to 168 (1).

(3) The reference offer concerning interconnection as well as access shall contain:

- a)* the general conditions of interconnection including preliminary ordering;
- b)* the geographically specified points of interconnection;
- c)* the possible technical solutions of interconnection;
- d)* the transmission routes applicable for interconnection;
- e)* the offered network (access) and related services;
- f)* the designation of interfaces;
- g)* the quality of service (including the conditions of operation and maintenance) and the available capacities;
- h)* the support services (operators, emergency, inquiry services);
- i)* raised-level services;
- j)* the conditions of carrier selection;
- k)* the conditions of number portability;
- l)* the conditions of the facility sharing thus in particular, under co-location the possibility of locating the equipment of the entitled service provider and the available technical circumstances in the premises of the obligated service provider or alternative possibilities of location;
- m)* the prices and conditions of use of the above services,
- n)* the rules of co-operation between the parties.

Article 173

(1) The service provider having significant market power in the market of telephone services by the date according to Article 168 (1) (for the purposes of this Article, the mandated service provider) shall compile a reference offer for providing access to the local loop and the related facility sharing and submit it to the authority by the 15th day of January 2004 and, with respect 2005, based on accounting separation, by the 31st day of August 2004 for the purposes of approval.

(2) The service provider according to paragraph (1) shall take action according to the provisions of Article 107 until the date according to Article 168 (1).

(3) When the obligated service provider is under an obligation to publish a reference offer for granting access to the local loop and the related facility sharing (hereinafter: local loop unbundling), it shall contain at least:

- a)* the general conditions related to local loop unbundling preliminary ordering;
- b)* the possibilities of access to the network end points of the access network;
- c)* in the event of granting bundled access to the local loop, the conditions of access to the transmission capacity available in the local loop;
- d)* the conditions of the facility sharing, in particular under co-location, the possibilities of locating the equipment of the entitled service provider and the available technical

circumstances in the premises of the obligated service provider or the alternative possibilities of location;

e) all the important information related to the architecture of the access network required for the conclusion of the contract on cession;

f) the essential technical parameters of the physical circuit applied in the access network;

g) the specifications concerning the technological equipment ensuring broadband transmission applicable in the local loop and the EMC requirements needed to avoid interference with other systems;

h) the prices and conditions of using the above services;

i) the rules of co-operation between the parties.

(4) The obligation of the obligated service provider to conclude a contract concerning the unbundling of the local loop does not obtain when the demand for granting local loop unbundling cannot be implemented for technical reasons or when the demand is met, the integrity of the network cannot be retained.

(5) The obligation of the obligated service provider to publish a reference offer concerning unbundling the local loop and the related facility sharing by the date according to Article 169 (1) shall obtain in the case of the service provider having significant market power in the telephone market at the time of the entry into force of this Act shall obtain only with regard to the of metallic twisted pair of the local loop.

Article 174

After the date according to Article 168 (1) the authority may prescribe that access be granted to the local loop and the obligation to conclude the contract concerning the joint use of assets related to this for the service provider with significant market power when the conditions according to Article 172 obtain with respect to a local loop of any physical circuit but with regard to the pair of metallic twisted pair of the local loop it shall do so in accordance with the provisions of separate legislation.

Article 175

(1) By the date according to Article 168 (1) the service provider with significant market power in the telephone service market at the time of the entry into force of this Act shall compile a reference offer concerning bit stream access and the related facility sharing and submit it to the authority for approval by the 15th day of January 2004 and, for the year 2005, based on accounting separation, by the 31st day of August 2004.

(2) The reference offer concerning bit stream access shall be compiled together with the offer concerning local loop unbundling.

(3) Beyond the provisions of Article 172 (2), the conditions of access to the available transmission capacity shall also be specified in the reference offer.

(4) The mandated service provider may provide bit stream access service with respect to a given local loop exclusively when in its reference offer it also offers local bit stream access on the given local loop and the related facility sharing.

(5) Otherwise, the rules applicable to the local loop unbundling shall be applied as appropriate to the bit stream access.

Article 176

By the date according to Article 168 (1) the service provider with significant market power in the leased-line service market shall provide the leased-line services with uniformed technical and useage conditions as specified in separate legislation and with the prescribed choice of services.

Article 177

(1) Pursuant to this Act, the minister shall designate the universal service providers at the latest by the 1st day of May 2004. Until their designation, the minister shall take action to have the universal service contracts in force at the time of the entry into force of this Act appropriate modified or terminated so as to ensure the continuity of services.

(2) The minister shall execute the universal service contracts according to Article 120 (1) with the designated service provider by the 1st day of July 2004 at the latest.

Article 178

(1) Until the date according to Article 168 (1), Articles 111 (1) and 112 (1) shall be applied to the service providers having significant market power in the telephone service market.

(2) Until the date according to Article 168 (1), the service provider having significant market power in the mobile radio phone service market shall enable its subscribers to select the carrier in the case of international calls in the manner specified in separate legislation.

Article 179

The service provider with significant market power in the markets of telephone, interconnection, mobile radio phone and leased-line services according to Articles 170-178 shall mean the service provider identified as such by the Communications Arbitration Committee upon the entry into force of this Act.

Article 180

(1) The licences according to Article 84 (1) issued pursuant to a concession contract concluded prior to the entry into force of this Act for a determined period shall remain in force during the period of validity of the concession contract.

Article 181

(1) The provisions of this Act shall be applied to the subscriber contracts of determined period concluded by the service provider having significant market power in the telephone service market prior to the 31st day of August 2003 from the date according to Article 168 (1) but at the latest from the 1st day of September 2004.

(2) Article 88 (2) shall be applied to statutory limitations commencing after the entry into force of this Act.

Authorisation

Article 182

(1) In relation to frequency management, the government shall be authorised to stipulate by decree

- a)* the national allocation of frequency bands;
- b)* the rules of the auction and tender issued to acquire the right to use frequencies;
- c)* the organisation and operation, control, tasks and financing of the authority performing the tasks of non-civilian purpose frequency management, the detailed rules concerning the order of non-civilian purpose frequency management and the organisations belonging to the scope of non-civilian purpose frequency management.

(2) In relation to electronic communications, the government shall be authorised to stipulate by decree

- a)* the functions and powers of the authority and the detailed rules of its procedures;
- b)* the system of preparing electronic communications for situations of emergency and the qualified periods, the tasks of agencies of public administration and ensuring the conditions of their operation;
- c)* the NTIA and the detailed rules concerning the order of the management of identifiers;
- d)* the rules of number portability;
- e)* the rules of carrier selection;
- f)* the order of co-operation between organisations performing electronic communications functions and organisations authorised to collect intelligence information and covert acquisition of data;
- g)* the requirements related to the quality of electronic communications services in relation to the protection of consumers;
- h)* the detailed rules concerning reference offers, network contracts and their conclusion;
- i)* the obligation of data protection and confidentiality for the electronic communications service provider, its employees members and proxies, the detailed rules of data handling, the special conditions concerning the protection of secrets, the handling of traffic and billing data, the conditions of identifier display and call rerouting;
- j)* the detailed rules concerning the operation, supervision, use, termination and resources of the Universal Electronic Communications Support Fund;
- k)* the rules concerning private-purpose networks different from this Act;
- l)* the detailed rules of the obligations that the authority may prescribe pursuant to Article 100 (3) with a view to accessing digital radio and television programmes;
- m)* the detailed rules of providing telegram service.

(3) In relation to frequency management, the minister shall be authorised to stipulate by decree

- a)* the rules of using civilian and joint purpose frequency bands;
- b)* the conditions of qualification for eligibility to draw up the technical plan required in certain cases for frequency designation in agreement with the minister in charge of the non-civilian purpose frequency management tasks;

c) the principles and detailed conditions of the transfer of the right of radio frequency usage;

d) the order of the official procedure related to ensuring individual right of use, in particular the detailed conditions of the frequency designation and radio licensing procedure, the detailed rules concerning the issue, modification, withdrawal, extension and refusal of the issue, individual rights of use, the conditions of exercising rights to frequency usage, the detailed rules of conditions which may be included in the frequency licence (frequency assignment, radio licence, rights of frequency usage), as well as the period of validity of the right of use to frequency;

e) the fees payable for the use of civilian purpose frequencies, the detailed rules of payment in agreement with the minister of finance;

f) the conditions of the Hungarian recognition of radio licences of foreign domicile;

g) the detailed rules of the certification of conformity and recognition as well as putting into circulation and commissioning of radio equipment and electronic communications terminal equipment and the authorisation of organisations assessing, controlling and attesting conformity;

h) the examination requirements related to radio amateurs; the order of examination and the conditions of issuing the certificate of examination

i) the order of activities of control, measurement service and interference elimination.

(4) In relation to electronic communications, the minister shall be authorised to stipulate by decree

a) the set of technical conditions related to electronic communications networks;

b) the fees of the procedures of the authority, their magnitude, mode and conditions of payment and the magnitude of the supervisory fee in agreement with the minister of finance;

c) the detailed conditions and technical requirements of the universal electronic communications service;

d) the fees payable for the commitment and use of identifiers and the detailed rules of payment in agreement with the minister of finance;

e) the magnitude of the contribution payable to the Universal Electronic Communications Support Fund and of the available subsidy, the calculation principles of the net avoidable costs or the mode of its determination, the methods of calculating the financial burden related to universal services, their compensation and sharing;

f) the detailed rules concerning the cost calculation of network services;

g) the conditions and procedural rules of interoperation of service providers and the central reference database operating in the interest of implementing number portability and the quality requirements of access to the database;

h) the rules concerning the fees of the telephone service provided by the telecommunication service provider with significant market power in the telephone service market and the rules related to the tariff packages related to the universal service in agreement with the minister of finance;

i) the rules related to the fee of broadcasting services in agreement with the minister of finance;

j) the rules related to the location of electronic communications structures in the course of settlement planning and development, the construction and modernisation of roads and public utilities, the installation and refurbishment of other structures and facilities;

k) the scope of data to be delivered by market players required for the performance of the tasks of the authority, the conditions of meeting the data delivery obligation of market players, the rules applicable to data handling and the keeping of registries by the authority;

- l)* the designation of the electronic communications service providers participating in defence tasks and the specification of their tasks of preparation ;
- m)* the requirements concerning the content of the technical descriptions of interfaces and the requirement of access to them;
- n)* the detailed rules of the separate keeping of accounting records;
- o)* the principles applicable in the course of market definition, market analysis, the designation of service providers having significant market power and the specifications of their obligations,
- p)* the rules concerning the establishment, operation and powers of the duty system of the informatics and communications sector, the obligations of the service providers concerning notification and contact maintenance;
- q)* the rules concerning the minimum set of leased-line services;
- r)* the rules concerning the designation of the universal service provider.
- s)* the rules concerning the subscriber contracts and entering into contracts

(5) The minister of economics and transport shall be authorised to stipulate the conditions of the certification of conformity of high-frequency electric equipment and equipment generating high-frequency signals or side-effects, the conditions of the statement of conformity of the manufacturer, the fundamental requirements of conformity and of the mutual recognition of certificates of conformity of foreign domicile by decree issued jointly with the minister.

(6) The minister in charge of non-civilian purpose frequency management shall be authorised to stipulate the following by decree in agreement with the minister:

- a)* the mode of applying the certificate of conformity for radio equipment using non-civilian purpose frequencies incorporated in Article 81 (1) and in other legal regulation on that basis and of the essential requirements and the deviations therefrom;
- b)* the order of frequency designation and radio licensing procedure controlling measurement service and interference elimination activity and data provision in the field of non-civilian purpose frequency management;
- c)* the rules of using non-civilian purpose frequency bands.

(7) The minister shall be authorised to stipulate the approach to protection and crossing of electronic communications structures with other types of structures by decree in agreement with the minister of economics and transport.

(8) The minister shall be authorised to specify the rules concerning support available for the use of universal electronic communications services for subscribers belonging to specific social groups by decree in agreement with the minister of health, social and family affairs.

Amended legislation

Article 183

(1) Article 5 (1)-(2) of Act LXII of 1993 on frequency management (Act on frequency management) shall be replaced by the following provision:

“(1) With a view to collaboration in the performance of the tasks of informatics and communications, the government shall set up the National Council for Communications and Informatics (hereinafter: the Council) consisting of 11 members.

(2) The members of the Council shall be delegated by the government upon the recommendation of the minister. The government shall decide on the recall of the members delegated by it upon the proposal of the minister.”

(2) Article 5 (5)-(6) of the Act on frequency management shall be replaced by the following provision:

“(5) Of the members

- a) three members shall be delegated by the National Radio and Television Body,
- b) one member shall be delegated by the Informatics Interest Reconciliatory Forum,
- c) one member shall be delegated by the Hungarian Academy of Sciences,
- d) one member shall be delegated by MTESZ (Association of the Scientific and Technical Societies),
- e) one member shall be delegated jointly by the organisations of telecommunications interest reconciliation.

(6) The Council shall be subordinated exclusively to the law, its members may not be instructed with regard to their activities.”

(3) Article 1 (2) of Act XXIII of 1992 on the legal status of civil servants shall be replaced by the following provision:

“(2) Unless otherwise provided by law, the provisions of this Act shall also apply to the legal relationship of civil servants of the Office of the President of the Republic, the Office of Parliament, the Office of the Constitutional Court, the Office of the Parliamentary Commissioner, the State Audit Office, the Council of Public Procurement, the National Land Fund Management Organisation, the Office of the National Radio and Television Body, the Economic Competition Office, the Secretariat of the Hungarian Scientific Academy and the National Communications Authority.”

(4) Article 88 (2) *s*) of Act XLII of 2000 on traffic by water shall be replaced by the following provision:

[The minister shall be authorised]

“(s) to determine the conditions and order of acquiring qualifications for navigation and the requirements of form and content of the document (certificate) to be issued with regard to education and the station managers of radio services in agreement with the minister of informatics and communications.”

(5) Article 56 (6) of Act XCVII of 1995 on aviation shall be replaced by the following provision:

“(6) The minister or the minister of defence – jointly with the minister of health, social and family affairs – shall specify by decree the types of special service licences, their technical and health conditions and the order of their issue and, with regard to the rules applicable to the station managers of radio services in agreement with the minister of informatics and communications.”

(6) Article 17 (3) of Act LXXXVII of 1999 on pricing (hereinafter 'Pricing Act') shall be replaced by the following provision:

“(3) In respect of communications services the activities identified in Article 16 shall be performed by the National Communications Authority, and not by the price regulator, and the Rules of the Act on Electronic Communications shall be applied to such procedure.”

(7) In the Table with title Services in Annex B) to the Pricing Act the following provisions

Service number (SZTJ)	Name	Price regulator
64.20.11.0 64.20.12.1 64.20.12.2.	Tariff of the universal telephone service, tariff of the telephone service provided by a service provider with significant market power on the market identified pursuant to Article 25 (2) (a) of Act XL of 2001.	minister for informatics and communications
64.20.21.0 64. 20.22.0	Tariff of the broadcasting service	minister for informatics and communications
64.20.16.0	Tariff of access to Internet service via telephone network	minister for informatics and communications
64.20.16.0	In respect of Internet service provided via telecommunications network the share of the telecommunications service tariff paid by the telecommunications service provider to the Internet service provider	minister for informatics and communications

shall be replaced by the provisions below:

Service number (SZTJ)	Name	Price regulator
64.20.11.0 64.20.12.1 64.20.12.2	Tariff of the universal electronic communications service	minister for informatics and communications
64.20.21.0 64. 20.22.0	Tariff of the broadcasting service	minister for informatics and communications
64.20.16.0	In respect of Internet service provided via fixed telephone network the share of the electronic communications service tariff paid by the electronic communications service provider to the Internet service provider	minister for informatics and communications

Article 184

The following provision shall replace

(1) Article 114/A (1) of Act I of 1996 on radio and television:

“(1) Program transmission may be commenced simultaneously with the notification to the registry introduced for this purpose.”

(2) The first sentence in Article 114/A (2) of Act I of 1996 on radio and television preceding the list:

“(2) The undertaking intending to pursue program transmission shall notify the body prior to the commencement of the activity.”

(3) Article 115 (4) of Act I of 1996 on radio and television:

“(4) The service area of the programme transmission company may not exceed two third of the maximum area of regional broadcasting as stipulated in this Act.”

Article 185

(1) The following provision shall replace Article 8 (1) a) and b) of Act CXXV of 1995 on national security services:

[Article 8 (1) The National Security Specialised Service]

“a) shall provide services upon written request within the limits of legal regulations with the special instruments and methods of gathering intelligence and covert acquisition of data for the intelligence gathering and covert data acquisition activities of organisations authorised thereto by law;

b) based on the requirements of the organisations authorised by law shall provide the special technical instruments and materials needed for the intelligence gathering and covert data acquisition activities;”

(2) The following provision shall replace Article 8 (6) of the Act on National Security Services:

“(6) The government shall determine the order of co-operation between the organisations authorised to gather intelligence information and covert acquisition of data and the national security specialised service.”

(3) The following provision shall replace Article 54 (1) j) of the Act on National Security Services:

/Article 54 (1) The National Security Services within the frame of gathering intelligence/

“j) may gather information from communications systems and other data storage devices”

Article 186

(1) Wherever a legal regulation refers to the Communications Authority, the Central Office of the Communications Authority, the authority, the Regional Office of Communications, this shall be understood as the National Communications Authority.

(2) Wherever legislation issued prior to the entry into force of this Act uses a definition, which in terms of content corresponds the definitions according to Article 188 of this Act, it shall be understood as the definition in this Act, in particular where

a) communications is mentioned, it shall also mean, *mutatis mutandis*, electronic communications,

b) where telecommunications is mentioned, it shall mean electronic communications,

c) where telecommunications service or structure is mentioned, it shall also mean electronic communications service or structure,

d) where a telecommunications network, equipment, or terminal equipment is mentioned, it shall mean electronic communications network, equipment or terminal equipment,

e) where telephone service or network is mentioned, it shall mean fix location telephone service or network

(3) Wherever a network contract or other contract related to electronic communications concluded prior to the entry into force of this uses a definition which in terms of its content corresponds to the definitions according to Article 188 of this, the provisions of paragraph (2) shall be applied as appropriate.

Harmonisation with European Union legislation

Article 187

(1) This Act, within the subject matter of the Europe Agreement concerning the establishment of an association between the Republic of Hungary and the European Communities and their Member States signed in Brussels on 16 December 1991, in line with Article 3 of Act I of 1994 promulgating the Agreement, contains regulations harmonised with the following legislation of the European Communities:

a) Regulation (EC) No 2887/2000 of the European Parliament and of the Council of 18 December 2000 on unbundled access to the local loop (Text with EEA relevance);

b) Directive 1999/5/EC of the European Parliament and of the Council of 9 March 1999 on radio equipment and telecommunications terminal equipment and the mutual recognition of their conformity, Articles 3 and 4, and Article 7(4);

c) Directive 1999/5/EC of the European Parliament and of the Council of 9 March 1999 on radio equipment and telecommunications terminal equipment and the mutual recognition of their conformity (Access Directive);

d) Directive 2002/20/EC of the European Parliament and of the Council of 7 March 2002 on the authorisation of electronic communications networks and services (Authorisation Directive);

e) Directive 2002/21/EC of the European Parliament and of the Council of 7 March 2002 on a common regulatory framework for electronic communications networks and services (Framework Directive);

f) Directive 2002/22/EC of the European Parliament and of the Council of 7 March 2002 on universal service and users' rights relating to electronic communications networks and services (Universal Service Directive);

g) 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);

h) Commission Directive 2002/77/EC of 16 September 2002 on competition in the markets for electronic communications networks and services (Text with EEA relevance).

Explanatory provisions

Article 188

For the purpose of this Act:

1. *Basic monitoring subsystem*: shall mean a system that enables communication and the accompanying data thereof by subscribers of an organisation performing electronic communications functions, or by the members of a group of subscribers (users) thereof to be selected at random from the entire range of users, representing at least 0.3 to 0.6% of the total number of subscribers (users), or not more than 0.3% if the number of subscribers exceeds 150,000 persons (generating maximum twice the average traffic calculated for one subscriber from the entire range of subscribers), but of not less than 60 subscribers or users in simultaneous connection to be fully, continuously and in the real time selected and made available at the access point without delay.

2. *Identifier*: shall mean a string of characters, consisting of letters, numbers and signs unambiguously identifying the addressee, that serves the purpose of making information or signals reach their destination, necessary for the operation of the electronic communications network, the provision of electronic communications services and the interoperation of electronic communications networks and services,.

3. *Identifier management*: shall mean all state activities which enable individual service providers to use the identifiers required to access communication networks or electronic communications services, taking into account international regulations. With regard to this Act, the activities associated with domain names, e-mail addresses and IP (Internet Protocol) addresses do not constitute part of the activities related to identifier management.

4. *Price squeeze*: shall mean a situation – in which competition is restricted – where an efficient service provider is unable to provide the output subscriber service at a profit, already provided in the relevant market by the service provider providing the network service, or by the undertaking controlled by it, controlling it or being controlled together with it – due to the restricted price margin, while using the network service – at a price developed by the service provider providing the network service, or by the undertaking controlled by it, controlling it or being controlled together with it.

5. *Flat rate Internet access call origination service (FRIACO)*: shall mean a network service, whereby subscribers' Internet calls originated from the caller's subscriber network termination point are transmitted to the interconnection point where the mandated service provider makes certain capacity available to the entitled service provider at the interconnection point against a flat rate fee.

6. *Roaming in a mobile radio communications network*: shall mean the utilization by subscriber of the operator of a mobile radio telephone network the network of another mobile radio telephone service provider or operator, whereby the subscriber is able to use the basic as well as, considering technical possibilities, all or part of the additional services and modes of calls available to it in the electronic service provider's network from whom it receives subscriber services in the other network used without becoming a subscriber thereto.

7. *Domestic call*: shall mean all calls originated and terminated domestically.

8. *Leased line*: shall mean all electronic communications facilities that provide transparent transmission capacity between network termination points, but do not contain switching functions controlled by the user.

9. *Bit stream access*: shall mean a two-way, digital high-speed network service, in the course of which the mandated service provider ensures for the entitled service provider full or shared access to the transmission capacity of its active network facilities

10. *Residential subscriber*: shall mean a natural person subscriber who declares that he shall use the subscriber service outside the scope of his business or professional activities.

11. *Universal electronic communications service*: shall mean a set of electronic communications services stipulated in this Act, available within the territory of the Republic of Hungary, in a predetermined quality, to all users, regardless of their geographical location, at an affordable price.

12. *Electronic communications structure*: shall mean track-line and track-type electronic communications structures and other; special structures required for electronic communications, which associated with wired-line and wireless connections, include covers, supports, protective and signalling equipment, etc., engineering objects, in particular, the accessories and support structures, antenna support structures (towers), poles, cable ducts, cable housings, channels, underground and surface signals and protective objects.

13. *Electronic communications service*: shall mean a service normally provided against remuneration, which consists wholly or mainly in the conveyance, and if applicable routing of signals on electronic communications networks, but exclude services providing or exercising editorial control over the content transmitted using electronic communications networks ; it does not include information society services, defined under separate legislation, which do not consist primarily in the conveyance of signals on electronic communications networks.

14. *Electronic communications service provider*: shall mean the operator of an electronic communications network or the provider of electronic communications service, which is a natural person or legal entity or a business undertaking without legal entity.

15. *Electronic communications activity*: shall mean the activity in the course of which signals, signs, texts, images, voice or messages of any other nature generated in any form that can be interpreted are transmitted via electronic communications networks to one or more users, including, in particular, the provision of electronic communications services, the operation of electronic communications networks and equipment, distribution of terminal equipment and related services.

16. *Rules concerning electronic communications*: shall mean this Act and any other legislation issued under this Act for the implementation of its provisions and the decisions of the authority.

17. *Electronic communications device*: shall mean all devices required to perform electronic communication activities, including, *inter alia*, equipment.

18. *Electronic communications facilities*: shall mean all the electronic communication devices and related facilities, including antennas..

19. *Electronic communications network*: shall mean transmission systems and, if applicable, equipment serving call routing, as well as other resources which make signal transmission between certain termination points possible by wire, wireless, optical or by other

electromagnetic means, including satellite networks, fixed and mobile land networks, electricity power line systems to the extent that they are used for transmitting signals, the networks used for broadcasting and cable television networks, regardless of the type of information conveyed.

20. *Operator of an electronic communications network*: shall mean any natural person, legal entity or business undertaking without legal entity that has the right of disposal or user's right over a public electronic communications network and related facilities.

21. *Electronic communications terminal equipment*: shall mean a product or part thereof designed to be connected to the electronic communications network either directly or indirectly in order to interoperate with the electronic communications network via the subscriber network termination point.

22. *Subscriber*: shall mean any natural person or legal entity or business undertaking without legal entity or other organisation, which is party to a contract with the provider of publicly available electronic communications services for the supply of such services.

23.. *Subscriber access point*: shall mean a network termination point through which the subscriber can have access to network functions and services provided via the network through the physical and logical connection of the electronic communications terminal equipment.

24. *Service provider providing subscriber access*: shall mean an electronic communications service provider that concluded a subscriber agreement with the subscriber for the physical and logical connection of the electronic communications terminal equipment to the electronic communications network or to a part thereof in order to use publicly available electronic communications services.

25. *Subscriber service*: shall mean publicly available electronic communications services that are not deemed to be network services under this Act.

26. *User*: shall mean a natural person, legal entity, business undertaking without a legal entity or any other organization using or requesting electronic communications activities, in particular electronic communications services.

27. *Physical co-location*: shall mean co-location in the case of which the equipment of the service provider entitled to co-location is accommodated within the facilities of the mandated service provider, at a specific location made available by the latter.

28. *Consumer*: shall mean any natural person who uses or requests publicly available electronic communications services for purposes that are outside his/her trade, business or profession.

29. *Distribution*: shall mean making available for the first time electronic communications equipment, and electric and electronic equipment that generates high-frequency signals or ancillary effects or devices which are components or accessories thereof, against a fee or free of charge, i.e. in particular through sales, other forms of transfer of ownership, storing, direct importation for own use, or in the case of production, commissioning.

30. *Geographic number*: shall mean a number specified in the National Table for Identifier Allocation (NTIA), a section, of which referring to a certain geographical location used to direct calls to the physical access point of a subscriber determined by the calling number assignment..

31. *Frequency management*: shall mean all state activities that serve the regulated national and international utilization of the radio spectrum with the aim to ensure the efficient use of the radio spectrum without any harmful interference, and to ensure frequencies for radio telecommunications services, radio astronomy and other non-radio telecommunications applications operated within radio services.

32. *Manufacturer*: shall mean a business entity responsible for the design, manufacturing, packaging, marking and placing the equipment on the market regardless of whether such tasks are carried out by itself or by another entity on its behalf. Entities making, for the purpose of placing on the market, significant modifications or upgrades to existing equipment which impact upon the essential requirements or using existing equipment to develop new units are also considered manufacturers. If the seat of a manufacturer is located outside the territory of the Republic of Hungary, the importer of the equipment shall be considered to be the manufacturer.

33. *Network integrity*: shall mean compliance with the set of technical requirements regarding the establishment, operation, modification and termination of the electronic communications network that ensures the undisturbed use of interoperating networks and access thereto, and that the data stored in such networks remain functionally unchanged.

34. *Network access point*: shall mean a point designated for the physical connection of one network to another through which access service is implemented.

35. *Network agreement*: shall mean an agreement between service providers for the use of and access to network services, including the agreement for access and interconnection.

36. *Network service*: shall mean the provision of access and/or interconnection services for another service provider, and ancillary services required for the supply thereof.

37. *Network termination point*: shall mean the physical and logical connection point or air interface through which access is provided to an electronic communications network by service providers.

38. *Tone dialling*: shall mean the use of voice frequency signals as specified by legislation.

39. *Harmonised frequency or frequency band*: shall mean the frequency or frequency band which, in the European Union, have been allocated for identical radio applications under identical terms and conditions for the use of such frequency.

40. *Efficient service provider*: shall mean the service provider the cost of which per unit of product or service is acceptable compared to international standards, taking into consideration the given market circumstances, the technology of service provision and the size of the service provider.

41. *Fixed location telephone service*: shall mean public telephone services to be used through

a fixed location subscriber termination point at a fixed location, such as publicly available telephone services not deemed mobile radiophone services.

42. *Fixed location telephone network*: shall mean a public telephone network facilitating the use of fixed location telephone services.

43. *Local sub-loop*: shall mean the section of the local loop used in a fixed location telephone network, which connects a local termination point with a certain intermediary access point.

44. *Local bit stream access*: shall mean bit stream access where the network facility is deemed to be a multiplexing and/or de-multiplexing equipment (e.g.: DSLM), connected to the local loop and placed in the fixed location telephone network,; the mandated service provider can continue to use the local loop for the provision of services.

45. *Local loop*: shall mean the physical circuit connecting the network termination point to the main distribution frame or equivalent facility in the fixed public telephone network.

46. *Access to the local loop*: shall mean full unbundled access and shared access to the local loop, which does not result in a change of title to the local loop.

47. *Shared access to the local loop*: shall mean the provision of access to the local loop or the local sub-loop owned by the mandated service provider for an entitled service provider, in the course of which the use of the local loop's or sub-loop's frequency spectrum above the voice band, used for the supply of services at the time of the submission of the request thereto, is allowed; the mandated service provider can continue to use for the provision of services the part of frequency spectrum not granted for access.

48. *Full unbundled access to the local loop*: shall mean the provision of access to the loop or the local sub-loop owned by the mandated service provider for an entitled service provider, in the course of which the use of the local loop's or sub-loop's full frequency spectrum is allowed.

49. *Location identification data*: shall mean any data processed in electronic communications networks, which indicates the geographical location of the terminal equipment of the user of an electronic communications service.

50. *Co-location*: shall mean the provision by the mandated service provider of physical premises and technical conditions for the entitled service provider for the adequate placement and connection of the equipment thereof through physical, distant and virtual co-location.

51. *Call origination service*: shall mean a form of network service whereby calls are transmitted from the caller's network termination point to the interconnection point.

52. *Carrier selection by call origination*: shall mean a form of carrier selection in which the service provider providing subscriber access ensures carrier selection by providing call origination service to the carrier service provider that has a legal relationship of subscription with the subscriber.

53. *Call termination service*: shall mean a form of network service whereby calls are transmitted from the interconnection point to the dialled subscriber's network termination

point.

54. *Carrier selection by call termination*: shall mean a form of carrier selection in which the service provider providing subscriber access ensures carrier selection by using call termination provided by the carrier service provider chosen by and being in legal relationship of subscription with the subscriber.

55. *Long run incremental cost calculation method (LRIC)*: shall mean a cost calculation method which utilizes the actual data in the service provider's accounting records and existing electronic communications structures as a starting point, and reassesses the actual data regarding tangible assets, intangible assets and operating costs and expenditures in light of the anticipated long run changes and efficiency factors of the operation, and, subsequently, allocates the items dependent on quantity to activities and products by using cost driver factors and cost- volume relationships considering a surcharge which assures the recovery of indirect costs..

56. *Access*: shall mean the making available of facilities and services to another undertaking under specific conditions, either on an exclusive or non-exclusive basis, for the purpose of providing electronic communications services. It covers, *inter alia*, access to network elements and related facilities, which involves, in particular

- the connection of equipment, by wire or wireless means (this includes, in particular, access to the local loop and to facilities and services necessary to provide services over the local loop),
- interconnection,
- bit stream access,
- access to the physical infrastructure, including buildings, underground facilities and towers,
- access to relevant software systems including operation support systems and access to number translation or systems offering equivalent functionality,
- access to land-line and mobile telephone networks, in particular for roaming,
- access to conditional access systems for digital television services

57. *Interface*:

a) *Network interface*: shall mean the connection surface of an electronic communications network, along with its physical and logical characteristics, that serves the provision of access to, or interconnection with, other electronic communications networks.

b) *Subscriber interface*: shall mean an interconnection surface for access to service, along with its physical and logical characteristics, that provides subscriber access to the electronic communications network.

58. *Internet access call origination service*: shall mean a form of network service, whereby the call, directed to access Internet service, is transmitted from the caller's subscriber network termination point to the interconnection point of the carrier service provider.

59. *Access to Internet service via the telephone network*: shall mean a service by which the user may access the Internet on the telephone network by connecting its terminal equipment to the telephone network termination point in order to use the data transmission service of the Internet service provider.

60. *Control*: shall mean the relationship set forth in Article 23 (2) of Act on Competition..

61. *Related equipment*: shall mean any device related to, or used for, the operation of the electronic communications network and the provision of the electronic communication service, including, *inter alia*, conditional access systems and electronic program guides

62. *Harmful interference*: shall mean interference which jeopardizes the functioning of a radio navigation service or other safety services or which otherwise seriously degrades, obstructs or repeatedly interrupts a radio communications service operating in accordance with applicable EU or national regulations.

63. *Device*: shall mean radio equipment and electronic communications terminal equipment.

64. *Output point*: shall mean the physical point of transfer for communication and accompanying data obtained with a monitoring system from the service provider's system in the course of intelligence information gathering and the covert acquisition of data to the National Security Service which is provided by the service provider at the place and in the form agreed as stipulated in Article 93 (2).

65. *Exclusive rights*: shall mean those rights conferred upon an undertaking by legislation or by administrative provisions, pursuant to which the undertaking with such rights may exclusively perform the given activity in a given geographic area.

66. *Facility sharing*: shall mean the shared use of electronic communications structures as well as electronic communications devices, including, *inter alia*, the shared use of information systems. Co-location is a special form of facility sharing.

67. *Carrier service provider*: shall mean the electronic communications service provider which ensures the accessibility of the called subscriber or service in cases determined by the subscriber, pursuant to the network agreement concluded with the service provider providing subscriber access.

68. *Carrier selection*: shall mean an option available to the subscriber of an electronic communications service to access the called subscriber or service by the selection of the participating carrier service provider that provides publicly accessible telephone service through its interconnection with the service provider of subscriber access which option can be used in either of the following ways:

Carrier pre-selection: shall mean that the subscriber provides for the carrier service provider in an agreement, and the call may be made without the use of a carrier selection prefix.

Call-by-call carrier selection: shall mean that the subscriber selects the carrier service provider, which may be different from the pre-selected one, on a call-by-call basis by dialling the carrier-selection prefix.

69. *Publishing*: shall mean that all information to be published pursuant to this Act and in accordance with the relevant procedure in the Authority's official journal and on the websites of the Authority is made available immediately.

70. *Special rights*: shall mean rights conferred upon a limited number of undertakings by legislation or by administrative provisions in a given geographic area, which

a) are assigned to entitled undertakings that are selected and whose number is limited in accordance with terms and conditions that are not objective, proportionate and non-

discriminatory, or

b) ensure for certain undertakings statutory or regulatory advantages under terms and conditions that are not objective, proportionate and non-discriminatory that have substantial influence on the possibility of other undertakings to pursue the same electronic communications activity in the same geographic area under substantially identical terms and conditions.

71. Mobile radio telephone network: shall mean a ground-based radio telecommunications network which facilitates two-way telephone connections between users moving about freely within a wide area.

72. Mobile radio telecommunications service: shall mean a publicly available telephone service through the use of which any subscriber thereto, moving about within a wide area, is able to originate calls from its not fixed equipment connected to the network termination point of a radio telecommunications network in order to establish communication with another network terminal, to which access is provided by way of the selection procedure defined in the National Table for Identifier Allocation. This service is designed for voice transmission and related services (e.g. data transmission services, sending SMS, WAP, GPRS).

73. Multiplexing: shall mean electronic communications services in the course of which a single standard digital signal flow is generated of radio and television program signals and other data signals for transmission to the program deliverer.

74. Program distribution: shall mean the real-time transmission of the signals produced by the broadcaster without any alteration in content, via a wire (cable) network, or via a non-free-to-air broadcasting radio telecommunication system, from the premises of the broadcaster, or from the termination point of the program transmission network, by inserting a separate organization, to the receiving device of users who are legally authorized thereto, with the exception of the signals transmission with the aid of a network suitable for the connection of less than ten receiving devices. A cable system within the boundaries of a plot of land is not considered to be program distribution.

75. Free-to-air broadcasting: shall mean a one-way radio communications process effected with a terrestrial or satellite system, intended for a theoretically unlimited number of users with suitable receiving device, for the transmission of sound, image or signals of another nature.

76. Program transmission: shall mean the real-time electronic forwarding of the broadcasting signals generated by the broadcaster to radio and television free-to-air broadcasting stations and program distribution networks, without any alteration in content through wire (cable) networks, and terrestrial or satellite not free-to-air broadcasting radio communications networks.

77. Program delivery: shall mean the real-time electronic forwarding of the broadcasting signals generated by the broadcaster to the receiving devices of users, without any alteration in content (through free-to-air broadcasting or program distribution).

78. High-frequency signal: shall mean radio frequency signals not used for radio communications purposes.

79. *High-frequency side-effect*: shall mean high-frequency signals which are generated in objects designed for different purposes (in devices, equipment, vehicles etc.) as a by-product of spark-discharge, gas-discharge or semi-conductor regulation.

80. *High-frequency electrical equipment*: shall mean non-electronic communications equipment for industrial, scientific, medical, household or similar purposes used for the generation of electromagnetic energy in a small space, or for the utilization thereof.

81. *Non-identifiable subscriber number*: a number not shown in the annex to the telephone bill issued to the subscriber, containing an itemised list of calls, in order to protect personal data.

82. *Non-geographic number*: shall mean a telephone number in a special group of numbers determined by the National Table of Identifier Allocation (NTIA), the physical address of the access thereto may only be established by number translation.

83. *International call*: shall mean a call where in order to reach the called subscriber or service, an international prefix must be dialled first.

84. *Net avoidable cost*: shall mean the cost that could be avoided by the efficient service provider, if it was not mandated to provide universal service. When calculating net avoidable cost, incomes and other (indirect) benefits that the universal service provider would lose by terminating the provision of universal service shall be taken into consideration.

85. *Public electronic communications network*: shall mean an electronic communications network used wholly or mainly for the provision of publicly available electronic communications services.

86. *Publicly available telephone service (telephone service)*: shall mean an electronic communications service available to all, which enables the origination and termination of domestic and international calls with call routing based on the domestic and international numbering plan as well as access to calling emergency numbers and – subject to the conditions – other services (including, *inter alia*, operator services, directory enquiry services, subscriber directory and public payphone, premium-rate services, services for disabled subscribers, and services irrespective of the geographical location).

87. *Public telephone network (telephone network)*: shall mean a public electronic communications network through which partly or fully publicly available telephone services are provided suitable for voice and other type of communication in particular, telefax and data communication between the network termination points,.

88. *Public pay telephone*: shall mean a telephone terminal equipment available to the general public, for the use of which the means of payment may include coins or credit/debit cards or pre-payment cards, including cards for use with dialling codes.

89. *Interconnection*: shall mean the physical and logical linking of electronic communications networks used by the same or different electronic communications service providers in order to allow the users of one service provider to exchange information with the users of the same or another service provider, or to access services provided by another service provider. Services may be provided by the parties involved or other parties who have access to the

network. Interconnection is a specific type of access implemented between service providers that have title to or the right to use public electronic communications networks.

90. *Radio station*: shall mean one or more transmitters or receiving devices, or a group of transmitters or receiving devices, including accessories for the purpose of the realization of a radio communications or radio astronomy service at a given place.

91. *Radio device*: shall mean a product or part thereof which is suitable for providing telecommunications by way of transmitting or receiving, or transmitting and receiving radio waves with the use of the radio frequency spectrum allocated for the purposes of terrestrial and space communications.

92. *Radio waves*: shall mean electromagnetic waves that propagate in space without an artificial conductor.

93. *Radio spectrum*: shall mean a frequency range from 9kHz to 3,000GHz.

94. *Radio service*: shall mean all radio telecommunications services and the radio astronomy service defined by legislation in harmony with the International Radio Regulations.

95. *Radio communications network*: shall mean an electronic telecommunications network, whereby information is transmitted wholly or mainly through the transmission and reception of radio frequency signals.

96. *Output subscriber service*: shall mean subscriber services associated with some network services, for the economical provision of which by a service provider other than the service provider providing the network service, the use of the relevant network service is necessary at the given level of technical development. For the purposes of this definition, services substituting the subscriber services in a reasonable way with respect to its purpose of use, price, quality and terms and conditions of performance shall also be taken into consideration.

97. *Reference offer*: shall mean an offer describing the details of network services offered and published on a mandatory basis by a service provider with significant market power on the basis of the decisions of the Authority, together with its legal, technical and financial conditions.

98. *Main distribution frame*: shall mean – within the meaning of local loop – a facility suitable for connection, housing the individual separation devices of the relevant local loop and sub-loop.

99. *Emergency call*: shall mean an urgency call sent to the police, ambulance or fire department using short call numbers or the harmonised European emergency call number.

100. *Transnational markets*: shall mean the market identified by the European Commission, covering the European Union or substantial part thereof.

101. *Telegram*: shall mean some written communication posted by the user through the electronic communications network or the postal service provider, which is forwarded by the service provider to the addressee by delivery or through electronic communications terminal equipment.

102. Distant co-location: shall mean co-location in the case of which the equipment of the service provider entitled to co-location is accommodated close to the electronic communication facility of the mandated service provider, but on separate premises.

103. Installation: shall mean the construction of radio stations, a radio communications system or network and bringing them into a condition suitable for operation by transmitting and receiving radio frequency signals without permanent or experimental operation.

104. Fully distributed cost calculation method (FDC): shall mean the establishment and division of costs and expenditures, actually incurred by the service provider in relation to the ordinary business activities and services of the service provider into cost categories, activities and types of services. A form of the FDC method is HCA-FDC which shall mean the method of calculating fully distributed costs on the basis of historic cost allocation.

105. Intelligence information gathering and the covert acquisition of data (within the meaning of this Act): shall mean the selection and attachment of information generated and forwarded during and in relation to electronic communications activities by electronic communications equipment in the electronic communications network as well as their recording with technical devices and learning about their content.

106. Transfer price: shall mean the consideration, calculated in accordance with a certain method, for a unit of service provided by the service provider through one of its lines of business to another .

107. Space segment: shall mean a part of the satellite communications system which comprises the satellite, GPS, remote sensing and remote control functions and terrestrial equipment providing logistic support for the satellites.

108. Line(s) of business: shall mean areas of business, within the scope of activities of the service provider, to be kept separately in the accounting records, which operate as if they were independent business entities.

109. Business secret: shall mean business secrets according to Article 81 of the Civil Code.

110. Virtual co-location: shall mean co-location in the case of which the mandated service provider, acting as instructed by the entitled service provider that possesses and operates the equipment connected to the main distribution frame, satisfying the needs of the service provider entitled to co-location.