

AMENDED DRAFT  
Electronic Communications Act (ZEKom-1).

I. GENERAL PROVISIONS

Article 1  
(content of the Act)

This Act shall govern the conditions for the provision of electronic communications networks and electronic communications services, the provision of universal service, the ensuring of competition and the management of the radio frequency spectrum and numbering resources, lay down the conditions for restrictions on ownership rights, specify the rights of users, govern the security of networks and services and their operation in emergency situations, ensure safeguarding of the right of users of public communications services to privacy of communications, govern the settlement of disputes between entities in the electronic communications market, govern the competencies, organisation and operations of the Communications Networks and Services Agency of the Republic of Slovenia (hereinafter: the Agency) as an independent regulatory authority, as well as the competencies of other bodies performing tasks under this Act, and regulate other matters relating to electronic communications.

Article 2  
(aim of the Act)

(1) The aim of this Act is to promote the development of electronic communications networks and services in the Republic of Slovenia, and thereby also the economic and social development of the country generally, develop the internal market of the European Union and enable the legitimate interests of all of its citizens to be exercised. A further aim of this Act is to ensure effective competition in the electronic communications market, efficient use of the radio frequency spectrum and numbering resources, universal service and protection of the rights of users, including disabled users and users with special social needs, and the right of users of public communications services to enjoy privacy of communications.

(2) This Act transposes the following Directives into the legislation of the Republic of Slovenia:

- Directive 2002/19/EC of the European Parliament and of the Council of 7 March 2002 on access to, and interconnection of, electronic communications networks and associated facilities (Access Directive) (OJ L 108, 24.4.2002, p. 7), as last amended by Directive 2009/140/EC of the European Parliament and of the Council of 25 November 2009 amending Directives 2002/21/EC on a common regulatory framework for electronic communications networks and services, 2002/19/EC on access to, and interconnection of, electronic communications networks and associated facilities and 2002/20/EC on the authorisation of electronic communications networks and services (OJ L 337, 18.12.2009, p. 37) (hereinafter: Directive 2009/140/EC);
- 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) (OJ L 108, 24.4.2002, p. 21), as last amended by Directive 2009/140/EC;
- 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) (OJ L 108, 24.4.2002, p. 33), as last amended by Directive

2009/140/EC;

- 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) (OJ L 108, 24.4.2002, p. 51), as last amended by Directive 2009/136/EC of the European Parliament and of the Council of 25 November 2009 amending Directive 2002/22/EC on universal service and users' rights relating to electronic communications networks and services, Directive 2002/58/EC 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, and Regulation (EC) No 2006/2004 on cooperation between national authorities responsible for the enforcement of construction protection laws (OJ L 337, 18.12.2009, p. 11) (hereinafter: Directive 2009/136/EC);

- 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) (OJ L 201, 31.7.2002, p. 37), as last amended by Directive 2009/136/EC;

- Commission Directive 2002/77/EC of 16 September 2002 on competition in the markets for electronic communications networks and services (OJ L 249, 17.9.2002, p. 21);

- Directive 2006/24/EC of the European Parliament and of the Council of 15 March 2006 on the retention of data generated or processed in connection with the provision of publicly available electronic communications services or of public communications networks and amending Directive 2002/58/EC (OJ L 106, 13.4.2006, p. 54).

### Article 3 (meaning of terms)

The terms used in this Act shall have the following meanings ascribed to them:

1. 'Application program interface' (API) shall mean a software interface between applications, made available by broadcasters or service providers, as well as resources in enhanced digital television equipment for digital television and radio services.
2. 'Access point' shall mean an element of an electronic communications network that enables a connection to be established between an access network and the backbone network of a natural person or legal entity providing electronic communications networks.
3. 'Access network' shall mean part of the electronic communications network that, directly or via distribution points, connects end-users to the nearest access point.
4. 'Electronic communications network' shall mean transmission systems and, where applicable, switching or routing equipment and other resources, including inactive network elements, which permit the conveyance of signals by wire, radio, optical or other electromagnetic means, including satellite networks, fixed (circuit- and packet-switched, including internet) and mobile terrestrial networks, electricity cable systems (to the extent that they are used for the purpose of transmitting signals), networks used for radio and television broadcasting, and cable TV networks, irrespective of the type of information conveyed.
5. 'Electronic communications equipment' shall mean all the associated facilities of electronic communications networks that enable electronic communications services. They shall include, *inter alia*, the switching and routing equipment or all types of base stations or electrical cable systems, when they are used for the purpose of transmitting signals in the provision of electronic communications services, including radio and television broadcasting and cable television and cable communications, irrespective of the type of information conveyed.

6. 'Electronic communications service' shall mean a service normally provided for remuneration which consists wholly or mainly in the conveyance of signals on electronic communications networks, including telecommunications services and transmission services in networks used for broadcasting, but excluding services providing or exercising editorial control over content transmitted using electronic communications networks and services, and excluding information society services that do not include, wholly or mainly, the transmission of signals on electronic communications networks.
7. 'Numbering resources' shall mean numbers, codes, names and addresses, including ENUM numbers, which are mappings of mnemonic internet addresses (domain). Numbering resources shall not include internet addresses (numerical addresses under the internet protocol) required for establishing communications between network termination points, and numbers, codes, names and addresses used exclusively within an individual public communications network.
8. 'Electronic mail' shall mean any text, voice, sound or image message sent over a public communications network which can be stored on the network or in the recipient's terminal equipment until the recipient collects it.
9. 'ENUM' shall mean the standard protocol which maps mnemonic internet addresses from the domain name system (DNS) into telephone numbers and vice versa.
10. 'ENUM number' shall mean the mnemonic internet address of a telephone number specified by the ENUM protocol.
11. 'European Telephony Numbering Space' shall mean the European numbering space, in parallel with national numbering spaces, which is used to provide pan-European services.
12. 'Geographic number' shall mean a number from the telephone numbering plan of the Republic of Slovenia under Article 63 of this Act, where part of its digit structure contains geographic significance used for routing calls to the physical location of the network termination point.
13. 'Household communications installation' shall mean the electronic communications network within a building that enables one or more subscribers to be connected to a public communications network.
14. 'Cell ID' shall mean the identity of the cell from which a mobile telephony call originated or in which it terminated.
15. Under this Act, 'emergency situation' shall mean war or state of emergency, a situation arising as a result of a natural or other disaster, or a catastrophic network breakdown.
16. 'Service provider' shall mean a natural person or legal entity which provides publicly available communications services or which has informed the competent regulatory authority of its intent to provide publicly available communications services.
17. 'Universal service provider' shall mean a natural person or legal entity providing universal service or a part thereof.
18. 'Publicly available telephone service' shall mean a service available to the public for originating and receiving, directly or indirectly, national and/or international calls and access to emergency services through a number or numbers in a national or international telephone numbering plan.
19. 'Public communications network' shall mean an electronic communications network used wholly or mainly for the provision of publicly available electronic communications services and enabling the transmission of information between network termination points.
20. 'Public communications service' shall mean a publicly available electronic communications service.
21. 'Public communications service of connectivity to the broadband communications network' shall mean a public communications service which provides user connectivity to the broadband communications network.

22. 'Public pay telephone' shall mean a telephone available to the public, for the use of which the means of payment may include coins and/or credit/debit cards and/or pre-payment cards, including cards for use with dialling codes.
23. 'Cable ducts' shall mean a horizontal civil engineering structure consisting of ducts, pipes and the like that facilitates the setting-up and maintenance of telecommunications conduits.
24. 'Catastrophic network failure' shall mean a severe breakdown in an electronic communications network which cannot be eliminated in one day.
25. 'Call' shall mean a connection established by means of a publicly available electronic communications service allowing two-way voice communication.
26. 'Emergency call' shall mean a call to an emergency number operated by bodies appointed to deal with such calls in the Republic of Slovenia, including the police and ambulance, rescue and relief services.
27. 'Communication' shall mean any information exchanged or conveyed between a finite number of parties by means of a publicly available electronic communications service. This shall not include any information conveyed as part of a broadcasting service to the public over an electronic communications network, except to the extent that the information can be related to an identifiable subscriber or user receiving the information.
28. 'Communications facility' shall mean a building or civil engineering structure that is part of the electronic communications network and associated infrastructure, including devices; it may also be a device, equipment or infrastructure that is not a facility under construction regulations.
29. 'End-user' shall mean a user not operating public electronic communications networks or providing publicly available electronic communications services.
30. 'Local loop' shall mean the physical circuit connecting a network termination point to the main distribution frame or equivalent facility in the fixed public electronic communications network.
31. 'Personal data breach' shall mean a breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of or access to personal data transmitted, retained or otherwise processed in connection with the provision of a publicly available electronic communications service in the European Union (hereinafter referred to as 'the EU').
32. 'Interconnection' shall mean the physical and logical linking of public communications networks used by the same or a different operator in order to allow users of one operator to communicate with users of the same or another operator, or to access services provided by another operator. Services may be provided by the parties involved or by other parties who have access to the network. Interconnection is a specific type of access implemented between public network operators.
33. 'Transnational markets' shall mean the markets referred to in Article 110 of this Act covering the EU or a substantial part thereof in more than one Member State.
34. 'Subscriber' shall mean any natural person or legal entity who or which is party to a contract with a provider of publicly available electronic communications services for the supply of such services.
35. 'Non-geographic number' shall mean a number from the numbering plan of the Republic of Slovenia referred to in Article 63 of this Act that is not a geographic number. It shall include, *inter alia*, mobile, freephone and premium-rate numbers.
36. 'Unsuccessful call attempt' shall mean a communication in which a telephone call has been successfully connected but not answered, or there has been a network management intervention.
37. 'Net neutrality' shall mean the principle by which all internet traffic on a public communications network is treated equally irrespective of content, application, service,

equipment, source and purpose of communication.

38. 'Facility as part of an associated electronic communications infrastructure' shall mean a building, section of a building or independent premises within a building in which electronic communications equipment is installed, as well as a civil engineering facility such as cable ducts, aerial masts or antennas.

39. 'Open communication networks' shall mean public communication networks to which all operators may have access under the same conditions.

40. 'Network termination point' shall mean the physical point at which a subscriber is provided with access to a public communications network; in the case of networks involving switching or routing, the network termination point shall be identified by means of a specific network address, which may be linked to a subscriber number or name.

41. 'Operator' shall mean an undertaking providing a network or service. A natural person or legal entity that enables free-of-charge access to the internet with no profitable intent, where internet service provision is not part of its profitable activity, shall not be deemed to be an operator.

42. 'Network operator' shall mean a natural person or legal entity which provides public communications networks or associated facilities, or which has notified a competent regulatory authority of the intended provision of a public communications network or associated facilities.

43. 'Operator access' shall mean making available facilities and/or services to another undertaking, under defined conditions, on either an exclusive or non-exclusive basis, for the purpose of providing electronic communications services, including when they are used for the delivery of information society services or broadcast content services. It shall cover, *inter alia*: access to network elements and associated facilities, which may involve the connection of equipment by fixed or non-fixed means (in particular, this includes access to the local loop and to facilities and services necessary to provide services over the local loop); access to physical infrastructure, including buildings, ducts and masts; access to relevant software systems, including operational support systems; access to information systems or databases for pre-ordering, provisioning, ordering, maintaining and repair requests, and billing; access to number translation or systems offering equivalent functionality; access to fixed and mobile networks, in particular for roaming; access to conditional access systems for digital television services; and access to virtual network services.

44. 'Location data' shall mean any data processed in an electronic communications network or by an electronic communications service indicating the geographical position of the terminal equipment of a user of a publicly available electronic communications service.

45. 'Traffic data' shall mean any data processed for the purpose of the conveyance of a communication on an electronic communications network or for the billing thereof.

46. 'Associated facilities' shall mean the services, physical infrastructure and other facilities or resources associated with an electronic communications network and/or an electronic communications service which enable and/or support the provision of services via that network and/or service, or which have the potential to do so, and shall include, *inter alia*, buildings or entries to buildings, building wiring, antennas, towers and other supporting structures, ducts, conduits, masts, manholes and boxes.

47. 'Associated services' shall mean those services associated with an electronic communications network and/or an electronic communications service that enable and/or support the provision of services via that network and/or service, or have the potential to do so, and shall include, *inter alia*, number translation or systems offering equivalent functionality, conditional access systems and electronic programme guides, as well as other services such as identity, location and presence services.

48. 'Presentation of calling-line identification' shall mean a function that enables a called

user to identify the network termination point from which a call originates on the basis of the number or code assigned to that network termination point.

49. 'Presentation of connected line identification' shall mean a function that enables a calling user to identify the network termination point in which the call ends on the basis of the number or code assigned to that network termination point.

50. 'Consumer' shall mean any natural person who uses or requests a publicly available communications service for purposes which are outside his or her trade, business or profession.

51. 'Radio amateur service' shall mean a radio communications service for the purpose of self-training, intercommunication (establishment of interconnections) and technical research carried out by radio amateurs, i.e. by duly authorised persons interested in radio techniques solely for personal reasons and without pecuniary interest.

52. 'Radio amateur satellite service' shall mean a radio communications service using space stations on Earth satellites for the same purposes as ordinary radio amateur services.

53. 'Radio frequency protection ratio' shall mean the minimum value of the wanted-to-unwanted signal ratio at the entry point into a receiver under specific conditions so that the defined quality of receipt of the wanted signal is achieved at the exit point from the receiver.

54. 'Radiocommunications services' shall mean electronic communications services provided through the use of radio frequencies.

55. Under this Act, 'radio frequency' shall mean a part of the radio frequency spectrum and it is defined by a central frequency and the width of the radio-frequency channel, the upper and lower limit frequency of the radio-frequency channel, or a statement of individual carrier frequencies.

56. 'Broadcasting' shall mean a radiocommunications service in which the transmission and distribution of radio or television programmes are intended for direct public reception in open space without choice of selection. The term 'programme' shall have the same meaning as ascribed to it in the act governing the media.

57. 'Distribution point' (point of concentration or distribution) shall mean an intermediate access point that provides an individual operator with access to every part of a building (every subscriber) separately.

58. 'Spectrum allocation' shall mean the designation of a given radio frequency band for use by one or more types of radio communications service, where appropriate, under specified conditions.

59. 'Conditional access system' shall mean any technical measure and/or arrangement whereby access to a protected radio or television broadcasting service in intelligible form is made conditional upon subscription or other form of prior individual authorisation.

60. 'Approval' shall mean the personal consent issued by a user or subscriber in accordance with the act governing personal data protection.

61. 'Information society service' shall mean any service normally provided for remuneration, at a distance, by electronic means and at the individual request of a recipient of services. 'At a distance' shall mean that the service is provided without the two parties being present simultaneously. 'By electronic means' shall mean that the service is sent initially and received at its destination by means of electronic equipment for the processing (including digital compression) and storage of data, and is entirely transmitted, conveyed and received by wire, radio, optical means or other electromagnetic means. 'At the individual request of a recipient of services' shall mean that the service is provided through the transmission of data upon individual request. Information society services shall include, in particular, the sales of goods and services, services of access to information or advertising over the internet, and access to communications network services, transmission of data or storage of the recipient's data on the communications network.

62. 'Value-added service' shall mean any service which requires the processing of traffic data, or location data other than traffic data, beyond what is necessary for the transmission of communication or the billing thereof.
63. 'Broadband network' shall mean a public communications network that enables the transmission of data at high speed.
64. 'Wide-screen television service' shall mean a television service that consists wholly or partly of programmes produced and edited to be displayed on a full-height wide-screen television. The 16:9 format shall be the reference format for wide-screen television services.
65. 'Harmful interference' shall mean interference which endangers the functioning of a radio navigation service or of other safety services, or which otherwise seriously degrades, obstructs or repeatedly interrupts a radiocommunications service operating in accordance with national, international or EU regulations.
66. 'Number' shall mean a number or prefix as defined by recommendation E.164 of the International Telecommunication Union (ITU).
67. 'Emergency call numbers' shall mean the single European emergency call number '112', the police number '113', the single European missing children hotline number '116000', and all other numbers so designated in the numbering plan.
68. 'Telecommunications line' shall mean a complete below- or above-ground link between two or more points along which one-way, two-way or both-way communication is possible.
69. 'User' shall mean a natural person or legal entity that uses or requests a publicly available electronic communications service.
70. 'User ID' shall mean a unique alphanumerical identifier assigned to persons when they apply or register for an internet access service or internet communication service.
71. Under this Act, 'controller' shall mean a natural person or legal entity, public authority, agency or any other body which, alone or jointly with others, determines the purposes and means of processing personal data.
72. 'Vertically integrated undertaking' shall mean an undertaking that operates at different levels of the retail and wholesale provision of networks and services.
73. 'Provision of an electronic communications network' shall mean the establishment, operation, control or making available of such a network.
74. 'Lawful interception of communications' shall mean a procedure ordained pursuant to the act governing the criminal procedure or the act governing the Slovenian Intelligence and Security Agency, wherein the contents, circumstances and facts relating to communications at a specific point in the public communications network are collected.
75. 'Enhanced digital television equipment' shall mean set-top boxes intended for connection to television sets, or integrated digital television sets able to receive digital interactive television services.
76. For the purposes of this Act, 'capacity of a network termination point' shall mean the existence of a network termination point at a specific location with a determinable data rate.

## II. CONDITIONS FOR THE PROVISION OF ELECTRONIC COMMUNICATIONS NETWORKS AND SERVICES

### Article 4

(provision of electronic communications networks and services)

Any natural person or legal entity may provide electronic communications networks and/or electronic communications services, subject to the conditions as set out in this Act and in the implementing regulations issued pursuant thereto, and in accordance with other legislation in force, provided this does not endanger public order, human life and health, public security or

the defence of the state.

Article 5  
(notification)

(1) Notification must be given in writing to the Agency prior to the commencement or alteration of the provision of public communications networks and/or public communication services.

(2) An undertaking with a notification from the Agency shall acquire the right, under the conditions of and in accordance with Article 90 of this Act, to enter into negotiations on interconnections with other undertakings and, where applicable, acquire operator access or interconnections from them, and the possibility of being selected as a universal service provider in accordance with Article 117 of this Act. The criteria and procedures for the imposition of specific obligations on undertakings are contained in Chapters VII and X and Articles 90 and 117 of this Act.

(3) The notification referred to in the preceding paragraph must contain the information that the Agency requires in order to maintain an official register of undertakings and to exercise supervision, as follows:

1. name, address and tax number (natural persons);
2. company name, registered office, tax number and an indication of the legal representative (legal entities);
3. a short description of the public communications network and/or public communications service, including a description of the characteristic physical and environmental features of the network and facilities, and the method of their implementation;
4. the envisaged date of commencement or alteration of the provision of public communications networks and/or public communications services.

(4) An undertaking must report changes to the information referred to in points 1, 2 and 3 of the preceding paragraph to the Agency within 30 days of their occurrence. An undertaking must report changes to the information referred to in point 4 of the preceding paragraph prior to the envisaged date, except in the case of *force majeure*, where the information may be reported within eight days of the envisaged date. It shall be deemed that there has been a change in the information referred to in point 4 of the preceding paragraph if the provision of public communications networks and/services does not actually commence on the envisaged date.

(5) The Agency shall enter the undertaking in the official register within seven days of receiving the notification and all the necessary information referred to in the third paragraph of this Article, at the same time sending the undertaking confirmation of entry in the official register. Entry in the official register shall not constitute a condition for the implementation of the rights and obligations that the undertaking has under this Act. Confirmation shall not constitute an administrative act, nor shall it in itself create rights and obligations under this Act.

(6) Where a notification does not contain all the necessary information referred to in the third paragraph of this Article, the Agency shall, within seven days of receipt of the notification, instruct the undertaking to supplement it by a deadline that may not be shorter than eight days.

(7) The Agency shall, by means of a general act, prescribe in detail the content and form of the notification referred to in the first paragraph of this Article and the content of the information referred to in the third paragraph of this Article. The Agency shall also, by means of a general act, determine the form and content of the confirmation referred to in the fifth paragraph of this Article.

(8) An undertaking must notify the Agency in writing at least 90 days prior to the planned cessation of provision of public communications networks and/or public communications services. An undertaking must also describe in this notification the method of providing permanent retention of data on the recording of lawful interception and of electronic communications traffic data for the entire period for which the keeping of records is required pursuant to this Act, and must state in particular how the retained materials will be accessible. The provisions of the act governing personal data protection and the act governing the protection of documents shall be applied in relation to the method and conditions of retention.

## Article 6

(payment of a fee on the basis of a notification)

(1) Undertakings must pay an annual fee to the Agency on the basis of the notification referred to in the first paragraph of the previous Article. The fees referred to in this Article shall cover the costs incurred by the Agency in the implementation of the provisions of this Act, with the exception of the provisions of Chapters V and VI.

(2) The level of the fee referred to in the preceding paragraph shall be set by multiplying the number of points by the value of a point. The number of points shall be nominally equal to 0.1 % of the annual revenue that an undertaking realises from the provision of public communications networks and/or public communications services in the territory of the Republic of Slovenia, where the number of points may not be less than 100, irrespective of annual revenue. The value of a point shall be set on the basis of a tariff, which shall be a general act of the Agency.

(3) An undertaking must notify the Agency of the amount of the revenue referred to in the preceding paragraph by 31 March each year for the previous year. Where an undertaking fails to do so by this deadline, the Agency shall regard its total revenue from the preceding year, obtained on the basis of data from the Agency of the Republic of Slovenia for Public Legal Records and Related Services, as the revenue referred to in the preceding paragraph.

(4) Should it have grounds for doubting the veracity of the information reported by an undertaking, the Agency, or a qualified auditor selected by the Agency, may review the information and estimate the revenue, with the costs of this procedure being borne by the undertaking. Where the estimated revenue deviates substantially from the reported revenue referred to in the second paragraph of this Article, the Agency shall take the estimated revenue into account in its calculation.

(5) In issuing the tariff referred to in the second paragraph of this Article, the Agency shall pay due regard to the necessary coverage of the costs referred to in the first paragraph of this Article in relation to the planned objectives and tasks laid down in its programme of work, and to the balance of funds from the previous year. The tariff shall be published in the Official Gazette of the Republic of Slovenia and shall enter into force following its publication.

(6) The proposed tariff referred to in the preceding paragraph shall contain a special explanatory note stating the reasons for the adoption or amendment of the tariff and the objectives it is designed to achieve, and must be published in advance in accordance with Article 204 of this Act. The Agency must submit the proposed tariff to the Government of the Republic of Slovenia (hereinafter: Government) no later than by 31 October of the current year, together with the programme of work and the financial plan for the next calendar year and the audited financial statements for the previous calendar year. If the Government does not issue its approval by 15 December of the current year, the tariff currently in force shall be applied until the entry into force of the new tariff.

(7) Prior to the issuing or amendment of the tariff, the costs referred to in the first paragraph

of this Article must be established and estimated and a deadline set, which may not be shorter than 15 days or longer than two months, by which the liable entities referred to in the first paragraph of this Article may submit their opinions, remarks and proposals regarding the planned issuing or amendment of the tariff. Discussions may also take place at this time between the relevant parties.

Article 7  
(setting and payment of fees)

- (1) The fee referred to in the preceding paragraph shall be set by the Agency in a decision setting the fee.
- (2) Fees shall be set in advance for the current calendar year.
- (3) In the first calendar year in which the obligation to pay a fee arises, the Agency shall set the fee as one-twelfth of the annual fee multiplied by the number of months remaining from the occurrence of the liability to the end of the year. However, it may not amount to less than one-twelfth of the annual fee.
- (4) An entity liable to pay a fee for the calendar year in which it ceases the provision of a public communications network and/or public communications service shall pay the fee on the basis of the number of months in which it provided the public communications network and/or public communications service, but not less than one-twelfth of the annual fee. The Agency shall, at the request of the liable entity, amend a decision setting the fee that has already been issued and return any advance payment to the liable entity within 30 days of delivery of the amended decision setting the fee.

Article 8  
(supervision)

The Agency shall oversee the implementation of the provisions of this Chapter.

III. CONSTRUCTION OF NETWORKS AND ASSOCIATED INFRASTRUCTURE

Article 9  
(spatial planning, construction and maintenance)

- (1) For the purposes of spatial planning, a public communications network and associated infrastructure shall be considered commercial public infrastructure.
- (2) The construction of public communications networks and associated infrastructure, the construction of electronic communications networks and associated infrastructure for the requirements of security, the police, defence, and protection, rescue and relief, and the construction of other electronic communications networks and associated infrastructure on, over or under real estate owned by entities of public law shall be deemed to be for the public benefit.
- (3) The maintenance of communications facilities which are part of the networks and associated infrastructure referred to in the preceding paragraph shall be deemed to be maintenance work for the public benefit within the meaning of construction regulations even if they are not intended for the provision of a commercial public service. The following shall be deemed to be maintenance work for the public benefit on communications facilities:
  1. the completion and upgrading of existing communications facilities or equipment of electronic communications networks (e.g. installation or replacement of equipment, including the replacement of overhead cable supports, increasing of capacity, installation of

communications cables in existing pipes, reconstruction, relocation, protection and repairs);  
2. the strengthening and replacement of existing antenna systems and their raising or lowering;

3. the replacement of existing containers;

4. implementation of the required earthing or the expansion of the existing earthing in order to replace a container/tower, lightning protection, machine installations, electrical installations and the necessary increase in the existing electrical connection power.

(4) The minister responsible for electronic communications (hereinafter: the minister) shall specify, with regard to the level of complexity of construction, the simple communications facilities which do not require a construction permit under construction regulations, and shall prescribe what is deemed to be maintenance of communications facilities over and above the works referred to in the preceding paragraph.

(5) Unless the actual and technical possibilities do not allow it, the communications networks and associated infrastructure referred to in the second paragraph of this Article must be constructed so as to enable their shared use for the purposes of environmental protection, restriction of unnecessary encroachments into the environment, and the protection of public health and public safety. To this end, construction of these communications networks must always provide for and install an access point enabling the shared use of the access part of the network, on which the Agency shall decide in accordance with Article 91 of this Act.

(6) In the construction of multi-apartment and commercial buildings, communications infrastructure must be designed and built into the common areas of the building. A distribution point must be planned and implemented in the design and construction of this infrastructure so as to provide an individual operator with a connection to every part of the building (every subscriber) separately. The same shall also apply, as appropriate, to the reconstruction of household communications infrastructure.

(7) The Agency shall, by means of a general act, regulate in detail technical and other issues arising from the implementation of the fifth and sixth paragraphs of this Article.

(8) Local communities shall promote the construction of electronic communications networks and associated infrastructure within the sphere of their competencies and, where appropriate, cooperate with the Agency. In doing so they shall, in particular, lay down the conditions for the construction of electronic communications networks and associated infrastructure in their spatial planning documents, conclude easement and other agreements with operators on their infrastructure, notify operators and the Agency of planned future modifications of existing infrastructure, and may plan the construction of open public communications networks.

#### Article 10 (joint construction)

(1) An investor in the communications networks referred to in the second paragraph of the previous Article must, not later than 30 days prior to the issuing of the order to produce the project design documentation required for the acquisition of a construction permit or, when a construction permit is not required, not later than 60 days prior to the commencement of works, notify the Agency of the planned construction and invite interested joint investors in electronic communications networks and associated infrastructure to engage in joint construction of the facilities. An investor in other types of commercial public infrastructure must, in the same timeframe as the investor in communications networks, notify the Agency of the planned construction and invite interested investors in electronic communications networks to express their interest in inclusion in electronic communications networks and associated infrastructure being planned. The Agency must publish on its website the investors' notices regarding the commencement of planning not later than seven days after

receipt, with the appropriate invitations to interested parties to decide on the invitation by a deadline laid down by the investor and notify the investor and the Agency of their interest. The deadline may not be shorter than 20 days from the day of publication.

(2) Where joint investors demonstrate an interest in joint construction under the procedure referred to in the preceding paragraph of this Article, the investor in communications networks and associated infrastructure referred to in the second paragraph of the previous Article must offer interested joint investors the opportunity to conclude an appropriate contract in proportion to the investment and notify the Agency thereof. If the investor and an interested joint investor fail to agree on the conclusion of this contract and its content, the Agency shall decide on the matter, at the request of one of the parties, under the procedure referred to in Article 218 of this Act, where its decision must be objective, transparent, non-discriminatory and proportionate. After the appropriate contract has been concluded or the Agency's decision become enforceable, the investor must plan and construct the communications networks and associated infrastructure in such a way as to increase capacity in line with the interest demonstrated.

(3) The obligations of an investor in communications networks and associated infrastructure referred to in the first to third paragraphs of this Article shall also apply to maintenance works for the public benefit on the communications facilities referred to in the third paragraph of the previous Article.

(4) An investor in other types of commercial public infrastructure (such as transport, energy, utilities and water infrastructure) must plan its networks in such a way that, as far as the technical possibilities allow, an electronic communications network and associated infrastructure may be constructed along with it at the same time, in line with the interest demonstrated under the procedure referred to in the first paragraph of this Article.

(5) Where construction of the communications network and associated infrastructure referred to in the second paragraph of the previous Article or of other commercial public infrastructure is financed from public funds, the investors must lay empty cable ducts of sufficient capacity when constructing this infrastructure if the information in the register referred to in the first paragraph of Article 14 of this Act shows that the planned area of construction does not yet have such cable ducts and has not acquired a joint investor referred to in the first paragraph of this Article. Cable ducts so constructed must be made available to all natural persons or legal entities providing electronic communications networks and associated infrastructure under equal conditions.

#### Article 11 (use of public funds)

(1) Funds for the construction of a broadband network or the provision of a public communications service of connectivity to the broadband communications network may also be provided from public funds in accordance with the regulations governing state aid monitoring.

(2) Public funds for construction of a broadband network may only be provided and used if the following conditions are cumulatively met:

1. a specific area of the Republic of Slovenia is not sufficiently covered by a broadband network or this network is not available to everyone under conditions comparable with the majority of other areas of the Republic of Slovenia with regard to the speed and price of broadband access;
2. there is no market interest in construction of a broadband network;
3. broadband networks must be planned and constructed as open communications networks;
4. transparency of selection of contractors for the construction of a broadband network and of operators of broadband network operators is ensured.

(3) Public funds for provision of a public communications service of connectivity to the broadband communications network may only be provided and used if the following conditions are cumulatively met:

1. public communications services of connectivity to the broadband communications network are not available to all households in a specific area of the Republic of Slovenia under conditions comparable with the majority of other areas of the Republic of Slovenia with regard to the speed and price of broadband access;

2. no market interest has been demonstrated in providing a public communications service of connectivity to the broadband communications network under the conditions referred to in the previous point.

(4) Whoever expresses a market interest in constructing a broadband network must construct it within three years from notifying the ministry responsible for electronic communications (hereinafter: the ministry) and the Agency of their interest in writing, and in the areas and to the extent indicated in their expression of interest. The Agency shall keep a record of the market interest demonstrated in the construction of a broadband network.

(5) The Agency shall carry out checks of the openness of the broadband networks constructed using the funds referred to in the first paragraph of this Article, and of compliance with the construction obligations referred to in the preceding paragraph by persons who have demonstrated an interest.

#### Article 12

(relocation or modification of other installations and the subsequent construction of other installations)

(1) An operator that wishes to construct a public communications network and associated infrastructure may, in the request to establish easement, request the relocation or modification of other installations, but only when the public communications network could not be built and other installations could be relocated or modified without negative effects on the use thereof, and when the shared use of installations under the conditions referred to in Article 91 is not possible.

(2) The costs of relocating or modifying installations must be fully covered by the network operator that requested the relocation or modification.

(3) The subsequent construction of other installations must be carried out in such a way as to not disturb the existing public communications network and associated infrastructure.

#### Article 13

(relocation and protection of existing communications networks)

(1) If an existing communications network and associated infrastructure as referred to in the third paragraph of Article 9 of this Act and entered in the register referred to in the first paragraph of Article 14 of this Act has to be relocated or protected on account of the construction of utilities and other structures, facilities and installations, the investor in the planned construction of utilities and other structures, facilities and installations must inform the owner of the network requiring relocation and protection at least 30 days prior to the planned commencement of works, and allow an authorised person of the owner to be present and exercise professional supervision of the execution of works. In the opposite case, the investor shall be liable to the owner for any damage caused.

(2) The relocation and protection referred to in the preceding paragraph may, upon agreement with the investor, also be carried out by the owner of the network referred to in the preceding paragraph or by a contractor authorised by the owner.

(3) The costs of relocation and protection shall be borne by the investor in the construction of utilities and other structures, facilities and installations, unless the investor in the construction of the utilities and other structures, facilities and installations and the owner of the network referred to in the first paragraph of this Article requiring relocation and protection stipulate otherwise by agreement.

(4) An investor in the planned construction of utilities and other structures, facilities and installations shall not be liable for any damage as stated in the first paragraph of this Article, nor shall it bear the costs of relocation or protection, if the network and associated infrastructure referred to in the first paragraph of this Article are not entered in the register referred to in the first paragraph of Article 14 of this Act, unless the owner of the network referred to in the first paragraph of this Article can prove that the investor was aware of the existence of the network and a proposal for entry in the register had already been submitted.

#### Article 14 (entry in the register)

(1) The owner of a communications network and associated infrastructure referred to in the second paragraph of Article 9 of this Act must supply information on the types and location of the networks, and of the facilities as far as they form part of the associated infrastructure, directly to the body responsible for surveying and mapping, for the purpose of in the register of infrastructural networks and facilities, in accordance with the regulation governing entry in this register. Every amendment to this information shall be reported to the competent body within three months of its occurrence.

(2) The owner of a public communications network and associated infrastructure must, in addition to the information referred to in the preceding paragraph, supply information on the existing state of affairs and the capacity of the network termination point directly to the body responsible for surveying and mapping, for the purpose of entry in the register referred to in the preceding paragraph, in accordance with the regulation referred to in the preceding paragraph. Every amendment to this information shall be reported to the competent body within three months of its occurrence. The information contained in the record of the existing state of affairs and the capacity of the network termination point shall not be public. In addition to the body responsible for surveying and mapping, the Agency shall have access to all the information entered pursuant to this paragraph for requirements relating to implementation of this Act, as shall the bodies responsible for the implementation of Article 11 of this Act. The Agency shall, by means of a general act, prescribe in detail the information to be entered and the method of collection of the information, determine the categories of other users by method of access to this information in order to provide adequate protection of any business secrets of owners, and regulate other matters arising from implementation of this provision.

(3) The Agency may, for requirements relating to implementation of this Act, require persons liable under the first paragraph of this Article to supply information on the availability of the networks and facilities referred to in the first paragraph of this Article, on which it shall keep its own records, and allow interested parties to inspect this information in relation to procedures it is conducting.

#### Article 15 (supervision)

The Agency shall oversee the implementation of the provisions of this Chapter and of the regulations and acts issued pursuant thereto, and cooperate with the inspectorate responsible

for construction in doing so.

#### IV. EXPROPRIATION AND RESTRICTION OF OWNERSHIP RIGHTS

##### Article 16

(withdrawal or restriction of ownership or other real rights in the construction of public communications networks)

- (1) The construction, installation, operation or maintenance of public communications networks and associated infrastructure in accordance with regulations shall be for the public benefit.
- (2) A public communications network must be planned so as to minimise disturbance to the real estate of another.
- (3) Ownership or other real rights to real estate may be revoked or restricted for the public benefit when required due to the construction, installation, operation or maintenance of a public communications network and associated infrastructure.
- (4) Ownership or other real rights to real estate shall be revoked or restricted under the procedure and in the manner laid down by the act governing the expropriation of real estate and the act governing real rights, unless this Act determines otherwise.
- (5) A network operator that wishes to carry out the works referred to in the first paragraph of this Article on, above or below the real estate of another may act as the eligible expropriator in an expropriation procedure or as the party entitled to easement in an easement procedure.
- (6) It shall be assumed that a decision in a procedure of expropriation or the establishment of easement for the benefit of a network operator is a matter of urgency within the meaning of the act governing the expropriation of real estate and the restriction of ownership rights. If the administrative body responsible for deciding such matters opts not to use the urgency procedure under the act governing the expropriation of real estate and the restriction of ownership rights, it must explain and justify its decision.

##### Article 17

(networks serving the requirements of security, police, defence, and protection, rescue and relief services)

The provisions of the previous Article shall also apply to electronic communications networks and associated infrastructure serving the requirements of security, police, defence, and protection, rescue and relief services.

##### Article 18

(establishment of easement on real estate owned by entities of public law in the construction of electronic communications networks that are not public communications networks)

- (1) The construction, installation, operation or maintenance of electronic communications networks that are not public communications networks as referred to in Articles 16 and 17 of this Act, and of the associated infrastructure, on the real estate of entities of public law in accordance with regulations shall be for the public benefit.
- (2) The electronic communications network referred to in the preceding paragraph must be planned so as to minimise disturbance to the real estate of the entity of public law.
- (3) Ownership or other real rights to real estate owned by entities of public law may be encumbered by easement for the benefit of a legal entity or natural person providing electronic communications networks that are not networks as referred to in Articles 16 and 17

when this is necessary in order to construct, install, operate and maintain the network and associated infrastructure.

(4) Unless this Act determines otherwise, in the cases referred to in the preceding paragraph, ownership or other real rights to real estate owned by entities of public law shall be encumbered by easement under the procedure and in the manner laid down by the act governing the expropriation of real estate and the restriction of ownership rights, and the act governing real rights.

(5) A natural person or legal entity that provides an electronic communications network that is not a network as referred to in Articles 16 and 17 of this Act and that wishes to carry out the works referred to in the first paragraph of this Article above or below real estate owned by an entity of public law may, in the procedure of establishing easement, act as the party entitled to easement.

#### Article 19 (easement)

(1) Under this Act, easement shall be a real right which, for the party entitled to easement referred to in Articles 16, 17 and 18 of this Act, comprises the following entitlements:

1. the construction, installation, operation and maintenance of an electronic communications network and associated infrastructure;
2. access to the electronic communications network and associated infrastructure for the purposes of the operation and maintenance thereof;
3. the removal of natural obstacles in the construction, installation, operation and maintenance of an electronic communications network.

(2) An entitled party must exercise its entitlements referred to in the preceding paragraph so as to cause minimal disturbance to the owner of the real estate and place the least possible burden on the servient estate. If the owner of the real estate suffers damage in the exercise of these entitlements, the responsible party must compensate for the damage, in accordance with the Code of Obligations.

#### Article 20 (establishment of easement)

(1) Easement shall be established to the extent and for the period required for the construction, installation, operation and maintenance of an electronic communications network and for the period of operation of the electronic communications network and associated infrastructure.

(2) For the purpose of establishing easement, the party entitled to easement shall submit a draft contract to the owner of the real estate.

(3) A provision on the admissibility of the shared use of the communications facilities of the party entitled to easement by those parties and by other natural persons and legal entities that provide electronic communications networks in accordance with the provisions of this Act, and a provision on the amount of monetary compensation for the easement, shall be mandatory components of the contract.

(4) The monetary compensation referred to in the preceding paragraph may not exceed the reduced value of the servient real estate or the actual damage and lost profit, including due to the admissibility of the shared use of the communications facilities of the party entitled to easement by those parties and by other natural persons and legal entities that provide electronic communications networks in accordance with the provisions of this Act, and to the restrictions on investors referred to in the first to third paragraphs of Article 13 of this Act

upon the relocation of public communications networks.

(5) The provisions of the second and fourth paragraphs of this Article shall not be applied when easement is established on the basis of a draft contract of the operator of other commercial public infrastructure on which easement is established in accordance with the acts governing commercial public infrastructure.

(6) Without prejudice to the provision of the third paragraph of this Article, easement in the construction of public communications networks and associated infrastructure financed from public funds under Article 11 of this Act on real estate owned by the state or self-governing local community shall be free of charge.

(7) If the owner of the real estate fails to sign the draft contract within ten days of receiving it, the party entitled to easement may request that the competent administrative body decide on the establishment of easement in accordance with Articles 16, 17 and 18 of this Act.

(8) The party entitled to easement must submit a copy of the signed contract referred to in the third paragraph of this Article to the Agency not later than 30 days after signing it. In the supervisory procedure, the Agency shall verify only whether the contract complies with the requirements referred to in the third paragraph of this Article.

## Article 21

(conditions for decision-making by the competent body)

(1) In deciding on the establishment of easement, the competent administrative body must determine and consider whether:

1. the acquisition of easement is a prerequisite for the construction, installation, operation or maintenance of an electronic communications network and associated infrastructure;
2. the electronic communications network and associated infrastructure was planned so as to minimise disturbance to the real estate of another;
3. the exercise of easement will significantly inconvenience the owner of the real estate.

(2) Significant inconvenience to an owner of real estate as referred to in point 3 of the preceding paragraph shall be deemed to occur if:

1. access to the real estate (to the land or a structure thereon) by the owner of the real estate is prevented or rendered substantially more difficult;
2. the performance of activities by the owner of the real estate is prevented or rendered substantially more difficult;
3. the value of the real estate (land or a structure thereon) is substantially reduced.

## Article 22

(decision of the competent administrative body)

(1) The competent administrative body shall establish easement by decision to an extent and for the period required for the construction, installation, maintenance or operation of the electronic communications network and for the period of operation of the electronic communications network and associated infrastructure. A provision on the admissibility of the shared use of the communications facilities by the party entitled to easement and by other natural persons and legal entities that provide electronic communications networks in accordance with the provisions of this Act shall be a mandatory component of the decision on the establishment of easement.

(2) The party entitled to easement must send a copy of the final decision referred to in the preceding paragraph to the Agency within 30 days.

Article 23  
(termination of easement)

(1) Easement shall terminate on the basis of an agreement between the two parties or upon expiry of the period for which it was established.

(2) Easement may terminate pursuant to a decision of the competent administrative body if it is found that:

1. at the request of one of the parties, easement is no longer required;
2. at the request of the owner of the real estate, the entitled party has not commenced exercise of the entitlements within three years, unless reasonable grounds exist for the non-commencement.

V. RADIO FREQUENCY SPECTRUM

1. General provisions

Article 24  
(management of the radio frequency spectrum)

(1) The radio frequency spectrum is a limited natural resource of important social, cultural and economic value.

(2) National bodies shall, in accordance with acts of international law applicable in the Republic of Slovenia, ensure the effective and undisturbed use of the radio frequency spectrum of the Republic of Slovenia and the rights of the Republic of Slovenia to orbital positions.

(3) The Agency shall manage the radio frequency spectrum of the Republic of Slovenia on the basis of a public authorisation, and in doing so shall adhere to the strategic guidelines of the ministry and the strategic guidelines of the Republic of Slovenia and the EU.

Article 25  
(strategic planning and coordination of radio spectrum policy)

(1) The Agency and the competent state bodies shall cooperate with the Commission and the bodies of other Member States in the strategic planning, coordination and harmonisation of use of the radio spectrum in the EU. To this end, they shall take into consideration, *inter alia*, the economic, safety, health, public interest, freedom of expression, cultural, scientific, social and technical aspects of EU policies, as well as the various interests of radio spectrum users, with the aim of optimising the use of the radio spectrum and avoiding harmful interference.

(2) By cooperating with the Commission and with the bodies of other Member States, the Agency and the competent state bodies shall promote the coordination of radio spectrum policy approaches in the EU and, where appropriate, harmonised conditions with regard to the availability and efficient use of the radio spectrum necessary for the establishment and functioning of the internal market in electronic communications.

Article 26  
(radio frequency band allocation plan)

(1) At the proposal of the minister, the Government shall, by decree, adopt a radio frequency band allocation plan that determines radio communications services in relation to radio frequency bands, the method of use of radio frequency bands and other issues relating to their use.

(2) The Agency shall compile the expert material for the draft decree referred to in the preceding paragraph in accordance with acts of international law governing the radio frequency spectrum and applicable in the Republic of Slovenia.

Article 27  
(plan of use of radio frequencies)

(1) The plan of use of radio frequencies, which must comply with the plan referred to in the preceding paragraph, shall be adopted by the Agency by means of a general act.

(2) In the general act referred to in the preceding paragraph, the Agency shall define in detail the purpose of use and the method of allocation of radio frequencies within the radio frequency bands set aside for individual radio communications services in the decree referred to in the previous Article, and lay down the technical parameters for the use of radio frequencies.

(3) The Agency shall adopt the general act referred to in the first paragraph of this Article with due regard to the requirements of national security and defence, protection against natural and other disasters, and aviation safety.

(4) The Agency shall adopt the general act referred to in the first paragraph of this Article:

1. with respect to radio frequencies set aside for the requirements of national security and defence and of protection against natural and other disasters, in agreement with the ministry responsible for defence, the ministry responsible for internal affairs and the director of the Slovenian Intelligence and Security Agency;
2. with respect to radio frequencies set aside for the requirements of aviation safety, in agreement with the ministry responsible for transport.

Article 28  
(technological neutrality)

(1) All types of technology used for electronic communications services and meeting the minimum technical requirements in accordance with the purpose of use of radio frequencies under the general act referred to in the preceding Article may be used in the radio frequency bands defined in the plans referred to in Article 26 of this Act as available for electronic communications services in accordance with EU regulations.

(2) Without prejudice to the provision of the preceding paragraph, the Agency shall, in the general act referred to in the previous Article, provide for proportionate and non-discriminatory restrictions on the types of radio network technology or types of wireless access technology used for electronic communications services where this is necessary to:

1. prevent harmful interference;
2. protect public health against electromagnetic fields;
3. ensure technical quality of service;
4. ensure maximisation of radio frequency sharing;

5. safeguard efficient use of the spectrum;
  6. ensure compliance with the general interest objective under the second paragraph of Article 29 of this Act.
- (3) Prior to deciding whether to apply restrictions for a reason referred to in point 2 of the preceding paragraph, the Agency shall acquire a prior opinion from the ministry responsible for the environment.

#### Article 29 (service neutrality)

(1) All electronic communications services meeting the minimum technical requirements within radio frequency bands may be provided in the radio frequency bands defined in the plan referred to in Article 26 of this Act as available for electronic communications services, as laid down in the general act referred to in Article 27 of this Act.

(2) Without prejudice to the provision of the preceding paragraph, the Agency shall, in the general act referred to in Article 27 of this Act, prescribe the provision of specific electronic communications services within an individual radio frequency band if it assesses that this is necessary for:

1. safety of life;
2. the promotion of social, regional or territorial cohesion;
3. the avoidance of inefficient use of radio frequencies;
4. the promotion of cultural and linguistic diversity and media pluralism through the allocation of radio frequencies for broadcasting services.

(3) Without prejudice to the provisions of the first and second paragraphs of this Article, the Agency shall, in the general act referred to in Article 27 of this Act, determine a prohibition of provision of any other electronic communications service within a specific radio frequency band if it assesses that this is necessary for a reason referred to in point 1 of the preceding paragraph.

#### Article 30 (review of restrictions and measures in relation to the provision of technological and service neutrality)

The Agency shall, at regular intervals of time which may not be longer than three years, review the necessity of the restrictions and measures under the second paragraph of Article 28 and the second and third paragraphs of Article 29 of this Act. The Agency shall publish the results of the review on its website.

#### Article 31 (use of radio frequencies)

(1) Radio frequencies in the Republic of Slovenia shall be used pursuant to a general authorisation under the general act referred to in Article 27 of this Act, or to a decision allocating radio frequencies when the Agency assesses, in the general act referred to in Article 27 of this Act, that this is necessary to:

1. prevent harmful interference;
2. ensure technical quality of service;
3. safeguard efficient use of the spectrum;

4. ensure compliance with general interest objectives in the allocation of radio frequencies for broadcasting services.

(2) Without prejudice to the provision of the preceding paragraph, no decision allocating radio frequencies need be acquired for radio frequencies set aside under the general act referred to in Article 27 of this Act for the requirements of national security and defence and protection against natural and other disasters.

(3) The Government shall, at the proposal of the minister responsible for defence, regulate the management and allocation of the radio frequencies referred to in preceding paragraph by decree.

(4) The Agency shall compile a survey of the allocated radio frequencies containing details on which natural persons or legal entities have been allocated specific radio frequencies, but not containing details of the radio frequencies referred to in the second paragraph of this Article. The information contained in the survey of allocated radio frequencies shall be public. The Agency shall publish the survey of allocated radio frequencies and update it on a regular basis.

## Article 32

(provision of radio amateur services)

(1) Radio amateurs may use radio frequencies set aside for radio amateur and radio amateur satellite services under the general act referred to in Article 27 of this Act on the basis of an amateur radio licence.

(2) Foreign radio amateurs may use the radio frequencies referred to in the preceding paragraph if they have a valid amateur radio licence issued by the European Conference of Postal and Telecommunications Administrations (CEPT). The Agency shall issue foreign radio amateurs that do not possess a valid CEPT amateur radio licence with a temporary licence, with the second and third paragraphs of this Article being applied *mutatis mutandis*.

(3) The Agency shall issue the licence referred to in the first paragraph of this Article in accordance with the provisions of the act governing the general administrative procedure, upon application from a radio amateur or a society or federation of societies of radio amateurs that encloses with the application a certificate attesting to completion of the radio amateur's examination, or an application from a legal entity that encloses with the application proof of the registration of the association or other legal entity pursuant to the act governing the organisation of societies, along with a valid amateur radio licence of a member of the society.

(4) In addition to the elements laid down in the act governing the general administrative procedure, an amateur radio licence shall contain:

1. details on the holder of the amateur radio licence;
2. the call sign allocated;
3. the radio amateur's class;
4. the period of validity of the amateur radio licence.

(5) The Agency shall lay down the method of implementation of this Article in detail by means of a general act.

(6) The holders of amateur radio licences referred to in the first and second paragraphs of this Article shall not be liable to pay an annual fee to the Agency for use of the radio spectrum referred to in the first paragraph of this Article.

## 2. Procedure

## 2.1 Procedure for the issuing of a decision allocating radio frequencies

### Article 33

(procedure for the issuing of a decision allocating radio frequencies)

(1) The Agency shall issue a decision allocating radio frequencies in accordance with the general act on the plan of use of radio frequencies, under the provisions of the act governing the general administrative procedure and following a prior public invitation to tender in cases determined by this Act. The procedures for the allocation of radio frequencies must be objective, transparent, proportionate and non-discriminatory.

(2) A decision shall be issued on the basis of a public invitation to tender when it is established in the procedure referred to in Article 36 of this Act that efficient use of a specific radio frequency may only be ensured by restricting the number of decisions allocating radio frequencies issued.

(3) A decision allocating radio frequencies for broadcasting and a decision allocating radio frequencies for the provision of public communications services to end-users shall be issued on the basis of a public invitation to tender, without the procedure referred to in Article 36 of this Act. If the Agency receives an initiative from an interested party for a public invitation to tender concerning the use of available frequencies for broadcasting or radio frequencies for the provision of public communications services to end-users, it shall take a written position on the initiative within 15 days of receiving it.

(4) Without prejudice to the provision of the preceding paragraph, the Agency shall issue a decision allocating radio frequencies for the broadcasting services referred to in the second and third paragraphs of Article 53 of this Act without a public invitation to tender.

(5) Without prejudice to the provision of the third paragraph of this Article, the Agency shall issue a decision allocating radio frequencies for broadcasting to broadcasting service providers without a public invitation to tender if another act deems this necessary in order to comply with public interest objectives.

(6) The Agency shall issue a decision allocating radio frequencies to a natural person or legal entity selected under a transparent and open procedure (of the ministry or a local community) as the operator using budget funds of the constructed broadband network for an area in which this network has already been constructed. The decision shall be issued pursuant to the act governing the general administrative procedure and without the procedure referred to in Article 36 of this Act.

### Article 34

(coordinated allocation of radio frequencies in connection with joint selection procedures)

(1) If the use of specific radio frequencies has been coordinated, the conditions and procedures of access agreed upon and the natural persons or legal entities allocated radio frequencies selected in accordance with international agreements and EU regulations, these persons and entities shall acquire the right to use these radio frequencies in the Republic of Slovenia on the basis of a decision issued pursuant to this Act.

(2) Where the general act referred to in Article 27 of this Act prescribes the use of radio frequencies on the basis of a decision allocating radio frequencies, the Agency shall issue the decision pursuant to the provisions of the act governing the general administrative procedure and without a prior public invitation to tender procedure. If all the conditions prescribed for the allocation of radio frequencies under this Act have been met in the selection procedure referred to in the preceding paragraph, the Agency may not impose additional conditions, criteria or procedures that could restrict, change or delay the issuing of the decision allocating

radio frequencies.

(3) Natural persons or legal entities that acquire the right in the Republic of Slovenia to use the radio frequencies referred to in the first paragraph of this Article without a decision being issued by the Agency may use these frequencies only in accordance with the selection decision of EU institutions (hereinafter: selection decision) and the EU regulation on the basis of which it was issued, and must also meet all the conditions contained therein. The Agency must notify these persons or entities accordingly of their rights and of the method of their exercise in the Republic of Slovenia. In doing so, the Agency shall take into account the selection decision and the EU regulation on whose basis it was issued.

(4) The Agency shall monitor and oversee the use of the radio frequencies referred to in the first paragraph of this Article and, in doing so, pay due regard to EU regulations, including any requirement to report to the Commission.

#### Article 35

(issuing of a decision allocating radio frequencies)

(1) An application to commence a procedure to acquire a decision allocating radio frequencies must, in addition to the elements laid down by the act governing the general administrative procedure, contain the information that the Agency requires to maintain the official register of beneficiaries of decisions allocating radio frequencies and to oversee the use of radio frequencies, as follows:

1. name, address and tax number (natural persons);
2. company name, registered office, tax number and an indication of the legal representative (legal entities);
3. an indication of the radio frequency to which the application relates and the purpose of use of this radio frequency;
4. an indication of the geographical area of use of the radio frequency;
5. information on the envisaged technical solution, particularly information on the envisaged antenna system and radio equipment, the information required in order to make an assessment on radiation, and statements regarding the location of the facilities, harmful interference and the cost-effectiveness of use of the radio frequency.

(2) When no public invitation to tender is required, the Agency must issue and deliver a decision allocating radio frequencies to an applicant within 42 days of receipt of the application and, at the same time, insert the information on the allocation into the review of allocated radio frequencies.

(3) Without prejudice to the provisions of the preceding paragraph, the Agency shall refuse to issue a decision allocating radio frequencies if it determines that:

1. the applicant has not settled all its outstanding liabilities to the Agency;
2. the allocation of the radio frequency does not comply with the acts referred to in Articles 26 and 27 of this Act;
3. the allocation of the radio frequency does not comply with the requirement for efficient use of the radio frequency spectrum;
4. the radio equipment signal would cause unavoidable harmful interference to other radio equipment, receivers, or electrical or electronic systems.

#### Article 36

(acquisition of opinions from interested parties)

(1) Where the Agency considers that interest in a particular radio frequency could exceed availability and thereby prevent its efficient use, it shall publish a public call to acquire the opinions of interested parties concerning the conditions of use of these frequencies, particularly regarding limiting the number of beneficiaries of decisions allocating radio frequencies. The Agency shall, at regular intervals of time which may not exceed three years, check whether a new public call as referred to in the preceding paragraph is required. The Agency must always publish such a public call when it receives an initiative for a public invitation to tender from any party interested in using specific radio frequencies.

(2) The Agency shall, in the public call, lay down the deadline for the acquisition of opinions from interested parties, which may not be shorter than 30 days, and specify those issues regarding which it wishes to acquire the opinions of interested parties. The Agency must maintain the confidentiality of any proposals from interested parties regarding the level of the fee for radio frequencies.

(3) Where the Agency determines, on the basis of the response of interested parties and of other relevant information at its disposal, that specific radio frequencies will not be made available to all interested parties, it must carry out a public invitation to tender prior to issuing decisions allocating radio frequencies. In the opposite case, the Agency shall issue decisions allocating radio frequencies under the provisions of the act governing the general administrative procedure.

#### Article 37

(application of provisions in the implementation of a public invitation to tender)

(1) With the exception of the provisions on exclusion, the provisions of the act governing the general administrative procedure shall not be applied to the public invitation to tender procedure itself.

(2) A public invitation to tender shall be conducted by a special impartial commission (hereinafter: commission) appointed by the director of the Agency, to which persons not employed by the Agency may also be appointed.

(3) The provisions on the exclusion of an official shall also be applied to members of the commission who are not officials employed by the Agency.

#### Article 38

(decision on the initiation of a public invitation to tender)

(1) A public invitation to tender shall commence on the basis of an Agency decision, which must contain at least the following:

1. a precise indication of the radio frequencies that are the subject of the public invitation to tender, the radiocommunications services to be provided through the use of these radio frequencies, and the areas or locations in which these radio frequencies are to be used;
2. the conditions, requirements and qualifications to be met by tenderers, which must comply with the relevant legislation and spatial planning documents in force;
3. criteria for the selection of the most favourable tender, the method of their application, and any other restrictions to be taken into account in the evaluation of tenders;
4. the minimum fee for the efficient use of a limited natural resource and the method of payment (one-off payment, annual payment), unless the public invitation to tender relates to radio frequencies for the provision of analogue broadcasting services;
5. the deadline by which tenderers may submit tenders and the method applying to their submission (date, time, address, code);
6. the address, place, date and time of the public opening of tenders;

7. the place, time and person from whom interested parties may obtain the tender dossier, the price of the tender dossier and the method of payment for the dossier;
8. the contact person from whom tenderers may obtain additional information;
9. the deadline by which tenderers are to be informed of the outcome (deadline by which decisions will be issued).

(2) When formulating the conditions, requirements, qualifications and criteria referred to in points 2 and 3 of the preceding paragraph, the Agency shall endeavour to ensure that the conditions, requirements, qualifications and criteria promote competition, investment, efficient use of the radio spectrum and the co-existence of existing and new services and equipment.

(3) Where the subject of a public invitation to tender is the allocation of radio frequencies for the provision of analogue broadcasting services, the decision must also contain the conditions that must be met by a tenderer regarding programmes and the criteria for selection of the most favourable tender that must be taken into account when assessing programmes. The conditions and criteria referred to in this paragraph shall be determined by the Broadcasting Council in accordance with the act governing the media.

(4) With regard to the minimum fee for efficient use of a natural resource and the method applying to its payment, the Agency must acquire the prior approval of the Government.

(5) A decision issued by the Agency pursuant to the first paragraph of this Article must be published in the Official Gazette of the Republic of Slovenia.

(6) The Agency may amend the decision referred to in the first paragraph of this Article and, in doing so, must also decide on an extension to the deadline for submitting tenders with respect to the extent of the amendments in the decision. All interested tenderers must be informed of all amendments on an equal and transparent basis. The new decision must be published in the Official Gazette of the Republic of Slovenia no later than seven days prior to the expiry of the deadline set for the submission of tenders in the decision referred to in the first paragraph of this Article.

#### Article 39

(deadline for the submission of tenders)

(1) The deadline for the submission of tenders must allow tenderers to be able to compile high-quality tenders and may not be shorter than 30 days, to run from the day after publication of the decision referred to in the preceding paragraph.

(2) A tender submitted by the deadline set in the public invitation to tender shall be deemed to have been submitted on time.

(3) The Agency may not accept a tender, an amended tender or a replacement tender that arrives after the expiry of the deadline referred to in the preceding paragraph. If such a tender is submitted by post, it must be returned to the sender unopened.

(4) The Agency must maintain the business secrecy of the list of tenderers and tenders submitted until the expiry of the deadline for the public opening of tenders.

#### Article 40

(tender dossier)

In the tender dossier, the Agency shall explain all items of the decision on the initiation of the public invitation to tender, and indicate which evidence on compliance with the conditions must be enclosed for tenders to be deemed to be acceptable.

Article 41  
(special provisions on the public opening of tenders)

- (1) The opening of tenders shall be public.
- (2) The tender commission shall keep minutes on the tender opening procedure, which must contain, in particular, the serial number of the tender and, if the tender is anonymous, the title or code of the tenderer and the tender price. Care must be taken throughout the procedure to ensure that tenderers' business secrets are not disclosed.
- (3) At the public opening of tenders, a check shall be made as to whether the tenders contain all documents required by the tender dossier (formal completeness), where the authenticity and content of the documents shall not be checked.
- (4) Only tenders delivered by the deadline and correctly marked shall be opened. The tender commission must send incorrectly marked tenders back to the sender unopened.
- (5) The public invitation to tender shall be valid if at least one timely and correct tender that meets the relevant conditions is received.
- (6) In the decision on initiation of a public invitation to tender, the Agency may stipulate that an individual public invitation to tender shall be deemed to be valid if a different minimum number of tenders meeting the relevant conditions is received.

Article 42  
(supplementing of tenders)

- (1) Within five days of the opening of tenders, the commission shall write to tenderers that have submitted incomplete tenders inviting them to supplement the tenders. The deadline for supplementing a tender may not be shorter than eight nor longer than 15 days. Those parts of a tender that are subject to evaluation may not be supplemented.
- (2) Incomplete tenders that are not supplemented by the deadline referred to in the preceding paragraph shall be rejected.

Article 43  
(review and evaluation of tenders)

- (1) After completion of the public tender opening procedure, the commission shall first establish whether all the documents in the tender meet the requirements of the law and the tender dossier. If the commission finds that a tender does not meet the requirements of the law and the tender dossier, it shall exclude it from further procedure. The commission shall evaluate the remaining tenders in accordance with the tender criteria.
- (2) After reviewing and evaluating the tenders received, the commission shall compile a report presenting its evaluations of the individual tenders and stating which of the tenders best meets the published selection criteria.
- (3) Where the subject of a public invitation to tender is the allocation of radio frequencies for the provision of analogue broadcasting services, the commission shall send the complete tenders and the report on its evaluation in relation to the tender criteria, which shall not include an evaluation of programmes, to the Broadcasting Council. The Broadcasting Council shall evaluate the tenders received in relation to their programmes in accordance with the criteria laid down in the decision on the initiation of the public invitation to tender and, on the basis of an overall evaluation of all tender criteria, submit a reasoned proposal for selection to the Agency. The Broadcasting Council must send the reasoned proposal for selection to the Agency not later than 60 days after receiving the tenders and the Agency's report.
- (4) The commission or the Broadcasting Council may request that tenderers provide

clarifications regarding their tenders; however, in doing so they may not request, permit or offer any amendments or supplements to the content of a tender.

(5) The commission or the Broadcasting Council must, when reviewing and evaluating tenders, take into account only those criteria for selection of the most favourable tenderer that are laid down in the law and the tender dossier, in particular the efficiency of use of the radio frequency spectrum and the promotion and protection of competition.

## 2.2 Public auction

### Article 44

(public invitation to tender for the preparation of a public auction)

(1) When the only criterion for selection of the most favourable tender is the tendered price, the Agency may stipulate in the decision on the initiation of the public invitation to tender that a public auction is to be held after completion of the public invitation to tender procedure.

(2) In the case referred to in the preceding paragraph, the decision on the initiation of the public invitation to tender must contain at least the following:

1. the radio frequencies that are the subject of the public auction and any restrictions concerning the number of rights to use radio frequencies;
2. the conditions and requirements that an individual tenderer must meet in order to be able to take part in the public auction, including the payment of a fee amounting to the administrative costs incurred by the Agency in holding the public auction, which the auction participant shall pay prior to commencement of the auction and which shall in no case be returned to a participant entitled to take part in the auction;
3. the minimum number of tenderers required to allow the public auction to take place;
4. the minimum fee for the efficient use of a limited natural resource, which shall be paid as a one-off lump-sum amount (reserve fee);
5. the detailed rules applying to implementation of the public auction in accordance with the law.

(3) A public invitation to tender involving a public auction shall be deemed to be valid if the minimum number of tenderers referred to in point 3 of the preceding paragraph take part in the auction.

(4) The Agency shall determine the time, place and method of implementation of the public auction in a decision on the selection of auction participants. The public auction shall be held not less than 20 days and not more than 30 days after the issuing of the decision on the selection of auction participants. The Agency shall publish the time and place of the public auction on its website and in the Official Gazette of the Republic of Slovenia.

### Article 45

(method of implementation of a public auction)

(1) A public auction shall be conducted by the chairman of the commission referred to in the second paragraph of Article 37 of this Act or by his deputy.

(2) A public auction shall be held orally, using written bids or with certified electronic applications (for electronic auctions).

(3) A public auction may be held in another suitable manner that enables the Agency official conducting the auction and each auction participant to monitor the course of the public auction directly and in real time, and the auction participant to submit bids to an official freely and directly.

(4) The lowest amount by which a bid for the fee referred to in point 4 of the second paragraph of the previous Article may be raised at an auction may not be less than one per cent of the reserve fee.

(5) Before determining the highest bid or bids, the last highest bid or bids must be announced and the auction participants given at least one opportunity to place a higher bid. If they do not, the last highest bid or bids shall be accepted and declared to be the highest by decision.

(6) A written decision on acceptance of the highest bid, with an indication of the deadline by which the fee is to be paid, must be issued to the auction participant or participants placing the highest bid.

(7) In conducting and maintaining order at a public auction, the head of the commission or his deputy conducting the public auction shall have official public authorisations in the administrative procedure in relation to conducting a public hearing.

(8) Should the chair of the commission or his deputy find, in the course of an oral public auction, that two or more auction participants have come to an agreement on the method of bidding or the result, or are engaged in coordinated bidding, these participants shall be excluded from the public auction and a written decision drawn up. There shall be no appeal against this decision.

(9) Where a public auction has been held, the auction participant or participants who have been successful at the public auction and who have paid the fee for the efficient use of a limited natural resource referred to in the second paragraph of Article 47 of this Act by the prescribed deadline shall be deemed to be the auction participant or participants selected under the public invitation to tender.

#### Article 46 (unallocated radio frequencies)

If not all radio frequencies are allocated at a public auction, the Agency may repeat the procedure referred to in Article 36 of this Act for the remaining radio frequencies or, in the cases referred to in the third paragraph of Article 33 of this Act, hold a direct public invitation to tender.

### 2.3 Procedure following the completion of a public invitation to tender

#### Article 47 (application of the act governing the general administrative procedure)

(1) Upon receipt of the commission's report on the evaluation of tenders, the Agency shall continue its decision-making procedure under the act governing the general administrative procedure, where all tenderers that have submitted correctly marked tenders by the deadline laid down in the public invitation to tender shall have the status of parties.

(2) If the decision on the initiation of a public invitation to tender lays down that a public auction is to be held after completion of the public invitation to tender, an administrative procedure shall be commenced only after the successful auction participant or participants have paid the fee for the efficient use of a limited natural resource or, if the payment method is such, have paid those of the instalments they are obliged to pay under the decision establishing the highest tender prior to the issuing of the decision allocating radio frequencies.

#### Article 48 (limitation of evidence)

In an administrative procedure initiated under a public invitation to tender, it shall not be permissible to propose or introduce evidence which should have been a constituent part of a complete and acceptable tender, or which could alter a tender in any way.

Article 49  
(selection of tenderers)

The Agency shall decide on tenders by issuing one or more decisions allocating radio frequencies. The Agency must issue and deliver decisions no later than eight months after expiry of the deadline for the submission of tenders, and must make its decision public at the same time.

Article 50  
(suspension of procedure)

The Agency may suspend a procedure for the issuing or amendment of a decision allocating radio frequencies if additional harmonisation, investigation or activities are required under acts of international law governing the radio frequency spectrum and applicable in the Republic of Slovenia.

Article 51  
(content of a decision allocating radio frequencies)

(1) In addition to the elements envisaged by the act governing the general administrative procedure, a decision allocating radio frequencies shall contain the following in particular:

1. details on the holder of the right to use radio frequencies;
2. the radio frequencies allocated;
3. the area of coverage;
4. the period of validity of the decision allocating radio frequencies;
5. the conditions that must be met concerning the use of radio frequencies.

(2) In a decision allocating radio frequencies issued on the basis of a public invitation to tender, the conditions referred to in point 5 of the preceding paragraph must also include the conditions relating to points 5 and 7 of Article 52 of this Act.

(3) When the subject of a decision is the allocation of radio frequencies based on the selection procedure referred to in the first paragraph of Article 34 of this Act, the decision shall also contain the additional elements necessary for the implementation of EU regulations, including the conditions ensuing from such a selection decision and from the EU regulation on the basis of which it was issued.

(4) When the subject of a decision is the allocation of radio frequencies for the provision of analogue broadcasting services, the decision shall also contain the name of the programme.

(5) The holder of a right to use radio frequencies must report any change to the information referred to in point 1 of the first paragraph of this Article and any change to the name of the programme referred to in the preceding paragraph to the Agency within 30 days of its occurrence.

Article 52  
(conditions applying to the use of radio frequencies)

The conditions referred to in point 5 of the first paragraph of the previous Article may only

relate to:

1. the obligation to provide the service or use the type of technology for which the right to use a frequency was allocated, including requirements concerning coverage and quality where appropriate;
2. the provision of efficient use of radio frequencies;
3. the technical and operational conditions necessary to prevent harmful interference and limit public exposure to electromagnetic fields, if such conditions differ from those included in the general authorisation;
4. the duration of a right to use radio frequencies;
5. the transfer of ownership of a right to use radio frequencies or the leasing of a right to use radio frequencies, and the conditions applying to such transfer or lease;
6. payments made under Article 60 of this Act;
7. additional obligations undertaken by the selected tenderer during participation in the public invitation to tender (e.g. concerning the rate of construction of an electronic communications network, programme content and the like);
8. obligations regarding acts of international law applicable in the Republic of Slovenia and relating to radio frequencies;
9. special conditions determined for the use of radio frequencies intended for requirements relating to measurements, attestations and other tests of radio equipment;
10. the conditions ensuing from the selection decision referred to in Article 34 of this Act and the EU regulation on the basis of which it was issued.

#### Article 53

(period of validity of a decision allocating radio frequencies)

- (1) The Agency shall issue a decision allocating radio frequencies for a fixed period of time, with a suitable period of depreciation of investments which may not exceed 15 years, except for the allocation of radio frequencies intended for aviation and maritime mobile services.
- (2) The Agency shall issue a decision allocating radio frequencies intended for requirements relating to measurements, attestations and other tests of radio equipment for a limited area of coverage and for not more than 90 days.
- (3) The Agency shall, as a rule, issue a decision allocating radio frequencies intended for specific events for not more than 15 days.

#### Article 54

(extension of a decision allocating radio frequencies)

- (1) The validity of a decision allocating radio frequencies, with the exception of decisions allocating radio frequencies for the provision of public communications services to end-users, may be extended at the proposal of the beneficiary of the decision if all the conditions for the use of those radio frequencies as prescribed are being met upon expiry of the decision, taking into account the objectives referred to in Articles 194 to 197 of this Act.
- (2) In the case of the extension of a decision allocating radio frequencies as referred to in the preceding paragraph, for all radio frequencies originally allocated on the basis of a public invitation to tender, with the exception of radio frequencies for analogue broadcasting services, a specific fee shall be paid for the efficient use of a limited natural resource so as to ensure optimal use of the radio frequencies allocated. This shall be a revenue of the budget. The amount and the method of payment of the fee shall be set by the Agency, which must obtain the prior approval of the Government. In setting the amount and the method of payment of the fee, due regard must be paid to the period for which the validity of the

decision allocating radio frequencies is being extended and the supply of and demand for the frequencies being put to tender, the level of development of the market to which the frequencies being put to tender relate, and the level of such fees in other Member States. It may in no case be so high as to hinder the development of innovative services and competition in the market.

(3) An application for the extension of a decision allocating radio frequencies must be submitted to the Agency no less than 30 and no more than 90 days prior to the expiry of validity of the decision.

(4) The Agency shall send notice of the expiry of validity of a decision allocating radio frequencies to the e-mail address supplied by the beneficiary of the decision 90 days prior to the expiry of validity of the decision. This notice shall be of an informative nature and shall not have any legal consequences.

(5) In the case of extension, the Agency shall issue a new decision allocating radio frequencies.

(6) The validity of a decision allocating radio frequencies intended for requirements relating to measurements, attestations and other tests of radio equipment and a decision allocating radio frequencies for events may not be extended.

#### Article 55

(transfer or leasing of rights to use radio frequencies)

(1) The beneficiary of a decision allocating radio frequencies may transfer or lease its right to use these radio frequencies by legal transaction to another natural person or legal entity that meets the prescribed conditions, but only with the prior approval of the Agency. The Agency shall verify that this other natural person or legal entity meets the conditions laid down in a law, implementing regulation or Agency act, and that the envisaged transaction does not cause distortion of competition where the spectrum is left unused.

(2) Without prejudice to the provision of the preceding paragraph, the beneficiary of a decision allocating radio frequencies that acquired the right to use these radio frequencies without paying the fee referred to in the eighth paragraph of Article 60 of this Act, except in the case of radio frequencies for analogue broadcasting services, may not transfer or lease its right to use these radio frequencies by legal transaction to another natural person or legal entity.

(3) Without prejudice to the provision of the first paragraph of this Article, the beneficiary of a decision allocating radio frequencies against whom the Agency is conducting proceedings to abrogate the decision pursuant to point 3 of the fourth paragraph of Article 58 of this Act may not transfer or lease its right to use the radio frequencies which are the subject of proceedings to another natural person or legal entity by legal transaction.

(4) In the case of the transfer of a right to use radio frequencies to another natural person or legal entity under the first paragraph of this Article, the Agency shall issue a new decision allocating radio frequencies to this natural person or legal entity in accordance with the provisions of the act governing the general administrative procedure.

(5) The purpose of the use of radio frequencies, which is harmonised under EU regulations, may not be changed upon transfer of a right to use radio frequencies.

(6) The conditions referred to in Article 52 of this Act and contained in a decision allocating radio frequencies issued on the basis of a public invitation to tender may only be amended with the prior approval of the Agency.

#### Article 56

(accumulation of radio frequencies in order to distort competition in the market)

Undertakings may not accumulate radio frequencies in order to distort competition in the market. Such conduct on the part of an undertaking may be detected in particular when it fails to use radio frequencies to the extent and by the deadlines laid down in the decision itself or in the undertaking's tender and there are no objective reasons which the undertaking was unable to influence or foresee at the time the decision was allocated, or when it follows from its conduct that the undertaking acquired the radio frequency in order to restrict competition in the market.

#### Article 57

(amendment of a decision allocating radio frequencies)

(1) The Agency may amend a decision allocating radio frequencies *ex officio* or at the proposal of the beneficiary of the decision.

(2) A decision allocating radio frequencies shall be amended *ex officio* if:

1. the distribution of radio frequency bands or use of radio frequencies changes;
2. public demand arises that cannot be met in any other way;
3. it is required for efficient use of the radio frequency spectrum for the public benefit;
4. harmful interference cannot otherwise be avoided or radio frequency protection is not achieved;
5. it is so required by acts of international law applicable in the Republic of Slovenia and relating to radio frequencies;
6. the name of the beneficiary of the decision allocating radio frequencies or the name of the programme changes;
7. it is required in order to form beneficiaries of decisions allocating radio frequencies into wider regional or national radio or television programming networks registered with the competent body under the act governing the media;
8. it is required in order to implement EU regulations in the field of electronic communications.

(3) The amendment of a decision allocating radio frequencies at the proposal of its beneficiary shall be possible only within the area of coverage of the decision and only if it does not encroach upon the rights of others and if the conditions under this Act are met. In the case of amendment of a decision allocating radio frequencies for the provision of broadcasting, amendment shall be possible outside the area of coverage if such an amendment ensures greater efficiency of use of radio frequencies, does not substantially alter the area of coverage, and does not encroach on the benefits enjoyed by other beneficiaries of decisions allocating radio frequencies, if the conditions under this Act are met.

(4) A decision allocating radio frequencies may not be amended at the proposal of its beneficiary if proceedings to abrogate the decision under point 3 of the fourth paragraph of Article 58 of this Act are being conducted against the beneficiary of the right to use radio frequencies.

(5) The Agency shall, when amending a decision allocating radio frequencies, issue a new decision allocating radio frequencies and annul the previous decision. The Agency may also determine the extent of and deadline for adjustment in the new decision. In the cases referred to in the second paragraph of this Article, the Agency may also annul a decision allocating radio frequencies in its entirety with a new decision and determine new content for that decision.

(6) In the decision referred to in the preceding paragraph, the Agency may, in exceptional cases, extend the validity of the decision allocating radio frequencies, but not a decision allocating radio frequencies for the provision of public communications services to end-users,

if the costs of the adjustment referred to in the preceding paragraph encroach disproportionately on the benefits enjoyed by the beneficiary of the decision allocating radio frequencies.

(7) The beneficiary of an amended decision allocating radio frequencies shall have the right to be allocated other comparable radio frequencies that technologically enable the provision of the same services, if the reasons for the amendment have not arisen through its own fault. Radio frequencies with an equivalent area of coverage shall be allocated by means of a decision under an administrative procedure without a public invitation to tender.

(8) The beneficiary of an amended decision allocating radio frequencies for the provision of broadcasting as referred to in the preceding paragraph shall have the right to be allocated additional radio frequencies in the area of coverage of the decision being amended if, owing to interference, it is not possible to provide services of the expected quality on radio frequencies with equivalent coverage. The additional radio frequencies shall be allocated by a decision under an administrative procedure without a public invitation to tender.

(9) Beneficiaries of a decision referred to in the preceding paragraph shall not be liable to pay an annual fee to the Agency for the use of the additional frequencies.

#### Article 58

(revocation of a decision allocating radio frequencies)

(1) The Agency may abrogate a decision allocating radio frequencies at the proposal of the beneficiary of the decision or *ex officio*.

(2) The Agency shall abrogate a decision allocating radio frequencies at the proposal of the beneficiary of the decision only if the beneficiary meets all the obligations laid down in the applicable legislation and in the decision allocating radio frequencies.

(3) The Agency must initiate a procedure to abrogate a decision allocating radio frequencies intended for analogue broadcasting services *ex officio* if this is proposed by the Broadcasting Council.

(4) The Agency shall abrogate a decision allocating radio frequencies *ex officio* if it finds that:

1. the application for the decision allocating radio frequencies contained false information;
2. the beneficiary no longer meets the prescribed conditions under the applicable legislation or its decision allocating radio frequencies;
3. the beneficiary has not commenced using the radio frequency by the deadline set in the decision allocating radio frequencies or the undertaking's tender in the public invitation to tender, or the allocated radio frequency was not used over a period of six months as ascertained by at least six random checks, unless the decision determines otherwise or the beneficiary proves the contrary by means of written evidence;
4. the beneficiary has transferred the right to use radio frequencies to another natural person or legal entity by legal transaction in accordance with the first paragraph of Article 55 of this Act;
5. there is no other way of avoiding harmful interference caused by the radio equipment signal to other radio equipment, receivers or electrical or electronic systems;
6. the fee for the use of radio frequencies or the fee for the efficient use of a limited natural resource have not been paid despite several warnings to do so;
7. there are other serious or recurring irregularities concerning compliance with the conditions for the use of radio frequencies referred to in Article 52 of this Act and laid down in the decision allocating radio frequencies, unless these irregularities have been removed by more lenient measures in a supervisory procedure.

## Article 59

(cessation of validity of a decision allocating radio frequencies)

- (1) A decision allocating radio frequencies shall cease to be valid under the Act itself:
1. upon expiry of the period for which it was issued;
  2. if its beneficiary ceases to exist;
  3. upon revocation of the licence to perform radio and television activities issued under a procedure and under conditions laid down in the act governing the media.
- (2) In the cases referred to in points 2 and 3 of the preceding paragraph, the Agency shall issue a declaratory decision.

## Article 60

(fee for the use of radio frequencies)

- (1) Beneficiaries of a decision allocating radio frequencies shall be liable to pay an annual fee to the Agency for the use of the radio frequencies allocated to them. This fee shall cover the costs incurred by the Agency in the management and supervision of the radio frequency spectrum.
- (2) The Agency shall prescribe the method of calculating the fees due to it under this Article by means of a general act. The amount of the fee shall be dependent on coverage, the density of the population in the area of coverage, the radio frequency, the width of the radio frequency band, the type of radio communications involved, or a combination of the above, and may not restrict competition or create barriers to market entry.
- (3) The amount of the fees referred to in the first and second paragraphs of this Article shall be set by the Agency using a tariff, with due regard to the necessity to cover the costs referred to in the first paragraph of this Article and with *mutatis mutandis* application of the fifth, sixth and seventh paragraphs of Article 6 of this Act.
- (4) Article 7 shall be applied to the charging and payment of fees for the use of radio frequencies.
- (5) Without prejudice to the provision of the second paragraph of Article 7 of this Act, a one-off fee shall be charged for the use of radio frequencies for the purposes referred to in the second and third paragraphs of Article 53 of this Act that corresponds to one-twelfth of the annual fee multiplied by the number of months for which the decision allocating radio frequencies is valid, but not less than one-twelfth of the annual fee.
- (6) Without prejudice to the provision of the fourth paragraph of Article 7 of this Act, the beneficiary whose right to use radio frequencies has ceased as a result of the expiry of the period for which it was allocated or through no fault of its own shall pay the fee on the basis of the number of months for which the right was valid, but not less than one-twelfth of the annual fee
- (7) Without prejudice to the provision of the first paragraph of this Article, state bodies that are beneficiaries of a decision allocating radio frequencies for the purposes referred to in the second paragraph of Article 53 of this Act shall not be liable to pay the annual fee referred to in the first paragraph of this Article.
- (8) Without prejudice to the provision of Article 23 of the Digital Broadcasting Act (OGRS, 102/07, 85/10), a fee shall also be paid for the efficient use of a limited natural resource for all radio frequencies allocated on the basis of a public invitation to tender, but not radio frequencies for analogue broadcasting services, in order to ensure the optimal use of the allocated radio frequencies. This shall be a revenue of the state budget. The minimum amount of this fee and the method of its payment shall be determined in the decision on the initiation of a public invitation to tender procedure. In setting the amount or minimum amount of this

fee and the method of its payment, due regard must be paid to the supply of and demand for the frequencies being put to tender, the level of development of the market to which the frequencies being put to tender relate, and the level of such fees in other Member States. It may in no case be so high as to hinder the development of innovative services and competition in the market.

#### Article 61

(supervision and construction of a monitoring and measuring system)

- (1) The Agency shall oversee implementation of the provisions of this Chapter and the implementation of the decisions issued pursuant thereto.
- (2) The Agency shall, for the purposes of managing and monitoring the radio frequency spectrum, establish and construct a national control and measurement system.
- (3) The construction referred to in the preceding paragraph shall be for the public benefit.

### VI. NUMBERING

#### Article 62

(objectives and management)

- (1) The Agency shall, pursuant to public authorisation, manage the set of all numbering resources used in the Republic of Slovenia with the objective of ensuring their efficient structuring and use and the objective of satisfying the needs of undertakings and other natural persons and legal entities eligible to acquire a decision allocating numbering resources in a fair and non-discriminatory manner under this Act. In doing so, the Agency shall take into account any strategic documents of the Republic of Slovenia and the EU, as well as the strategic guidelines of the ministry responsible for electronic communications.
- (2) The Agency shall manage all information relating to the management of numbering resources.
- (3) The Agency shall publish on its website information on the numbers and number blocks allocated, as follows:
  1. number or number block;
  2. holders of numbers or number blocks.

#### Article 63

(numbering plan)

- (1) The numbering plan shall be adopted by the Agency by means of a general act.
- (2) The numbering plan shall lay down the type, length, structure, purpose and method of use of numbering resources, including numbers for emergency calls and numbers whose use is harmonised on the basis of EU regulations, and must also enable the portability of numbers and the introduction of new electronic communications services.
- (3) Changes or additions to the numbering plan that significantly affect the numbering system and whose implementation is technologically complex shall not be applied until two years after their entry into force.

#### Article 64

(use of numbering resources)

The undertakings and natural persons or legal entities referred to in the first paragraph of

Article 66 of this Act may use numbering resources only on the basis of a decision allocating numbering resources by which the Agency allocates rights to their use.

#### Article 65

(procedure for the issuing of a decision allocating numbering resources)

(1) The Agency shall issue a decision allocating numbering resources in accordance with the numbering plan, under the provisions of the act governing the general administrative procedure and following a prior public invitation to tender procedures in cases determined by this Act. The Agency shall, in allocating numbering resources managed by the International Telecommunication Union (ITU), pay due regard to the procedures laid down in the appropriate recommendations of that Union. In allocating numbers whose use is harmonised under EU regulations, the Agency shall also take into account the procedures laid down in EU regulations and recommendations.

(2) The Agency shall employ a public invitation to tender procedure only when it is established, with *mutatis mutandis* application of Article 36 of this Act, that efficient use of specific numbering resources (e.g. short numbers) can only be ensured by restricting the number of decisions issued allocating numbering resources. Undertakings that may allocate the numbering resources they acquire for use to their users under equal, cost-oriented and transparent conditions may take part in a public invitation to tender procedure. Other natural person or legal entities may only take part if they can prove that they require numbering resources in order to perform an activity for the public benefit under area legislation or EU regulations.

(3) In this public invitation to tender procedure, the provisions of this Act governing public invitation to tender procedures for the allocation of specific radio frequencies shall be applied *mutatis mutandis* by the Agency.

(4) The Agency shall decide on tenders by issuing one or more decisions allocating numbering resources, which it must in this case issue and deliver within 42 days of the expiry of the deadline for the submission of tenders. It must make its decision public at the same time.

#### Article 66

(issuing of a decision allocating numbering resources)

(1) An undertaking or other natural person or legal entity may submit an application for a decision allocating numbering resources if they can prove that they require numbering resources in order to perform an activity for the public benefit under area legislation or EU regulations relating to numbering resources.

(2) The application referred to in the preceding paragraph must contain the information that the Agency requires to maintain an official register of beneficiaries of decisions allocating numbering resources and to oversee the use of numbering resources, in particular:

1. name, address and tax number (natural persons);
2. company name, registered office, tax number and an indication of the legal representative (legal entities);
3. proof that the applicant is entitled to be allocated numbering resources;,
4. details on the type, quantity and purpose of use of the numbering resources they wish to acquire;
5. a project that includes a plan of the assessment of needs for the next three years, if the applicant is requesting a larger block of numbers;
6. the grounds on which the applicant can prove that the allocated quantity of numbering

resources will be used over the next three years.

(3) The Agency shall, by means of a general act, prescribe in detail the content and form of the notification application.

(4) The Agency shall, by means of a general act, determine the size of the number block referred to in point 5 of the second paragraph of this Article.

(5) Where a public invitation to tender is not being held, the Agency must issue and deliver the decision allocating numbering resources within 21 days of the commencement of the procedure for the acquisition of numbers.

(6) Without prejudice to the provision of the preceding paragraph, the Agency shall refuse to issue a decision allocating numbering resources if it determines that:

1. the applicant is not entitled to be allocated numbering resources;
2. the applicant has not settled all its outstanding liabilities to the Agency;
3. the intended use does not justify the requested quantity or type of numbering resources;
4. the allocation of numbering resources would contravene the legislation in force.

(7) Undertakings may allocate numbers to users of their services in accordance with a decision allocating numbering resources and the applicable legislation. On the basis of legal transactions for remuneration, they may allocate them for use to service providers, wherein they may only charge actual costs. Undertakings may not distinguish between service providers concerning the number blocks used for access to their services. They must send all details of such legal transactions to the Agency.

#### Article 67

(content of a decision allocating numbering resources)

(1) A decision allocating numbering resources must contain at least the following:

1. details on the holder of the right to use numbering resources;
2. the numbering resources allocated;
3. the conditions applying to the use of numbering resources referred to in Article 68 of this Act.

(2) The holder of a right to use numbering resources must notify the Agency of any change to the information referred to in point 1 of the preceding paragraph within 30 days of its occurrence.

#### Article 68

(conditions applying to the use of numbering resources)

The conditions referred to in point 3 of the first paragraph of this Article may relate only to:

1. the service for which the allocated numbering resource or resources may be used, including any requirements linked to the provision of that service, and the tariff principles and highest prices that may be applied in a particular numbering area;
2. the provision of actual and effective use of numbering resources;
3. the portability of numbers;
4. the obligation to provide the information on subscribers required in public directories in accordance with Articles 116 and 137 of this Act;
5. the duration of a decision allocating numbering resources, taking into account all changes to the numbering plan;
6. transfer of the right to use numbering resources and the conditions of such transfer;
7. fees for the use of allocated numbering resources in accordance with Article 74 of this Act;
8. the obligations which the beneficiary of a decision allocating numbering resources assumes in a public invitation to tender procedure;
9. obligations under acts of international law applicable in the Republic of Slovenia and relating to numbering resources and their use.

Article 69  
(validity of a decision allocating numbering resources)

A decision allocating numbering resources shall be issued by the Agency for an indefinite period of time.

Article 70  
(transfer of the right to use numbering resources)

- (1) The beneficiary of a decision allocating numbering resources may transfer its right to use these resources by legal transaction to another natural person or legal entity that meets the prescribed conditions. However, this may only be done with the prior approval of the Agency, which shall verify whether the natural person or legal entity meets the conditions laid down in a law, implementing regulation or Agency act.
- (2) In the transfer of a right to use numbering resources to another natural person or legal entity under the preceding paragraph, the Agency shall issue a new decision allocating numbering resources to this natural person or legal entity in accordance with the provisions of the act governing the general administrative procedure.
- (3) The purpose of use of numbers harmonised under EU regulations may not change with the transfer of the right referred to in the preceding paragraph.

Article 71  
(amendment of a decision allocating numbering resources)

- (1) The Agency may, for the purposes of alignment with the changes or additions to the plan under the third paragraph of Article 63 of this Act, amend a decision allocating numbering resources that has already been issued, *ex officio* and by decision, within 30 days of the entry into force of the changes or additions to the plan. In this case, the beneficiary of a decision allocating numbering resources or the users to whom they have been allocated shall not have the right to demand compensation.
- (2) The Agency may also amend a decision allocating numbering resources at the proposal of its beneficiary.

Article 72  
(revocation of a decision allocating numbering resources)

- (1) The Agency must abrogate a decision allocating numbering resources *ex officio* if it finds that:
  1. the application for the decision allocating numbering resources contained false information;
  2. the beneficiary no longer meets the prescribed conditions under the applicable legislation or its decision allocating numbering resources;
  3. the allocated numbering resources have not begun to be used within three years of the issuing of the decision allocating numbering resources or are not used for more than one year;
  4. the beneficiary has transferred the right to use numbering resources to another natural person or legal entity by legal transaction in accordance with the first paragraph of Article 70 of this Act.
- (2) The Agency shall also abrogate a decision allocating numbering resources *ex officio*:
  1. if the fee for the use of the numbering resources or the fee for the efficient use of a limited natural resource have not been paid despite a warning to do so;

2. if there are other serious or recurring irregularities concerning compliance with the conditions for the use of numbering resources referred to in Article 68 of this Act and laid down in the decision allocating numbering resources, unless these irregularities have been removed by more lenient measures in a supervisory procedure.

#### Article 73

(cessation of validity of a decision allocating numbering resources)

(1) A decision allocating numbering resources shall cease to be valid:

1. at the proposal of the beneficiary of the decision allocating numbering resources;
2. if the beneficiary of the decision allocating numbering resources ceases to exist;
3. upon revocation of the decision allocating numbering resources.

(2) In the cases referred to in points 1 and 2 of the preceding paragraph, the Agency must issue a declaratory decision.

#### Article 74

(fees for the use of numbering resources)

(1) Beneficiaries of a decision allocating numbering resources shall be liable to pay an annual fee to the Agency for the use of the numbering resources allocated to them. This fee shall cover the costs incurred by the Agency in the management and supervision of numbering resources.

(2) The Agency shall prescribe the method of calculating the fee due to it under this Article by means of a general act. The amount of the fee shall be dependent on the quantity, length and types of numbering resources, and may not restrict competition or create barriers to market entry.

(3) The amount of the fees referred to in the first and second paragraphs of this Article shall be set by the Agency using a tariff, with due regard to the necessity to cover the costs referred to in the first paragraph of this Article and with *mutatis mutandis* application of the fifth, sixth and seventh paragraphs of Article 6 of this Act.

(4) Article 7 shall be applied to the charging and payment of fees for the use of numbering resources.

(5) Without prejudice to the provision of the fourth paragraph of Article 7 of this Act, the beneficiary whose right to use numbering resources has ceased as a result of the expiry of the period for which it was allocated or through no fault of its own shall pay the fee on the basis of the number of months for which the right was valid, but not less than one-twelfth of the annual fee

(6) Without prejudice to the provisions of the first paragraph of this Article, an undertaking shall not be required to pay the Agency for the use of numbers transferred to another undertaking. The undertaking to which the numbers have been allocated shall be liable to pay the Agency for these numbers. The Agency shall take into account the information sent by the undertaking in accordance with the ninth paragraph of Article 131 of this Act.

(7) Payment of a fee for the efficient use of a limited natural resource in order to ensure the optimal use of numbering resources shall be required for numbering resources allocated on the basis of a public invitation to tender, unless the numbering resources are required for performance of activities in the public interest in accordance with the first paragraph of Article 66 of this Act. This shall be a revenue of the state budget. The minimum amount of this fee and the method of its payment shall in this case be set in the decision on the initiation of a public invitation to tender procedure. In deciding on the public invitation to tender criteria and the minimum amount of the fee, and setting the method of its payment, due

regard must be paid to the supply of and demand for the numbering resources put to tender, the level of development of the market to which the numbering resources being put to tender relate, and the level of such fees in other Member States. It may in no case be so high as to hinder the development of innovative services and competition in the market.

Article 75  
(European telephone access codes)

- (1) The international prefix for calls abroad from the Republic of Slovenia shall be 00. Undertakings shall inform their end-users of this in a suitable manner.
- (2) A provider of publicly available telephone services that enables international calls must handle calls to or from the European Telephony Numbering Space at prices that are similar to the prices for calls to or from other Member States.

Article 76  
(access to services using non-geographic numbers)

- (1) The operator of a public communications network or provider of publicly available electronic communications services must enable end-users to call all numbers provided within the EU, including numbers from the European Telephony Numbering Space and single international freephone numbers, and to access and use services using non-geographic numbers within the EU, when this is technically and economically feasible.
- (2) An operator of public communications networks or a provider of publicly available electronic communications services shall not be liable to meet the obligation referred to in the preceding paragraph if a called subscriber has chosen, for commercial reasons, to limit calls originating from a specific area of the European Union.
- (3) A court may order an operator of public communications networks or a provider of publicly available electronic communications services to block access to individual numbers or to services accessible via these numbers if the grounds exist for doing so on account of abuse or fraud in a specific case with which it is dealing. The court may, in such a case, require that a provider of electronic communications services retain revenue from the connection concerned or another service.

Article 77  
(ENUM numbers)

- (1) The Agency shall convert numbers into ENUM numbers.
- (2) The Agency shall, by means of a general act, regulate in greater detail the method of converting numbers into ENUM numbers and the method of database management, as well as set technical and other requirements relating to the conversion of numbers and necessary for implementation of this Article.

Article 78  
(supervision)

The Agency shall oversee the implementation of the provisions of this Chapter and of the decisions issued pursuant thereto.

**VII. SECURITY OF NETWORKS AND SERVICES, AND OPERATION IN  
EMERGENCY SITUATIONS**

Article 79  
(security of networks and services)

(1) Undertakings must adopt appropriate technical and organisational measures to appropriately manage the risk to the security of networks and services, and particularly to prevent and minimise the impact of security incidents on users and interconnected networks. The measures adopted must, having regard to the state of the art, ensure a level of security appropriate to the risk presented.

(2) The measures referred to in the first paragraph of this Article shall include the adoption and implementation of an appropriate security plan, which shall be a business secret of the undertaking.

(3) The security plan shall include at least the following:

- a definition of all the security risks at the undertaking, as well as those outside the undertaking, that could threaten the operation of the public communications network or that could disrupt the provision of publicly available electronic communications services by the undertaking;
- a definition of the likelihood of an event for all the security risks referred to in the previous indent;
- a definition of the level of the negative effects and consequences for operation of the public communications network and for publicly available communications services for all the security risks referred to in the first indent;
- a definition of measures to reduce the likelihood of the occurrence of a security incident;
- a definition of measures to reduce negative effects and mitigate the consequences of a security incident;
- the definition of an appropriate method of organising security at the undertaking, an integral part of which shall be security of the network and the information system and the physical protection of facilities and equipment;
- the definition of an appropriate method of ensuring sufficient numbers of staff at key posts at the undertaking engaged in a professional capacity in security matters;
- the definition of a method for the regular verification of compliance of the measures and procedures conducted with those described in the security plan.

Article 80  
(network integrity)

Network operators must adopt all measures necessary to secure the integrity of their networks so as to ensure continuity of provision of services over those networks.

Article 81  
(obligation to notify and report on breaches of security or integrity)

(1) Undertakings must notify the Agency, as soon as it learns of them, of all breaches of security or integrity if these breaches have had a significant impact on the operation of public communications networks or the provision of public communications services.

(2) Where appropriate and with regard to the seriousness of the breach, the Agency shall notify the national contact point for security incidents (SI-CERT) of breaches of security of networks and services and of breaches of network integrity.

(3) Where appropriate and with regard to the seriousness of the breach, the Agency shall notify the regulatory authorities of other Member States and the European Information and

Network Security Agency (ENISA) of breaches of security of networks and services and of breaches of network integrity.

(4) Where the Agency believes that disclosure of a breach referred to in the preceding paragraph is in the public interest, it may inform the public or require the undertaking to which the breach of security and integrity relates to do so.

(5) The Agency shall submit to the Commission and ENISA a summary annual report on the notifications received and the measures taken in accordance with the first, second or third paragraphs of this Article no later than by the end of February for the preceding year.

## Article 82 (security audit)

(1) At the request of the Agency, undertakings must submit to a security audit carried out by a qualified independent body, which shall send the results of the audit to the Agency and audited undertaking, retaining the level of confidentiality referred to in Article 79 of this Act. The costs of this audit shall be borne by the undertaking.

(2) The undertaking must, for the purposes of implementation of the audit referred to in the preceding paragraph, choose from among one of the independent audit organisations registered with the Slovenian Auditing Institute, and notify the Agency of the audit organisation chosen and of the commencement of the audit procedure within 30 days of the Agency making the request referred to in the preceding paragraph.

(3) Where an undertaking does not act in accordance with the preceding paragraph, the Agency shall appoint an independent audit organisation registered with the Slovenian Auditing Institute to conduct the audit referred to in the first paragraph of this Article. The costs of the audit shall be borne by the audited undertaking.

## Article 83 (measures in the event of emergency situations)

(1) In the event of the occurrence of an emergency situation, an undertaking must give precedence to securing the operation of those parts of the network required for the continuity of operation of the networks of entities responsible for the security and defence system and the protection and rescue system. Undertakings must, as required, envisage alternative routes to ensure that network breakdowns are as short as possible. To this end, these measures must be coordinated in advance with the entities responsible for the security and defence system and the protection and rescue system.

(2) Undertakings providing public telephone networks must adjust their networks so as to give priority to communications from certain network termination points over communications from other network termination points (hereinafter: priority function). Communications given a priority function in the public telephone network of an individual undertaking shall also retain that priority in the public telephone networks of other undertakings. In emergency situations, undertakings may also give priority to the operation of network termination points so as to restrict or interrupt the operation of other telephone connections.

(3) The Government shall, by decree, determine those groups of users with the right to priority network termination points under the preceding paragraph.

(4) The Government shall, by resolution, also determine other measures and restrictions or interruptions of operations connected with the provision of public communications networks or services in the event of a natural or other disaster or a catastrophic network breakdown, if this is necessary to rectify the situation that has arisen.

(5) The measures issued pursuant to the fourth or preceding paragraph of this Article must be taken to the extent and for period of time essential for the removal of the emergency situation referred to in first paragraph of this Article.

Article 84  
(availability of publicly available services)

(1) Undertakings providing publicly available telephone services via public communications networks must adopt appropriate technical and organisational measures to ensure that their activities are disrupted to the minimum possible extent in the event of the occurrence of an emergency situation. Undertakings providing publicly available telephone services must implement these measures for the entire duration of the circumstances that led to their adoption.

(2) The measures referred to in the preceding paragraph must ensure the availability of publicly available telephone services in the shortest possible time. These measures must also ensure uninterrupted access to and use of emergency call numbers, in particular the single European emergency call number '112', the police number '113' and the single European missing children hotline number '116000'.

Article 85  
(industrial action)

(1) Universal service providers and/or undertakings obliged to implement obligations pursuant to this Chapter of the Act shall, by means of an internal act, stipulate the method of uninterrupted provision of universal service or of the undertaking's obligations under this Chapter.

(2) The Agency shall monitor compliance with the obligation to adopt and implement the internal act referred to in the preceding paragraph.

Article 86  
(general act)

The Agency shall lay down the method of implementation of the provisions of this Article in detail by means of a general act.

Article 87  
(supervision)

The Agency shall oversee the implementation of the provisions of this Chapter.

## VIII. ENSURING OF COMPETITION

### 1. General

Article 88  
(independence of operation of the Agency in regard of ensuring competition)

(1) In implementing tasks under this Chapter in relation to ensuring competition, the Agency may not request or receive instructions from any other state bodies. This shall not preclude it from consulting the body responsible for competition protection nor from cooperating with

other regulatory authorities, the Commission or the Body of European Regulators for Electronic Communications (BEREC) under this Act.

(2) The Agency may, in order to promote regulatory predictability, draw up a multiannual regulatory strategy and publish it on its website.

#### Article 89

(undertakings with special or exclusive rights)

(1) Undertakings having special or exclusive rights to provide other commercial activities and with annual revenues in the area of electronic communications networks or services in excess of EUR 10 million must either provide electronic communications networks or services through a legally independent undertaking or keep separate financial accounts for activities associated with the provision of electronic communications services or networks, as if these activities were performed in a legally independent undertaking.

(2) The separate financial accounts referred to in preceding paragraph shall be kept such that all elements of expenditures and revenues related to activities associated with the provision of electronic communications services or networks are defined, together with the basis for their calculation and detailed distribution procedures used, and including a breakdown of the fixed assets and itemised structural costs.

#### Article 90

(interconnection and operator access)

(1) Operators of public communications networks shall have the right, and when required by other operators of public communications networks also the obligation, to negotiate amongst themselves concerning interconnection in order to provide public communications services for the purpose of the provision and interoperability of services. Operators of public communications networks shall provide other operators with operator access or interconnection under conditions that accord with the obligations imposed by the Agency under this Act in relation to interconnection and operator access.

(2) The parties shall agree on technical and commercial issues relating to operator access or interconnection by contract, where this contract may not contravene the provisions of this Act. Disputes shall, where one of the parties so requests, be resolved by the Agency using the procedure referred to in Article 218 of this Act.

(3) In concluding contracts on interconnection or operator access, the parties must safeguard the confidentiality of all the information exchanged in the course of the procedure. The information exchanged may not be used for any other purpose nor disclosed to a third party, particularly not to another department, branch office or subsidiary company, or to partners that could acquire a competitive advantage on the basis of this information. Without prejudice to the above, the obligations referred to in Articles 102 and 103 of this Act shall apply.

(4) In accordance with Articles 194 to 197 of this Act, the Agency shall encourage and, where it assesses such a course of action to be appropriate under the circumstances, provide suitable operator access, interconnection and interoperability of services, by decision, in a manner that promotes efficiency, long-term competitiveness, efficiency of investment and innovation, and provides the greatest possible benefits for end-users. The Agency may impose obligations in particular on operators which monitor access to final users to the extent necessary to ensure the connection of both terminals, including the obligation of the interconnection of their networks if that has not yet been performed or, in justified cases and to the necessary extent, impose on operators the obligation to enable interoperability of their services. This shall not affect the obligations that the Agency may impose on undertakings

with significant market power under this Act.

(5) The obligations and conditions in the decision referred to in the preceding paragraph must be objective, transparent, proportionate and non-discriminatory. The decision must be issued in accordance with the procedures referred to in Article 204 of this Act and with the procedures of cooperation and consultation with other regulatory authorities, the Commission and BEREC referred to in Articles 209 to 212 of this Act.

(6) In order to ensure realisation of the objectives referred to in the fourth paragraph of this Article in relation to operator access and interconnection, the Agency may, in justified cases, decide *ex officio* using the procedures referred to in Articles 204 and Articles 209 to 212 of this Act, and with *mutatis mutandis* application of the procedure referred to in Articles 218 and 219 of this Act.

(7) An undertaking that does not provide services or operate a network in the Republic of Slovenia may request operator access or interconnection without notifying the Agency in advance under Article 5 of this Act.

#### Article 91 (shared use)

(1) Where a natural person or legal entity providing an electronic communications network acquires the right to construct, install, operate or maintain a network and associated infrastructure on, above or below real estate owned by another, or where it is entitled to make use of an expropriation or easement procedure on this real estate, the Agency may order shared use of the communications facilities referred to in the second paragraph of this Article, with due regard paid to the principle of proportionality.

(2) The Agency may order the measure referred to in the preceding paragraph to the benefit of natural persons or legal entities providing electronic communications networks that are deprived of access to viable alternatives due to the need to protect the environment, public health, public security or spatial planning arrangements, where the parties are unable to reach agreement between themselves regarding the shared use referred to in the first paragraph of this Article. In such a case, the Agency may order the natural person or legal entity referred to in the first paragraph of this Article to allow the other party shared use of the property or of communications facilities such as buildings, entrances to buildings and the installations within buildings, posts, antennas, towers and other similar structures, as well as cable ducts, channels, manholes and terminal boxes, including a shared physical location. The Agency may lay down rules for the sharing of the costs of shared use of facilities or real estate.

(3) The Agency may, where it assesses such a course of action to be appropriate under the circumstances, decide on the measure referred to in the first paragraph of this Article *ex officio* in accordance with the procedure referred to in the fifth paragraph of the previous Article.

(4) The Agency may also order shared use at the proposal of a party using the procedure referred to in Article 218 of this Act, but only after a prior public consultation process has taken place with stakeholders that lasts for the period referred to in Article 204 of this Act, where all interested parties must have an opportunity to express their opinion.

(5) The ordering of shared use must be objective, transparent, non-discriminatory and proportionate. The Agency shall, where it assesses such a course of action to be appropriate under the circumstances, order shared use in cooperation with the bodies of self-governing local communities.

#### Article 92 (shared use of installations in buildings)

(1) The Agency shall impose an obligation of shared use of installations in buildings, or of the first distribution point if this is outside the building, on the natural persons or legal entities referred to in the first paragraph of the previous Article, by decision and in accordance with the procedure referred to in the previous Article, if the duplication of this infrastructure would be economically inefficient or physically non-feasible. In doing so, it may determine the rules for the sharing of the costs of shared use of the facilities or property, adjusted to the investment risk, where the Agency assesses such a course of action to be appropriate under the circumstances.

(2) Where the owner of an installation referred to in the preceding paragraph is the owner of the building, he must allow other natural persons and legal entities providing electronic communications networks shared use of this installation.

#### Article 93

(shared use of other commercial public infrastructure)

(1) An investor or owner of another type of commercial public infrastructure must, in accordance with the technical capacities, allow network operators and interested state bodies shared use of the free capacities of this infrastructure at cost-oriented prices. Free capacities shall be deemed to be, in particular, empty or partly used ducts, unused optical fibre and the capacities of support masts for erecting additional cables or antennas for the construction of electronic communications networks. If an investor or owner of commercial public infrastructure and a party interested in shared use fail to agree on the concluding of this contract and its content, the Agency shall decide on the matter, at the request of one of the parties, under the procedure referred to in Article 218 of this Act. The Agency shall lay down rules for the sharing of the costs of shared use of facilities or real estate.

(2) The Agency may order shared use only after a prior public consultation process has taken place, which may not last less than 30 days. All interested parties must be given the opportunity to express their opinion in the course of the public consultation process.

(3) The ordering of shared use must be objective, transparent, non-discriminatory and proportionate.

#### Article 94

(implementation of shared use)

A natural person or legal entity providing a communications network must exercise the right of shared use of the communications facilities or property referred to in Articles 91 to 93 of this Act so as to cause minimal disturbance to the owner of the real estate and minimal encroachments onto the real estate that is the subject of the shared use of facilities or real estate, and cause minimal disturbance to the owner of the infrastructure to which the right of shared use has been assigned or to the person that operates this infrastructure.

## 2. Regulation of undertakings with significant market power

#### Article 95

(undertakings with significant market power)

(1) In ensuring effective competition on the electronic communications market with *ex ante* regulation, an undertaking shall be deemed to have significant market power under this Act if, either itself or with other undertakings on a particular public communications network

market or public communications services market (hereinafter: relevant market), it holds a position equivalent to a dominant position, i.e. such economic influence as to enable it to exercise a considerable degree of independence in respect of its competitors, users and consumers.

(2) Where two or more undertakings are present in the market, the structure of which is considered to be conducive to coordinated effects, they may be treated as undertakings with a joint dominant position within the meaning of the preceding paragraph, even in the absence of structural or other links between them.

(3) Where an undertaking has significant market power in a relevant market (first market), it may also be designated as having significant market power on a market closely related to the first market (second market) if the links between the two markets are such as to allow the market power held in the first market to be leveraged into the second market, thereby strengthening the operator's market power. Remedies aimed at preventing such leverage may be applied in the second market pursuant to Articles 102 to 104 and Article 106 of this Act. Where such remedies prove to be insufficient, the remedies referred to in Article 107 of this Act may be applied.

#### Article 96

(criteria for assessing a dominant position)

Where the Agency assesses that an undertaking has significant market power under the first paragraph of the previous Article, the following criteria shall be applied, where these criteria are not cumulative:

1. the market share of the undertaking in the relevant market and the variation of its market share in the relevant market over a longer period of time;
2. barriers to entry into the relevant market and the impact on potential competition in that market;
3. the impact of large users on the power of the undertaking (countervailing buying power);
4. the elasticity of demand;
5. the stage of development of the relevant market;
6. technological advantages;
7. the development of sales and distribution networks;
8. the achievement of economies of scale or economies of integration;
9. the level of vertical integration;
10. the degree of product differentiation;
11. the possibility of access to financial sources;
12. the control of infrastructure that may not easily be duplicated;
13. the interconnection of services.

#### Article 97

(criteria for assessing joint dominance)

(1) The Agency may consider two or more undertakings to be in a joint dominant position within the meaning of Article 95 of this Act if, even in the absence of structural or other links between them, they operate in a market which is characterised by a lack of effective competition and in which no single undertaking has significant market power.

(2) The circumstances referred to in the first paragraph of this Article are likely to be in place where the market is concentrated and exhibits a number of appropriate characteristics, of which the following may be the most relevant without being cumulative:

1. low elasticity of demand;

2. similar market shares;
3. high legal or economic barriers to entry;
4. vertical integration with collective refusal to supply;
5. lack of countervailing buying power;
6. lack of potential competition.

#### Article 98

(conduct of the Agency in determining significant market power)

In determining significant market power and using the criteria referred to in Articles 96 and 97 of this Act, the Agency shall act in accordance with EU legislation and adhere consistently to Commission guidelines governing market analysis and the determination of significant market power in the area of electronic communications networks and services. In doing so, the Agency shall cooperate with the body responsible for the protection of competition.

#### Article 99

(determination of relevant markets)

(1) The Agency must, in the area of the provision and implementation of electronic communications in accordance with the principles of competition law, with consistent adherence to each and any Commission recommendation on the relevant markets of products and services in the area of electronic communications and to the guidelines referred to in the previous Article of this Act, determine the product, service and geographical markets relevant to conditions in the country in its analysis of an individual relevant market. In doing so, the Agency shall cooperate with the body responsible for the protection of competition.

(2) Where, by means of the decision referred to in Article 101 of this Act, the Agency intends to regulate a market that is not mentioned in a recommendation referred to in the preceding paragraph, it must first carry out a test of three criteria, which are cumulative, in accordance with this recommendation for such a market:

1. the presence of high and constant barriers to entry of a structural, legal or regulatory nature;
2. the structure of the market, which tends towards inefficient competition within a suitable timeframe;
3. the fact that competition legislation does not suffice to ensure an adequate market response.

(3) In the cumulative compliance with the criteria referred to in the preceding paragraph, the Agency must, for regulation of such a relevant market, hold a public consultation in accordance with Article 204, engage in cooperation in accordance with Article 214, and consult other regulatory authorities, the Commission and BEREC in accordance with Articles 209, 210 and 212 of this Act.

#### Article 100

(analysis of relevant markets)

(1) The Agency must, at regular intervals of time, analyse the markets referred to in the first paragraph of the previous Article. In doing so it shall, where it assesses such a course of action appropriate under the circumstances, work professionally with the body responsible for the protection of competition in accordance with Article 214 of this Act.

(2) The Agency must conduct the analysis referred to in the preceding paragraph no later than three years after the adoption of the previous measure relating to the relevant market. This

period may, in exceptional circumstances, be extended by no more than three years if the Agency notifies the Commission of the proposed extension, with its grounds for doing so, and if the Commission does not signal its opposition to the extension within one month of receipt of the notification.

(3) For relevant markets for which the Commission was not notified in advance, the Agency must conduct the analysis referred to in the first paragraph of this Article within two years of the adoption of the amended Commission recommendation on the relevant markets referred to in the first paragraph of the previous Article.

(4) In conducting the analysis referred to in the first paragraph, the Agency must pay due regard to the provisions of Articles 98 and 99 of this Act and follow the Commission guidelines governing market analysis and the determination of market power.

(5) If the Agency fails to complete the analysis of the relevant market by the deadlines referred to in the second and third paragraphs of this Article, it may request assistance from BEREC. In the event of such assistance, the Agency must notify the Commission of the draft measure under Articles 209, 201 and 212 of this Act within six months.

#### Article 101

(imposition, amendment, maintenance or withdrawal of obligations for undertakings with significant market power)

(1) If the Agency finds, on the basis of an analysis of the relevant market, that this market is insufficiently competitive, it shall determine by decision the undertaking or undertakings with significant market power in this market. It shall acquire the opinion of the body responsible for the protection of competition before issuing the decision.

(2) The Agency must, by means of the decision referred to in the preceding paragraph, impose on the undertaking with significant market power at least one of the obligations referred to in Articles 102 to 107 of this Act. In doing so, the Agency shall pay due regard to the principle of proportionality, for which it must provide due grounds.

(3) If the Agency intends to impose the obligation of functional separation referred to in Article 108 of this Act on an undertaking with significant market power by decision or, with due regard to the principle of proportionality, impose other obligations for operator access or interconnection that are not obligations as referred to in the preceding paragraph, it may do so only with the prior approval of the Commission.

(4) Where a re-determination is made that a specific undertaking is an undertaking with significant market power, the Agency may impose on this undertaking the same or other obligations and repeal the previous decision.

(5) If the Agency finds, on the basis of an analysis of the relevant market, that this market is sufficiently competitive, it may not determine any undertaking as being an undertaking with significant market power. If this market was previously uncompetitive, the Agency must, by means of appropriate decisions, abrogate all decisions that determined operators with significant market power in this market. In such a case, the decision shall also lay down an appropriate suspensory deadline, which may not be shorter than 15 days, and publish the decision in a form that takes into account the prohibition of the publication of the business secrets of the parties.

(6) In abrogating decisions pursuant to the preceding paragraph, the Agency shall also withdraw all obligations that undertakings had as undertakings with significant market power.

(7) The Agency may only take a measure under this Article after holding the prior public consultation with interested parties referred to in Article 204 of this Act, in cooperation with the body responsible for the protection of competition under Article 214 of this Act and with

other competent regulatory authorities in Member States, the European Commission and BEREC under the conditions referred to in Articles 209 to 212 of this Act.

(8) The Agency may impose measures that change the technical details of previously imposed obligations under this Article and that do not have a significant impact on the market by decision in an administrative procedure, on the basis of the analysis of relevant markets that formed the basis for the previously imposed obligations and with due regard to the provisions of Articles 209 to 212 of this Act. The Agency must acquire the opinion of the body responsible for the protection of competition before issuing a decision that changes the technical details of previously imposed obligations.

#### Article 102 (obligation of transparency)

(1) The Agency may, on the basis of the decision referred to in the first paragraph of the previous Article, impose obligations of transparency on a specific network operator with significant market power in relation to interconnection and/or operator access by making public specified information regarding interconnection or operator access.

(2) In doing so, the Agency may request the following from the operator:

- accounting information;
- technical specifications;
- network characteristics;
- terms and conditions for supply and use;
- all conditions limiting access to and/or use of services and applications;
- prices.

(3) In this decision, the Agency shall set out in detail which information should be made public, the level of detail required and the manner of publication.

(4) The Agency may, in accordance with the first, second and third paragraphs of this Article, require a network operator referred to in the first paragraph of this Article, by decision, to publish a reference offer for interconnection and/or operator access. This reference offer must be sufficiently unbundled to ensure that other operators that wish to request a service relating to interconnection and/or operator access are not required to pay for facilities that are not necessary for the service requested. This reference offer must describe the services that the operator with significant market power is offering in relation to interconnection and/or operator access, broken down into components according to market needs, and the associated terms and conditions, including prices. If this reference offer does not meet the provisions of this Act or the decision referred to in the first paragraph of the previous Article, the Agency may, by decision in a supervisory procedure, require its amendment.

(5) Without prejudice to the provisions of the first to fourth paragraphs of this Article, a reference offer for unbundled access to the local loop must contain at least those elements that the Agency specifies in a general act drawn up in accordance with EU regulations.

#### Article 103 (obligation of non-discrimination)

(1) The Agency may, on the basis of the decision referred to in the first paragraph of Article 101 of this Act, impose obligations of non-discrimination on a specific network operator with significant market power in relation to interconnection and/or operator access by making public specified information regarding interconnection and/or operator access.

(2) Imposition of the obligations referred to in the preceding paragraph shall ensure, in particular, that the operator referred to in the preceding paragraph:

1. applies equivalent conditions of interconnection and/or operator access in equivalent circumstances to other operators providing equivalent services;
2. provides services and information to other operators in relation to interconnection and/or operator access under the same conditions and of the same quality as it provides for its own services or those of its subsidiaries or partners.

Article 104  
(obligation of accounting separation)

(1) The Agency may, in the decision referred to in Article 101 of this Act and under the regulations governing accounting, impose an obligation on a specific network operator with significant market power to keep accounting records in relation to specified activities relating to interconnection and/or operator access separate from accounting records for other activities. This shall not affect application of the act governing the transparency of financial relations and the separate recording of different activities.

(2) The Agency shall impose this obligation in order to oversee compliance with the obligation referred to in the previous Article or, where appropriate given the circumstances of the case, in order to prevent unfair cross-subsidy. This obligation shall be imposed, in particular, on a vertically integrated undertaking and may require it to make transparent its wholesale and internal transfer prices. It may also determine the format and accounting methodology to be used.

(3) At the request of the Agency, the network operator referred to in the first paragraph of this Article must provide accounting records, including data on the revenues received from other parties with which it does business.

(4) The Agency may publish such information as would contribute to an open and competitive market, while respecting the level of confidentiality of the information received in accordance with national and EU rules relating to business secrecy.

(5) The Agency shall lay down the method of meeting the obligations under this Article in detail by means of a general act.

Article 105  
(obligation of operator access to and the use of specific network facilities)

(1) The Agency may, on the basis of the decision referred to in the first paragraph of Article 101 of this Act, impose an obligation on a specific network operator with significant market power to meet reasonable requests for operator access to and the use of specific network elements and associated facilities. The Agency shall do so when it considers that denial of access, or unreasonable terms and conditions having a similar effect, would hinder the emergence of a sustainable competitive market at the retail level, or would not be in the interest of end-users. The Agency may also impose additional conditions so as to ensure that the obligations are met fairly, reasonably and in good time.

(2) The Agency may require, *inter alia*, that the network operator referred to in the preceding paragraph:

1. give operator access to specified network elements and/or facilities, including:
  - access to inactive network elements,
  - or unbundled access to the local loop in order, *inter alia*, to allow carrier selection or pre-selection and/or a subscriber line retail offer;
2. negotiate in good faith with undertakings requesting access;
3. not withdraw access to facilities already granted;
4. provide specified services on a wholesale basis for resale by third parties on the retail market;
5. grant open access to technical interfaces, protocols or other key technologies that are indispensable for the interoperability of services or virtual network services;
6. provide co-location or other forms of associated facility sharing in accordance with Article 91 and the first paragraph of Article 92 of this Act;
7. provide specified services needed to ensure interoperability of end-to-end services to users,

- including facilities for intelligent network services or roaming on mobile networks;
8. provide access to operational support systems or similar software systems necessary to ensure fair competition in the provision of services;
  9. interconnect networks or network facilities;
  10. provide access to associated services such as identity, location and presence services.

(3) Where the Agency is considering whether to impose the obligation referred to in the first paragraph of this Article, and in particular when considering whether such obligations would be proportionate to the objectives set out in Articles 194 to 197 of this Act, it shall take account, in particular, of the following factors:

1. the technical and economic viability of using or installing competing facilities, in light of the rate of market development, taking into account the nature and type of interconnection and/or operator access involved, including the viability of other upstream access products such as access to ducts;
2. the feasibility of providing the access proposed, in relation to the capacity available;
3. the initial investment by the facility owner, taking account of any public investment made and the risks involved in making the investment;
4. the need to safeguard competition in the long term, particularly in the area of infrastructure;
5. where appropriate, any relevant intellectual property rights;
6. the provision of pan-European services.

(4) The Agency may, by means of a general act, regulate in detail other issues which arise in the course of implementation of this Article. In doing so, it may determine, in particular, the technical or operational conditions of access that beneficiaries or providers must meet in order to secure normal operation of the network. Where this includes the obligation to adhere to special technical standards or specifications, these must meet the requirements referred to in Article 201 of this Act.

#### Article 106

(price control and cost accounting obligation)

(1) The Agency may, in the decision referred to in the first paragraph of Article 101 of this Act, impose on a specified operator with significant market power an obligation relating to cost recovery and price controls, including obligations for the cost orientation of prices and obligations concerning cost-accounting systems, for the provision of specific types of interconnection and/or operator access.

(2) The Agency shall impose the obligations referred to in the preceding paragraph if, on the basis of the market analysis referred to in Article 100 of this Act, it assesses that the operator concerned may sustain prices at an excessively high level, or may apply a price squeeze, to the detriment of end-users.

(3) In imposing the obligation referred to in the first paragraph of this Article, the Agency must, in order to encourage investments by network operators, including in next-generation networks, take into account any investment made by the network operator referred to in the first paragraph of this Article and allow it a reasonable rate of return on adequate capital employed, taking into account any risks specific to a particular new network investment project.

(4) Any cost recovery mechanism or pricing methodology prescribed by the Agency must serve to promote efficiency and sustainable competition, and maximise consumer benefits. In this regard, the Agency may also take account of prices available in comparable competitive markets and from other network operators.

(5) Where the Agency imposes an obligation on the operator referred to in the first paragraph

of this Article regarding the cost orientation of its prices, the burden of proof that charges are derived from costs, including a reasonable rate of return on investment, shall lie with the operator concerned. In verifying this obligation, the Agency may use cost accounting methods independent of those used by the network operator. The Agency may, by decision, require a network operator to provide full justification for its prices, and may, where appropriate, require prices to be adjusted. The burden of proof of this shall lie with the network operator obliged to meet this requirement.

(6) Where the Agency imposes on the operator referred to in the first paragraph of this Article the obligation to use a cost accounting system in order to support price controls, it shall at the same time oblige the operator to make a description of the cost accounting system publicly available, showing at least the main categories under which costs are grouped and the rules used for the allocation of costs. Compliance with the cost accounting system shall be verified by a qualified auditor. A statement of compliance shall be published annually.

#### Article 107

(obligation to regulate retail services)

(1) The Agency may, in the decision referred to in the first paragraph of Article 101 of this Act, impose on a specified operator with significant market power on a specific retail market obligations relating to the regulation of retail services.

(2) The Agency may only impose such obligations under this Article if, on the basis of the market analyses referred to in Article 100 of this Act, it establishes that a relevant market intended for end-users is insufficiently competitive and the obligations referred to in Articles 102 to 107 of this Act would not achieve the objectives it is seeking in the market.

Obligations under this Article may include prohibitions on:

1. the charging of excessive prices;
2. the creation of barriers to market entry;
3. the restriction of competition by setting excessively low prices;
4. the giving of undue advantages to particular end-users;
5. the unreasonable bundling of particular services.

(3) The Agency may, at the same time as imposing obligations under this Article, prescribe one of the following methods:

1. retail price capping;
2. the regulation of individual tariffs;
3. cost-oriented prices;
4. prices oriented towards those in comparable markets.

(4) In meeting obligations under this Article relating to retail tariff regulation or other relevant retail controls, the operator referred to in the first paragraph of this Article must use the necessary and appropriate cost accounting systems laid down by the Agency in the decision referred to in the first paragraph of this Article. In doing so, the Agency may specify the format and accounting methodology to be used by such an operator. Compliance with the cost accounting system shall be verified by a qualified auditor, in accordance with the act governing auditing. The Agency shall publish a statement of compliance annually.

#### Article 108

(functional separation)

(1) Where the Agency establishes that the appropriate obligations referred to in Articles 102 and 106 of this Act have failed to achieve effective competition and that there are important and persisting problems and/or market failures identified in relation to the provision of

operator access, it may, as an exceptional measure and in the decision referred to in the first paragraph of Article 101 of this Act, impose an obligation on a vertically integrated undertaking to place activities relating to the provision of operator access in an independently operating business entity. This business entity shall supply operator access to all undertakings, including to other business entities within the vertically integrated undertaking, on the same timescale, terms and conditions, including those relating to price and service levels, and by means of the same systems and processes.

(2) Where the Agency intends to impose an obligation of functional separation under the first paragraph of this Article, it may do so only in accordance with the procedure referred to in the third paragraph of Article 101 of this Act. It must therefore submit a draft that includes:

- evidence justifying the Agency's conclusions;
- a reasoned assessment that there is little or no prospect of effective and sustained infrastructure-based competition within a reasonable timeframe;
- an analysis of the expected impact on regulation of the market, on the undertaking, including on the workforce of the independent entity and on the electronic communications sector as a whole, and on incentives to invest in the sector as a whole, particularly with regard to the need to ensure social and territorial cohesion, and on interested parties, including, in particular, the expected impact on competition and any potential effects on consumers;
- an analysis of the reasons why the obligation of functional separation would be the most efficient means of enforcing remedies aimed at addressing the competition problems/market failures identified.

(3) The draft measure must include the following elements:

- the precise nature and level of separation, specifying in particular the legal status of the separate business entity;
- an identification of the assets of the separate business entity, and the products or services to be supplied by that entity;
- the governance arrangements to ensure the independence of the staff employed by the separate business entity, and the corresponding incentive structure;
- rules for ensuring compliance with the obligations;
- rules for ensuring transparency of operational procedures, in particular towards other interested parties;
- a monitoring programme to ensure compliance, including the publication of an annual report.

(4) Following the Commission's approval referred to in the third paragraph of Article 101 of this Act, the Agency shall conduct a coordinated analysis of the relevant markets related to the access network, in accordance with the procedure referred to in Article 100 of this Act. On the basis of its assessment, the Agency shall impose, maintain, amend or withdraw obligations in accordance with the seventh paragraph of Article 101 of this Act.

(5) The Agency may impose on an undertaking on which functional separation has been imposed any other obligation referred to in Articles 102 to 106 or the second obligation referred to in the third paragraph of Article 101 of this Act for any relevant market referred to in Article 99 of this Act on which it has been designated as having significant market power in accordance with Article 101 of this Act.

#### Article 109

(voluntary separation by a vertically integrated undertaking)

(1) An undertaking which has been designated as having significant market power in one or several relevant markets must notify the Agency at least six months in advance of the intention to transfer its local access network assets or a substantial part thereof to a separate

legal entity under different ownership, or to establish a separate business entity in order to provide all retail providers, including its own retail divisions, with fully equivalent forms of operator access under equal conditions. Undertakings shall also notify the Agency of any change of that intent, as well as the final outcome of the process of voluntary separation.

(2) The Agency shall assess the effect of the intended transaction on existing obligations imposed on the undertaking under Article 101 of this Act. For that purpose, the Agency shall, in accordance with Article 100 of this Act, conduct a coordinated analysis of relevant markets related to the access network without delay. On the basis of its assessment, the Agency shall impose, maintain, amend or withdraw obligations in accordance with the seventh paragraph of Article 101 of this Act.

(3) The Agency may impose on a legally and/or functionally undertaking any other obligation referred to in Articles 102 to 106 or the second obligation referred to in the third paragraph of Article 101 of this Act for any relevant market referred to in Article 100 of this Act on which it has been designated as having significant market power in accordance with Article 101 of this Act.

#### Article 110

(determination and analysis of transnational markets and the imposition, amendment, maintenance or withdrawal of obligations on transnational markets)

(1) Where the Commission defines transnational markets in the area of the provision and implementation of electronic communications by decision, every definition of a transnational market by the Agency must accord with that decision.

(2) The Agency shall conduct an analysis of transnational markets together with the regulatory authorities of other Member States covered by the transnational market.

(3) The Agency shall decide on the imposition, amendment, maintenance or withdrawal of obligations for undertakings with significant market power on transnational markets together with the regulatory authorities of other Member States covered by the transnational market.

#### Article 111

(supervision)

Within the framework of its authorisations, the Agency shall oversee the application of the provisions of this Act on the ensuring of competition and compliance with obligations imposed by decision under the provisions of this Chapter.

### IX. DIGITAL RADIO AND TELEVISION DISTRIBUTION

#### Article 112

(digital radio and television distribution)

(1) Public communications networks intended for the distribution of digital television services must be planned so as to also be appropriate for the distribution of high-definition television services and programmes.

(2) An operator providing the public communications networks referred to in the preceding paragraph must, in the receipt and redistribution of high-definition television services or programmes, maintain their high-definition format. In doing so, it must retain the original picture and sound quality, except where there is a need to adjust to the technical capacities of the equipment for receiving and decoding a television programme or to the properties of the network.

(3) The Agency may, by means of a general act, issue instructions for the classification of programmes for which a licence has been issued under the Act governing the media. In doing so it must pay due regard to the public interest sought by media legislation and the interests of end-users. An operator referred to in the preceding paragraph that intends to change the programme location within the framework of the general act referred to in the general act referred to in the first sentence of this paragraph must inform the publisher of this programme and notify them of the new programme location not less than 30 days prior to the intended change. The classification of programmes under the general act referred to in the first sentence shall not impinge upon the right of an end-user to freely choose the order of programmes for his own use.

(4) The Agency may, by decision and in accordance with the procedure referred to in Article 90 of this Act or the procedure referred to in the sixth paragraph of Article 90 of this Act, order an operator that provide electronic communications networks as referred to in the first paragraph of this Article to ensure access to application programme interfaces and electronic programme guides under fair, reasonable and non-discriminatory terms.

(5) The Agency shall, by means of a general act, lay down the requirements for the interconnection of digital interactive television services and digital television equipment used by consumers.

#### Article 113 (conditional access systems)

(1) Conditional access systems for digital television and radio services operated in the EU market must have the necessary technical capabilities for cost-effective transcontrol that allow the possibility of full control by operators of public communications networks at local and regional levels of the services using such conditional access systems.

(2) Operators of conditional access services that provide access to digital television and radio services and on whose access services broadcasters depend must provide all broadcasters, on a fair, reasonable and non-discriminatory basis, with technical services enabling the services to be received by subscribers by means of a decoder.

(3) The operators referred to in the preceding paragraph must keep separate accounting records for conditional access services.

(4) Holders of industrial property rights to conditional access products and systems must grant licences to manufacturers of consumer equipment on fair, reasonable and non-discriminatory terms. When granting licences, such holders may not, through any conditions, prevent manufacturers from including common interfaces in the same product enabling connection to other access systems or elements specific to another access system, provided that they comply with the relevant and reasonable conditions ensuring the security of transactions of conditional access system operators.

#### Article 114 (supervision)

The Agency shall oversee the implementation of the provisions of this Chapter and the obligations imposed pursuant thereto.

### X. UNIVERSAL SERVICE AND ADDITIONAL MANDATORY SERVICES

#### Article 115 (universal service)

(1) Universal service shall mean the minimum set of services of specified quality which is available to all end-users in the Republic of Slovenia at an affordable price and regardless of their geographical location.

(2) The minimum set of services under universal service shall include:

1. connection to the public communications network and access to publicly available telephone services at a fixed location upon a reasonable request of an end-user, capable of allowing end-users to make and receive local, national and international telephone calls, facsimile communications and data communications, at data rates that are sufficient to permit functional internet access;
2. the provision of access to publicly available telephone services upon a reasonable request of an end-user via a connection to the public communications network referred to in the preceding paragraph capable of allowing the establishment and receipt of national and international telephone calls;
3. the provision of and access to a comprehensive directory and comprehensive telephone directory enquiry service (hereinafter: comprehensive directory enquiry service) in accordance with Article 116 of this Act;
4. the provision of public pay telephones or other public voice telephony access points, from which it is possible to make emergency calls free of charge and without having to use any means of payment, so as to meet the reasonable needs of end-users in terms of geographical coverage, number of telephones or other public voice telephony access points, accessibility for disabled end-users and quality of service;
5. the provision of measures for disabled end-users defined by the Government in agreement with the minister responsible for the disabled that ensure that the use of and access to the services referred to in the previous points of this paragraph are equivalent to that enjoyed by other end-users, including access to emergency services. These measures shall also include the obligation of a universal service provider to make available to disabled end-users, at a reasonable price, the purchase or leasing of such terminal equipment that allows them to enjoy equivalent use of and access to services.

(3) The reasonable request of an end-user referred to in the preceding paragraph shall include connection to a single location at which the end-user lives or carries on his activity. The connection may be made using wired or wireless technologies. If an end-user has the possibility of alternative access to services from the set of universal services at an affordable price, he may not request these services from a universal service provider under the conditions of this Chapter.

#### Article 116

(comprehensive directory and comprehensive directory enquiry service)

(1) The comprehensive directory must contain at least the details referred to in points 1 to 4 of the first paragraph of Article 148 of this Act on all subscribers of publicly available telephone services that have given their prior consent in accordance with Article 150 of this Act. The comprehensive directory may be in printed or electronic format. The Agency shall give its prior consent to the format.

(2) The comprehensive directory enquiry service, to which all end-users, including users of public pay telephones, must have access at an affordable price, must contain information on all the subscribers included in the comprehensive directory.

(3) Information in the comprehensive directory must be updated on a regular basis or at least once a year, taking into account the method of its publication. The information provided by a comprehensive directory enquiry service must be updated at least once a month. A universal

service provider providing a comprehensive directory or comprehensive directory enquiry service shall immediately notify the Agency if another operator of publicly available telephone services fails to provide it with the information referred to in the first paragraph of this Article.

(4) A universal service provider providing a comprehensive directory or comprehensive directory enquiry service may not treat information provided to it by different providers of publicly available telephone services in a different manner.

(5) The universal service provider referred to in the preceding paragraph may not charge providers of publicly available telephone services for the publication of information on their subscribers in a comprehensive directory or the use of that information in a comprehensive directory enquiry service.

#### Article 117 (provision of universal service)

(1) All end-users in the territory of the Republic of Slovenia must be provided with the universal services referred to in Article 115 of this Act.

(2) The Agency may designate one or universal service providers when, on the basis of an analysis of the situation and after prior consultation with interested parties, it assesses that this is necessary in order to ensure the high-quality provision of universal service for the entire territory of the Republic of Slovenia. The Agency may designate different universal service providers in order to provide different parts of universal service or to cover different parts of the territory of the Republic of Slovenia.

(3) Where the Agency finds, on the basis of the analysis of the situation and after the consultation with interested parties referred to in the preceding paragraph, that a universal service provider need not be designated for a particular part of universal service or to cover a particular part of the territory of the Republic of Slovenia, it must, at regular intervals, which may not be longer than two years, make checks to ensure that the designation of universal service provider is still not required.

(4) The Agency may decide not to designate the universal service provider referred to in point 4 of the second paragraph of Article 115 of this Act for the entire territory of the Republic of Slovenia or a part thereof if, on the basis of consultation with interested parties, it finds that this service or comparable services are available to a sufficient degree in this area.

#### Article 118 (designation of a universal service provider)

(1) Unless this Chapter determines otherwise, the Agency shall designate a universal service provider by decision for a period of five years, on the basis of *mutatis mutandis* application of the provisions of Chapter V of this Act governing public invitations to tender.

(2) The subject of the public invitation to tender shall be the provision of the various services included under universal service, or the provision of universal service in a specific area or on the entire territory of the Republic of Slovenia.

(3) In formulating the criteria for the selection of a universal service provider, the Agency shall take into account the objectives of reliability, quality and cost-effectiveness of the provision of universal service.

(4) The Agency must, in procedures pursuant to this Article, pay due regard to the principles of efficiency, objectivity, transparency and non-discrimination.

(5) If the public invitation to tender is unsuccessful, the Agency shall designate, by decision, that undertaking with significant market power in the area of publicly available telephone

services at a fixed location referred to in the first paragraph of Article 95 of this Act to act as the universal service provider. In the absence of such an undertaking, it shall designate the undertaking with the greatest number of subscribers to publicly available telephone services at a fixed location. In doing so, the Agency must adhere to the principles of efficiency, objectivity and transparency.

(6) The Agency must, at least six months prior to expiry of the validity of the decision referred to in the first paragraph of this Article, and on the basis of information on the provision of universal service, establish whether the general availability of facilities and services included in universal service requires redesignation of a universal service provider, where it shall take into account the opinions of interested parties.

(7) The Agency shall notify the Commission of the universal service obligations imposed on the universal service provider or providers referred to in the first paragraph of this Article.

#### Article 119

(disposal of a local access network)

(1) A universal service provider must notify the Agency in writing prior to the intended disposal of all or a substantial part of its local access network assets to a separate legal entity under different ownership.

(2) The Agency shall assess the effects of the intended disposal on the provision of access at a fixed location and on the provision of telephone services in accordance with points 1 and 2 of the second paragraph of Article 115 of this Act. On the basis of its assessment, the Agency may, by decision, impose, amend or withdraw a universal service obligation. If a universal service provider has to be redesignated in a specific area or on the entire territory of the Republic of Slovenia owing to the disposal, the Agency must use the procedure referred to in Article 118 of this Act.

#### Article 120

(prices and general terms and conditions)

(1) The Agency shall monitor the development and level of retail prices of the services referred to in Article 115 of this Act.

(2) The prices of specific services provided as universal service by a specific universal service provider must be the same across the entire territory of the Republic of Slovenia.

(3) The Agency may require a specific universal service provider to adjust the prices of the services it provides as universal service if, on the basis of the information referred to in the first paragraph of this Article, it finds that the prices are not affordable or that they are not the same across the entire territory of the Republic of Slovenia.

(4) The Agency shall, on the basis of collected information referred to in the first paragraph of this Article, require an individual universal service provider, by decision, to offer price options or packages for consumers with low incomes or special needs that differ from those otherwise provided under normal commercial terms so as to ensure that they are not prevented from accessing the network and using the services referred to in the second paragraph of Article 115 of this Act. The Agency shall require this if it determines, on the basis of the information collected, that the prices referred to in the first paragraph of this Article are too high with regard to the average monthly income in the Republic of Slovenia as published by the Statistical Office of the Republic of Slovenia and if they grow by more than 5 percentage points faster than the cost-of-living index from the previous year. The Agency shall lay down in detail, by means of a general act, the method of taking these criteria into

account. The minister shall, in agreement with the minister responsible for social affairs, determine those categories of consumers deemed to be persons with low incomes or special needs. In doing so, he shall take into account the level of funds needed to satisfy the minimum living requirements, or the level of physical disability in accordance with the legislation governing disabled care. The legal representative, custodian or carer of a child with special needs shall also be deemed to be a person with special needs.

(5) The prices of specific services provided as universal service, and the terms and conditions applying to those services, must be made public and must be transparent and non-discriminatory.

(6) A universal service provider must set the prices and the general terms and conditions in such a way that subscribers to specific services provided as universal service are not obliged to pay for facilities or services which are not necessary or not required for such services.

(7) A universal service provider designated pursuant to Article 118 of this Act must provide its subscribers with the following cost-monitoring options:

1. itemised billing in accordance with Article 121 of this Act;
2. free-of-charge selective call-barring for outgoing calls or premium SMS or MMS or, where technically feasible, other kinds of similar application to prevent calls or premium SMS or MMS or, where technically feasible, other kinds of similar applications of defined types or to defined types of number;
3. a pre-payment system for payment for access to the public communications network and the use of publicly available telephone services for consumers;
4. the phased payment of fees for connection to the public communications network;
5. at the request of the subscriber, information on other low-cost tariffs, if available;
6. other cost-monitoring methods for publicly available telephone services, including free-of-charge alerts in the event of abnormal or excessive consumption patterns, if the Agency so determines in the decision referred to in the first paragraph of Article 118 of this Act.

#### Article 121

(obligation to issue an itemised bill)

(1) A universal service provider must make available to subscribers with whom it has signed a contract a level of itemised billing that allows them to verify and control their use and the charges incurred (basic level of itemised billing). Calls which are free of charge, including emergency calls, may not be identified in an itemised bill.

(2) The basic level of itemised billing shall be sent to subscribers free of charge and upon the issuing of every bill, unless the subscriber informs the universal service provider that he does not wish to receive itemised bills.

(3) The Agency may, by means of a general act, prescribe the minimum set of elements that must be stated separately in the basic level of itemised billing.

(4) A universal service provider shall act in accordance with the provisions of the fourth and fifth paragraphs of Article 139 of this Act in order to protect the privacy of calling users and called subscribers in the issuing of itemised bills.

#### Article 122

(restriction or disconnection of service for reasons on the part of the subscriber)

(1) A universal service provider may restrict access to its services or disconnect a subscriber and terminate his subscriber contract only if he has not settled his outstanding liabilities or has breached other conditions laid down in the subscriber contract. A universal service provider must lay down in the general terms and conditions which measure is to be taken in

the event of a specific breach, and the deadline by which it will be carried out. The selected measure and the deadline must be proportionate to the breach and must be non-discriminatory.

(2) In the event of a breach, a universal service provider must send a warning to the subscriber in a reliable manner stating the deadline by which the subscriber must cease the breach or settle his liabilities, and the measure that will be taken by the operator if the subscriber fails to cease the breach or settle his liabilities by this deadline.

(3) Without prejudice to the provisions of the preceding paragraph, a universal service provider shall not be obliged to notify a subscriber of a measure in advance if the breach results in an immediate and serious threat to public order, public safety or public health, and if such a measure is envisaged in the general terms and conditions. Non-payment of bills shall in no instance be deemed to be a breach requiring the introduction of a measure without prior warning.

(4) Where technically feasible, a universal service provider must restrict access only to those services in relation to which the user breached the subscriber contract, except in instances of abuse or the persistent late payment or non-payment of bills. A universal service provider may not restrict access to and use of the single European emergency call number '112', the police number '113' and the single European missing children hotline number '116000'.

#### Article 123 (quality of universal service)

(1) The Agency shall prescribe, by means of a general act, the quality of universal service so as to determine, in particular, the quality parameters, the limit values thereof, and the method of measuring such parameters.

(2) The Agency shall also, by means of the general act referred to in the first paragraph of this Article, prescribe the content, form, method and frequency of publication of information on the quality of universal service.

(3) Universal service providers must send information on the quality of universal service, including any changes thereto, to the Agency.

(4) The Agency shall monitor the quality of universal service and may take steps in accordance with the procedure referred to in Article 224 of this Act.

(5) Should the Agency have grounds for doubting the veracity of the information referred to in the third paragraph of this Article, it may, *ex officio*, order an independent audit, or a review similar to an audit, of the information on the quality of provision of universal service, with the costs of this being borne by the universal service provider.

(6) If the measured values of the quality parameters for a specific universal service provider fail to reach the limit values at least three times in succession, the Agency may initiate a procedure to select a new universal service provider.

#### Article 124 (data rate)

(1) The Agency shall lay down, by means of a general act, the data rate necessary for functional internet access and the deadline by which this rate is to be achieved, which may not be longer than two years. In doing so, it shall take into account the prevailing technologies and bandwidth used by the majority of subscribers, and the technological feasibility, with minimum distortion of the market.

(2) The Agency may, pursuant to the preceding paragraph, also determine the data rate that enables broadband access, if broadband access is already used by at least half the households

in the Republic of Slovenia. The data rate shall be determined by taking into account the data rate used by at least 80% of households with existing broadband access.

(3) Where the Agency finds that at least half the households in the Republic of Slovenia are already using the broadband access referred to in the preceding paragraph, it shall draw up an analysis of the impact of a change to the data rate which also takes into account the envisaged costs of implementing this obligation. The analysis must be submitted for public discussion in accordance with the second paragraph of Article 204 of this Act, together with the draft general act.

(4) After expiry of the deadline set in the general act referred to in the first paragraph of this Article, the Agency shall review the circumstances that led to determination of the data and, where required, determine a new data rate in the general act.

#### Article 125

(compensation of the net costs of universal service provision)

(1) A universal service provider may request compensation for the net costs of provision of the universal services referred to in the second paragraph of Article 115 or the fourth paragraph of Article 120 of this Act.

(2) The net costs of the provision of universal service shall be calculated as the difference between the net costs for a designated undertaking of operating with the universal service obligations and operating without the universal service obligations, whereby the net cost calculation should assess the benefits, including intangible benefits, to the universal service provider. The Agency shall prescribe in detail, by means of a general act, the method of calculating the net costs and the intangible benefits taken into account in the calculation of the net costs of universal service provision. In doing so, it shall take into account the premises defined in EU legislation governing universal service.

(3) A universal service provider must send accounting records and information that provides a basis for calculation of the net costs of the provision of universal service to the Agency within 90 days of the end of the business year. If it fails to do so, it shall forfeit the right to claim net costs.

(4) The Agency, or an auditor authorised by the Agency, shall audit or check the accounting records and information referred to in the preceding paragraph.

The Agency shall determine whether universal service provision could be an unfair burden on a universal service provider. In such a case, it shall calculate the net costs of universal service provision. If a universal service provider was selected by public invitation to tender, the Agency shall, in its calculation, take into account the costs of provision of the universal service offered by the provider in the public tender. The Agency shall take into account different costs to those offered by the universal service provider in the public invitation to tender only if the conditions taken into account in the public invitation to tender have changed and if the universal service provider proves the justifiability of the deviations on an objective and transparent basis. The Agency shall publish the results of the cost calculation and the results of the review of the information provided by a universal service provider.

(6) Where the Agency establishes, on the basis of a calculation of the net costs of universal service provision, that they do in fact represent an unfair burden, it shall set, by decision, the amount of compensation, which may not exceed the calculated net costs.

(7) A universal service provider shall, at its request and under the conditions set out in this Article, be paid compensation for the provision of universal service from the compensation fund, which shall be established and administered by the Agency.

#### Article 126

(compensation fund and its operation)

- (1) The Agency shall establish the compensation fund referred to in the seventh paragraph of the previous Article by opening a separate bank account and keeping separate accounting records for the fund.
- (2) All undertakings operating in the territory of the Republic of Slovenia and receiving revenue from the provision of public communications networks and/or public communications services in excess of EUR 2 million must contribute to the compensation fund referred to in the preceding paragraph.
- (3) The amount of an individual undertaking's contributions shall be determined by the Agency on the basis of its revenue from the provision of public communications networks and/or services as a proportion of the total revenue from the provision of public communications networks and/or public communications services of all undertakings referred to in the preceding paragraph in the territory of the Republic of Slovenia.
- (4) A universal service provider whose calculated contribution to the compensation fund is less than the calculated compensation for the provision of universal service obligations shall not pay a contribution to the compensation fund. It shall receive compensation in the form of the difference between the calculated compensation and the calculated contribution.
- (5) The entities liable under the second paragraph of this Article shall contribute the calculated liability to the compensation fund on the basis of an Agency decision. In the decision, the Agency shall also determine the deadline for payment, which may not be shorter than 30 days.
- (6) Undertakings shall notify the Agency by 31 March each year of the level of revenue arising in the previous year from the provision of public communications networks and public communications services. If an undertaking fails to do so by this deadline, the Agency shall take into account as the revenue referred to in the second paragraph of this Article the undertaking's total revenue for the previous year, obtained on the basis of information held by the Agency of the Republic of Slovenia for Public Legal Records and Related Services.
- (7) Should it have grounds for doubting the veracity of the information reported to it by an undertaking, the Agency, or a qualified auditor selected by the Agency, may review the information and estimate the revenue, with the costs of this procedure being borne by the undertaking. Where the estimated revenue deviates substantially from the revenue income referred to in the preceding paragraph, the Agency shall take the estimated revenue into account in its calculation.
- (8) Information on the compensation of the net costs of universal service provision, the method of its allocation and use and the parts that were financed shall be public. For this purpose, the Agency shall publish an annual report on compensation of the net costs of universal service provision, the calculated net costs, the intangible benefits taken into account in the calculation of the net costs, and the contributions paid.

Article 127

(additional mandatory services)

- (1) The Government may, by decree, lay down additional services to be publicly available across the entire territory of the Republic of Slovenia, in addition to the services referred to in the second paragraph of Article 115 of this Act, and their level of quality, with due regard to the development of electronic communications, the existing range of public communications services in the market, the development strategy of the state as a whole, and the interests of end-users.
- (2) If certain additional services are not publicly available in a certain area of the Republic of

Slovenia or if the prescribed quality is not provided in that area, a provider of additional services shall be selected for that area.

(3) A provider of additional services shall be selected by the Agency by decision and on the basis of a public invitation to tender, with *mutatis mutandis* application of the provisions of Chapter V of this Act and taking into account the principles of efficiency, objectivity and transparency. The subject of the public invitation to tender shall be the provision of an additional service in a specific area of the Republic of Slovenia. The selection criteria shall, in particular, be the ability to provide an additional service and the costs of such provision.

(4) The selected provider of an additional service must provide it in a cost-effective manner and apply the same conditions to all users.

(5) Neither the provisions of Article 126 of this Act nor any other compensation mechanism that would include contributions from undertakings in the Republic of Slovenia shall be applied to the financing of additional services. The ministry responsible for electronic communications shall, through *mutatis mutandis* application of Article 125 of this Act, finance the compensation of any net costs of the provision of an additional mandatory service.

#### Article 128 (supervision)

The Agency shall oversee the implementation of the provisions of this Chapter and the obligations imposed pursuant thereto.

### XI. USERS' RIGHTS

#### Article 129 (subscriber contracts)

(1) A subscriber contract must include at least the following in a clear, comprehensible and easily accessible form:

1. the name and address or company name and registered office of the undertaking;
2. a statement of the services, in particular:
  - information on whether it provides access to emergency services and caller location data, and all restrictions relating to the provision of the emergency services referred to in Article 134 of this Act,
  - information on all other conditions restricting access to or the use of services and applications and permitted pursuant to other regulations,
  - information on the minimum level of quality of the services provided, including the supply time for initial connection and, where appropriate in light of the circumstances, information on other service quality parameters as laid down in the general act referred to in Article 133 of this Act,
  - information on all procedures put in place by the undertaking to measure and shape traffic so as to avoid filling or overfilling a network link, and information on how those procedures could affect service quality,
  - the types of maintenance service offered and customer support services provided, and the means of contacting these services,
  - all restrictions imposed by the provider on the use of terminal equipment supplied;
3. where an obligation exists under Article 137 of this Act, information on whether the subscriber has the option to choose whether or not his personal data is included in the directory, and the data concerned;

4. details of the prices and tariffs for the services that are the subject of the contract and apply from the signing of the contract, information on the method of receiving up-to-date information on all applicable tariffs and maintenance charges, and information on the possible payment methods and the differences in costs based on the payment method;
  5. the period of validity of the subscriber contract and the conditions for renewal and termination of the contract or the provision of services, including information on:
    - any minimum usage or duration required to benefit from promotional terms,
    - any charges related to portability of numbers and other identifiers,
    - any charges due on termination of the contract, including any cost recovery with respect to terminal equipment;
  6. details on any compensation and the refund arrangements which apply if the undertaking fails to meet the contractually agreed service quality levels;
  7. the procedure for the settlement of disputes under this Act;
  8. the types of action available to the undertaking in reaction to security or integrity incidents or in the event of network threats and vulnerabilities;
  9. the method used to notify subscribers of an intended change to the terms and conditions laid down in the subscriber contract, and the method of exercise of a subscriber's right to terminate a contract in such a case;
  10. procedures applying to non-payment for services;
  11. the method used to calculate the user fee for the period of use of any terminal equipment received in the event of early termination of a subscriber contract, if the contract also includes the sale of terminal equipment;
  12. information specifically intended for disabled subscribers;
  13. other provisions in agreement with the subscriber.
- (2) Subscribers must be notified of any change to the terms and conditions laid down in the subscriber contract not less than 30 days prior to the proposed introduction of the changes. Subscribers must be informed that, unless the change to the terms and conditions laid down in the subscriber contract are necessary as a result of the requirement to adjust to this Act or to regulations adopted pursuant thereto, they shall have the right to withdraw from the subscriber contract, by the same deadline, without a notice period, without paying the costs of termination of the subscriber contract and without a contractual penalty, if they do not accept the changes. The Agency may, by means of a general act, prescribe the form and method of publication of the notice.
- (3) The provisions of the preceding paragraph shall not affect or impinge upon the subscriber's due and unpaid liabilities nor the subscriber's contractually agreed obligations.
- (4) A subscriber who, upon concluding a subscriber contract, received terminal equipment at a promotional price may, when withdrawing from a contract prior to expiry of the commitment period under the second paragraph of this Article, choose to return to the operator an amount that corresponds to a proportionate part of the total value of the terminal equipment and retain the terminal equipment, or return the terminal equipment in the state in which it was delivered to him and pay the user fee applying to the period of use of the terminal equipment, with the operator returning the purchase amount to him. An operator may offer to maintain a subscriber contract under the terms and conditions laid down in the existing contract for a subscriber who wishes to exercise the right of withdrawal.
- (5) The provisions of this Article shall be applied to consumers when they conclude a subscriber contract with an operator and to other end-users when the provisions so require.

Article 130  
(commitment period of a subscriber contract)

(1) A subscriber contract with a consumer and a service provider may not lay down an initial commitment period that exceeds 24 months. In every case an operator must offer users the possibility of concluding a subscriber contract with a commitment period of not more than 12 months.

(2) Without prejudice to any minimum contractual period, the conditions and procedures for contract termination must not act as a disincentive against changing service provider.

#### Article 131 (number portability)

(1) All operators must enable subscribers with numbers from the telephone numbering plan referred to in Article 63 of this Act to retain their number or numbers when changing service providers in the following instances:

1. in the case of geographic numbers, at a specific location;
2. in the case of non-geographic numbers, at any location.

(2) Without prejudice to the provision of the preceding paragraph, this shall not apply to the porting of numbers from a network providing services at a fixed location to a mobile network, or vice versa.

(3) An operator may charge a subscriber a one-off fee for the porting of a number to another operator. This fee shall take account of the costs of the porting, but may not be so high as to act as a disincentive to use this facility.

(4) The Agency may not set retail prices for the porting of numbers in a manner that would distort competition, for example through the setting of specific or common retail tariffs.

(5) The costs of the provision of a network facility that enables number portability shall be borne by the operator. The operator of the network in which the call was generated shall pay the costs under the interconnection contract to the operator of the network in which the call to the ported number ends.

(6) The prices charged between operators in relation to number portability must be cost-oriented.

(7) Operators must port and activate a number as quickly as possible. In every case the number must be activated within one working day counting from the moment the operator to which the number is to be ported receives a signed contract on the porting of the number from the other operator.

(8) The Agency shall regulate the method of implementation of number portability, as well as technical and other requirements for compliance with the provisions of this Article, in detail by means of a general act.

(9) An operator must send the Agency a printout of the total number of all numbers, by type and block, that were ported to another operator or ported to that operator in the last year by 15 January of the current year, i.e. reflecting the situation as at 31 December as reported by the manager of the central database of ported numbers. The operator may also mandate the manager of the database of ported numbers to send the information on the ported numbers to the Agency.

#### Article 132 (transparency and publication of information)

(1) The Agency shall encourage operators to publish transparent, comparable, adequate and up-to-date information on applicable prices and tariffs, on any charges due upon termination of a contract, and on the standard terms and conditions in respect of access to publicly available electronic communications services and the use of these services for end-users and

consumers. This information must be published in a clear, comprehensive and easily accessible form. To this end, the Agency may issue recommendations, including additional requirements regarding the form in which such information must be published. The Agency may, where appropriate, encourage operators to undertake self-regulatory or co-regulatory measures such as the signing of voluntary codes of conduct.

(2) If the Agency finds that adequate and high-quality information is not available on the basis of the preceding paragraph, it may, by means of a general act, specify that operators must, *inter alia*:

1. provide subscribers with information on applicable tariffs regarding any number or service that is subject to special pricing conditions, where, with respect to individual categories of service, the Agency may require such information to be communicated directly prior to connecting the call;
2. notify subscribers of all changes regarding the provision of access to emergency services or to caller location data as part of the services to which they are subscribed;
3. notify subscribers of all changes to conditions that restrict access to or the use of services and applications and permitted under the legislation of the Republic of Slovenia, in accordance with EU regulations;
4. provide information on all procedures put in place by the undertaking to measure and shape traffic so as to avoid filling or overfilling a network link, as well as information on how those procedures could affect service quality;
5. inform subscribers of the right to include their personal data in the directory and of the types of personal data, in accordance with Article 137 of this Act;
6. regularly inform disabled subscribers, using technologies adapted to their needs, of details of products and services designed for them.

(3) The Agency shall publish up-to-date links to the websites of operators to allow information on operators' services, prices and general terms and conditions to be monitored and compared. If applications that provide comparable information are not available free of charge or at a reasonable price in the market, the Agency may provide those applications itself.

### Article 133

#### (quality of public communications services)

(1) The Agency may, after taking account of the views of interested parties, require operators to publish comparable, adequate and up-to-date information on the quality of their services and on measures taken to ensure equivalence of access for disabled end-users. The operator must, upon request, supply this information to the Agency in advance of its publication.

(2) The Agency may, by means of a general act, regulate in detail the issues arising from the implementation of this Article. In particular, it may set the quality of service parameters to be measured and the content, form and manner of the information to be published, including possible quality certification mechanisms, in order to ensure that end-users, including disabled end-users, have access to comprehensive, comparable, reliable and user-friendly information.

(3) The Agency may, by decision, impose a minimum quality of service requirement on operators of public communications networks in order to prevent the degradation of service, including the hindering or slowing down of traffic over their networks.

(4) Prior the issuing of the decision referred to in the preceding paragraph, the Agency must send the Commission and BEREC a summary of the grounds for action, the envisaged requirements and the proposed course of action. The Agency shall take utmost account of any comments and recommendations the Commission might make after examining this

information.

(5) The Agency may issue a recommendation on the method of setting the compensation to be reimbursed to its end-users in the event of non-operation or poor quality of operation of public communications services.

#### Article 134 (emergency call numbers)

(1) An operator must ensure that all users of electronic communications services that enable the making of internal calls to a number or numbers from the numbering plan referred to in Article 63 of this Act, including users of public pay telephones, are able to call the emergency services free of charge and without having to use any means of payment.

(2) An operator must enable disabled users to make emergency calls using spoken and sign languages and other forms of non-verbal language. An operator or provider must provide such emergency calls in the method and to the extent allowed by the technology. Should an operator or provider claim that it is unable to meet the obligations referred to in the previous two sentences, the burden of proving the technical incapacity to provide such emergency calls shall rest with that operator or provider.

(3) Operators of public communications networks and providers of publicly available telephone services must ensure that the transfer of a call to the emergency service dealing with the call is free of charge.

(4) Operators of public communications networks must, for every call to the single European emergency call number '112' and police number '113' send number and caller location data free of charge to the emergency service handling the call as soon as the call reaches that service. Operators shall send all information to the extent allowed by the technology. Operators shall bear the burden of proving the extent of any technical incapacity.

(5) An operator must inform its users of the existence and importance of the single European emergency call number '112' and the single European missing children hotline number '116000' in a visible place on its website and in the directory. It must inform its users of the existence and importance of the emergency call number '112' by SMS upon their entry into the network of another Member State. With the prior agreement of the roaming user's operator, a roaming user may upon, entry into its network, be informed of the existence and importance of the emergency call number '112' by SMS, if this is technically possible. The content of the notification shall be determined by the body responsible for handling emergency calls to the single European emergency call number '112'.

(6) In agreement with the minister responsible for protection and rescue, the minister shall prescribe the service quality for the single European emergency call number '112', determining, in particular, the quality parameters, their limit values and the method of measuring these parameters, and the criteria for ensuring accurate and reliable caller location identification.

(7) Abuse of an emergency call shall be prohibited. Any person who calls an emergency call number at least three times a day for the same purpose despite being warned on each occasion by a body that receives emergency calls that the content of the call is not of the type handled by any body charged with receiving emergency calls in the Republic of Slovenia shall be deemed to be abusing an emergency call.

#### Article 135 (measures for disabled users)

(1) The Government may, at the coordinated proposal of the minister and the minister

responsible for the disabled, and if it deemed it necessary, lay down by decree the technical and functional requirements that must be met by providers of electronic communications services to provide disabled end-users with access to electronic communications services that is equivalent to the access enjoyed by the majority of end-users and the possibility of taking advantage of the choice of undertakings and service providers available to the majority of end-users.

(2) The Republic of Slovenia shall, in accordance with the act governing the media, give particular support to the creation and broadcast of programmes intended for blind, deaf and deaf-blind users using technologies adapted to their needs, and the development of the corresponding technical infrastructure.

(3) The ministry responsible for radio and telecommunications terminal equipment shall take steps to encourage the making available of appropriate terminal equipment to provide the necessary services and functions to disabled end-users.

(4) The ministry referred to in the preceding paragraph, with the cooperation of the ministry responsible for the media, shall encourage suppliers of digital television equipment and providers of digital television services to work together to provide interoperable television services for disabled end-users.

#### Article 136

(radio and telecommunications terminal equipment)

(1) Users may not connect to a public communications network radio or telecommunications terminal equipment that does not comply with requirements under the regulations governing radio and telecommunications terminal equipment and the regulations governing electromagnetic compatibility.

(2) Operators may not reject any reasonable request to connect the terminal equipment of a user that complies with requirements under the regulations governing radio and telecommunications terminal equipment and the regulations governing electromagnetic compatibility.

#### Article 137

(directories and directory enquiry services)

(1) Subscribers to publicly available telephone services shall have the right to have an entry in the comprehensive directory referred to in Article 116 of this Act.

(2) Subscribers referred to in the preceding paragraph that wish to be entered in the comprehensive directory shall have the right to have their information made available to providers of directory enquiry services and/or directories.

(3) Every end-user of publicly available telephone services must have access to the comprehensive directory enquiry services referred to in Article 116 of this Act, as well as access to directory enquiry services in other Member States by voice call or SMS.

(4) Operators and the resellers of their services that allocate telephone numbers to subscribers must meet all reasonable requests to provide publicly available directory services and directories, including the comprehensive directory enquiry service and comprehensive directory, and make available to providers of directory services and directories the relevant information in an agreed format on fair, objective, cost-oriented and non-discriminatory terms. The Agency shall decide in accordance with Articles 217 and 218 of this Act in the event of a dispute.

(5) The Agency may impose, by decision, obligations and conditions on operators that control end-users' access in relation to the provisions of directory enquiry services in

accordance with the procedure referred to in Article 90 of this Act.

Article 138  
(additional facilities and obligations)

If the Agency, after consultation with interested parties, establishes that the facilities listed below are not provided to a sufficient extent or that the obligations are sufficiently met in the entire territory of the Republic of Slovenia or in a part thereof, it may, by means of a general act, lay down that undertakings that provide publicly available telephone services or access to a public communications network:

1. enable tone-dialling or the presentation of calling-line identification, if this is technically and economically feasible;
2. enable all or some of the cost-monitoring options referred to in the seventh paragraph of Article 120 of this Act, including the option of controlling costs for data services;
3. meet the obligations referred to in Article 122 of this Act.

Article 139  
(itemised billing)

(1) All subscribers to publicly available telephone services shall have the right to receive unitemised bills.

(2) If a provider of publicly available telephone services offers an itemised billing service under its general terms and conditions or the general act referred to in the previous Article, the provisions of Article 121 of this Act shall be applied *mutatis mutandis* to this service.

(3) All itemised billing offered by an operator which exceeds the basic level of itemised billing referred to in the first paragraph of Article 121 of this Act must be defined in the general terms and conditions. If an operator offers such itemised billing against payment, the prices must be set at the level of the actual costs incurred by the operator from the requested additional itemisation. This aforementioned shall not affect the possibility for other users and subscribers to pay separately for individual services, where technically feasible, and in such instances they shall not be included in the itemised bill.

(4) An operator shall, at the request of a subscriber to publicly available telephone services, issue an itemised bill referred to in the preceding paragraph with a level of itemisation of called numbers that guarantees protection of the privacy of calling users that are legal entities and of called subscribers by deleting or concealing the last three digits of a number called. An operator shall not be required to conceal called numbers:

1. in an itemised bill for calls between telephone numbers of the same subscriber;
  2. if the subscriber is a consumer;
  3. if the subscriber is a natural person or legal entity that performs a commercial or other activity in the market and they request an unconcealed itemised bill and enclose with the request a document showing to which user the number for which they are requesting an itemised bill has been allocated and the user's consent to disclosure of the called numbers stating that it has been given in order to provide grounds for exceeding the costs of a company telephone that had been agreed upon. An operator shall send the itemised bill to the user, who may conceal the telephone numbers called for private purposes on the bill.
- (5) An operator must retain a request relating to the sending of itemised bills with unconcealed called numbers in accordance with point 3 of the preceding paragraph for one year following the day the bill was sent and submit it to the competent authorities for inspection at their request.

#### Article 140

(deprivation or restriction of access to and use of services and applications)

- (1) Only a court in a specific criminal procedure, with due regard to the principle of proportionality and in accordance with the act governing the criminal procedure, may deprive an individual end-user of access to and the use of services and applications provided via electronic communications networks.
- (2) The provision of the preceding paragraph shall not affect the rights of an operator to restrict access to and the use of its services for other reasons, under conditions laid down in this Act.

#### Article 141

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

- (1) An operator may, without the consent of users, temporarily restrict or interrupt access to its services if this is necessary for upgrading, modernisation or maintenance, or in the event of faults or damage.
- (2) An operator must announce restrictions or interruptions due to upgrading, modernisation or maintenance in the public media at least one day in advance and, at the same time, inform the Agency, and inform users and the Agency of wider restrictions or interruptions due to faults or damage without delay.
- (3) Restrictions or interruptions may only last as long as necessary for the execution of the relevant works or for the removal of faults or damage.

#### Article 142

(right of objection and complaint)

- (1) Every end-user shall have the right to object to a decision or the conduct of operators in relation to the rights and obligations laid down in this Act and in the regulations issued pursuant thereto, and to contracts on the provision of electronic communications networks and/or services, to the relevant authority or body established by the operator.
- (2) Organisations that may file an action under the act governing consumer protection may file an objection in response to a breach of general terms and conditions and prices by operators in transactions with users and consumers, as well as act under the provisions referred to in the fifth to ninth paragraphs of this Article.
- (3) An operator must log every error reported in relation to its decision-making or conduct as referred to in the first paragraph of this Article by an end-user using a dedicated telephone number of the operator.
- (4) An end-user must file an objection within 15 days of the day on which they learned of the contested decision or conduct referred to in the first paragraph of this Article, but no later than 60 days from the issuing of the bill or the day the contested event that is the subject of the objection occurred, where the objection shall also be deemed to have been made on time if submitted by registered mail on the last day of the deadline for the complaint. If the deadline would expire on a Saturday, Sunday, public holiday or non-working day, the objection shall be deemed to have been made on time if submitted on the next working day.
- (5) An objection may also be filed using a dedicated telephone number of the operator for the reporting of errors. In such a case, the end-user must state that he is filing an objection within the meaning of the first paragraph of this Article. The authorised person of an operator that receives telephone calls relating to the reporting of errors must record all the information important for the filing of such an objection. An operator shall be deemed to have received an

objection on the day it was reported via a call to the operator's telephone number.

(6) Where an end-user sends an objection via electronic mail, the operator may, with the prior consent of the end-user, send its decision on the objection via electronic mail to the address from which the objection was sent or to the electronic mail address stated by the end-user in the objection or supplied in the consent.

(7) An operator must, in its decision, state explicitly that this is its final decision and, in the legal caution, set out the possibility of launching proceedings before the Agency, and state the deadline for filing such a proposal. An operator must send a decision on an objection to an end-user using a method that makes it possible to prove it has been delivered.

(8) If an operator fails to accept an objection within 15 days of its submission, the end-user may, within 15 days of receipt of the decision, submit a proposal for settlement of the dispute to the Agency.

(9) If an operator fails to decide on an objection within 15 days of its submission, the end-user may, within 30 days of submission of the objection to the operator, submit a proposal for settlement of the dispute.

(10) An end-user may also submit a proposal for settlement of the dispute to the Agency when the operator accepts the objection but then fails to meet its obligations within 15 days of the submission of the decision. In this case, the end-user may submit a proposal for settlement of the dispute within 15 days of the expiry of the deadline for compliance with the obligations.

(11) The Agency shall reject a proposal for the settlement of a dispute if the proposal is not submitted by the deadlines referred to in the eighth, ninth and tenth paragraphs of this Article.

(12) If a subscriber submits an objection or a proposal for the settlement of a dispute under this Article using the procedure referred to in Article 218 of this Act, the operator may not restrict access to its services, disconnect the subscriber or terminate the subscriber contract for the non-payment of liabilities until final settlement of the dispute or a final decision is made by the Agency, if the subscriber has, by the relevant deadline, settled the uncontested part of the bill or paid a sum equal to the average value of the last three uncontested bills.

(13) The Agency shall handle a proposal for the settlement of a dispute in accordance with the procedure referred to in Article 218 of this Act.

(14) An operator must lay down the method and procedure of resolving objections from end-users in its general terms and conditions.

#### Article 143 (supervision)

The Agency shall oversee the implementation of the provisions of this Chapter. In overseeing the implementation of the first paragraph of Article 136 of this Act, the Agency shall only supervise the operations of radio or telecommunications equipment in operation, and cooperate and work in conjunction with the inspectorate responsible for the control of goods in the market, with *mutatis mutandis* application of Article 222 of this Act.

## XII. PERSONAL DATA PROCESSING AND PROTECTION OF THE PRIVACY OF ELECTRONIC COMMUNICATIONS

#### Article 144 (the terms 'user' and 'services concerned')

(1) For the purposes of this Chapter, 'user' shall mean any natural person using a publicly available communications service, for private or business purposes, without necessarily

having subscribed to this service.

(2) This Chapter shall regulate the processing of personal data in connection with the provision of publicly available electronic communications services over public communications networks, including public communications networks supporting data collection and identification devices.

#### Article 145

(general provisions on security of processing)

(1) Providers of publicly available electronic communications services must take appropriate technical and organisational measures to safeguard the security of their services. If it is necessary in order to ensure the security of their services with respect to network security, they shall take appropriate technical and organisational measures in conjunction with the provider of the public communications network.

(2) Having regard to the state of the art and the cost of their implementation, these measures must ensure a level of security appropriate to the risk presented. Risk shall mean, in particular, every activity, service or product that encroaches on the secrecy, confidentiality and security of the electronic communications network or electronic communications services, which alters the accessibility, content or quality of service, and which an operator can effectively eliminate itself or in conjunction with other operators.

(3) The measures referred to in the preceding paragraph must at least:

- ensure that personal data can be accessed only by authorised personnel for legally authorised purposes;
- protect personal data retained or transmitted against accidental or unlawful destruction, accidental loss or alteration, and unauthorised or unlawful storage, processing, access or disclosure;
- ensure the implementation of a security policy with respect to the processing of personal data.

(4) The Agency shall conduct periodic audits of the measures taken by providers of publicly available electronic communication services, and may issue recommendations regarding best practices concerning the level of security which those measures should achieve.

#### Article 146

(obligation to inform of a particular risk to network security)

(1) Providers of public communications services must inform their subscribers of each particular risk to the security of the network immediately upon learning of that risk, with an announcement on their website and in another appropriate manner. Where the risk lies outside the scope of measures which the service provider can take, it must, at the same time, inform subscribers of all possible remedies by which they can remove such risk, including a statement of the likely costs, and allow them quick and effective access to protective measures.

(2) In the case of abuse committed by third parties and arising through no fault of subscribers or users, providers of publicly available communications services shall bear the costs of providing public communications services that have arisen as a result of the abuse. It shall be deemed that abuse did not arise through the fault of a subscriber or user when the subscriber or user deployed all reasonable protective measures and adhered to the instructions of which they were informed by the provider of public communications services under the preceding paragraph.

Article 147  
(confidentiality of communications)

(1) Confidentiality of communications shall be ensured under this Act for the purposes of safeguarding the expected level of confidentiality in the use of electronic communications, and ensuring freedom of communication and freedom of expression. Confidentiality of communications shall relate to:

1. the content of communications;
2. traffic and location data relating to the communications referred to in the previous point;
3. the facts and circumstances in connection with the interruption of the connection or the connection not being established.

(2) An operator and anyone involved in the provision and performance of its activities must continue to safeguard the confidentiality of communications after ceasing performance of the activity for which it was bound to safeguard confidentiality.

(3) Those entities liable under the preceding paragraph may only obtain the information on communications referred to in the first paragraph of this Article to the extent necessary for the provision of specific publicly available communications services, and may only use or communicate this information to others in order to provide these services.

(4) Where operators obtain information on the content of communications or record or retain communications and the traffic data related to them under the preceding paragraph, they must notify the user of this when the subscriber contract is signed or upon the commencement of provision of the publicly available communications service, and erase information on the content of communications or the communications themselves as soon as this is technically feasible and the information is no longer necessary for the provision of the particular publicly available communications service.

(5) All forms of surveillance or interception of communications by third parties other than users, such as listening, tapping, recording, retention and forwarding of the communications referred to in the first paragraph of this Article, without the consent of the users concerned shall be prohibited, unless this is permitted under the preceding paragraph or under Article 153, Article 160 or Articles 162 to 168 of this Act, or if this form of surveillance or interception is necessary for the sending of messages (e.g. facsimile messages, electronic mail, electronic mailboxes, voicemail and SMS services).

(6) The recording and retention of communications without the prior consent of the participants of the communications shall be prohibited in the case of communications in which such processing is not normal and where the participants, because of the nature of the communication, do not expect such processing and cannot expect it in advance.

(7) Without prejudice to the provisions of the fifth paragraph of this Article, the recording of communications and related traffic data shall be permitted in the course of lawful business practice for the purpose of providing evidence of a commercial transaction or of any other business communication, on condition that the parties to the communication are notified in advance of the recording, its purpose and the period of retention of the recording (e.g. automated answering machines). The recorded communication must be erased as soon as possible and, in any case, no later than by the end of the period during which the transaction can be lawfully challenged.

(8) The notification of recording must be given via the same medium and in the same form as the recorded communication.

(9) Without prejudice to the provisions of the fifth paragraph of this Article, the recording of the content of communications and the acquisition of the related data referred to in the first paragraph of this Article shall be permitted for organisations and state bodies responsible for the implementation of intelligence and security tasks and the tasks of the police, defence and

protection, rescue and relief services, on condition that the calling users are notified in advance of the recording, its purpose and the period of retention of the recording (e.g. automated answering machines). Other state bodies shall be permitted to record the content of communications where this Act so determines.

Article 148  
(data on subscribers)

(1) Service providers may collect the following data on their subscribers:

1. the personal name of the subscriber or the name of the subscriber's company and its organisational form;
2. the subscriber's address;
3. the subscriber's number or other numbering resources used for the establishment of a connection to the subscriber;
4. if the subscriber so wishes, his academic, scientific or professional title, his website address and other personal contact details (e.g. IM-address) or e-mail address;
5. the tax number for a natural person and the tax and registration numbers for a legal entity;
6. on the basis of payment by the subscriber, additional data, if he so wishes and this does not interfere with the rights of third parties.

(2) Service providers may only process the collected data referred to in the preceding paragraph for:

1. the conclusion, implementation, amendment and termination of a subscriber contract;
2. the levying of charges for services;
3. the preparation and publication of directories under this Act;
4. other lawful purposes with the subscriber's consent.

(3) The service providers referred to in the first paragraph of this Article may retain the data referred to in the first paragraph until full payment is made for the services, but not beyond the expiry of the limitation period for its claims relating to service provision, except in the cases of data for which a longer retention period with regard to internal procedures is defined under this Act (Article 149), the supply of traffic and location data for the protection of life and limb (Article 153), the tracing of malicious or nuisance calls (Article 155), the lawful interception of communications (fifth paragraph of Article 160) and obligations ensuing from the chapter of this Act on the retention of data (fifth paragraph of Article 166).

Article 149  
(internal procedures)

(1) In order to ensure security of personal data processing, and with due regard to the third paragraph of Article 145 of this Act, service providers must establish internal procedures for responding to requests from competent authorities for access to users' personal data based on area legislation. They must keep non-erasable three-year records on their response to such requests that include the number of requests received, the persons making the requests, the legal justification invoked and their response.

(2) Service providers must submit information on their internal procedures as referred to in the preceding paragraph to the Information Commissioner, as well as information on the number of requests received, the persons making the requests, the legal justification invoked and their response.

Article 150  
(directories)

(1) Subscribers must be informed, free of charge and before their data is included in a printed or electronic directory available to the public or obtainable through directory enquiry services, of the purpose of the directory and of any further possibilities of use of their data based on search functions. The costs of informing subscribers shall be borne by the issuer of the directory.

(2) Subscribers must be given the opportunity to determine whether their personal data, as defined in the first paragraph of Article 148 of this Act, is to be included in a public directory, and if so, which data. If a subscriber decides to include his personal data in a public directory, the data referred to in the first and second points of the first paragraph of Article 148 of this Act and the subscriber's telephone number must be included in the directory. Subscribers may check the data included and demand its amendment or deletion.

(3) Subscribers must be given the opportunity to prohibit the use of their personal data for calls with a commercial or research purpose. A subscriber may prohibit the use of his personal data for both or one of the above purposes upon entry in the directory or at any time subsequently. The issuer of a directory must clearly mark the prohibition applying to the use of a subscriber's personal data for a particular purpose in the directory. Where a subscriber signals a prohibition of use after entry in the directory, or changes the content of that prohibition, the issuer of the directory must enter the change in the directory in the next issue of the directory.

(4) Not being included in a public directory, verifying, correcting or deleting the personal data referred to in the second paragraph of this Article, the entry of a prohibition on the use of a subscriber's personal data for the purposes referred to in the preceding paragraph or the entry of amendments to this prohibition must be free of charge to the subscriber.

#### Article 151 (traffic data)

(1) Traffic data relating to subscribers and users processed and retained by an operator must be erased or made anonymous as soon as it is no longer needed for the purpose of the transmission of a communication, except in the cases of data for which a longer period of retention is defined under this Act with regard to internal procedures (Article 149), the supply of traffic and location data for the protection of life and limb (Article 153), the tracing of malicious or nuisance calls (Article 155), the lawful interception of communications (fifth paragraph of Article 160) and obligations ensuing from the chapter of this Act on the retention of data (Articles 162 to 168).

(2) Without prejudice to the provision of the preceding paragraph, an operator may, until complete payment for a service is made but no later than by the expiry of the limitation period, retain and process traffic data required for the purposes of calculation and of payment relating to interconnection.

(3) For the purpose of marketing electronic communications services or for the provision of value-added services, the provider of a publicly available electronic communications service may process the data referred to in the first paragraph of this Article to the extent and for the duration necessary for such services or marketing, but only if the subscriber or user to whom the data relates has given his prior consent. Subscribers or users must be informed, prior to giving consent, of the types of traffic data which are processed and of the purpose and duration of such processing. A user or subscriber shall have the right to withdraw their consent at any time.

(4) For the purposes referred to in the second paragraph of this Article, and in order to inform subscribers and users, a service provider must state in the general terms and conditions which

traffic data will be processed and the duration of that processing.

(5) Traffic data may only be processed under the previous paragraphs of this Article by persons acting under the authority of an operator and handling billing or traffic management, responding to customer enquiries, detecting fraud, marketing electronic communications services or providing a value-added service, where this processing must be restricted to what is necessary for the purposes of such activities.

(6) Without prejudice to the provisions of the first, second, third and fifth paragraphs of this Article, an operator shall send traffic data to the Agency or a competent body if they so request in order to settle disputes, in particular interconnection or billing disputes, in accordance with the applicable legislation.

## Article 152

(location data other than traffic data)

(1) Location data other than traffic data relating to users or subscribers may only be processed when it is made anonymous, or with the prior consent of the users or subscribers, to the extent and for the duration necessary for the purposes of providing the value-added service. A user or subscriber may withdraw this consent at any time.

(2) A user or subscriber must be informed, prior to issuing the data processing consent referred to in the preceding paragraph, of:

1. the possibility of refusing consent;
2. the type of data to be processed;
3. the purpose and duration of processing;
4. the possibility of the transmission of this location data to a third party for the purpose of providing the value-added service.

(3) A user or subscriber that has consented to the processing of the data referred to in the first paragraph of this Article shall have the possibility, using a simple means and free of charge, of temporarily refusing the processing of such data for each connection to the network or for each transmission of a communication.

(4) The data referred to in the first paragraph of this Article may only be processed under the previous paragraphs of this Article by persons acting under the authority of an operator or by a third party providing the value-added service, where this processing must be restricted to what is necessary for the purposes of providing the value-added service.

(5) In accordance with the third paragraph of Article 134 of this Act, an operator must supply the location data referred to in the first paragraph of this Article to the competent body in relation to calls to the single European emergency call number '112' and the police number '113' even where a user or subscriber has temporarily refused the processing of the data referred to in the first paragraph of this Article or has not given his consent to its processing.

(6) The provisions of the first to fourth paragraphs of this Article shall not be applied to location data other than traffic data for which this Act stipulates mandatory retention.

## Article 153

(supply of traffic and location data for the protection of life and limb)

(1) An operator must, when required to protect an individual's vital interests, supply the police at its written request, and if necessary in light of the specific circumstances of the case in question, the data necessary to establish the most recent whereabouts of a mobile communications device:

1. if there are grounds for believing it likely that the life or limb of a person who has with

them or is presumed to have with them a mobile communications device is in imminent danger, and the acquisition of this data is urgently required in order to prevent death or serious injury;

2. if acquisition of the data is required in order to locate a person whose capacity to carry out legal acts has been revoked or restricted or who has established health problems that indicate a danger to their life or limb, and who has been reported missing and has with them or is presumed to have with them a mobile communications device;

3. if acquisition of the data is required in order to locate a child whom parents or legal guardians have reported missing and who has with them or is presumed to have with them a mobile communications device.

(2) The police shall send a reasoned request for supply of the data necessary to establish the most recent whereabouts of a mobile communications device to the operator in writing or by electronic mail using a qualified digital signal. The request may, in exceptional circumstances, when urgent in light of the circumstances of the case, be sent by fax.

(3) The data required to establish the most recent whereabouts of an individual's mobile communications device shall be data on the location codes (Cell ID) at the start of the communication and data determining the geographical location of cells, with an indication of their location codes (Cell ID), during the period for which it is retained, data on the communication, and other data processed by the operator in personal and other databases and enabling a more precise determination of the most recent whereabouts of an individual's mobile communications device.

(4) The police shall retain all the documentation and findings that form the basis of a request, as well as the request itself as referred to in the first paragraph of this Article, in the manner and under the conditions referred to in Article 165 of this Act, and ensure the non-erasable recording of the measures and operations carried out in accordance with the fifth paragraph of Article 166 of this Act.

(5) An operator shall retain the data sent pursuant to the request referred to in the first paragraph of this Article in the manner and under the conditions referred to in Article 165 of this Act, and ensure the non-erasable recording of the measures and operations carried out in accordance with the fifth paragraph of Article 166 of this Act.

(6) The minister responsible for the interior shall, after acquiring the prior opinion of the Information Commissioner, prescribe in detail the method of sending requests, processing the data supplied, conducting internal controls of the method or of technical issues relating to the processing of personal data and of the technical characteristics of the information system for performance of the tasks referred to in the first paragraph of this Article.

(7) An operator must, after receiving the request referred to in the first paragraph of this Article, send the requested data to the person making the request in the shortest possible time or as soon as technically possible. The operator shall bear the burden of proving any technical incapacity.

(8) The police must notify the person regarding whom they requested and acquired location data under this Article as soon as possible, unless this would harm the interests of the individual himself or the interests of those closest to him in the cases referred to in the first paragraph of this Article, for as long as this situation persists but for not more than one year.

(9) The police may not send the data they have acquired under this Article to the persons reporting a missing person or children as referred to in points 2 and 3 of this Article if supplying such data would threaten the personal safety or dignity of these persons or children, with particular regard to the regulations governing the protection of witnesses, restraining orders or the prevention of domestic violence.

(10) Inspection and supervision of the processing of the data referred to in the first paragraph of this Article shall be carried out by the Information Commissioner at least once a year.

Article 154  
(calling-line and connected line identification)

- (1) Where a service provider offers the presentation of calling-line identification, the calling user must have the possibility, using a simple means and free of charge, of preventing the presentation of calling-line identification on a per-call basis. A subscriber may request this from the provider of electronic communications services automatically and free-of-charge for all calls from his lines.
- (2) Without prejudice to the provisions of the preceding paragraph, operators must override the prevention of the presentation of calling-line identification free of charge for calls to an emergency call number.
- (3) Where a service provider offers the presentation of calling-line identification, the called subscriber must have the possibility, using a simple means and free of charge, and for reasonable use of this function, of preventing the presentation of calling-line identification for incoming calls.
- (4) Where a service provider offers the presentation of calling-line identification and the calling-line identification is presented prior to the line being established, the called subscriber must have the possibility, using a simple means, of rejecting incoming calls where the presentation of calling-line identification has been prevented by the calling user or subscriber.
- (5) Where a service provider offers connected line identification, the called subscriber must have the possibility, free of charge and using a simple means, of preventing presentation of the connected line identification to the calling user.
- (6) A service provider must set out the possibilities pertaining to the presentation and prevention of presentation of calling-line and connected line identification in its general terms and conditions.
- (7) The provision of the first paragraph of this Act shall also be applied to calls to third countries originating in Member States. The provisions of the third, fourth and fifth paragraphs of this Article shall also be applied to incoming calls originating in third countries.

Article 155  
(tracing of malicious or nuisance calls)

- (1) Where a subscriber makes a written request for an operator to trace malicious or nuisance calls, the operator may, on a temporary basis but for not more than three months, record the origin of all calls to the subscriber's network termination point, including those for which an elimination of the presentation of calling-line identification has been requested.
- (2) The operator must retain the data on the tracing and make available to the subscriber that requested the tracing of malicious or nuisance calls, in writing, data on the results of the tracing, i.e. the data identifying the calling party (e.g. the telephone number).
- (3) An operator shall send any data disclosing the identity of the calling subscriber only if the subscriber demonstrates a legal interest in protecting his rights before a court, whereby the operator shall inform the calling subscriber and the Information Commissioner.
- (4) Operators shall ensure retention of the data collected pursuant to this Article, with due regard to the measures referred to in the third paragraph of Article 145 of this Act, for a period of three years following its delivery to the subscriber.

(5) The Information Commissioner shall oversee implementation of the provisions of this Article.

Article 156  
(call-forwarding)

Operators must enable a subscriber to stop automatic call-forwarding by third parties to the subscriber's terminal using a simple means and free of charge.

Article 157  
(cookies)

(1) The retention of information or the gaining of access to information stored in a subscriber's or user's terminal equipment shall be permitted only on condition that the subscriber or user gives their consent thereto, after having been given clear and comprehensive information in advance about the information manager and the purpose of the processing of this information, in accordance with the act governing personal data protection.

(2) Without prejudice to the provisions of the preceding paragraph, the technical retention of information or access to this data may be permitted exclusively for the purpose of carrying out the transmission of a communication over an electronic communications network, or as strictly necessary in order for the provider of an information society service explicitly requested by the subscriber or user to provide the service.

(3) If technically feasible, effective and in accordance with the act governing personal data protection, a user may also signal the consent referred to in the first paragraph of this Article by using appropriate settings in a browser or other applications. The consent of a user or subscriber shall mean personal consent in accordance with the act governing personal data protection.

(4) The provisions of this Act shall be applied in the case of a violation of the rules on informing a individual and acquiring his consent as referred to in the first paragraph of this Article and in the case of a violation of the act governing personal data protection.

(5) Inspection and supervision of the implementation of the provisions of this Article shall be carried out by the Information Commissioner.

Article 158  
(unsolicited communications)

(1) The use of automated calling and communication systems to make calls to subscribers' telephone numbers without human intervention (e.g. automatic calling machines, SMS, MMS), facsimile machines or electronic mail for the purposes of direct marketing shall be allowed only on the basis of a subscriber's or user's prior consent.

(2) Without prejudice to the provisions of the preceding paragraph, a natural person or legal entity that obtains from a purchaser of its products or services their electronic mail address may use that address for the direct marketing of its own similar products or services, on condition it gives that customers the clear and distinct opportunity to refuse, free of charge and straightforwardly, the use of their electronic mail address at the time of the collection of these contact details, and on the occasion of every message in the event that the customer has not initially refused such use.

(3) The use of means of direct marketing using electronic communications (e.g. voice calls) other than those laid down in the previous two paragraphs of this Article shall be permitted only with the consent of the subscriber or user. The refusal of consent must be free of charge

for a subscriber or user.

(4) The first and third paragraphs of this Article shall be applied to subscribers that are natural persons.

(5) The sending of electronic mail for the purposes of direct marketing which, contrary to the act governing electronic commerce in the market, disguises or conceals the identity of the sender on whose behalf the message is sent, or without a valid address to which the recipient may send a request that such direct marketing cease, shall be prohibited. The sending of electronic mail for the purposes of direct marketing that invites recipients to visit websites that contravene the above-mentioned act shall also be prohibited.

(6) The provisions of this Act shall be applied in cases where commercial communications are sent by electronic mail contrary to the provisions of this Article and they also constitute unsolicited electronic mail under the act governing consumer protection. The provisions of this Act shall also be applied in cases where commercial communications are sent by electronic mail contrary to the provisions of this Article and they also constitute unsolicited electronic mail under the act governing electronic commerce in the market.

(7) Without prejudice to any supervisory procedure occasioned by a breach of the provisions of this Article, any natural person or legal entity that has suffered damage by the breach, as well as any service provider seeking to protect its business interests and the interests of its customers, shall have a legal interest in filing a civil action or interim order against the person committing a breach of the provisions of this Article.

#### Article 159 (personal data breach)

(1) A provider of public communications services must notify the Agency of any personal data breach without delay.

(2) Where the personal data breach is likely to adversely affect the personal data or privacy of a subscriber or individual, the provider referred to in the preceding paragraph must also notify that subscriber or individual of the breach without undue delay.

(3) Notification of a personal data breach to the subscriber or individual concerned shall not be required if the provider of a public communications service has demonstrated to the satisfaction of the Agency that it has implemented appropriate technological protection measures and that those measures were applied to the data related to the security breach. The provider of a public communications service must ensure that such measures render the data unintelligible to any person who is not authorised to access it.

(4) Where the provider of a public communications service has not notified the subscriber or individual concerned of the personal data breach, the Agency may, having considered the likely adverse effects of the breach, require it to do so. The provider of a public communications service shall notify the Agency after it has complied with this obligation.

(5) The notification to the subscriber or individual referred to in the second or fourth paragraph of this Article must contain at least a description of the personal data breach, the contact addresses from which more information may be obtained, and the measures recommended to mitigate any possible adverse effects caused by the personal data breach. The notification to the Agency referred to in the first paragraph of this Article must, in addition to the above, contain a description of the consequences of, and the measures proposed or taken by the provider of a public communications service to address, the personal data breach.

(6) For the purposes of implementation of the provisions of this Article, the Agency may issue a general act concerning the circumstances in which providers of public communications services are required to notify of personal data breaches, the format of such

notification and the manner in which notification is to be made. In doing so, the Agency must pay due regard to any relevant technical implementing measures adopted by the Commission.

(7) Providers of public communications services must maintain a sufficient inventory of data on personal data breaches. The data inventory must comprise the facts surrounding the breach, its effects, including an assessment of the number of persons affected, and the remedial action taken, which shall enable the Agency to verify compliance with the provisions of this Article. The inventory shall only include the information necessary for this purpose.

#### Article 160

##### (lawful interception of communications)

- (1) An operator must enable the lawful interception of communications at a particular point in the public communications network immediately upon receipt of a copy of that part of the operative part of an order from a competent body stating the point of the public communications network on which the lawful interception of communications should be undertaken, and other data relating to the manner and extent of this measure.
- (2) The copy of the order referred to in the preceding paragraph shall be made by the authority that issued the order.
- (3) An operator must enable the lawful interception of communications in the manner, scope and duration laid down in the copy of the operative part of the order referred to in the first paragraph of this Article.
- (4) An operator may, in exceptional circumstances, enable the lawful interception of communications pursuant to a verbal order if this is laid down in the act which specifies the conditions and circumstances applying to the issuing of verbal orders. A written transcript of the verbal order shall be delivered to the operator as soon as possible and not more than 48 hours after the order was issued.
- (5) Operators must ensure that non-erasable records of every lawful interception of communications, including the information referred to in the first or fourth paragraphs of this Act and the information on execution of the order (who executed it, the duration of interception) are kept for 30 years and that, for the same period, that the level of secrecy applying to the copy of the order is maintained. The body that oversees communications under the order referred to in the third paragraph of this Article shall retain the information in accordance with the regulation governing its operations.
- (6) Operators must, at their own expense, ensure adequate equipment and appropriate interfaces in their networks enabling the lawful interception of communications in their networks. In the lawful interception of communications in international electronic communications networks pursuant to the act governing the Slovenian Intelligence and Security Agency, network operators must, at their own expense, ensure adequate equipment and delivery interfaces enabling the lawful interception of international communications in their networks, or adequate pathways to delivery interfaces at the competent body's control centre.
- (7) The minister shall, in agreement with the minister responsible for the interior, the minister responsible for defence and the director of the Slovenian Intelligence and Security Agency, prescribe the functionality of the equipment and determine the appropriate interfaces referred to in the preceding paragraph.
- (8) The Agency shall oversee compliance with the obligations of operators referred to in this Article. This shall not impinge upon the competencies of other competent bodies to oversee lawful interception pursuant to other acts.

Article 161  
(supervision)

The Agency shall, with due regard to the restrictions referred to in Article 160 of this Act, oversee implementation of the provisions of this Chapter, except for the provisions of Articles 149, 153, 155 and 157 of this Act, the implementation of which shall be overseen by the Information Commissioner.

XIII. DATA RETENTION

Article 162  
(meaning of terms)

Without prejudice to the provision of Article 3 of this Act, the terms used in this Chapter shall have the following meanings ascribed to them:

1. 'Data' shall mean traffic data, location data and the related data necessary to identify a subscriber of consumer.
2. 'User' shall mean means any natural person or legal entity using a public communications service for private or business purposes, without necessarily having subscribed to this service.
3. 'Telephone services' shall mean voice calls, voice mail, conference or data calls, supplementary services (including call-forwarding and call transfer), and messaging and multimedia services (including short message services, enhanced media services and multimedia services).

Article 163  
(general provisions on data retention)

- (1) Operators must, for the purpose of acquiring data on traffic in the electronic communications network as stipulated by the act governing the criminal procedure, for the purpose of ensuring national security, constitutional order and the security, political and economic interests of the state as stipulated by the act governing the Slovenian Intelligence and Security Agency, and for the purpose of national defence as stipulated by the act governing national defence, retain the data referred to in Article 164 of this Act if it is created or processed during the provision of associated public communications services.
- (2) An operator that acquires or processes the data referred to in Article 164 of this Act and has its head office or branch office and equipment for the provision of public communications services or a public communications network in the Republic of Slovenia shall be subject to the obligation referred to in the preceding paragraph.
- (3) The obligation referred to in the first paragraph of this Article shall also apply to the retention of data referred to in Article 164 of this Act on unsuccessful call attempts, where that data is generated and processed or retained (as regards telephony data) or logged (as regards internet data) by providers of public communications services or network operators. This obligation shall not include the retention of data on the content of communications.
- (4) Operators may also cooperate to ensure retention of the data referred to in Article 164 of this Act. The Agency may order an operator, by decision, to ensure retention for other operators as well, if this is appropriate and necessary in light of their mutual business relations. The decision shall also determine the eligible costs of an operator charged with retaining data.
- (5) Operators shall ensure retention of the data referred to in the first, third and fourth paragraphs of this Article in accordance with the provisions of this Act for 14 months

following the day of communication for data related to publicly available telephone services and eight months from the day of communication for other data.

(6) The competent body that decides on access to the data referred to in the first paragraph of this Article may, at the suggestion of the person proposing a data access order, extend the period of retention for a limited period if this justified by the specific circumstances of criminal prosecution as stipulated by the act governing the criminal procedure, and the requirement to ensure national security, constitutional order and the security, political and economic interests of the state as stipulated by the act governing the Slovenian Intelligence and Security Agency and national defence as stipulated by the act governing national defence. The competent body that decides on access to data shall inform the ministry and the Information Commissioner of this. The ministry shall officially notify the Commission and other Member States of the extension of a retention period, and state the reasons for extension. Implementation of a measure shall be discontinued as soon as the special circumstances are no longer in place or when the competent body that decided on the extension receives notification from the Commission that the measure is inadmissible.

(7) Operators must, at the end of the retention period, destroy all data it has retained pursuant to the provisions of this Chapter, except data for which an access order was issued and which was sent to the competent body.

#### Article 164

(categories of data to be retained)

The following data shall be retained:

1. data necessary to trace and identify the source of a communication, including:

- concerning fixed network telephony and mobile telephony: the calling telephone number and the name and address of the subscriber or registered user,
- concerning internet access, electronic mail and internet telephony: the Internet Protocol address, the user ID, the telephone number allocated to any communication entering the public telephone network, and the name and address of the subscriber or registered user to whom an Internet Protocol address, user ID or telephone number was allocated at the time of the communication;

2. data necessary to identify the destination of a communication, including:

- concerning fixed network telephony and mobile telephony: the number called and, in cases involving supplementary services such as call-forwarding or call transfer, the number or numbers to which the call is routed, and the name and address of the subscriber or registered user;
- concerning internet access, electronic mail and internet telephony: the user ID or telephone number of the intended recipient of an internet telephony call, the name and address of the subscriber or registered user and the user ID of the intended recipient of the communication;

3. data necessary to identify the date, time and duration of a communication, including:

- concerning fixed network telephony and mobile telephony: the date and time of the start and end of the communication,
- concerning internet access: the date and time of the log-in and log-off of the internet access service, based on a certain time zone, together with the IP address, whether dynamic or static, allocated by the internet access service provider to a communication, and the user ID of the subscriber or registered user,
- concerning electronic mail and internet telephony: the date and time of activation of the service and, for internet telephony, the duration or time of completion of provision of the service, where the time zone shall be taken into account;

4. data necessary to identify the type of communication, including:

- concerning fixed network telephony and mobile telephony: the telephone service used,
  - concerning electronic mail and internet telephony: the internet service used;
5. data necessary to identify users' communication equipment, including:
- concerning fixed network telephony: the calling and called telephone numbers;
  - concerning mobile telephony: the calling and called telephone numbers, the International Mobile Subscriber Identity of the calling and called parties, the International Mobile Equipment Identity of the calling and called parties, and in the case of pre-paid anonymous services, the date and time of the initial activation of the service and the Cell ID from which the service was activated,
  - concerning internet access, electronic mail and internet telephony: the calling telephone number for dial-up access and the digital subscriber line or other end-point of the originator of the communication;
6. data necessary to identify the location of mobile communication equipment:
- the location label (Cell ID) at the start of the communication;
  - data identifying the geographical location of cells by reference to their location labels during the period for which communications data is retained.

Article 165  
(security of retained data)

- (1) Operators shall ensure the security of retained data in accordance with the act governing personal data protection. In relation to this, every operator, separately or together, shall adopt technical and organisational measures to protect data against destruction, loss or alteration, and unauthorised or unlawful retention, processing, access or disclosure.
- (2) Operators may process retained data only to the extent required to ensure retention.
- (3) Retained data must be of the same quality as data in the network. The provisions of this Act on the security and protection of data in the network shall apply to retained data.
- (4) The Agency shall, after obtaining the prior opinion of the Information Commissioner, prescribe the method of retention of data and the method of implementation of this Article in detail by means of a general act. The Agency shall oversee implementation of the general act adopted pursuant to this provision.

Article 166  
(transmission of retained data to competent bodies)

- (1) An operator must, immediately or without undue delay, transmit retained data as soon as it receives a copy of that part of the operative part of an order from a competent body stating all the required data on the scope of access.
- (2) The copy of the order referred to in the preceding paragraph shall be made by the body that issued the order.
- (3) An operator must, upon receipt of an order, transmit the retained data to the competent body to the extent determined in the copy of the operative part of the decision.
- (4) An operator may not disclose an order to the persons to whom the order referred to in the first paragraph of this Article relates or to third parties, nor disclose that it has transmitted or will transmit retained data to the competent body under this Article.
- (5) Operators must, together with the competent bodies entitled to request access to retained data, ensure that non-erasable records of every transmission of retained data are kept for ten years that, for the same period, acquired and transmitted data is retained from the day it was transmitted to the competent body and the level of secrecy applying to the copy of the order is maintained.

(6) The minister shall prescribe in detail the method of transmission of retained data in agreement with the minister responsible for the interior, the minister responsible for defence and the director of the Slovenian Intelligence and Security Agency.

(7) The Information Commissioner shall oversee compliance with the obligations of operators under this Article. This shall not impinge upon the competencies of other competent bodies to oversee the obligations pursuant to other acts.

Article 167  
(costs of retention)

Operators must bear the costs of ensuring all the necessary technical and organisational measures for the retention of data in accordance with the provisions of this Act.

Article 168  
(data on access orders and data transmission)

(1) A court that has ordered access to data shall maintain a collective database of access orders and the transmission of data retained pursuant to Article 166 of this Act, comprising:

1. the number of cases in which access to retained data was ordered;
2. a statement of the date or period for which the data was requested, the date on which the competent body issued the data access order and the date of the transmission of the data;
3. the number of cases in which data access orders could not be executed.

(2) The competent court shall forward the database referred to in the preceding paragraph for the current year to the ministry responsible for justice no later than by 31 January the following year.

(3) The ministry responsible for justice shall, on the basis of the databases received from all courts, prepare a joint report on access to retained data no later than by 20 February every year for the previous year. It shall forward it to the ministry, which shall in turn forward it to the Commission and to the National Assembly committee responsible for supervising the intelligence and security services without delay.

(4) The ministry responsible for justice shall, after obtaining the prior opinion of the president of the Supreme Court of the Republic of Slovenia, issue instructions using the reporting forms under this Article.

Article 169  
(supervision)

The Information Commissioner shall, with due regard to the restrictions referred to in Article 166 of this Act, oversee implementation of the provisions of this Chapter, except for the provisions referred to in the fourth paragraph of Article 165 of this Act, which shall be overseen by the Agency.

XIV. AGENCY

1. General provisions

1.1. General

Article 170  
(Agency)

- (1) The Communications Networks and Services Agency of the Republic of Slovenia (hereinafter: the Agency) is a legal entity of public law.
- (2) The Agency shall be independent in exercising the functions that lie within its sphere of competence.
- (3) It shall exercise the rights and discharge the obligations of the founder, which is the Government, in the name of the Republic of Slovenia.

Article 171  
(workings of the Agency)

- (1) The Agency shall carry out the functions laid down in this Act, in other acts within its sphere of operation and in the implementing regulations adopted pursuant thereto. In doing so, it shall pursue the development of objectives deriving from the strategic documents of the Republic of Slovenia in the area of its operation.
- (2) The Agency must discharge functions within its areas of competence in an impartial, transparent and timely manner, and within the framework of the periods stipulated by law.
- (3) The organisation and operation of the Agency shall be governed by the statute.

Article 172  
(acts of the Agency)

- (1) The Agency shall issue general acts on matters relating to its areas of competence.
- (2) The Agency may, by means of a general act, regulate in detail issues which arise in the course of implementation of the provisions of acts relating to its areas of competence.
- (3) The Agency shall issue non-binding recommendations as part of its regulatory competencies.
- (4) The Agency shall decide on specific matters within its areas of competence by decision or resolution.
- (5) The statute and the general acts of the Agency for the implementation of public authorisations shall be published in the Official Gazette of the Republic of Slovenia, and recommendations on the Agency website.

Article 173  
(bodies of the Agency)

The bodies of the Agency shall be the Agency Council and the Agency director.

1.2 Agency Council

Article 174  
(composition and appointment of members of the Agency Council)

- (1) The Agency Council shall comprise five members, one of whom shall be a representative of the Electronic Communications Council.
- (2) The members of the Agency Council shall be appointed by the Government.
- (3) The chairman of the Agency Council shall be elected by the members of the Agency Council from among their own number, with a majority of votes and by secret ballot.
- (4) In appointing candidates to serve as Agency Council members, the Government shall use the criteria of professional competence and qualifications. In appointing the candidate who is

the representative of the Electronic Communications Council, the Government shall only verify that the conditions referred to in the second paragraph of Article 175 have been met.

(5) The Electronic Communications Council shall select one of its members and put him forward for appointment to the Agency Council as its representative, as referred to in the first paragraph of this Article, without a public call, if he meets the conditions referred to in the second paragraph of Article 175 of this Act. The representative of the Electronic Communications Council shall be a member of the Agency Council until the expiry of his term of office at the Electronic Communications Council.

(6) If no member of the Electronic Communications Council meets the conditions referred to in the second paragraph of Article 175 of this Act, the Electronic Communications Council shall have representative on the Agency Council. In this case, without prejudice to the first paragraph of this Article, the Agency Council shall comprise four members.

#### Article 175

(term of office of and conditions applying to members of the Agency Council)

(1) Members of the Agency Council shall be appointed for a period of five years and may be reappointed.

(2) A person may be appointed as a member of the Agency Council if he:

- is a citizen of the Republic of Slovenia;
- has business capacity;
- has at least the level of education provided by an undergraduate study programme or by study programmes corresponding under the law with undergraduate study in an appropriate discipline;
- has at least five years' experience of working in a post that requires the level of education referred to in the previous indent;
- is an expert in the area of the Agency's operation;
- has not been convicted by final judgement of a criminal offence committed intentionally and prosecuted *ex officio*, and have not been given a non-suspended prison term of more than six months.

#### Article 176

(incompatibility)

Members of the Agency Council may not be:

1. members of bodies of political parties;
2. officers under the act governing the public sector pay system;
3. public officials in state bodies;
4. persons who are employed by or who serve as members of the management or supervisory board of legal entities that perform an activity in an area which the Agency is competent to regulate, or who have ownership stakes in legal entities that perform an activity in an area which the Agency is competent to regulate or in legal entities which have an ownership stake in such legal entities;
5. persons whose spouse, extra-marital partner or civil partner under the act governing same-sex partnerships or direct relation up to and including the second degree serves as a member of the management or supervisory board of a legal entity that performs a business activity in an area which the Agency is competent to regulate, or who has ownership stakes in legal entities that perform an activity in an area which the Agency is competent to regulate or in legal entities which have an ownership stake in such legal entities.

Article 177  
(competencies of the Agency Council)

(1) The Agency Council shall:

- adopt its own rules of procedure;
- pass opinions on the programme of work, the financial plan and the annual report;
- approve the statute adopted by the Agency director;
- propose the appointment or dismissal of the Agency director;
- propose a temporary prohibition on the performance of functions by the director;
- propose the early dismissal of members of the Agency Council.

(2) Members of the Agency Council or persons authorised by the Agency Council may inspect the business accounts as defined in the Slovenian Accounting Standards and the Agency's accounting documents.

(3) Upon every such request by the Agency, the Agency director must submit to the Agency a report on the operations of the Agency and any other information that the Agency Council requires in order to carry out its functions.

(4) The Agency Council may suggest improvements in the operation of the Agency to the Agency director, as well as point out to him any irregularities in the Agency's operations and notify the competent bodies of these irregularities.

Article 178  
(dismissal of members of the Council before the end of their term of office)

(1) A member of the Agency Council shall be subject to early dismissal if he:

- so requests;
- no longer meets the conditions for appointment laid down in this Act;
- if he permanently loses the working capacity to hold office;
- if the position of incompatibility referred to in Article 176 arises.

(2) The Government shall dismiss a member of the Agency Council early by administrative decision, on the basis of a reasoned proposal from the Agency Council.

(3) The Agency Council shall be responsible for carrying out the procedure of early dismissal of members of the Agency Council as laid down by the Agency statute. The member of the Agency Council whose early dismissal is being proposed may not take part in implementation of the dismissal procedure.

(4) Judicial protection in the form of an administrative dispute may be claimed against a decision on dismissal.

Article 179  
(convening an Agency Council meeting and Council decision-making)

(1) The Agency Council shall work and take decisions at meetings at least four times a year. These meetings shall be convened by the chairman of the Agency Council at his own initiative, at the request of at least two members of the Agency Council or at the request of the Agency director. Specific grounds must be provided in a request made by a member of the Agency Council and the director.

(2) The Agency Council shall adopt decisions after consultation and voting at a meeting. A decision shall be adopted if a majority of all members of the Agency Council vote for it. Minutes shall be drawn up of Agency Council meetings.

Article 180

(rights and obligations of members of the Agency Council)

- (1) Members of the Agency Council must discharge their functions impartially and with due diligence, and safeguard the business secrecy of the Agency.
- (2) Members of the Agency Council shall be entitled to attendance fees and the reimbursement of other expenses, in accordance with the government regulation issued on the basis of the act governing public agencies. Equipment, working conditions and the provision of information shall be ensured by the Agency.
- (3) Members of the Agency Council shall be liable for any damage resulting from a violation of their duties.

1.3 Agency director

Article 181

(appointment of the director and acting director)

- (1) The Agency director shall be appointed by the Government at the proposal of the Agency Council and after a public competition.
- (2) The public competition shall be published in the daily press, the Official Gazette of the Republic of Slovenia and on the Agency's website. It must be published no more than 90 and no less than 60 days prior to the expiry of the term of office of the incumbent Agency director.
- (3) The public competition shall be held by a special competition commission appointed by the official council.
- (4) There shall be no appeal against an appointment decision. Judicial protection in the form of an administrative dispute may be claimed, where the competent court shall decide on the matter as a matter of priority.
- (5) If the director dies or is dismissed, or if his term of office has expired and a new director not yet been appointed, the Government shall appoint an acting director, without a public competition, to serve until the appointment of a new director but for no longer than six months. In relation to the acting director, the provisions of Articles 182, 185 and 186 of this Act shall apply *mutatis mutandis* to the conditions of appointment, the reasons for early dismissal and the temporary prohibition on the performance of functions by the director.
- (6) In the event of a temporary prohibition on the performance of functions by the director as referred to in Article 186 of this Act, an acting director shall be appointed until the measure comes to an end.

Article 182

(term of office and conditions applying to the appointment of the director)

- (1) A person may be appointed to the post of director if:
  - he is a citizen of the Republic of Slovenia;
  - he has business capacity;
  - has at least the level of education provided by an undergraduate study programme or by study programmes corresponding under the law with undergraduate study in an appropriate discipline;
  - he has at least ten years' experience of working in a post that requires the level of education referred to in the previous indent;
  - he is an expert in the areas of the Agency's operation;
  - he has management, organisational and international experience;

- he has a high level of knowledge of at least one world language;
  - he has not been convicted by final judgement of a criminal offence committed intentionally and prosecuted *ex officio*, and has not been given a non-suspended prison term of more than six months, or has not been convicted by final judgement of a criminal offence against official duties and public authorisations;
  - no criminal proceedings have been brought against him in relation to a criminal offence committed intentionally and subject to prosecution *ex officio*;
  - he meets the requirements referred to in Article 183 of this Act.
- (2) The director shall be appointed for a period of five years and may be reappointed after the holding of a public competition.

#### Article 183 (incompatibility)

The director and his deputies, their spouses, extra-marital partners, partners under the act governing same-sex partnerships or direct relations up to and including the second degree may not:

- perform activities themselves as natural persons in an area which the Agency is competent to regulate;
- be members of the management or administrative body of a legal entity that performs an activity in an area which the Agency is competent to regulate;
- have ownership stakes in legal entities that performs an activity in an area which the Agency is competent to regulate or in legal entities which have an ownership stake in such legal entities.

#### Article 184 (competencies and responsibilities of the Agency director)

(1) The Agency director shall:

- represent and present the Agency;
- manage its operations and organise its work, where he shall appoint deputies for particular areas;
- adopt the statute, the programme of work, the financial plan and the Agency's annual report;
- manage procedures and give authorisations to manage procedures in matters relating to the Agency's competencies;
- issue individual acts and adopt general acts and recommendations relating to the Agency's competencies;
- safeguard the business secrecy of the Agency;
- work with the Agency Council and area-related advisory councils in accordance with their competencies.

(2) The Agency director shall be liable for any damage caused by negligent or unlawful conduct on his part, under the general rules of liability for damages.

#### Article 185 (dismissal of the director before the end of his term of office)

(1) The director shall be subject to early dismissal only if:

- he so requests;
- he no longer meets the conditions for appointment referred to in the first paragraph of

Article 182 of this Act, except for the condition referred to in the ninth indent of the first paragraph of Article 182 of this Act;

- he permanently loses the working capacity to hold the post of director.

(2) The director may also be subject to early dismissal if, in accordance with its competencies under the act governing the court of audit, the Court of Audit of the Republic of Slovenia issues a call for his dismissal.

(3) The Government shall dismiss the director at its own initiative or at the proposal of the Agency Council if the reasons referred to in the first and second paragraphs of this Article are in place.

(4) The director must be informed of the reasons for his early dismissal and must, at the same time, be given the opportunity to respond.

(5) The Government shall dismiss the director by administrative decision, where it must explain the reasons for its decision. The provisions of the act governing the employment of public officials shall apply *mutatis mutandis* to the dismissal of the director, unless this Act determines otherwise.

(6) There shall be no appeal against the decision referred to in the preceding paragraph. Judicial protection in the form of an administrative dispute may be claimed, where the competent court shall decide as a matter of priority.

(7) The Government shall make information on the dismissal of the director public. If this information does not contain a statement of grounds for all the reasons for dismissal, the Government must, at the request of the dismissed director, publish the decision referred to in the fifth paragraph of this Article in full on its website.

(8) A dismissed director shall be allocated to a vacant position at the Agency that corresponds to his qualifications for the period remaining on his employment contract, or for an indefinite period if he concluded an employment contract for an indefinite period of time prior to his appointment. If no such position is available, the Government shall, under the act governing employment, terminate his employment contract in accordance with the provisions on ordinary termination.

(9) If the director is dismissed early because he no longer meets the conditions for appointment referred to in the eighth or ninth indents of the first paragraph of Article 182 of this Act, the dismissal shall be on grounds of fault, as shall be the termination of his employment contract under the act governing employment.

#### Article 186

(temporary prohibition on the performance of functions by the director)

(1) The Government shall, at its own initiative or at the proposal of the Agency Council, decide by administrative decision on a temporary prohibition on the performance of functions by the director if:

- criminal proceedings have been brought against him on reasonable suspicion of having committed a criminal offence referred to in Articles 257, 257a, 261 or 263 of the Penal Code (OGRS, 55/08, 66/08 – amendments, 39/09, 91/11);

- or a definitive charge has been brought against him in relation to a criminal offence committed intentionally that is subject to *ex officio* prosecution and for which the main sanction prescribed is a prison term of at least six months.

(2) In the cases referred to in the first paragraph of this Article, the director shall be temporarily relieved of his authorisations; at the same time, he shall be offered an employment contract for another post at the Agency. Only in cases where it is not possible to otherwise ensure the lawfulness of the Agency's operations or the impartiality of its decision-making may the director be temporarily relieved of his authorisations and prohibited from

working at the Agency.

(3) The temporary prohibition on the performance of functions by the director as referred to in the first paragraph of this Article shall last until:

- the final decision by the Government on his dismissal;
- the expiry of his term of office;
- or the final completion of criminal proceedings.

(4) The director must be informed of the reasons for the temporary prohibition on the performance of his functions and must, at the same time, be given the opportunity to respond.

(5) The Government shall decide on a temporary prohibition on the performance of functions by the director by administrative decision. Judicial protection in the form of an administrative dispute may be claimed against this decision.

(6) If the director is temporarily prohibited from performing any work at the Agency, he shall be entitled to 50% of the basic salary he would have received had he been discharging the functions of director for the period of the prohibition. If the director is offered a contract of employment for another post at the Agency and he accepts the contract, he shall receive the salary for that post. If he refuses the offer, he shall not have the right referred to in this Article.

(7) If the criminal proceedings referred to in the first paragraph of this Article are finally completed before a criminal court and they do not provide a basis for the dismissal of the director under this Act, the consequences of the measure referred to in the first paragraph of this Article shall be removed on the day the judicial decision becomes final.

#### 1.4 Operation of the Agency

##### Article 187 (number of employees)

For the implementation of its competencies, the Agency shall determine, in the work programme, the appropriate number of employees required.

##### Article 188 (salaries of employees)

The regulations governing the public sector pay system shall apply to the salaries of Agency employees.

##### Article 189 (funding of the Agency)

The Agency shall be funded exclusively from revenues from the payments made under this Act and under other acts applying to its areas of operation.

##### Article 190 (monitoring of the work of the Agency)

(1) The Government shall approve the statute of the Agency.

(2) The Government shall approve the Agency's programme of work and financial plan after receiving a positive opinion from the Agency Council.

(3) The Agency must keep separate accounting records by area of regulation, in accordance with the act governing accounting and with the regulations issued pursuant thereto. The

Agency's accounts and financial reports must be inspected by a qualified auditor.

(4) Every year the Agency must prepare an annual report, to be approved by the Government, and notify the National Assembly thereof. The annual report shall comprise a report on work and a business report.

(5) Supervision of the legality of the work of the Agency shall be conducted by the ministry responsible for the Agency's area of operation. This supervision shall not include the possibility of influencing the content of general or specific legal acts issued by the Agency in relation to the implementation of its competencies pursuant to this Act or to other acts applying to its areas of operation.

(6) The Court of Audit shall supervise the Agency's use of funds to verify that funds are used lawfully, for their assigned purpose and in a cost-effective and efficient manner.

(7) The ministry responsible for administration shall oversee the implementation of regulations on the administrative procedure.

#### Article 191

##### (proceedings before the Agency)

(1) The Agency shall conduct proceedings and issue decisions and other individual acts under the act regulating the general administrative procedure, unless this Act determines otherwise. Where this Act lays down that a decision or other individual act is to be issued on the basis of a public invitation to tender, the Agency shall carry out a public invitation to tender procedure under this Act prior to initiating an administrative procedure.

(2) The director may authorise persons within the Agency who meet the conditions for deciding in a general administrative procedure to decide on individual matters.

(3) A decision or other individual Agency act issued in a general administrative procedure shall be final, unless this Act or another act applying to the Agency's area of operation determine otherwise.

(4) Only those legal remedies laid down in the act governing the general administrative procedure for which the Agency is competent shall be permitted against a decision or other individual Agency act referred to in the preceding paragraph.

(5) The Agency shall itself perform the administrative enforcement of its enforceable decisions and may, when doing so, impose an appropriate fine and use the coercive measures laid down in the act governing the administrative procedure. The administrative enforcement of monetary obligations shall be performed by the tax authority in accordance with the procedure prescribed for the execution of tax obligations.

#### Article 192

##### (judicial protection)

(1) Judicial protection may be claimed against a final decision or other individual Agency act in accordance with the act governing administrative disputes.

(2) An administrative suit may be filed against acts issued by the Agency under this Act at the Administrative Court of the Republic of Slovenia in Ljubljana. The administrative court based in Ljubljana shall rule on the dispute.

(3) Procedures relating to administrative suits as referred to in the preceding paragraph shall be fast-track. The court shall rule on such actions as a matter of priority. The same shall apply to courts ruling on legal remedies.

#### Article 193

##### (collection of information relating to proceedings before the Administrative Court)

(1) The Administrative Court shall collect information on the number and general area of administrative suits, the length of proceedings before the court from the filing of an action to the final judicial decision, and the number of decisions resulting in an interim order issued by the court in relation to electronic communications.

(2) The Administrative Court shall send the information referred to in the previous paragraph for the current year to the ministry responsible for justice no later than by 31 January the following year.

(3) The ministry responsible for justice shall send the information received to the Commission and BEREC at their reasoned request.

2. Objectives of the Agency in the area of electronic communications

#### Article 194

(general objectives and principles)

(1) The Agency must, in discharging its functions, adopt all measures necessary for achieving the objectives referred to in Articles 195 to 197 of this Act, where the measures must be proportionate to the objectives being sought.

(2) Measures adopted by the Agency must be as technologically neutral as possible, unless the provisions of this Act and of the implementing regulations adopted pursuant thereto and governing the radio frequency spectrum determine otherwise.

(3) The Agency must, within the sphere of its competencies, contribute to the realisation of policies aimed at promoting cultural and linguistic diversity and media pluralism.

#### Article 195

(promoting competition)

The Agency shall promote effective competition in the provision of electronic communications networks, electronic communications services, and associated facilities and services, in particular by:

1. ensuring that users, including disabled users, elderly users and users with special social needs are able to take fullest advantage of benefits of choice, price and quality;
2. ensuring that there is no distortion or restriction of competition in the electronic communications sector, including the transmission of content;
3. promoting the efficient use of radio frequencies and the numbering space, and ensuring their efficient operation;
4. promoting the construction and development of networks and services.

#### Article 196

(promoting the development of the internal market)

The Agency shall contribute to the development of the internal market, *inter alia*, by:

1. removing the remaining barriers to the provision of electronic communications networks, associated facilities and services, and electronic communications services at the EU level;
2. promoting the construction and development of pan-European networks, the interoperability of pan-European networks and end-to-end connectivity;
3. cooperating with other competent regulatory authorities in Member States (hereinafter: other regulatory authorities), the Commission and BEREC in a transparent manner so as to ensure the development of uniform operation and uniform application of EU legislation.

Article 197  
(supporting the interests of citizens)

The Agency shall support the interests of citizens, in particular by:

1. ensuring that all citizens have access to universal services;
2. ensuring a high level of consumer protection in transactions with suppliers, in particular by providing the possibility of simple and inexpensive dispute settlement procedures via institutions that are independent of all parties involved;
3. contributing to the provision of a high level of protection of personal data and privacy;
4. promoting the provision of clear information, in particular by requiring transparent tariffs and conditions for the use of public communications services;
5. attending to the needs of special social groups, particularly disabled users, elderly users and users with special social needs;
6. ensuring the integrity of public communications networks and the security of networks and publicly available communications services;
7. promoting the possibility of end-users making their own choices with regard to access, the dissemination of information or the use of applications and services;
8. promoting the preservation of the open and neutral character of the internet.

Article 198  
(regulatory principles)

In realising the objectives referred to in Article 194 to 197 of this Act, the Agency shall apply objective, transparent, non-discriminatory and proportionate regulatory principles by, *inter alia*:

1. promoting regulatory predictability through a consistent regulatory approach at suitable periods of inspection;
2. ensuring that, under similar conditions, there is no discrimination in the treatment of natural persons and legal entities providing electronic communications networks and services;
3. protecting competition to the benefit of users, including promoting the preservation of the open and neutral character of the internet and, where necessary, promoting competition in the area of infrastructure;
4. promoting efficient investment and innovations in the area of new and improved infrastructure, including ensuring that all access obligations pay due regard to the risk assumed by undertakings making investments and facilitating various agreements on cooperation between investors and the parties seeking access so that the investment risk is spread and competitiveness in the market and the principle of non-discrimination are preserved;
5. taking due account of the different conditions pertaining to competition and users that exist in different geographical areas of the country;
6. imposing prior regulatory obligations only when there is no effective or sustainable competition, and mitigating and removing these obligations as soon as this requirement is met.

Article 199  
(independence of operation)

The Agency must discharge its competencies in the area of electronic communications independently of natural persons and legal entities providing electronic communications

networks and/or electronic communications services.

### 3. Competencies of the Agency in the area of electronic communications

#### Article 200 (official registers)

(1) The Agency shall keep official registers of:

1. operators;
2. beneficiaries of decisions allocating radio frequencies;
3. beneficiaries of decisions allocating numbering resources;
4. holders of amateur radio licences.

(2) The official registers referred to in the preceding paragraph shall be kept by the Agency as an interconnected computer database.

(3) The Agency shall keep the following information in the official register of operators:

1. name, address and tax number (natural persons);
2. company name, registered office, identification number and registration number (legal entities);
3. notification of a public communications network or public communications service;
4. the date of commencement, alteration or cessation of the provision of public communications networks and/or public communications services;
5. the decision establishing that an operator has significant market power;
6. the settlement of liabilities by operators originating from this Act;
7. any sanction imposed for a breach of the provisions of this Act.

(4) The Agency shall keep the following information in the official register of beneficiaries of decisions allocating radio frequencies:

1. name, address and tax number (natural persons);
2. company name, registered office, identification number and registration number (legal entities);
3. the decision allocating radio frequencies, the electronic communications network and/or electronic communications service for which the allocated radio frequency is being used, the date of expiry of validity of the decision, and other information contained in the decision;
4. the settlement of liabilities by the beneficiary of a decision allocating radio frequencies originating from this Act;
5. any sanction imposed on a beneficiary of a decision allocating radio frequencies for a breach of the provisions of this Act.

(5) The Agency shall keep the following information in the official register of beneficiaries of decisions allocating numbering resources:

1. name, address and tax number (natural persons);
2. company name, registered office, identification number and registration number (legal entities);
3. the decision allocating numbering resources, the electronic communications network and/or electronic communications service for which the allocated numbering resources are being used, the date of expiry of validity of the decision, and other information contained in the decision;
4. the settlement of liabilities by the beneficiary or beneficiaries of a decision allocating numbering resources originating from this Act;
5. any sanction imposed on a beneficiary of a decision allocating numbering resources for a breach of the provisions of this Act.

(6) The Agency shall keep the following information in the official register of holders of amateur radio licences:

1. name and address (natural persons);
2. company name, registered office, identification number and registration number (legal entities);
3. the call sign allocated.

(7) The Agency may also obtain the information referred to in this Article from the official registers of other state bodies and directly by electronic means.

(8) The Agency shall keep the information referred to in the third paragraph of this Article for as long as the operator provides public communications networks and/public communications services under this Act, after which time it shall archive the information permanently. The Agency shall keep the information referred to in the fourth and fifth paragraphs of this Article for as long as the natural person or legal entity has the right to use radio frequencies or numbers, after which time it shall archive the information permanently.

#### Article 201

(collection and supply of data and information)

(1) All natural persons and legal entities providing public communications networks and/or electronic communications services must make available to the Agency, at its written request, all data and information at its disposal, including the documents and financial information that the Agency needs to discharge its competencies under this Act for, *inter alia*:

1. the systematic or case-by-case verification of compliance with requirements relating to the efficient use of radio frequencies or numbering resources, contributions to the funding of universal service or the payment of fees on the basis of authorisation for the use of radio frequencies and for the use of numbering resources, or fees for the efficient use of a limited natural resource;
2. the case-by-case verification of compliance with the provisions of this Act or with individual Agency acts;
3. the assessment of the security and integrity of operators' services and networks, including the documented security policies;
4. the settlement of disputes under the provisions of this Act;
5. the implementation of procedures relating to applications for the allocation of rights to use limited natural resources under this Act;
6. the publication of comparative overviews of the quality and prices of services for the benefit of consumers;
7. clearly defined statistical purposes;
8. the implementation of analyses of relevant markets and the discharge of other competencies in relation to ensuring competition;
9. the discharge of the Agency's competencies in the area of construction.

(2) In discharging the competencies referred to in the preceding paragraph, the Agency shall have the right, in particular, to require that the natural persons and legal entities referred to in the preceding paragraph submit all information and data on the future development of a network or service that could affect the wholesale services that they make available to competitors. The Agency may also require operators with significant market power on wholesale markets to submit accounting information on the retail markets linked to those wholesale markets.

(3) The information requested must be proportionate to the purpose for which it is to be used. The Agency must state the purpose of use of the requested information in the request, and process the information in accordance with the seventh paragraph of this Article.

(4) The persons referred to in the first paragraph of this Article must submit data and information to the Agency free of charge, and to the extent and by the deadline laid down in

the Agency's request. The late submission of data and information and the supply of incorrect or incomplete data or information contrary to the Agency's request shall be deemed to be a breach of the duty to supply the requested data and information.

(5) The Agency must send the Commission, at its reasoned request, the data and information which the Commission requires to perform its tasks and which is proportionate to the performance of those tasks. If the Agency previously obtained the data and information requested from a specific person referred to in the first paragraph of this Article, it must inform this person prior to supplying such data and information and explain that the Commission may forward this data and information to other regulatory authorities. If this person reasonably opposes the supply of this data and information to other regulatory authorities, the Agency must inform the Commission.

(6) The Agency may supply data and information obtained from the persons referred to in the first paragraph of this Article to other regulatory authorities at their reasoned request.

(7) When supplying and using confidential data and information, the Agency must ensure that the level of confidentiality is maintained. The Agency may only use confidential data and information which it obtains from another regulatory authority for the purpose for which it was requested.

(8) The Agency may make certain data and information public when it believes that this would contribute to the openness and competitiveness of the market. If it does so, it must lay down the method of access to such publication by means of a general act.

#### Article 202

(use of standards and specifications)

(1) The Agency and other competent state bodies shall, for the provision of services, technical interfaces and network functions, and where required to ensure the interoperability of services and greater choice for users, promote the use of standards and specifications from the list of non-mandatory standards and specifications drawn up by the Commission and published in the Official Journal of the EU.

(2) Until the publication of the standards and specifications under the preceding paragraph, the Agency and other competent state bodies shall promote the use of the standards and specifications adopted by the European Committee for Standardization (CEN), the European Committee for Electrotechnical Standardization (CENELEC) and the European Telecommunications Standards Institute (ETSI).

(3) Where the standards and specifications referred to in the preceding paragraph do not exist, the Agency and other competent state bodies shall promote the introduction of international standards or recommendations adopted by the International Telecommunication Union (ITU), the European Conference of Postal and Telecommunications Administrations (CEPT), the International Organization for Standardisation (ISO) or the International Electrotechnical Commission (IEC).

#### Article 203

(net neutrality)

(1) The Agency shall promote the preservation of the open and neutral character of the internet and the possibility of end-users making their own choices with regard to access, the dissemination of information or the use of applications and services.

(2) The Agency must pay special attention to the objectives referred to in the preceding paragraph when discharging the competencies referred to in points 3 and 4 of the second paragraph of Article 132 of this Act and in the third and fourth paragraphs of Article 133 of

this Act, and the competencies relating to the implementation of point 2 of the first paragraph of Article 129 by network operators and internet service providers.

(3) Network operators and internet service providers shall make every effort to preserve the open and neutral character of the internet such that they do not hinder, withhold or slow down internet traffic at the level of individual services or applications, or take measures to degrade these services or applications, except in the event of:

1. urgent technical measures to secure the undisturbed operation of networks and services (e.g. avoidance of network congestion);
2. urgent measures to preserve the integrity and security of networks and services (e.g. removal of undue excessive load on a transmission medium/channel);
3. urgent measures to restrict unsolicited communications under Article 158 of this Act;
4. a court decision.

(4) The measures referred to in points 1, 2 and 3 of the preceding paragraph must be proportionate, non-discriminatory, subject to a time-limit and carried out to the extent necessary to achieve their objectives.

(5) Services provided by network operators and internet service providers may not be based on services or applications offered or used via internet access services.

(6) The Agency may issue a general act for implementation of the provisions of the third, fourth and fifth paragraphs of this Act.

4. Public nature of work in the area of electronic communications

#### Article 204 (public involvement)

(1) When formulating policies on the electronic communications market and adopting regulations, the Agency and other state bodies must, before adopting measures that will have a significant impact on this market, obtain and pay due regard to the opinions of interested parties.

(2) The Agency and other state bodies must, before adopting the acts and regulations referred to in the preceding paragraph, publish their proposals and gather opinions by a published deadline that may not be shorter than 30 days.

(3) After expiry of the deadline referred to in the second paragraph of this Article, and before the adoption of an act or regulation referred to in the first paragraph of this Article, the Agency or other state body must publish the opinions and comments received on its website and state how these opinions and comments were taken into account, or the reasons why they were not taken into account. Information and data of a confidential nature shall not be published.

#### Article 205 (public nature of the Agency's work)

(1) The Agency's work shall be public.

(2) The Agency's programme of work, its financial plan and the annual report shall be published on the Agency's website.

(3) For the purpose of implementing the provisions of the first paragraph of this Article, the Agency must define the following in detail in the statute:

1. the rules relating to the procedure for gathering opinions pursuant to the previous Article, in which it defines at least the method and location of publication of the acts referred to in the first paragraph of this Article, the results of the consultation and the form in which the opinions of interested parties are received;

2. the means of access to the data and information that the Agency is obliged to publish, and to other public data and information;
  3. the form of cooperation with representatives of consumer and disability organisations, and of organisations of other users of public communications services.
- (4) The Agency shall provide information of a public character in accordance with the act governing information of a public character.
- (5) Without prejudice to the provisions of the preceding paragraph, information exchanged by parties in the course of the mediation procedures referred to in Article 220 of this Act shall be exempt from access, unless the parties involved explicitly agree to the disclosure of this information.

Article 206  
(publication of data and information)

- (1) The Agency must publish data and information on at least the following on its website:
1. the interconnection contracts signed with operators with significant market power;
  2. the reference offers of those network operators obliged to formulate and publish them;
  3. the calculated compensation and costs applying to universal service provision;
  4. decisions on rights to use radio frequencies and numbering resources;
  5. amateur radio licences issued;
  6. the intended and completed transfer of rights to use radio frequencies and numbering resources;
  7. public calls to obtain the opinions of interested parties under this Act;
  8. public invitations to tender held by the Agency under this Act;
  9. decisions relating to disputes between natural persons or legal entities providing electronic communications networks and/or services;
  10. decisions relating to disputes between natural persons or legal entities providing electronic communications networks and/or services, and end-users;
  11. completed supervisory procedures;
  12. strategies adopted by the Agency under this Act.
- (2) On its website, the Agency shall promote user awareness of the existence and importance of emergency call numbers and other ‘116’ telephone numbers with added social value.
- (3) Without prejudice to the method of publication referred to in the first paragraph of this Article, the Agency must provide for publication using another method if another act so determines.
- (4) The Agency must, when publishing data and information, pay due regard to the prohibition on the disclosure of business secrets and personal data.
- (5) The Agency shall design the websites and portals it operates in accordance with international recommendations on the accessibility of online content, where it shall enable increased access to and transparency of information important for making an informed choice.

5. Cooperation between the Agency and other bodies in the area of electronic communications

5.1 Role of the Commission and BEREC

Article 207  
(obligation to take Commission recommendations into account)

In the performance of its functions, the Agency must pay due regard to the recommendations

of the Commission issued for the purpose of harmonisation of the application of the provisions of the directives referred to in the second paragraph of Article 2 of this Act. If the Agency decides not to take the recommendations into account, it shall notify the Commission of this and state the reasons for its position.

Article 208  
(consideration of the opinions and positions of BEREC)

In promoting better regulatory harmonisation and greater compliance, and adopting decisions on its own national markets, the Agency shall support and give the fullest possible consideration to the opinions and joint positions of BEREC.

5.2 Cooperation between the Agency and other regulatory authorities, the Commission and BEREC

Article 209  
(cooperation and consultation)

(1) Cooperation between the Agency and other regulatory authorities, the Commission and BEREC

(2) The Agency must consult other regulatory authorities, the Commission and BEREC before adopting measures relating to:

- the definition of a relevant market;
- a market analysis procedure;
- the imposition, amendment or withdrawal of specific obligations under the chapter on ensuring competition, where the measure would have an impact on trade between Member States.

(3) For this purpose the Agency must send a reasoned draft of the measure referred to in the preceding paragraph, along with an official notice, to the other regulatory authorities, the Commission and BEREC, and give them one month in which to respond with their comments.

(4) The Agency shall hold the consultation referred to in the second paragraph of this Article after completing the consultation with the interested parties referred to in Article 204 of this Act, and send the other regulatory authorities, the Commission and BEREC the opinions and comments obtained from the public, unless Commission recommendations or guidelines defining the form, deadlines, content and details of the information relating to the official notice referred to in the preceding paragraph, and the circumstances in which an official notice is not required, determine otherwise.

(5) The Agency may adopt the draft measure after expiry of the deadline referred to in the third paragraph of this Article, where it must take into account the comments received from other regulatory authorities, the Commission and BEREC to the fullest possible extent.

(6) The Agency must report all adopted final measures referred to in the second paragraph of this Article to the Commission and BEREC.

Article 210  
(procedure of cooperation and consultation prior to the adoption of a measure relating to the determination of a relevant market or a market analysis procedure)

(1) If the Commission reports, by the one-month deadline referred to in the third paragraph of the previous Article, that the proposed measure referred to in the first or second indent of the second paragraph of the previous Article would hinder the operation of the single market or

that it has serious doubts as to its compatibility with the applicable EU legislation, the Agency must suspend adoption of the proposed measure for a further two months.

(2) If within this period the Commission adopts a decision which obliges the Agency to withdraw the measure, the Agency shall amend or withdraw the draft measure within six months of the issuing of the Commission decision. If the draft measure is amended, the Agency shall commence public consultation using the procedures referred to in Article 204 of this Act, and send the Commission another official notice on the draft measure in accordance with the provision of the second paragraph of the previous Article.

#### Article 211

(procedure of cooperation and consultation prior to the adoption of a measure relating to the imposition, amendment or withdrawal of specific obligations)

(1) If the Commission reports, by the one-month deadline referred to in the third paragraph of Article 209 of this Act, that the proposed measure referred to in the third indent of the second paragraph of Article 209 would hinder the operation of the single market or that it has serious doubts as to its compatibility with the applicable EU legislation, the Agency must suspend adoption of the proposed measure for a further three months.

(2) In that three-month period the Agency shall work closely with the Commission and BEREC to formulate the most suitable and effective measure in relation to the objectives being sought in the single electronic communications market.

(3) In the period referred to in the preceding paragraph of this Article, the Agency may amend or withdraw the proposed measure, where it shall take the fullest possible account of the communication received from the Commission and any opinions or advice from BEREC, or retain the proposed measure.

(4) If after expiry of the three-month period referred to in the second paragraph of this Article the Commission issues a recommendation that the Agency amend or withdraw the proposed measure, the Agency shall, on the basis of this recommendation, adopt a final measure within one month and forward it to the Commission. The one-month deadline may be extended if this is necessary in order to allow another public consultation to go ahead.

(5) Without prejudice to the provision of the preceding paragraph, the Agency may decide not to take the Commission's recommendation into account and not to amend or withdraw the proposed measure, in which case it shall provide an explanation.

#### Article 212

(notification of urgent and extraordinary measures)

(1) If necessary in order to provide immediate protection to competition or users' rights, the Agency may, in exceptional circumstances and without the consultation referred to in the second to fourth paragraphs of Article 209 and the first paragraph of Article 201 of this Act, adopt a temporary measure, which must be proportionate to the objectives it wishes to achieve. The Agency must send the temporary measure, together with all reasons for its adoption, without delay to other regulatory authorities, the Commission and BEREC.

(2) If the Agency wishes to change the temporary measure referred to in the preceding paragraph into a permanent measure or extend its validity, it must pay due regard to the provisions of the second to fourth paragraphs of Article 209 and the first paragraph of Article 210 of this Act.

### 5.3 Cooperation between the Agency and other competent state bodies or public sector organisations

Article 213  
(general)

Where other state bodies are responsible for an area for which the Agency is also responsible under this Act, the Agency and these state bodies must cooperate with and consult each other.

Article 214  
(cooperation between the Agency and the body responsible for competition protection)

- (1) The Agency and the body responsible for competition protection must exchange the data and information they require in order to discharge their competencies. In doing so, they must maintain the applicable level of confidentiality.
- (2) The data and information referred to in the preceding paragraph must be limited to what is appropriate and proportionate to the purpose for which it was exchanged.
- (3) In analysing relevant markets and determining significant market power under this Act, the Agency shall cooperate with the body responsible for competition protection, which shall not affect its exclusive competence to take decisions in this area.

Article 215  
(cooperation with the Information Commissioner)

The Information Commissioner may, in procedures lying within its competence under this Act, request the cooperation of the Agency.

Article 216  
(cooperation with the body responsible for network security and integrity)

The Agency may request the professional assistance of SI-CERT, which operates within the Academic and Research Network of Slovenia (ARNES), and other bodies responsible for network security and integrity in order to ensure network security and integrity.

## XV. DISPUTE SETTLEMENT

Article 217  
(competence to settle disputes)

- (1) The Agency shall settle disputes between entities on the electronic communications market in the Republic of Slovenia, such as:
  - disputes between natural persons or legal entities providing electronic communications networks and/or services, if these disputes relate to rights and existing obligations determined by this Act, regulations issued pursuant thereto, and general and specific acts (inter-operator disputes);
  - disputes between natural persons or legal entities providing electronic communications networks and services and end-users, if these disputes relate to rights and obligations determined by this Act and by regulations issued pursuant thereto, and rights and obligations ensuing from contracts on the provision of electronic communications networks and/or services (end-user disputes).
- (2) Disputes between natural persons or legal entities providing electronic communications networks and/or services and other natural persons or legal entities which benefit from access

or interconnection obligations imposed or agreed upon under this Act or a general or specific Agency act adopted pursuant thereto shall be settled as inter-operator disputes.

(3) The settlement of the disputes referred to in the first and second paragraphs of this Article shall not affect any possible judicial competence.

(4) The Agency shall operate independently and may not request or receive instructions from other state bodies when implementing tasks under the first paragraph of this Article in relation to dispute settlement. This shall not preclude the possibility of consultation between the Agency and the body responsible for competition protection, or the body responsible for consumer protection, should the Agency deem it appropriate.

#### Article 218

(dispute settlement procedure)

(1) The Agency shall endeavour to resolve a dispute by mediation in accordance with the provisions of the procedure referred to in Article 220 of this Act.

(2) Should any of the parties oppose Agency mediation, or if mediation does not lead to settlement or agreement between the parties and judicial proceedings have not been initiated regarding the matter, the Agency shall continue the dispute settlement procedure and decide on the dispute by decision.

(3) In the dispute settlement procedure, the Agency shall apply the provisions of the act governing the general administrative procedure, unless this Act determines otherwise.

(4) Should any party initiate a civil action before the competent court or withdraw the dispute settlement request in the course of a dispute resolution procedure before the Agency, the dispute resolution procedure shall be stopped.

(5) If the party that requested commencement of the procedure fails to attend the oral hearing despite being properly summoned to do so, and fails to respond to the record taken of the oral hearing by the specified deadline, it shall be deemed to have withdrawn its request. The Agency must warn the person submitting a dispute settlement request of the consequences of failing to respond to the record by the specified deadline.

(6) The Agency shall issue a decision as soon as possible and not later than four months after the initiation of the dispute settlement procedure.

(7) The Agency must decide pursuant to the law, implementing regulations and general acts, and in accordance with the objectives sought in the market pursuant to Articles 194 to 197 of this Act, particularly with regard to ensuring effective competition and protecting the interests of users. Parties must cooperate fully with the Agency in dispute settlement procedures. Natural persons and legal entities providing electronic communications networks and/or services, or other parties to the dispute must, in accordance with point 4 of the first paragraph of Article 201 of this Act, make available to the Agency at its request all the required information they have at their disposal.

(8) The Agency must make public decisions relating to the disputes referred to in the first indent of the first paragraph and the second paragraph of Article 217 of this Act in a form which takes into account the prohibition on the publication of the business secrets of the parties, unless the parties propose the publication of their business secrets. The Agency shall also publish on its website other information on the disputes referred to in the second indent of the first paragraph of Article 217 of this Act which it is dealing with, where it may not publish personal data or business secrets.

#### Article 219

(settlement of cross-border disputes)

(1) In disputes between entities in the electronic communications market arising in different

Member States within the jurisdiction of one or more other regulatory authorities in addition to the Agency, the Agency must coordinate efforts to settle the dispute in conjunction with them and in accordance with the objectives sought by the responsible bodies in the market. At the same time, the Agency shall also have the right to consult BEREC in order to ensure that settlement of the dispute is consistent with the objectives of secondary EU legislation.

(2) Where a dispute has been referred to the Agency for settlement, and after coordination with other competent regulatory authorities, the provisions of Articles 217 and 218 of this Act shall apply *mutatis mutandis*.

(3) In the cases referred to in the first paragraph of this Article, the Agency may, before adopting a settlement measure, request that BEREC produce an opinion on the measure. If the Agency or any other regulatory authority has requested the opinion of BEREC regarding the settlement of a dispute, the Agency shall wait for that opinion and take it into account to the fullest possible extent. Without prejudice to this, the Agency may adopt urgent measures where required.

(4) Where the Agency is competent to settle a dispute, it shall endeavour to settle it by mediation in accordance with the provisions of Article 220 of this Act.

(5) Should any of the parties oppose Agency mediation, or if mediation does not lead to settlement or agreement between the parties and judicial proceedings have not been initiated regarding the matter, the Agency shall, after coordination with other regulatory authorities, in accordance with the objectives sought by regulatory authorities in the market and with due regard to the opinions of BEREC, continue the dispute settlement procedure and decide on the dispute by decision.

#### Article 220 (mediation)

(1) The Agency shall, within eight days of receipt of a dispute settlement proposal from one of the opposing parties, or *ex officio* in the case referred to in Article 90 of this Act, inform the opposing parties in writing of the initiation of a mediation procedure and the conditions applying to settlement of the dispute by means of the Agency decision referred to in the second paragraph of Article 218 of this Act, if agreement is not reached.

(2) The Agency shall, in a mediation procedure, act as the mediator and conduct the entire procedure in accordance with the principles of impartiality, equality, justice and confidentiality, and with the objectives sought in accordance with Article 194 to 197 of this Act.

(3) Where the Agency submits an amicable settlement proposal drawn up by a natural person or legal entity providing electronic communications networks and services to an end-user that has submitted the dispute settlement request referred to in the second indent of the first paragraph of Article 217 of this Act, and that proposal upholds the end-user's request in full, it shall be deemed that the end-user agrees with the settlement offered and has withdrawn his request if he does not respond to the proposal by the specified deadline. In the amicable settlement proposal, the Agency must warn the person that has filed the dispute settlement request of the consequences of failing to respond by the deadline specified in the proposal.

(4) The mediation procedure shall be of a confidential nature. This provision must be observed by all those that participate in the procedure in any way.

(5) The Agency may define the rules of mediation in greater detail by means of a general act.

## XVI. SUPERVISION AND DECISION-MAKING ON OFFENCES

### Article 221 (supervisory competence)

(1) The Agency shall oversee the implementation of the provisions of this Act, of the regulations issued pursuant thereto and of general acts, except in cases that lie within the competence of the Information Commissioner under Articles 155 and 157 of this Act. The Agency shall also oversee the implementation of all individual acts and/or measures which it adopts pursuant to this Act and to the regulations and general acts adopted pursuant to this Act.

(2) Without prejudice to the preceding paragraph, the Agency shall not oversee the provisions of Chapter IV of this Act, with the exception of the seventh paragraph of Article 20 and the second paragraph of Article 22 of this Act.

(3) The Agency shall also oversee implementation of the provisions of EU regulations in the territory of the Republic of Slovenia in the area of electronic communications which have a direct effect on the legislation of the Republic of Slovenia and which at the same time lay down supervision of their implementation by national regulatory authorities in the area of electronic communications, as well the imposition of sanctions at the level of Member States.

### Article 222 (cooperation between supervisory authorities)

The Agency and the Information Commissioner must keep each other informed of the supervisory measures carried out, provide each other with the information necessary for carrying out supervision, and cooperate in a professional capacity.

### Article 223 (supervisory procedure)

(1) In the supervisory procedure under this Act, the provisions of the act governing inspection and supervision shall be applied, unless this Act determines otherwise.

(2) If supervision is conducted by the Information Commissioner, the provisions of the act governing personal data protection shall also be applied in the supervisory procedure.

### Article 224 (supervisory procedure for natural persons and legal entities providing electronic communications networks and/or services)

(1) If in the course of supervision of natural persons or legal entities providing electronic communications networks and/or services the Agency establishes irregularities in the implementation of the provisions of this Act and of the regulations, general acts and individual acts issued pursuant thereto, or of the measures which it adopts itself, it shall notify those persons in writing and offer them an opportunity to make a statement on the matter by a reasonable deadline.

(2) The Agency may, after receiving a reply or after expiry of the deadline referred to in the preceding paragraph, demand that the violation referred to in the preceding paragraph of this Article be halted immediately or by a reasonable deadline, and at the same time adopt appropriate and proportionate measures to ensure removal of the irregularity.

(3) The Agency may also, by means of a decision issued in a supervisory procedure and containing measures and the reasons for the removal of irregularities, and a reasonable deadline for compliance with the measures imposed, order the interruption or suspension of provision of a service or package of services that could seriously damage competition if permitted to continue, until the person or entity referred to in the first paragraph of this Article meets the access obligations under a market analysis conducted in accordance with Article 100 of this Act.

(4) In the event of a violation of Article 102 and of points 1 and 2 of the first paragraph of Article 201 of this Act, the provisions of the first and second paragraphs of this Article shall not be applied.

(5) If the measures referred to in the second paragraph of this Article have not been carried out by the specified deadline, the Agency may, in the case of serious and recurring violations, issue a decision prohibiting the person or entity referred to in the first paragraph of this Article from the further provision of electronic communications networks or services, or temporarily or permanently revoke their right to use radio frequencies or numbering resources.

(6) The Agency may, in the case of the violation referred to in the preceding paragraph, impose a fine on the person or entity referred to in the first paragraph of this Article even though the violation might have subsequently been removed.

(7) Without prejudice to the provisions of the first, second and fifth paragraphs of this Article, the Agency may, if it has evidence of a violation which constitutes an immediate and serious threat to public order, public safety or human life and health, or would cause serious economic or operational difficulties for other operators or users of electronic communications networks or services or other users of the radio spectrum, adopt urgent temporary measures to rectify the situation before the adoption of a final decision, without setting in advance a deadline for the removal of the irregularities or giving an opportunity to make a statement on the matter. In this case, the person or entity referred to in the first paragraph of this Article shall have the opportunity to make a statement on the matter and propose a resolution only after adoption of the urgent temporary measures.

#### Article 225

(duration of temporary measures)

The temporary measures referred to in the seventh paragraph of the previous Article shall remain in place for no more than three months. In the event that enforcement proceedings are not completed, this period may be extended by three months.

#### Article 226

(authorised persons of the Agency)

(1) The supervisory functions of the Agency under this Chapter shall be performed by persons employed by the Agency and holding an authorisation from the minister (hereinafter: authorised persons of the Agency).

(2) Proof of authorisation to perform supervisory functions shall be demonstrated by means of an official identity card and badge issued by the minister.

(3) Authorised persons of the Agency must meet the conditions prescribed for inspectors by the act governing inspection and supervision.

(4) The persons referred to in the first paragraph of this Article shall independently perform their supervisory functions under this Act, conduct administrative procedures and issue decisions and resolutions. The provisions of the act governing inspection and supervision

shall apply *mutatis mutandis* to other authorisations, competencies, procedures and measures.

Article 227  
(legal remedies)

- (1) Decisions of the Agency and the Information Commissioner issued in supervisory procedures under this Act shall be final in the administrative procedure. An administrative suit may be filed against a decision.
- (2) An administrative suit against a final decision issued in a supervisory procedure under this Act shall be filed at the registered office of the Administrative Court of the Republic of Slovenia.
- (3) The court of first instance and the court that decides on legal remedies shall decide on administrative suits under this Act as a matter of priority.

Article 228  
(offence authorities)

- (1) The Agency and the Information Commissioner shall decide on the sanctions for violations of this Act and of the regulations issued pursuant thereto as the offence authorities under the act governing offences, with each responsible for their own area of supervision.
- (2) The offence procedures referred to in the preceding paragraph shall be resolved by fast-track procedure in accordance with the act governing offences.
- (3) An offence authority may, for offences under this Act, impose a fine higher than the minimum amount prescribed for an individual offence.
- (4) For the purposes of supervision, authorised persons of the Agency shall at the same time be authorised officials that conduct offence authority procedures and rule within those procedures, under the conditions of and in accordance with the act governing offences.

XVII. ELECTRONIC COMMUNICATIONS COUNCIL OF THE REPUBLIC OF SLOVENIA

Article 229  
(Electronic Communications Council of the Republic of Slovenia)

- (1) The Electronic Communications Council of the Republic of Slovenia (hereinafter: the Council) is a body charged with providing advice for directing the development of electronic communications and protecting the interests of consumers in the area of electronic communications in the Republic of Slovenia.
- (2) The Council shall have 11 members, who shall be appointed by the National Assembly for a period of five years. Four members shall be appointed from among the representatives of consumer organisations, representative disabled organisations (at the proposal of the national council for disabled organisations) and educational institutions, with at least one member being appointed from each of these organisations. The remaining seven members shall be various experts in the area of electronic communications.
- (3) The chairman and deputy chairman of the Council shall be appointed by the members of the Council from among their number.
- (4) Council members may not be:
  1. members of bodies of political parties;
  2. officers under the act governing the public sector pay system;
  3. public officials in state bodies;

4. persons employed by an operator, members of the supervisory or management board of an organisation that performs activities subject to regulation that falls within the competence of the Agency, or persons holding ownership stakes in organisations engaged in activities subject to direct regulation that falls within the competence of the Agency or in organisations with ownership stakes in such organisations;

5. persons whose spouse, extra-marital partner or civil partner under the act governing same-sex partnerships or direct relation up to and including the second degree serves as a member of the management or supervisory board of an organisation that performs a business activity in an area which the Agency is competent to regulate, or who has ownership stakes in an organisation that performs a business activity in an area which the Agency is competent to regulate or in an organisation which has an ownership stake in such an organisation.

(5) Members of the Council shall have the right to a reimbursement of expenses and to remuneration for their work. The level of that remuneration shall be set by the National Assembly. The Council's equipment, working conditions and provision of information shall be ensured by the Agency.

(6) The Council shall have a secretary who assists the chairman in the preparation and holding of meetings and who performs other professional and administrative tasks required to ensure that the work of the Council runs smoothly. The Agency Council shall appoint the secretary from among employees of the Agency, at the proposal of the Agency director. The secretary shall be entitled to 70% of the attendance fee of a member of the Agency Council.

#### Article 230 (workings of the Council)

(1) The Council shall adopt rules of procedure.

(2) The Council must meet in session at least twice a year. A meeting shall be convened if the Agency director or at least four members so request in writing. The chairman of the Council may convene a meeting at any time.

(3) Meetings may be attended by the Agency director, or by persons authorised by him, and by the minister or representatives of the ministry responsible for electronic communications.

(4) A Council meeting shall be quorate if over half the members are present. Decisions shall be adopted by a simple majority.

#### Article 231 (tasks of the Council)

(1) The Council shall produce opinions, recommendations and proposals regarding matters in the area of electronic communications, including the protection of consumers, the disabled and users with special social needs in this area. The Agency may request the opinion of the Council regarding matters relating to electronic communications. The opinions, recommendations and proposals of the Council shall not be binding on the Council, although the Council is obliged to take a position on them.

(2) The Council may request information, other than personal data, from the Agency, state bodies and other entities in the area of electronic communications. When using confidential information, the Council must ensure that the level of confidentiality is maintained.

(3) The Agency shall publish the opinions, recommendations and proposals referred to in the first paragraph of this Article on its website.

## XVIII. PENAL PROVISIONS

### Article 232 (offences)

(1) A fine of up to 5% of the annual turnover generated on the public communications network and/or public communications services market in the preceding business year shall be levied on a legal entity, sole trader or individual independently pursuing an activity if they commit one of the following offences:

1. fail to meet obligations of transparency imposed or fail to act in accordance with the published reference offer for interconnection or operator access (Article 102);
2. fail to meet obligations of non-discrimination imposed (Article 103);
3. fail to meet obligations of accounting separation imposed (Article 104);
4. fail to meet obligations of operator access to and the use of specific network facilities (Article 105);
5. fail to meet obligations of price control or cost accounting imposed (Article 106);
6. fail to meet obligations to regulate retail services imposed (Article 107);
7. fail to meet obligations of functional separation imposed (Article 108).

(2) A fine of between EUR 1,000 and 10,000 shall be levied on the responsible person of a legal entity or sole trader that commits an offence referred to in the preceding paragraph.

### Article 233 (offences)

(1) A fine of between EUR 50,000 and EUR 400,000 shall be levied on a legal entity regarded under the act governing companies as a medium-sized or large undertaking if they commit one of the following offences:

1. fail to provide written notification to the Agency prior to the commencement, alteration or cessation of provision of public communications networks and/or public communications services (first and eighth paragraphs of Article 5);
2. fail to act in accordance with Articles 10 and 11 of this Act;
3. fail to supply information to the body responsible for surveying and mapping in accordance with the first and second paragraphs of Article 14 of this Act;
4. fail to use radio frequencies in accordance with the first paragraph of Article 31 of this Act;
5. fail to operate in accordance with a decision allocating radio frequencies or fail to meet the conditions laid down in a decision allocating radio frequencies (Articles 51 and 52);
6. as a legal entity registered in or outside the Republic of Slovenia, they do not operate in accordance with a decision issued pursuant to a joint selection procedure carried out by competent EU institutions on the basis of a EU regulation (third paragraph of Article 51 and point 10 of Article 52);
7. as the beneficiary of a decision allocating radio frequencies, they transfer or lease the right to use these radio frequencies without the prior approval of the Agency (Article 55);
8. accumulate radio frequencies in order to distort competition in the market (Article 56);
9. use numbering resources without a valid decision allocating numbering resources (Article 64);
10. allocate allocated numbers on the basis of a legal transaction for use by service providers and in doing so charge more than the actual costs (seventh paragraph of Article 66);
11. as the beneficiary of a decision allocating numbering resources, they transfer the right to use these numbering resources without the prior approval of the Agency (first paragraph of Article 70);

12. fail to adopt appropriate technical and organisational measures to appropriately manage the risk to the security of networks and services (first paragraph of Article 79);
13. fail to adopt all measures necessary to secure the integrity of their networks (Article 80);
14. fail to notify the Agency breaches of security or integrity (first paragraph of Article 81);
15. fail to submit the information necessary for an assessment of the security or integrity of their services and networks, or fail to submit to a security audit carried out at their expense by a qualified independent organisation (Article 82);
16. fail to coordinate with entities responsible for the security and defence system and the protection and rescue system in the event of network breakdown, war, state of emergency or a natural or other disaster (first paragraph of Article 83);
17. fail to adjust their networks so as to enable the priority function (second paragraph of Article 83);
18. fail to carry out other measures and restrictions or interruptions of operations in the event of a natural or other disaster or a catastrophic network breakdown in accordance with the measures adopted by the Government (fourth paragraph of Article 83);
19. fail to adopt appropriate technical and organisational measures in the event of network breakdown, war, state of emergency, or a natural or other disaster, or fail to implement these measures for the entire duration of the circumstances that led to their adoption, unless they were prevented from doing so for reasons of *force majeure* (first paragraph of Article 84);
20. fail to ensure uninterrupted access to and use of emergency call numbers (second paragraph of Article 84);
21. fail to determine by resolution which employees are obliged to ensure the uninterrupted provision of universal service or performance of operator's obligations in emergency situations (Article 85);
22. fail to provide electronic communications networks and/or electronic communications services through a legally independent undertaking or fail to keep separate financial accounts for activities associated with the provision of electronic communications services and/or networks (Article 89);
23. fail to negotiate on interconnection (first paragraph of Article 90);
24. fail to safeguard the confidentiality of information in the course of the signing of contracts on interconnection (third paragraph of Article 90);
25. fail to implement the Agency decision referred to in the fourth paragraph of Article 90;
26. fail to implement the Agency decision on shared use referred to in the second paragraph of Article 91 or the first paragraph of Article 92;
27. fail to exercise the right to shared use under Article 94;
28. fail to notify the Agency in accordance with the first paragraph of Article 109;
29. fail to classify programmes in accordance with the third paragraph of Article 112 of this Act;
30. fail to ensure access to application programme interfaces and electronic programme guides pursuant to an Agency decision, or fail to do so under fair, reasonable and non-discriminatory terms (fourth paragraph of Article 112);
31. fail to adhere to prescribed requirements regarding the interconnection of digital interactive television services and digital television equipment used by consumers (fifth paragraph of Article 112);
32. fail to ensure that their conditional access systems for digital television and radio services operate in accordance with the first paragraph of Article 113;
33. fail to provide technical services on a fair, reasonable and non-discriminatory basis (second paragraph of Article 113);
34. fail to keep accounting records for conditional access services separate from those for other activities (third paragraph of Article 113);

35. fail to grant industrial property rights to conditional access products and systems to manufacturers of consumer equipment on fair, reasonable and non-discriminatory terms (fourth paragraph of Article 113);
36. prevent manufacturers from including common interfaces in the same product enabling connection to other access systems or elements specific to another access system (fourth paragraph of Article 113);
37. provide a comprehensive directory or comprehensive directory enquiry service while treating information provided to them by different providers of publicly available telephone services in a different manner (fourth paragraph of Article 116);
38. fail to provide the universal service as ordered to do so by Agency decision (first and fifth paragraphs of Article 118);
39. as a universal service provider, fail to notify the Agency in writing prior to the disposal of local access network assets to a separate legal entity under different ownership (first paragraph of Article 119);
40. fail to ensure that the prices of specific services provided as universal service and the terms and conditions applying to those services are made public and are transparent and non-discriminatory (first paragraph of Article 120);
41. fail to ensure that the prices of services provided as universal service are the same across the entire territory of the Republic of Slovenia (second paragraph of Article 120);
42. fail to comply with the Agency decision referred to in the fourth paragraph of Article 120;
43. fail to set prices and general terms and conditions in accordance with the sixth paragraph of Article 120;
44. fail to ensure that the measured values of the quality parameters for the universal service they provide reach the limit values at least three times in succession (sixth paragraph of Article 123);
45. fail to contribute their calculated liability to the compensation fund by the deadline and in the amount set on the basis of an Agency decision (fifth paragraph of Article 126);
46. fail to notify the Agency of the revenue arising from the provision of public communications networks and/or public communications services by the deadline laid down in this Act (sixth paragraph of Article 126);
47. obstruct the Agency in its review of the information and estimate of revenue (seventh paragraph of Article 126);
48. fail to provide their subscribers with number portability (first paragraph of Article 131);
49. charge a subscriber for the porting of a number contrary to the third paragraph of Article 131;
50. fail to ensure that the prices of interconnection are cost-oriented (sixth paragraph of Article 131);
51. fail to port and activate a number within one working day from the receipt of a signed contract on the porting of a number (seventh paragraph of Article 131);
52. fail to provide adequate and high-quality information regarding access to and the use of publicly available electronic communications services in accordance with the second paragraph of Article 132;
53. fail to meet the requirements of the decision referred to in the third paragraph of Article 133;
54. fail to provide their users with free-of-charge access to emergency call numbers (first paragraph of Article 134);
55. fail to enable disabled users to make emergency calls using spoken and sign languages and other forms of non-verbal language in the method and to the extent allowed by the technology (second paragraph of Article 134);
56. fail to send number and caller location data to the competent bodies to the extent allowed

by the technology (fourth paragraph of Article 134);

57. fail to notify users in accordance with the fifth paragraph of Article 134;

58. fail to notify users and the Agency in accordance with the second paragraph of Article 141 of this Act;

59. carry out a measure even though the subscriber acted in accordance with the eleventh paragraph of Article 142;

60. fail to carry out technical and organisational measures to safeguard the security of their network and services (first paragraph of Article 145);

61. fail to take measures that ensure a level of security appropriate to the risk presented and the costs, with regard to the state of the art (second paragraph of Article 145);

62. fail to inform users of each particular risk to the security of the network or service immediately upon learning of that risk, or fail to inform them of all possible remedies by which they can remove such risk, and the likely costs, or allow them quick and effective access to protective measures (first paragraph of Article 146);

63. fail to safeguard the confidentiality of communications in accordance with the second paragraph of Article 147;

64. obtain, for themselves or another, information on the content, facts and circumstances of communications that exceeds the minimum extent necessary for the provision of electronic services, or fail to use this information exclusively for the provision of these services and the implementation of contractual obligations related to them (third paragraph of Article 147);

65. fail to notify a subscriber or user in accordance with the fourth paragraph of Article 147;

66. carry out surveillance or the interception of communications when not explicitly permitted to do so under this Act (fifth paragraph of Article 147);

67. fail to notify users properly and in advance of recording, its purpose and the period of retention of the recording, and fail to erase the recorded communication on time in accordance with the seventh paragraph of Article 147;

68. fail to give the notification of recording via the same medium or in the same form as the recorded communication (eighth paragraph of Article 147);

69. fail to establish internal procedures and fail to keep non-erasable records on their response to requests for access to users' personal data (first paragraph of Article 149);

70. fail to erase traffic data or make it anonymous after the end of the connection (first paragraph of Article 151);

71. fail to obtain a subscriber's or user's prior consent in accordance with the third paragraph of Article 151;

72. allow traffic data to be processed by someone other than a person under their authority (fifth paragraph of Article 151);

73. fail to act in accordance with the sixth paragraph of Article 151;

74. fail to process location data in accordance with the first paragraph of Article 152;

75. violate a user's or subscriber's right to temporarily refuse the processing of the data referred to in the third paragraph of Article 152;

76. allow location data to be processed by someone other than a person under their authority (fourth paragraph of Article 152);

77. fail to retain the documents, findings and requests or data in the manner and under the conditions referred to in Article 165 of this Act, or fail to ensure the non-erasable recording of the measures and operations carried out in accordance with Article 166 of this Act (fifth paragraph of Article 153);

78. fail to send the requested data as stipulated by the Act (seventh paragraph of Article 153);

79. fail to act in accordance with the first, second or fourth paragraphs of Article 159;

80. fail to maintain a sufficient inventory of data on personal data breaches (seventh paragraph of Article 159);

81. fail to initiate the lawful interception of communications following receipt of a copy of the operative part of an order or verbal order (first and fourth paragraphs of Article 160);
  82. fail to carry out lawful interception in the manner, scope and duration laid down in the copy of the operative part of an order or in a verbal order (third and fourth paragraphs of Article 160);
  83. fail to ensure that non-erasable records of interception are kept for 30 years or fail to maintain the level of secrecy applying to the copy of the order (fifth paragraph of Article 160);
  84. fail to ensure adequate equipment and appropriate interfaces or pathways to the control centres of competent bodies at their own expense (sixth paragraph of Article 160);
  85. fail to ensure retention for other operators if ordered to do so by decision (fourth paragraph of Article 163);
  86. retain data for a shorter period than that laid down by the law (fifth paragraph of Article 163);
  87. fail to destroy data after the end of its period of retention, or destroy data for which an access order has been issued (seventh paragraph of Article 163);
  88. fail to ensure data retention to the extent stipulated by the law (Article 164);
  89. fail to ensure the security of retained data (first paragraph of Article 165);
  90. review, process or otherwise use data contrary to the law (second paragraph of Article 165);
  91. fail to ensure that retained data has the same quality, security or protection as data in the network (third paragraph of Article 165);
  92. fail to transmit retained data immediately or without undue delay in the manner and to the extent laid down in the copy of the operative part of an order (first and third paragraphs of Article 166);
  93. fail to ensure non-erasable records of transmissions of retained data or fail to maintain the level of secrecy applying to the copy of the order (fifth paragraph of Article 166);
  94. fail to maintain a collective database in accordance with the first paragraph of Article 168;
  95. obstruct authorised persons of the Agency or the Information Commissioner in the performance of their tasks (Articles 221 to 225).
- (2) A fine of between EUR 2,000 and EUR 20,000 shall be levied on a legal entity that is not regarded as a legal entity under the first paragraph of this Article and on a sole trader or individual independently pursuing an activity if they commit an offence referred to in the preceding paragraph.
- (3) A fine of between EUR 500 and 10,000 shall be levied on the responsible person of a legal entity or sole trader that commits an offence referred to in the first paragraph of this Article.

#### Article 234 (offences)

- (1) A fine of between EUR 20,000 and EUR 50,000 shall be levied on a legal entity regarded under the act governing companies as a medium-sized or large undertaking if they commit one of the following offences:
1. fail to act in accordance with Article 9;
  2. act contrary to the second paragraph of Article 19;
  3. fail to ensure that an easement contract contains the mandatory components referred to in the third paragraph of Article 20;
  4. fail to send the Agency all details of legal transactions relating to allocated numbers

(seventh paragraph of Article 66);

5. fail to act in accordance with a decision allocating numbers (Articles 67 and 68);
6. fail to enable end-users to call all numbers provided within the EU or to access and use services using non-geographic numbers within the EU when this is technically and economically feasible (first paragraph of Article 76);
7. fail to plan electronic communications networks for the distribution of digital television services so as to also be appropriate for the distribution of high-definition television services and programmes (first paragraph of Article 112);
8. fail to maintain a high-definition format (second paragraph of Article 112);
9. fail to provide their users with cost-monitoring options in accordance with the seventh paragraph of Article 120;
10. fail to ensure a level of itemised billing that allows subscribers to verify and control their use and the charges incurred (first paragraph of Article 121 and second paragraph of Article 139);
11. fail to provide subscribers with a basic level of itemised billing free of charge (second paragraph of Article 121 and second paragraph of Article 139);
12. fail to comply with a subscriber's request (second paragraph of Article 121 and second paragraph of Article 139);
13. fail to ensure that the basic level of itemised billing contains the elements stipulated in the general act referred to in the third paragraph of Article 121;
14. restrict access to their services or disconnect a subscriber and terminate a subscriber contract for reasons not specified in their general terms and conditions (first paragraph of Article 122);
15. fail to specify a measure that it carries out in the general terms and conditions, or to ensure that the measure is proportionate to the breach and non-discriminatory (first paragraph of Article 122);
16. fail to warn a user in accordance with the first paragraph of Article 122;
17. carries out a measure referred to in the third paragraph of Article 122 for the non-payment of a bill without prior warning;
18. disconnect a user for reasons other than non-payment or underpayment for services and such disconnection is technically feasible (fourth paragraph of Article 122);
19. fail to ensure that a subscriber contract contains all the prescribed elements (first and fourth paragraphs of Article 129);
20. fail to notify their subscribers in accordance with the second paragraph of Article 129;
21. fail to allow users a choice upon withdrawal from a subscriber contract in accordance with the third paragraph of Article 129;
22. fail to adhere to the longest initial commitment period referred to in the first paragraph of Article 130;
23. fail to enable the prescribed tone-dialling or presentation of calling-line identification where this is technically and economically feasible (point 1 of Article 138);
24. fail to enable the prescribed cost-monitoring options (point 2 of Article 138);
25. fail to comply with the prescribed obligations relating to restriction or disconnection of service for reasons on the part of the subscriber (point 3 of Article 138);
26. charge a higher price for additional itemised billing than that reflecting the actual costs (third paragraph of Article 139);
27. as an operator, fail properly to log errors reported by an end-user (third paragraph of Article 142);
28. use collected data contrary to the second paragraph of Article 148;
29. fail to inform subscribers in advance and free of charge of the purpose and possibilities of further use of a printed or electronic directory containing their personal data (first paragraph

of Article 150);

30. fail to give subscribers the opportunity to decide (second paragraph of Article 150);

31. fail to mark a prohibition applying to the use of a subscriber's personal data for particular purposes by the prescribed deadline (third paragraph of Article 150);

32. use a subscriber's personal data for calls with a commercial or research purpose despite the subscriber playing a prohibition on such use (third paragraph of Article 150);

33. failing to ensure free-of-charge refusal of entry in a public directory or verification, correction or deletion of personal data (fourth paragraph of Article 150);

34. processing traffic data for marketing purposes or the provision of value-added services without the user's prior consent (third paragraph of Article 151);

35. fail to specify in their general terms and conditions which traffic data will be retained or processed and the duration of that processing, or fail to state that they will handle that data in accordance with the act governing personal data protection (fourth paragraph of Article 151);

36. fail to inform a user, prior to his consent, of:

1. the possibility of refusing consent,

2. the type of location data to be processed,

3. the purpose and duration of processing of location data,

4. the possibility of the transmission of this location data to third parties (second paragraph of Article 152);

37. fail to give a subscriber or user the possibility, using a simple means and free of charge, of temporarily preventing the processing of location data (third paragraph of Article 152);

38. fail to provide the possibility referred to in the first to fifth paragraphs of Article 154 and the seventh paragraph of Article 154;

39. fail to set out the possibilities pertaining to the presentation and prevention of presentation of calling-line or connected line identification in its general terms and conditions (sixth paragraph of Article 154);

40. fail to provide the possibility referred to in the first paragraph of Article 155, in accordance with the first to third paragraphs of Article 155;

41. fail to ensure data retention in accordance with the fourth paragraph of Article 155;

42. fail to send the Agency the requested data in accordance with Article 201;

43. fail to comply with the obligation referred to in the third or fourth paragraphs of Article 203.

(3) A fine of between EUR 500 and EUR 15,000 shall be levied on a legal entity that is not regarded as a legal entity under the first paragraph of this Article and on a sole trader or individual independently pursuing an activity if they commit an offence referred to in the preceding paragraph.

(4) A fine of between EUR 200 and 2,000 shall be levied on the responsible person of a legal entity or sole trader that commits an offence referred to in the first paragraph of this Article.

#### Article 235 (offences)

(1) A fine of between EUR 1,000 and EUR 20,000 shall be levied on a legal entity regarded under the act governing companies as a medium-sized or large undertaking if they commit one of the following offences:

1. fail to notify the Agency of changes to the information stipulated in the law by the statutory deadline (fourth paragraph of Article 5);

2. fail to submit to the Agency, by the statutory deadline, the information requested on the amount of the annual revenue realised from the provision of public communications networks and/or public communications services (third paragraph of Article 6);

3. fail to submit to the Agency, by the statutory deadline, a copy of a signed easement contract (seventh paragraph of Article 20) or a copy of the final decision (second paragraph of Article 22);
  4. fail to report a change to information (fifth paragraph of Article 51 and second paragraph of Article 67);
  5. fail to act in accordance with the Agency's general act referred to in Article 123 or fail to send information on universal service quality, together with any changes to that information, to the Agency;
  6. fail to publish adequate and updated information on the quality of their services, or fail to supply that information to the Agency (Article 133);
  7. connect to a public communications network radio or telecommunications terminal equipment contrary to the provision of the first paragraph of Article 136;
  8. reject a request to connect radio or telecommunications terminal equipment contrary to the provision of the second paragraph of Article 136;
  9. fail to enable their subscribers to have an entry in a comprehensive directory provided under universal service (first paragraph of Article 137);
  10. fail to provide all users with access to a comprehensive directory enquiry service or to appropriate directory enquiry services in other Member States (third paragraph of Article 137);
  11. fail to make adequate information available for the provision of publicly available directories or directory enquiry services on fair, objective, cost-oriented and non-discriminatory terms (fourth paragraph of Article 137);
  12. in the provision of electronic communications services that enable call-forwarding, fail to enable subscribers to stop automatic call-forwarding by third parties to their terminal using a simple means and free of charge (Article 156);
  13. process a user's data acquired in the manner referred to in the first paragraph of Article 157 without the user's prior consent and without clear and comprehensive information being provided to the user about the information manager and the purpose of the processing of this information;
  14. use electronic communications for direct marketing without the user's prior consent (first or third paragraph of Article 158);
  15. use a customer's electronic mail address for direct marketing even though he has refused use of his address for direct marketing purposes (second paragraph of Article 158);
  16. uses a false identity or false address in direct marketing conducted via electronic communications (fifth paragraph of Article 158).
- (2) A fine of between EUR 200 and EUR 1,000 shall be levied on a legal entity that is not regarded as a legal entity under the first paragraph of this Article and on a sole trader or individual independently pursuing an activity if they commit an offence referred to in the preceding paragraph.
- (3) A fine of between EUR 100 and 500 shall be levied on the responsible person of a legal entity or sole trader that commits an offence referred to in the first paragraph of this Article.

#### Article 236 (offences)

- (1) A fine of between EUR 100 and 500 shall be levied on an individual, society or federation of societies of radio amateurs if they use radio frequencies set aside for radio amateur and radio amateur satellite services without a valid amateur radio licence or valid CEPT amateur radio licence (first and second paragraphs of Article 32), or if they use radio frequencies set aside for radio amateur and radio amateur satellite services contrary to the provisions of a

general act of the Agency (fifth paragraph of Article 32).

(2) A fine of between EUR 200 and 500 shall be levied on an individual who calls an emergency call number at least three times a day for the same purpose despite being warned on each occasion by a body that receives emergency calls that the content of the call is not of the type handled by any body charged with receiving emergency calls in the Republic of Slovenia (sixth paragraph of Article 123).

(3) A fine of between EUR 500 and 5,000 shall be levied on an individual who commits an offence referred to in Article 232.

(4) A fine of between EUR 1,000 and 5,000 shall be levied on an individual who commits an offence referred to in Article 233.

(5) A fine of between EUR 250 and 3,000 shall be levied on an individual who commits an offence referred to in Article 234.

(6) A fine of between EUR 300 and 1,000 shall be levied on an individual who commits an offence referred to in Article 235.

## XIX. TRANSITIONAL AND FINAL PROVISIONS

### Article 237 (existing notifications)

Natural persons and legal entities that notified the Agency in writing, pursuant to Article 5 of the Electronic Communications Act (OGRS, 13/07 – official consolidated version, 102/07 – ZDRad, 110/09, 33/2011, hereinafter: Electronic Communications Act), that they intend to provide public communications networks and/or public communications services shall continue to perform this activity to the extent, in the manner and under the conditions laid down in this Act.

### Article 238 (Article deleted)

### Article 239 (existing networks on another's land)

(1) The owner of land on which an electronic communications network is located or being constructed or installed must permit the further use of the land for the requirements of the construction or installation, maintenance and operation of the electronic communications network if they or their legal predecessors have agreed in writing to such use.

(2) The right of a operator derived from the obligation of owners of land referred to in the preceding paragraph shall contain an entitlement to easement under this Act, which must be exercised in accordance with the provisions of Article 19 of this Act.

### Article 240 (entry in the register)

Owners of public communications networks and associated infrastructure must supply information on the capacity of the network termination point under the second paragraph of

Article 14 of this Act directly to the body responsible for surveying and mapping for the purpose of entry in the register referred to in the first paragraph of Article 14 of this Act within one month of the entry into force of this Act.

Article 241  
(existing decisions and procedures)

- (1) Decisions issued pursuant to the Electronic Communications Act may be amended or annulled, or cease to be valid under the conditions and in the manner laid down in this Act.
- (2) Procedures conducted by the Post and Electronic Communications Agency of the Republic of Slovenia and the Information Commissioner of the Republic of Slovenia pursuant to the Electronic Communications Act and not completed by the entry into force of this Act shall continue under the provisions of this Act.

Article 242  
(existing decisions allocating radio frequencies and numbering resources)

- (1) The Agency shall, *ex officio* and within three months of the entry into force of this Act, review the existing decisions allocating radio frequencies issued pursuant to the Electronic Communications Act. Where the amendment of a decision allocating radio frequencies is required for the purposes of harmonisation with the provisions of this Act, the Agency shall abrogate the existing decision allocating radio frequencies and issue the beneficiary with a new decision. The new decision may not be to the detriment of the beneficiary.
- (2) The Agency shall, *ex officio* and within three months of the entry into force of this Act, review the existing decisions allocating numbering resources issued pursuant to the Electronic Communications Act. Where the amendment of a decision allocating numbering resources is required for the purposes of harmonisation with the provisions of this Act, the Agency shall abrogate the existing decision allocating numbering resources and issue the beneficiary with a new decision. The new decision may not be to the detriment of the beneficiary.

Article 243  
(harmonisation with the principles of technological and service neutrality)

- (1) Without prejudice to the provisions of the first paragraph of the previous Article, decisions allocating radio frequencies issued pursuant to the Electronic Communications Act shall be deemed to comply with the principles of technological and service neutrality irrespective of the provisions of Articles 28 and 29 of this Act.
- (2) The Agency shall, *ex officio* and no later than by 25 May 2016, review the decisions referred to in the preceding paragraph in terms of their compliance with the provisions on technological and service neutrality in Articles 28 and 29 of this Act. Where necessary, the Agency shall abrogate an existing decision allocating radio frequencies and issue the beneficiary with an amended decision. A decision allocating radio frequencies may not be amended to the detriment of its beneficiary.
- (3) The Agency shall, *ex officio* and no later than by 25 May 2016, bring its implementing regulations regarding restrictions on the rights to use radio frequencies in force on the day this Act enters into force into line with the principles of technological and service neutrality referred to in Articles 28 and 29 of this Act.
- (4) In implementing the provisions of this Article, the Agency shall pay due regard to the

requirement for such measures to promote competition.

Article 244  
(extension of validity of existing decisions)

(1) Without prejudice to the provision of the first paragraph of Article 54 of this Act, the Agency may, at the proposal of the beneficiary, extend the validity of a decision allocating radio frequencies for the provision of public communications services to end-users that are in force on the day this Act enters into force if all the conditions applying to the use of those radio frequencies as prescribed are being met upon expiry of the decision and for as long as is required to make changes to the allocation of the radio frequency spectrum, while at the same time ensuring uninterrupted provision of services to end-users, but not beyond 25 May 2016. In doing so, the Agency shall pay due regard to the principles of objectivity, transparency, non-discrimination and proportionality, and the objectives referred to in Articles 194 to 197 of this Act.

(2) In the event of the extension of a decision allocating radio frequencies referred to in the preceding paragraph, a fee shall also be paid for the efficient use of a limited natural resource so as to ensure optimum use of the radio frequencies allocated. This shall be a revenue of the budget. The amount and the method of payment of the fee shall be set by the Agency, which must obtain the prior approval of the Government. In setting the level of the fee, due regard must be paid to the criteria referred to in the eighth paragraph of Article 60 of this Act and the period by which the validity of the decision allocating radio frequencies is to be extended.

(3) An application for extension of the validity of a decision allocating radio frequencies referred to in the first paragraph of this Article must be submitted to the Agency no less than three months and not more than 12 months prior to the expiry of its validity.

(4) Without prejudice to the provision of the preceding paragraph, the beneficiary of a decision allocating radio frequencies for the provision of public communications services to end-users whose validity expires less than three months after the entry into force of this Act shall submit an application to the Agency for an extension of the decision within 30 days of the entry into force of this Act.

(5) The Agency shall decide in accordance with the provisions of this Act on an application for the extension of a decision allocating radio frequencies for the provision of public communications services to end-users that was submitted pursuant to the Electronic Communications Act (OGRS, 13/07 – official consolidated version, 102/07 – ZDRad, 110/09, 33/11) and about which a decision has not yet been taken by the day this Act enters into force.

(6) The extension of existing decisions allocating radio frequencies referred to in the first paragraph of this Article pursuant to and under the conditions of the Electronic Communications Act (OGRS, 13/07 – official consolidated version, 102/07 – ZDRad, 110/09, 33/11) after 31 December 2012 shall be the reason for the amendment of such decisions in accordance with the provisions of points 2 and 3 of the second paragraph of Article 157 of this Act.

(7) In extending validity, the Agency shall issue a new decision allocating radio frequencies in accordance with the act governing the general administrative procedure.

Article 245  
(existing amateur radio licences)

Amateur radio licences issued by the Agency pursuant to the Electronic Communications Act and its implementing regulations shall be deemed to comply with this Act and remain valid

until the expiry of their validity.

#### Article 246

(deadline for adjustment to obligations regarding the inclusion of the '116000' number within the set of emergency call numbers)

Operators must adjust to the obligations referred to in Articles 84, 122 and 134 of this Act regarding the single European missing children hotline number '116000' within three months of the entry into force of this Act.

#### Article 247

(digital radio and television distribution)

Operators of public communications networks intended for the distribution of digital television services must adjust their programme package to the provisions of the general act referred to in the third paragraph of Article 112 of this Act within three months of the entry into force of this Act.

#### Article 248

(validity of a decision designating a universal service provider)

A previous universal service provider shall continue to provide universal service after the entry into force of this Act pursuant to the decision issued in accordance with the Electronic Communications Act and until the expiry of validity of the decision.

#### Article 249

(harmonisation of general terms and conditions)

Operators must harmonise their general terms and conditions with the provisions of this Act, including the requirement regarding the mandatory content of subscriber contracts referred to in Article 129 of this Act, within four months of the entry into force of this Act.

#### Article 250

(sending of caller location data)

(1) Operators of public communications networks must harmonise the obligation to send number and caller location data to police number '113' with the requirements of the fourth paragraph of Article 134 of this Act within three months of the entry into force of this Act.  
(2) Operators of public communications networks must, by the expiry of the deadline referred to in the preceding paragraph and for every call to police number '113', send number data without delay and free of charge to the service handling the call, and caller location data without delay, free of charge and upon request.

#### Article 251

(deadline for harmonisation with the obligations regarding cookies referred to in Article 157 of this Act)

The deadline for harmonisation with the obligations regarding cookies referred to in Article 157 of this Act in relation to the retention of data or the acquisition of access to data stored in a subscriber's or user's terminal equipment shall be five months after the entry into force of

this Act.

Article 252  
(Agency)

- (1) The Post and Electronic Communications Agency of the Republic of Slovenia, which operated pursuant to the Electronic Communications Act, shall continue its work as the Agency under the provisions of this Act.
- (2) Within six months of the entry into force of this Act, the Government shall bring the Decision on the Establishment of the Post and Electronic Communications Agency of the Republic of Slovenia (OGRS, 60/01, 52/02, 80/04, 35/11) into line with the provisions of this Act.
- (3) The director of the Post and Electronic Communications Agency of the Republic of Slovenia and his deputies shall continue in post under this Act until the expiry of their terms of office.
- (4) The Agency director shall bring the statute of the Agency referred to in the first paragraph of this Article into line with the provisions of this Article within six months of the entry into force of this Act.

Article 253  
(Agency Council)

The Government shall appoint the members of the Agency Council within six months of the entry into force of this Act.

Article 254  
(Electronic Communications Council)

The members of the Electronic Communications Council shall continue their work until the end of the period for which they were appointed under the second paragraph of Article 148 of the Electronic Communications Act.

Article 255  
(transition from inspectorate to Agency)

- (1) Within three months of the entry into force of this Act, public officials from the Inspectorate for Electronic Communications and Electronic Signatures engaged in the area of electronic communications will move to the Agency to work as authorised persons of the Agency. The Agency will also take over work assets, rights and obligations, unfinished business and the archive from the Inspectorate.
- (2) The public officials referred to in the preceding paragraph shall sign employment contracts with the Agency as authorised persons for those posts laid down in the Agency's act on the organisation and the classification of posts.
- (3) The Agency's act on internal organisation and the classification of posts shall be harmonised with this Act no later than 30 days after the entry into force of this Act.
- (4) The Inspectorate for Electronic Communications and Electronic Signatures shall supervise implementation of the first paragraph of Article 14, Articles 83 to 85 and the first paragraph of Article 136 of this Act in relation to the operation of radio or telecommunications equipment in operation until the takeover referred to in the first paragraph of this Article. It shall also supervise the implementation of the provisions of the

rules governing radio and telecommunications equipment and the rules governing electromagnetic compatibility until 1 January 2013.

Article 256  
(issuing of implementing regulations)

The deadline for the issuing of implementing regulations mandatory under this Act shall be no more than six months after the entry into force of this Act.

Article 257  
(cessation of validity)

(1) On the day this Act enters into force, the following implementing regulations issued pursuant to the Electronic Communications Act (OGRS, 13/07 – official consolidated version, 102/07 – ZDRad, 110/09, 33/11) and the Telecommunications Act (OGRS, 30/01, 110/02 – ZGO-1) shall cease to be valid:

1. General Act on the Content and Form of the Notification of the Provision of Public Communications Networks and/or Public Communications Services (OGRS, 81/04, 118/05, 81/07);
2. Rules on the Method of Calculating Fees on the Basis of Notification for the Use of Radio Frequencies and Numbering Resources (OGRS, 118/04, 90/05, 22/07, 46/10, 35/11);
3. Rules on Facilities and their Breakdown within the Framework of Public Communications Networks and Associated Facilities (OGRS, 100/05);
4. Decree on Measures for Disabled End-Users (OGRS, 92/10);
5. General Act on the Method of Taking into Account the Criteria for the Provision of Price Options and for the Determination of Packages for Consumers with Low Incomes within the Framework of the Provision of Universal Service (OGRS, 139/04, 103/09);
6. Rules on the Categories of Consumers Entitled to Special Price Options or Packages (OGRS, 101/05, 92/10);
7. General Act on the Quality of Universal Service (OGRS, 79/07, 40/10);
8. General Act on the Data Rate for Functional Internet Access (OGRS, 81/04, 111/06);
9. General Act on the Method of Calculating the Net Costs of Universal Service (OGRS, 81/04);
10. General Act on the Elements of a Reference Offer for Unbundled Access to the Local Loop (OGRS, 96/04);
11. Decree on the Plan for the Allocation of Radio Frequency Bands (OGRS, 107/04, 99/08, 3/10);
12. Rules on Radio Frequencies that May be Used without a Decision Allocating Radio Frequencies (OGRS, 45/05, 37/06, 13/08, 27/10);
13. The General Act on the Plan of Use of Radio Frequencies (NURF-2) (OGRS, 66/12, 68/12 – amendments);
14. General Act on the Numbering Plan (OGRS, 79/07, 74/09);
15. General Act on the Size of Number Blocks for the Acquisition of which a Project Must be Submitted (OGRS, 104/07);
16. General Act on the Portability of Numbers (OGRS, 75/05, 83/05 – amendments, 25/06, 39/06, 16/07, 71/08, 96/08 – amendments);
17. Rules on Service Quality for the Single European Emergency Telephone Number ‘112’ (OGRS, 53/09);
18. General Act on Management of the Conversion of Numbers into ENUM Domains (OGRS, 89/08, 48/09 – amendments);

19. Decree on the Priority Right to Network Termination Points (OGRS, 100/05);
  20. Rules on Equipment and Interfaces for the Lawful Interception of Data (OGRS, 29/06);
  21. Rules on the Method of Transmission of Retained Traffic Data on Telephone and Data Services in Mobile and Fixed Electronic Communications Networks (OGRS, 103/09, 55/12);
  22. General Act on Conditions for the Interconnection of Digital Television Equipment Used by Consumers (OGRS, 136/06);
  23. General Act on the Secrecy, Confidentiality and Security of Electronic Communications, Data Retention and the Protection of Retained Data (OGRS, 126/08);
  24. General Act on Conditions for the Use of Radio Frequencies Intended for Amateur Radio Satellite Services (OGRS, 117/04, 118/07);
  25. General Act on the Collection, Use and Supply of Information on the Development of the Electronic Communications Market (OGRS, 73/07);
  26. General Act on Restrictions on the Modulation Signal of Analogue Audio Radio Broadcasting Stations (OGRS, 79/07);
  27. General Act on Use of the RDS System (OGRS, 75/04);
  28. Recommendation on the Actual Data Rates of Broadband Internet Access (OGRS, 107/09);
  29. Recommendation on Contractual Relationships Between Operators of Electronic Communications Networks, Intermediate Operators, Reseller Operators and Providers of Publicly Available Electronic Communications Services and End-Users (OGRS, 107/09);
  30. General Act on the Mediation Procedure (OGRS, 92/07);
  31. Rules on the Identity Card and Badge of an Authorised Person of the Post and Electronic Communications Agency of the Republic of Slovenia (OGRS, 26/10);
  32. Instructions on the Implementation of Telecommunications Traffic Control (OGRS, 78/01);
  33. Decision on the Establishment of the Post and Electronic Communications Agency of the Republic of Slovenia (OGRS, 60/01, 52/02, 80/04);
  34. Ordinance on the Establishment of the Electronic Communications Council (OGRS, 56/01, 39/02, 13/03, 19/05, 68/06, 100/07, 46/09, 27/10);
  35. Statute of the Post and Electronic Communications Agency of the Republic of Slovenia (OGRS, 68/05);
  36. Rules on the Method of Implementation of Article 104a of the Electronic Communications Act (OGRS, 28/11);
  37. Recommendation on the Conduct of Operators in the Event of Unreasonable Requests for Operator Access (OGRS, 106/11);
  38. Recommendation on the Price Accessibility of Universal Services (OGRS, 34/11).
- (2) The implementing regulations referred to in the preceding paragraph shall be used until the issuing of implementing regulations pursuant to this Act.

Article 258  
(cessation of validity)

(1) On the day this Act enters into force, the Electronic Communications Act (OGRS, 13/07 – official consolidated version, 102/07 – ZDRad, 110/09, 33/11) and the following implementing regulations thereto and to the Telecommunications Act (OGRS, 30/01, 110/02 – ZGO-1) shall cease to be valid:

1. General Act on the Promotion of Contractual Regulation of the Shared Use of the Property and Facilities of Electronic Communications Networks (OGRS, 80/10);
2. General Act on the Determination of Relevant Markets (OGRS, 18/08, 112/08);
3. General Act on Itemised Billing (OGRS, 18/02);

4. General Act on the Minimum Set of Leased Lines (OGRS, 96/04),
  5. General Act on the Register of the Telecommunications, Broadcasting and Postal Services Agency of the Republic of Slovenia (OGRS, 111/02);
  6. General Act on the Selection and Pre-Selection of an Operator (OGRS, 45/03);
  7. General Act on the Share Use of Parts of the UMTS/IMT-2000 Network (OGRS, 70/03);
  8. General Act on the Transparency and Publication of Information (OGRS, 96/04, 59/08, 55/10, 7/12).
- (2) On the day this Act enters into force, Article 9 of the Digital Broadcasting Act (OGRS, 102/07, 85/10) shall cease to be valid.

Article 259  
(entry into force)

This Act shall enter into force on the 15th day following its publication in the Official Gazette of the Republic of Slovenia.