

Amendments to the Telecommunications Act and a number of other Acts in relation to the implementation of a new European harmonised regulatory framework for electronic communications networks and services and the new Directive on services by the Commission of the European Communities

BILL

Article I

The Telecommunications Act will be amended as follows:

A

Article 1.1 is to read as follows:

Article 1.1

In this Act and the provisions pursuant hereto, the terms below have the following meanings:

- a. Our Minister: Our Minister of Economic Affairs;
- b. Board: Board, as referred to in Article 2 of the Independent Post and Telecommunications Authority Act (*Wet Onafhankelijke Post- en Telecommunicatie Autoriteit*);
- c. Director-General of the Dutch Competition Authority: Director-General of the Dutch Competition Authority as referred to in Article 2, paragraph 2 of the Competition Act (*Mededingingswet*);
- d. national regulatory authority: authority in another Member State of the European Union that is charged under the law of that Member State with one or more regulatory or related implementing tasks that are assigned in the Council Directives nos. 2002/19/EEC, 2002/20/EEC, 2002/21/EEC, 2002/22/EEC or 2002/58/EEC;
- e. electronic communications network: transmission systems, including the switch or routing equipment and other means which enable the transmission of signals through cables, radio waves, optical or other electromagnetic means, including satellite networks, fixed and mobile terrestrial networks, electricity networks, in so far as these are used for the transmission of signals, and networks for radio and television broadcasting and cable television networks, regardless of the nature of the information being transmitted;
- f. electronic communications service: a service that is normally offered at a charge, which entirely or largely consists of transmitting signals through electronic communications networks, including telecommunications services and transmission services on networks that are used for broadcasting, however not the service whereby the content transmitted using the electronic communications networks and services is delivered or subject to editorial control. It does not comprise the services of the

information company as described in Article 1 of Council Directive no. 98/34/EEC that does not consist wholly or principally of transmitting signals through electronic communications networks;

g. public electronic communications service: electronic communications service that is available to the public;

h. public electronic communications network: electronic communications network that is wholly or principally used for providing public electronic communications services, including a network intended for the broadcasting of programmes in so far as this is to the general public;

i. provision of an electronic communications network: the construction, operation, management or making available of an electronic communications network;

j. related facilities: facilities belonging to an electronic communications network or an electronic communications service which enable the provision of services through that network or make such a service possible or support such a service, as well as systems for conditional access and electronic programme guides;

k. network termination point: physical point at which a subscriber is provided with access to a public communications network; in the case of networks with switching or routing functions the network termination point is determined by means of a specific network address, which can be linked to a subscriber number or name;

l. access: the making available of network components, associated facilities or services to another undertaking under explicit conditions, whether or not on an exclusive basis for the purpose of providing electronic communications services or distributing programmes to the public by that undertaking;

m. interconnection: specific type of access that is realised between the operators of public networks, comprising the physical and logical connection of public communications networks that are used by the same or another undertaking in order to enable the users of an undertaking to communicate with those of the same or another undertaking or to have access to services that are provided by another undertaking;

n. user: natural person or legal person who makes use of or requests a public communications service;

o. end-user: natural person or legal person who uses or wishes to make use of a public electronic communications service and who does not also provide public electronic communications networks or public electronic communications services;

p. subscriber: natural person or legal person who is party to a contract with a provider of public electronic communications services for the provision of such services;

q. consumer: natural person or legal person who makes use of or requests a public electronic communications service, other than for business or professional purposes;

r. undertaking: undertaking within the meaning of Article 81, paragraph 1 of the Treaty establishing the European Community;

s. undertaking that possesses substantial market power: undertaking that possesses economic power either alone or together with other undertakings, enabling it to act to a large extent independently of its competitors, customers and ultimately the consumers;

t. transnational market: the market as defined by decree as referred to in Article 15, paragraph 4 of Council Directive 2002/21/EEC, that covers at least a part of the Netherlands;

u. leased line: the public provision of transparent transmission capacity between two network termination points of one or more electronic communications networks, without routing functions being available to the users as part of the leased line provided;

v. minimum package of leased lines: the minimum package of leased lines as laid down by the Commission of the European Communities on the grounds of Articles 17 and 22 of Council Directive no. 2002/21/EEC or Articles 18 and 37 of Council Directive no. 2002/22/EEC, as stated in a list of the norms published in the Official Journal of the European Communities;

w. public telephone network: electronic communications network that is used for providing public telephone services; it supports the transmission between network termination points of voice communication as well as other forms of communication, such as fax and data;

x. public telephone service: service that is available to the public for outgoing and incoming calls;

y. programme: programme within the meaning of Article 1, paragraph 1, under f. of the Media Act (*Mediawet*);

z. cables: cables and the supporting works, protection works and signalling systems pertaining to the cables, as well as installations intended to establish connections therein between cables in, on or over public land on the one hand, and cables in buildings and land forming part thereof on the other hand, or between cables of the latter category mutually;

aa. public land:

1°. public highways, including the pavement, banks, shoulders, ditches, bridges, viaducts, tunnels, culverts, embankments and other works pertaining thereto;

2°. waters with bridges, public gardens, squares and other places pertaining thereto to which everyone has access;

bb. number: digits, letters or other symbols, whether or not in combination, serving to obtain access to or identification of users, network operators, services, network termination points or other network elements;

cc. number identification:

1°. facility for providing the called network termination point with the number of the calling network termination point or a number by which an individual user can be identified, before the connection is established;

2°. facility for providing the calling network termination point with the number of the called network termination point or a number by which an individual user can be identified, before the connection is established;

dd. putting on the market: delivering for the first time after manufacture in the European Economic Area, importation into the European Economic Area from a country outside that area, as well as utilisation after manufacture or importation from a country outside the European Economic Area into the European Economic Area;

ee. public telecommunications network: public electronic communications network that is not used solely for distributing programmes to the public;

ff. public telecommunications service: public electronic communications service that does not consist solely of the transmission of programmes to the public;

gg. equipment: electrical and electronic equipment as well as equipment and installations that contain electrical or electronic components;

- hh. peripheral equipment;
 - 1°. equipment intended for connection to a public telecommunications network in such a way that it:
 - a. can be connected directly to network termination points, or
 - b. can be used for interaction with a public telecommunications network via direct or indirect connection to network termination points for the purpose of the transmission, processing or reception of data;
 - 2°. radio transmission equipment which is suitable for connection to a public telecommunications network;
 - 3°. equipment for satellite earth stations unless otherwise provided by or pursuant to Chapter 10, but with the exclusion of specially constructed equipment that is meant for use as part of a public telecommunications network;
 - ii. radio transmission equipment: equipment which by nature is intended for broadcasting or broadcasting and receiving radio communications signals;
 - jj. electromagnetic compatibility: the ability of equipment to function satisfactorily in its electromagnetic environment without causing electromagnetic interference which is intolerable to anything in that environment;
 - kk. conditional access system: any technical measure or arrangement whereby access to a protected radio or television broadcasting service in an understandable form is made dependent on a subscription or another form of prior individual authorisation;
 - ll. application programme interface: a software interface between external applications that is made available by broadcasters, service providers, as well as the facilitating devices in the end equipment;
 - mm. International Telecommunications Convention: the Charter and Convention of the International Telecommunications Union established in Geneva on 22 December 1992 with corresponding appendices and regulations (Bulletin of Treaties - *Tractatenblad* - 1993, 138), the Instruments of Amendment to the Charter and the Convention of the International Telecommunications Union established in Kyoto on 14 October 1992 (Bulletin of Treaties 1995, 201) and the Instruments of Amendment to the Charter and Convention of the International Union for Telecommunications established in Minneapolis on 6 November 1998 (Bulletin of Treaties 2001, 90);
 - nn. Council Directive no. 2002/19/EEC: Directive no. 2002/19/EEC of the European Parliament and the Council of the European Union of 7 March 2002 concerning access to and interconnection of electronic communications networks and associated facilities (Access Directive) (OJ L 108);
 - oo. Council Directive no. 2002/20/EEC: Directive no. 2002/20/EEC of the European Parliament and the Council of the European Union of 7 March 2002 concerning the authorisation for electronic communications networks and services (Authorisation Council Directive)(OJ L 108);
 - pp. Council Directive no. 2002/21/EEC: Directive no. 2002/21/EEC of the European Parliament and the Council of the European Union of 7 March 2002 concerning the common regulatory framework for electronic communications networks and services (Framework Directive) (OJ L 108);
 - qq. Council Directive no. 2002/22/EEC: Directive no. 2002/22/EEC of the European parliament and the Council of the European Union of 7 March 2002 concerning universal

service and user rights in respect of electronic communications networks and services (Universal Services Directive) (OJ L 108);

rr. certificate: electronic confirmation linking data for verifying an electronic signature with a particular person and confirming the identity of that person;

ss. qualified certificate: certificate that meets the requirements set pursuant to Article 18.15, paragraph 2, and issued by a certification service provider that meets the requirements laid down pursuant to Article 18.15, paragraph 1;

tt. certification service provider: a natural person or legal person who issues certificates or other services in relation to electronic signatures;

uu. means of creating electronic signatures: configured software or hardware that is used to implement the data for creating electronic signatures;

vv. secure means of creating electronic signatures: a means for creating electronic signatures that meets the requirements laid down pursuant to Article 18.17, paragraph 1;

ww. electronic signature: for the application of this Act, the definition as contained in Article 15a, paragraph 4 of Title 1, Section 1A of Book 3 of the Netherlands Civil Code is applicable;

xx. signatory: for the application of this Act, the definition as contained in Article 15a, paragraph 5 of Title 1, Section 1A of Book 3 of the Netherlands Civil Code is applicable.

B

An article will be inserted after Article 1.2, to read as follows:

Article 1.3

1. In exercising its tasks and powers, the Board will in any case take into account the following objectives:

a. the promotion of genuine competition in the supply of electronic communications networks, electronic communications services, associated facilities, or services as referred to in Article 8, paragraph 2 of Council Directive no. 2002/21/EEC;

b. the contribution to the development of the internal market as referred to in Article 8, paragraph 3 of Council Directive no. 2002/21/EEC;

c. the promotion of the interests of end-users as referred to in Article 8, paragraph 4 of Council Directive no. 2002/21/EEC, in so far as these objectives concern the tasks and powers conferred on the Board by or pursuant to this Act.

2. In exercising its tasks and powers, the Board will take into account the recommendations of the Commission of the European Communities as referred to in Article 19, paragraph 1 of Council Directive no. 2002/21/EEC, in so far as these recommendations concern tasks or powers conferred on the Board by or pursuant to this Act.

3. Should the Board not follow the recommendations as referred to in paragraph 2, it will notify the Commission of the European Communities and Our Minister, giving its reasons.

C

Chapter 2 is to read as follows:

CHAPTER 2. NOTIFICATION AND REGISTRATION

Article 2.1

1. The party that installs or provides a public electronic communications network or associated facilities or provides a public electronic communications service will notify the Board accordingly.

2. The Board will determine what information must be submitted to the Board with the notification, as well as the manner in which the notification is to be made. The information will in any case include the name, business address or home address and a description of the networks, services or facilities as referred to in paragraph 1. The Board will publish this notification in the Official Gazette (*Staatscourant*).

3. The information as referred to in paragraph 2 will be collected solely for the purpose of the proper implementation of this Act, and is limited to that which is strictly necessary for establishing the identity of the party as referred to in paragraph 1.

4. The Board will register the party as referred to in paragraph 1 after receipt of the notification as referred to in that paragraph, together with the relevant information.

5. In order to provide or issue qualified certificates to the public, registration by the Board is required of the certification service provider who is established in the Netherlands. When applying for a registration, the certification service provider will submit documents demonstrating compliance with the said requirements by and pursuant to Article 18.15, paragraphs 1 and 2. The Board is authorised to determine what other information must be submitted when applying for a registration.

6. A certification service provider of which an organisation as referred to in Article 18.16, paragraph 1, has determined that it meets the requirements set by or pursuant to Article 18.15, paragraphs 1 and 2, only needs to submit valid proof of identification in order to comply with that laid down in the second sentence of paragraph 5.

Article 2.2

1. The Board will not proceed with registration as referred to in Article 2.1, paragraph 4, if:

- a. the notification does not concern a public electronic communications network, a public electronic communications service or associated facilities, or
- b. the required information on the grounds of Article 2.1, paragraph 2, has not been provided or is incomplete or incorrect.

2. The Board shall refuse registration as referred to in Article 2.1, paragraph 5, if the registration applied for does not concern the provision or issue of qualified certificates to the public.

3. The Board may refuse the registration of a certification service provider if the information submitted by it on the grounds of Article 2.1, paragraph 5 or 6, has not been provided or is incomplete or incorrect.

4. The Board shall terminate or alter a registration:

- a. if the grounds of the registration have ceased to exist;

- b. if a certification service provider performs activities or services in contravention of the provisions given by or pursuant to this Act, or
- c. if the Board has established that the certification service provider does not comply, or comply wholly, with the requirements as referred to in Article 18.15, paragraphs 1 and 2, and the certification service provider has not demonstrated its compliance with these requirements within the period set by the Board. If the certificate service provider demonstrates that it cannot reasonably comply with the requirements within the set period, the Board may extend this period.

Article 2.3

1. In the interests of the proper implementation of this Act, the Board will maintain a register of the registrations. The register will contain in any case the name and business address or home address of the registered party.
2. The register will be open to inspection by everyone free of charge at a place to be determined by the Board. The information in the register may also be accessed by electronic means free of charge.
3. The registered party shall notify the Board immediately of any changes that affect the registration.
4. The Board shall update the register in accordance with the changes arising from Article 2.2, paragraph 4, or the changes that the Board has received on the grounds of paragraph 3.
5. Notwithstanding paragraph 4, the Board may alter the information concerning the registration if this is necessary to eliminate simple factual inaccuracies.

Article 2.4

1. As soon as possible after registration as referred to in Article 2.1, paragraph 4, the Board shall issue the registered party concerned with a written statement showing that the notification as referred to in Article 2.1, paragraph 1, has been made to the Board. The statement will also contain details of the applicable statutory provisions concerning the joint use of antenna sites, antenna systems or antennas, the obligation to tolerate the installation, maintenance and clearing away of cables, end-to-end connections, as well as access relating to providers with significant market power.
2. Contrary to paragraph 1, the Board shall issue the statement as referred to in that paragraph within a week of receipt of a written request to this effect from a registered party as referred to in paragraph 1.

Article 2.5

The Board is the responsible party, within the meaning of Article 1, part d. of the Personal Information Protection Act (*Wet bescherming persoonsgegevens*), for the collection of data as referred to in Article 2.1 and for the register as referred to in Article 2.3.

D

Article 3.3 will be amended as follows:

a. In paragraph 9, “Directive no. 97/13/EEC of the European Parliament and the Council of the European Union of 10 April 1997 concerning a common framework for general authorisation and individual licences for telecommunications services” will be replaced by: Council Directive no. 2002/20/EEC.

b. With the renumbering of paragraph 10 as paragraph 11, a paragraph will be inserted after paragraph 9, to read as follows:

10. Our Minister may decide that one or more providers of public electronic communications networks or public electronic communications services are excluded from obtaining a licence for the use of sets of frequencies to be determined with that decision, if that licence is to be granted according to a procedure as referred to in paragraph 4, under b. or under c., on the understanding that this may only take place if necessary for bringing about or maintaining genuine competition.

E

In Article 3.5, “public telecommunications networks or public telecommunications services” are to be replaced by: public electronic communications networks or public electronic communications services.

F

Article 3.8 will be amended as follows:

a. In paragraph 3, “Article 3.6 shall” will be replaced by: Articles 3.3, paragraph 10, and 3.6 shall.

b. A paragraph will be inserted after paragraph 3, to read as follows:

4. If the permission concerns the transfer of a licence for the use of sets of frequencies for the purpose of providing public electronic communications networks or public electronic communications services, Our Minister will publish the decision for this permission, the conditions associated with this permission as well as the decision to amend these conditions, in the Official Gazette.

G

In Article 3.9, paragraphs 2 to 5 are cancelled, as well as the “1” for paragraph 1.

H

Article 3.11 will be amended as follows:

a. Paragraph 4 is cancelled.

b. Paragraph 5 is renumbered as paragraph 4.

c. Paragraph 4 will be amended as follows:

1. In the first sentence, “their broadcasting transmission networks” will be replaced by: their public electronic communications network that consists of radio transmission equipment that is suitable for the broadcasting of programmes.

2. In the second sentence “paragraphs 2 to 4” will be replaced by: paragraphs 2 and 3.

I

Article 3.12 will be amended as follows:

a. In paragraph 1 the phrase “in so far as it concerns the broadcasting transmission networks” is replaced by: in so far as it concerns public electronic communications networks that consist of radio transmission equipment that is suitable for the broadcasting of programmes.

b. In paragraph 2, under a., “paragraph 5” is replaced by: paragraph 4.

J

An article will be inserted after Article 4.1, to read as follows:

Article 4.1a

Rules may be laid down by Ministerial regulation for the implementation of technical measures relating to the harmonisation of number stocks in the European Union in accordance with Article 19, paragraph 2 of Council Directive no. 2002/21/EEC in order to support the development of pan-European services.

K

Article 4.2 is to read as follows:

Article 4.2

1. Numbers that are included in a numbering plan or a designation established on the grounds of paragraph 5 may be assigned by the Board upon application to:

a. a provider of an electronic communications network for the provision of electronic communications services by way of its electronic communications network;

b. a provider of an electronic communications service for the purpose of providing its electronic communications service, or

c. a natural person or legal person for the purpose of using an electronic communications service.

2. A decision concerning an application for the assignment of numbers shall be rendered and made known within three weeks of receipt. If the application concerns a number for which it is established in a numbering plan that it is to be assigned by means of an auction procedure, the period will be extended by three weeks.

3. In the interest of an efficient assignment of numbers, it may be provided by ministerial regulation that numbers for a designated use or category of cases determined by that regulation may only be assigned to either one or two of the categories of applicants referred to in paragraph 1, under a. up to and including c.

4. In the interest of an efficient assignment, an assignment of numbers may be granted with restrictions. In the aforementioned interest, regulations may be attached to such an assignment.

5. During the preparation of a numbering plan, in accordance with the uses to be designated by Our Minister and their corresponding numbers, the Board may assign numbers during a period to be determined by that decision. The prohibition under Article 4.1, paragraph 4, shall apply *mutatis mutandis* to the numbers designated by Our Minister.

6. If several applications with an equal preference for a particular number or numbers are submitted on the same day to the Board for consideration, the Board will decide on these applications by drawing lots. The numbers as referred to in paragraph 7 are excluded from this procedure.

7. Numbers of an exceptional economic value are assigned by means of an auction procedure, if this is recorded in a numbering plan relating to these numbers. The proceeds of the auction will go to the State.

8. If only one applicant qualifies for the assignment of a number as referred to in paragraph 7 in accordance with or under or pursuant to the rules in this Act, the number will be assigned to this applicant without an auction.

9. By or pursuant to a governmental decree, rules may be laid down for the application procedure for numbers as referred to in paragraph 7 concerning the auction procedure and concerning the drawing of lots.

10. It is prohibited to use numbers designated by Our Minister pursuant to paragraph 5 or numbers appearing in a numbering plan for the use designated or included in a numbering plan without or contrary to an assignment.

L

An article will be inserted after Article 4.2, to read as follows:

Article 4.2a

1. Numbers that are assigned by means of an auction procedure are assigned for an indefinite period, unless Our Minister determines a maximum duration of the assignment in the numbering plan concerned.

2. A number for which a maximum duration is included in a numbering plan will not be put into use earlier than one year after the maximum period of the assignment has lapsed, if the number is subsequently assigned to another number holder.

M

In Article 4.3, paragraph 2, in replacing the full stop at the conclusion of part d. by a semi-colon, a part will be added, to read as follows:

e. the intended use as described in the application does not make the assignment of the requested numbers necessary.

N

In Article 4.7, paragraph 4, “An assignment or reservation may be revoked by the Board if” is replaced by: An assignment or reservation may be deferred by the Board for a period to be determined by the Board, or revoked, if.

O

Article 4.8 will be amended as follows:

In paragraph 1, “The duration of the reservations will also be entered” will be replaced by: The duration of the assignment of the reservation will also be entered.

P

Article 4.10 will be amended as follows:

a. “telecommunications services” will be replaced each time by: electronic communications services.

b. “telecommunications service” will be replaced each time by: electronic communications service.

c. In paragraph 2, “Without prejudice to Article 6.9,” will be deleted.

d. “telecommunications network” will be replaced each time by: electronic communications network.

e. Article 4.10, paragraph 7 is to read as follows:

7. A provider of a public electronic communications network over which a category of public electronic communications services pursuant to paragraph 1 is provided:

a. shall ensure that its network is equipped in such a manner that a provider of that service will be able to comply with any obligation imposed pursuant to paragraph 1, and

b. shall establish a cost-orientated tariff for interconnection related to an obligation imposed pursuant to paragraph 1.

f. In paragraph 8, after “obligation” will be inserted: to end-users.

Q

In Articles 5.1, paragraph 1, and 5.5, paragraph 1, “for a public telecommunications network or for a broadcasting network” will be replaced by: for a public electronic communications network.

R

In Article 5.2, paragraph 1, “providers of public telecommunications networks or of broadcasting networks” will be replaced by: providers of public electronic communications networks.

S

In Article 5.2, paragraph 3, “A provider of a public telecommunications network or of a broadcasting network” will be replaced by: A provider of a public electronic communications network.

T

In Articles 5.3, paragraph 1, 5.6, paragraph 1, 5.7, paragraph 1, and 5.8, paragraph 1, “the provider of a public telecommunications network or of a broadcasting network” will be replaced in each case by: the provider of a public electronic communications network.

U

In Article 5.3, paragraph 2, “the provider of the network” will be replaced by: the provider as referred to in paragraph 1.

V

In Article 5.8, paragraph 2, “telecommunications” will be replaced by: a public electronic communications network or a public electronic communications service provided through such means.

W

In Article 5.10, paragraph 1, “Providers of public telecommunications networks and broadcasting networks” will be replaced by: Providers of public electronic communications networks.

X

Chapter 6 is to read as follows:

CHAPTER 6. INTEROPERABILITY OF SERVICES

Article 6.1

1. A provider of public electronic communications networks or public electronic communications services, who thereby controls the access to end-users, will enter into negotiations with the provider of public electronic communications networks or public electronic communications services at the latter's request with the aim of concluding an agreement on the basis of which the necessary measures will be taken, including if necessary by means of interconnection of the networks concerned, in order to effect end-to-end connections.

2. The providers involved in the negotiations shall treat all confidential business information they obtain during the negotiations as confidential, and only use such information for the purpose for which it has been provided.

3. At the request of a provider of public electronic communications networks who is of the opinion that another provider does not comply with its obligation to enter into negotiations with the former, the Board may stipulate conditions as to the manner in which the negotiations are to be held, notwithstanding the right of the providers to terminate jointly their negotiations. The providers concerned will adhere to the stipulations laid down by the Board in their negotiations.

Article 6.2

1. If the negotiations as referred to in Article 6.1 do not result in an agreement between the providers referred to in that article, should the Board be of the opinion that further negotiations will not reasonably lead to an agreement, at the request of one of the providers it may oblige the other provider, in so far as this provider controls access to the end-users, to effect and guarantee the end-to-end connections desired by the applicant under conditions to be laid down by the Board, if the Board is of the opinion that the interests of the other provider that have led to the failure to reach agreement do not reasonably counterbalance the interests of the provider submitting the request.

2. Furthermore, the Board may officially, whether or not within the context of a request as referred to in paragraph 1, impose obligations on providers of public electronic communications networks or public electronic communications services which thereby control access to end-users, concerning the effecting and guaranteeing of end-to-end connections, if such is justified in the case in question in the light of the objectives as referred to in Article 1.3.

3. The decision as referred to in paragraph 1 or 2 will be published in the Official Gazette. Information as referred to in Article 10, paragraph 1, part c. of the Government Information (Public Access) Act (*Wet openbaarheid van bestuur*) will not be published.

Article 6.3

1. Categories of public electronic communications services may be designated by governmental decree, if this is justified in the light of the objectives as referred to in Article 1.3, whereby the providers of services belonging to a designated category and the

providers of the networks concerned, in so far as they control access to the end-users, are required to effect and guarantee end-to-end connections in the Netherlands.

2. At the request of providers that supply electronic communications services outside the Netherlands that belong to a category of services designated pursuant to paragraph 1, the providers as referred to in paragraph 1 will take the necessary measures to effect and guarantee the end-to-end connections in relation to the services provided abroad.

3. If the effecting of end-to-end connections is technically not possible or economically unfeasible or the taking of the required measures cannot otherwise be reasonably expected in the light of the means available, the Board may exempt a provider from the obligation as referred to in paragraph 1 or 2 to effect and guarantee end-to-end connections.

4. Notwithstanding paragraph 3, in order to implement paragraph 1 or, in the case of a request, paragraph 2, each provider referred to therein will enter into negotiations with other providers as referred to therein in order to conclude agreements on the basis of which measures will be taken to effect and guarantee end-to-end connections.

Article 6.4

1. By or pursuant to a governmental decree, rules may be laid down for providers of public telephone networks or public telephone services:

a. concerning the handling of calls from the European telephone numbering space;

b. that aim to ensure that end-users in the Netherlands who make use of a non-geographic number assigned by the Board pursuant to Article 4.2, paragraph 1, can be called on this number by end-users located in other Member States of the European Union;

c. that aim to ensure that end-users in other Member States of the European Union who make use of a non-geographic number assigned by a national regulatory authority can be called on this number by end-users located in the Netherlands.

2. Tasks and powers may be conferred on the Board with the rules as referred to in paragraph 1.

Y

Two chapters are inserted after Chapter 6, to read as follows:

CHAPTER 6A. OBLIGATIONS FOR UNDERTAKINGS THAT POSSESS SIGNIFICANT MARKET POWER

§ 6a.1 Establishing significant market power

Article 6a.1

1. The Board shall determine in accordance with the principles of the general European competition law the relevant markets in the electronic communications sector for which the product or service market corresponds to a product or service market stated in a recommendation as referred to in Article 15, paragraph 1, of Council Directive no.

2002/21/EEC. The Board will determine in any case as soon as possible after a recommendation as referred to in the first sentence has come into effect the relevant markets referred to in that sentence.

2. The Board will determine in accordance with the principles of the general European competition law the relevant markets in the electronic communications sector other than those referred to in paragraph 1 if it is of the opinion that there is reason for such or that this arises from Article 6a.4.

3. The Board will investigate the relevant markets determined in accordance with paragraphs 1 and 2 as soon as possible.

4. The Board will investigate a transnational market as soon as possible after a decree by the Commission of the European Communities on which this is based has come into effect, and subsequently at regular intervals.

5. The aim of the examination as referred to in paragraphs 3 and 4 is in any case to establish:

a. whether or not the market concerned is actually competitive, and whether undertakings offering public electronic communications networks, related facilities or public electronic communications services that are active therein possess significant market power, and

b. what obligations as referred to in Articles 6a.6 to 6a.10 and 6a.12 to 6a.15 are appropriate for the undertakings as referred to under a. that possess significant market power.

6. Once the examination as referred to in paragraph 3 or 4 has been completed, the Board will implement Articles 6a.2, paragraph 1, or 6a.3 as soon as possible.

7. In the performance of its tasks and powers on the grounds of this chapter, the Board will take account of the guidelines laid down by the Commission of the European Communities pursuant to Article 15, paragraph 2, of Council Directive no. 2002/21/EEC.

8. In assessing whether two or more undertakings jointly possess economic power as referred to in Article 1.1, part s., the Board will adopt in any case the criteria as referred to in Annex II to Council Directive no. 2002/21/EEC.

9. The Board will exercise its tasks and powers on the grounds of this chapter with transnational markets in collaboration with the national regulatory authorities concerned.

Article 6a.2

1. If an examination as referred to in Article 6a.1, paragraph 3 or 4, shows that the relevant market or transnational market is not genuinely competitive, the Board will determine which undertakings that provide public electronic communications networks, related facilities or public electronic communications services possess significant market power, and:

a. it will impose on each of them, where appropriate, obligations as referred to in Articles 6a.6 to 6a.10 or 6a.12 to 6a.15;

b. it will uphold obligations imposed or upheld previously, in so far as they concern this market, provided they are still appropriate, or

c. it will revoke obligations imposed or upheld previously, in so far as they concern this market and if they are no longer appropriate.

2. The Board will impose on the grounds of paragraph 1, part a.:

a. obligations as referred to in Articles 6a.6 to 6a.10 only on undertakings that provide electronic communications networks or related facilities;

b. obligations as referred to in Articles 6a.12 to 6a.15 only if the relevant market or transnational market is an end-user market and the obligations as referred to in Articles 6a.6 to 6a.11 and 6a.17 are inadequate to bring about genuine competition or in order to protect the interests of the end-users.

3. An obligation as referred to in paragraph 1 is appropriate if it is based on the nature of the problem observed in the relevant market and is proportional and justified in the light of the objectives of Article 1.3.

Article 6a.3

1. If an examination as referred to in Article 6a.1, paragraph 3 or 4, shows that a relevant market or transnational market is genuinely competitive, the Board will determine this and will revoke the obligations imposed or upheld earlier pursuant to Article 6a.2, paragraph 1, in so far as they concern this market.

2. If an examination as referred to in Article 6a.1, paragraph 3 or 4, shows that an undertaking in a relevant market or transnational market that is not genuinely competitive is required to comply with obligations imposed or upheld earlier pursuant to Article 6a.2, paragraph 1, the Board will revoke these obligations in so far as they concern this market, if the undertaking in this relevant market or transnational market does not possess significant market power.

3. If an examination as referred to in Article 6a.1, paragraph 3 or 4, shows that a relevant market or transnational market is not genuinely competitive and the obligations as referred to in Articles 6a.6 to 6a.11 are sufficient to effect genuine competition or protect the interests of end-users, the Board will revoke the obligations imposed or upheld earlier pursuant to Article 6a.2, paragraph 1, as referred to in Articles 6a.12 to 6a.15, in so far as they concern this market.

Article 6a.4

No later than three years after a decision as referred to in Article 6a.2, paragraph 1, concerning the imposing or upholding of obligations concerning an undertaking that possesses significant market power in a relevant market has come into effect, the Board may decide:

- a. to uphold these obligations on the grounds of Article 6a.2, paragraph 1, part b., or
- b. to revoke these obligations on the grounds of Articles 6a.2, paragraph 1, part c.

Article 6a.5

The Board will publish a decision as referred to in Articles 6a.2, paragraph 1, or 6a.3 in the Official Gazette. Information as referred to in Article 10, paragraph 1, part c., of the Government Information (Public Access) Act will not be published.

§ 6a.2 Obligations relating to access

Article 6a.6

On the grounds of Article 6a.2, paragraph 1, the Board may impose the obligation to comply with reasonable requests for forms of access to be determined by the Board.

Article 6a.7

1. On the grounds of Article 6a.2, paragraph 1, the Board may impose an obligation concerning price control or cost allocation for the forms of access to be determined by the Board. The Board may attach regulations to the obligations that are required for the proper implementation of the obligation.

2. An obligation as referred to in paragraph 1 may entail the adoption of cost-oriented prices or the drawing up and application of a cost allocation system.

3. If the Board has imposed an obligation for:

a. cost-oriented prices, the undertaking will demonstrate that its prices are indeed cost-oriented;

b. the drawing up and application of a cost allocation system, the system drawn up by the undertaking requires the approval of the Board.

4. Notwithstanding the second sentence of paragraph 1, the Board may attach regulations to the drawing up of a cost allocation system concerning the submission of the results of the application of the system by the undertaking on which the obligation rests.

5. If an obligation to draw up a cost allocation system has been imposed:

a. the undertaking in question, with due regard for the regulations given by the Board, will provide a satisfactory description of the system that shall contain at least the main categories to which the costs are assigned and the rules applied for allocating the costs;

b. the Board or an independent competent third party designated by the Board will examine each year whether the undertaking is acting in accordance with the system.

6. The results of the examination as referred to in paragraph 5, part b., will be published in the Official Gazette.

Article 6a.8

On the grounds of Article 6a.2, paragraph 1, for the forms of access to be determined by the Board, the Board may impose the obligation to grant this access in similar circumstances and under similar conditions. This obligation also means that the undertaking applies the same conditions as those which apply to itself, its subsidiaries or partner undertakings under the same circumstances.

Article 6a.9

1. On the grounds of Article 6a.2, paragraph 1, the Board may impose the obligation to publicise information to be determined by the Board concerning the form of access to be determined by the Board. This information may concern, *inter alia*:

a. tariffs and other conditions that are to be adopted in granting access;

b. technical features and other properties of the network.

2. On the grounds of Article 6a.2, paragraph 1, the Board may impose the obligation to publicise a reference offer containing a description of the form of access to be determined by the Board. The reference offer shall be divided into the different forms of access and their associated tariffs and other conditions.

3. If an obligation as referred to in Article 6a.6 that concerns the unbundled access to the connection network is also imposed on an undertaking on which an obligation as referred to in paragraph 2 is imposed, the reference offer of the undertaking will comply in any case with Annex II to Council Directive no. 2002/19/EEC.

4. If the Board is of the opinion that the reference offer does not correspond to the obligations imposed on the grounds of this chapter, it will give the undertaking instructions concerning the changes to be made.

5. The Board may attach regulations to an obligation as referred to in paragraphs 1 and 2 concerning the level of detail and the manner of making such information known.

Article 6a.10

1. On the grounds of Article 6a.2, paragraph 1, the Board may impose the obligation to keep separate accounts in which the income and the costs of the forms of access to be determined by the Board, to the undertaking itself or to other undertakings, are separate from those of the other activities carried out by the undertakings.

2. The Board may attach regulations to the obligation to keep separate accounts concerning the method of setting out the accounts and the submission of accounting documents to the Board, including information about income received from third parties.

Article 6a.11

1. Notwithstanding the powers of the Board pursuant to Article 6a.2, paragraph 1, to impose obligations as referred to in Articles 6a.6 to 6a.10, in exceptional circumstances the Board may impose other obligations to be indicated by ministerial regulation relating to access on an undertaking that possesses significant market power, in so far as such obligations are appropriate.

2. Under the ministerial regulation as referred to in paragraph 1, rules may be laid down concerning the obligations to be imposed by the Board under this regulation. These rules will concern in any case:

- a. the circumstances that have to occur before these obligations may be imposed, and
- b. the nature and extent of the obligations.

3. The Board will revoke a decision as referred to in paragraph 1, if:

- a. it has decided on the grounds of Article 6a.3, paragraph 1, that the relevant or transnational market concerned is genuinely competitive;
- b. it is proved on the grounds of Article 6a.3, paragraph 2, that the undertaking as referred to in paragraph 1 no longer has significant market power.

4. The Board will also revoke a decision as referred to in paragraph 1 if the exceptional circumstances that caused the decision to be taken no longer exist.

5. No later than eighteen months after a decision as referred to in paragraph 1 has come into effect, the Board will examine whether exceptional circumstances still exist and the Board will decide on the grounds of:

- a. paragraph 1 to uphold the decision, or
- b. paragraph 4 to revoke the decision.

§ 6a.3 Obligations at end-user level

Article 6a.12

On the grounds of Article 6a.2, paragraph 1, the Board may impose the obligation:

- a. with the delivery of end-user services to be determined by the Board, to treat the end-users of these services equally in identical situations;
- b. to unbundle the end-user services to be determined by the Board from other services, and
- c. to publicise information to be determined by the Board among categories of end-users to be determined by the Board in a manner to be determined by the Board.

Article 6a.13

1. On the grounds of Article 6a.2, paragraph 1, the Board may impose obligations relating to the level of end-user tariffs.

2. If the Board imposes an obligation as referred to in paragraph 1, on the grounds of Article 6a.2, paragraph 1 the Board will also impose the obligation to maintain a cost allocation system to be determined or approved by the Board.

3. An undertaking on which an obligation as referred to in paragraph 2 has been imposed, will submit to the Board on a particular date each year in the month of May to be determined by the Board the result of the application of the cost allocation system concerned for the previous calendar year.

4. If an obligation as referred to in paragraph 2 has been imposed, each year after the result as referred to in paragraph 3 has been submitted the Board or an independent competent third party will examine whether the undertaking has acted in accordance with the cost allocation system concerned. The results of the examination will be published in the Official Gazette.

5. The Board may attach further regulations to the obligations as referred to in paragraphs 1 and 2 that are necessary for the proper implementation of these obligations.

Article 6a.14

1. If on the grounds of Article 6a.2, paragraph 1, the Board imposes or upholds an obligation as referred to in Article 6a.13, paragraph 1, on the grounds of Article 6a.2, paragraph 1, the Board may also impose the obligation not to proceed with the introduction of new or altered end-user tariffs before the Board has approved these tariffs.

2. The Board will assess within three weeks after receipt of a request for approval whether the new or altered end-user tariff is in accordance with the obligation imposed or upheld as referred to in Article 6a.13, paragraph 1. If information as referred to in

paragraph 7 is missing, the undertaking that has submitted the request will be informed of this fact within three days after the request has been received.

3. The Board may extend the period as referred to in the first sentence of paragraph 2 only once by a period of three weeks. The Board will inform the undertaking that has submitted this request of such an extension in writing.

4. If the Board is of the opinion that the new or altered end-user tariff is in accordance with the obligation imposed or upheld as referred to in Article 6a.13, paragraph 1, the Board will approve its introduction.

5. If the Board is of the opinion that the new or altered end-user tariff is not in accordance with the obligation imposed or upheld as referred to in Article 6a.13, paragraph 1, the Board will inform the undertaking that has submitted the request of this fact. The Board will inform the undertaking as referred to in the first sentence within four weeks of this notification, stating which points of the obligation as referred to in the first sentence are not met.

6. The Board will assess a request for approval following a written notification as referred to in the second sentence of paragraph 5 within two weeks of receiving this request.

7. No later than the date on which a decision as referred to in Article 6a.2, paragraph 1, comes into effect, entailing the imposition or upholding of the obligation not to proceed with the introduction of new or altered end-user tariffs before the Board has approved these tariffs, the Board will establish what information must be submitted by the undertaking in question with a request as referred to in paragraph 2 and in what form this information is to be submitted. The Board will inform the undertaking in question accordingly.

Article 6a.15

For the implementation of Article 17 of Council Directive no. 2002/22/EEC, other obligations may be designated by governmental decree other than those obligations as referred to in Articles 6a.12 to 6a.14, which the Board may impose on the grounds of Article 6a.2, paragraph 1, on undertakings that possess significant market power in a relevant end-user market or a transnational end-user market.

§ 6a.4 Carrier choice and carrier preference on public telephone networks at a fixed location

Article 6a.16

1. An undertaking for which it has been established on the grounds of Article 6a.2, paragraph 1, that it possesses significant market power in a single relevant market or transnational market or several relevant markets or transnational markets jointly, with the provision of access to and the use of public telephone networks at a fixed location, will be designated as such by the Board.

2. The Board will revoke a designation as referred to in paragraph 1 in so far as an examination as referred to in Article 6a.1, paragraph 3 or 4, shows that:

a. a relevant market or transnational market that concerns the provision of access to and the use of public telephone networks at a fixed location has become genuinely competitive, or

b. the undertaking in question no longer possesses significant market power with the provision of access to and the use of public telephone networks at a fixed location.

3. The Board will publish a decision as referred to in paragraph 1 or 2 in the Official Gazette. Information as referred to in Article 10, paragraph 1, part c., of the Government Information (Public Access) Act will not be published.

Article 6a.17

1. An undertaking that is designated pursuant to Article 6a.16, paragraph 1, will ensure, in so far as it has been designated, that the facilities are available for its subscribers that allow them with each call, by means of a carrier selection code or a standard pre-selection code, to use the services of providers that have access to its public telephone network at a fixed location and provide a public telephone service, or a substantial part thereof, at a fixed location.

2. Each subscriber must be able to change the pre-selection code as referred to in paragraph 1 by choosing a number for this purpose from a numbering plan laid down by Our Minister on the grounds of Article 4.1.

3. On the grounds of Article 6a.16, paragraph 1, the Board may impose regulations on a designated undertaking concerning the functionality of the facilities as referred to in paragraph 1.

4. An undertaking that is designated pursuant to Article 6a.16, paragraph 1, will comply, in so far as it has been designated, with reasonable requests for access to its public telephone networks at a fixed location from providers that wish to provide at least a substantial part of the public telephone service at a fixed location by means of a carrier selection code or pre-selection code as referred to in paragraph 2. The tariffs for the access as referred to in the first sentence are cost-oriented.

5. In order not to discourage subscribers from using the facilities described in paragraph 1, rules may be laid down by ministerial regulation concerning the maximum tariff that may be charged by the undertaking designated pursuant to Article 6a.16, paragraph 1, to its subscribers for these facilities.

§ 6a.5 The minimum package of leased lines

Article 6a.18

1. An undertaking for which it has been established on the grounds of Article 6a.2, paragraph 1, that it possesses significant market power in a relevant market or a transnational market in providing a type of leased line from the minimum package of leased lines will be designated as such by the Board.

2. The Board will revoke a designation as referred to in paragraph 1 in so far as an examination as referred to in Article 6a.1, paragraph 3 or 4, shows that:

a. a relevant market or transnational market, of which the type of leased line concerned from the minimum package of leased lines forms a part, has become genuinely competitive, or

b. the undertaking in question no longer possesses significant market power in providing the type of leased line from the minimum package of leased lines for which it has been designated.

3. A designation as referred to in paragraph 1 is cancelled at the moment that the type of leased line concerned from the minimum package of leased lines no longer forms part of the minimum package of leased lines.

4. The Board will publish a decision as referred to in paragraph 1 or 2 in the Official Gazette. Information as referred to in Article 10, paragraph 1, part c., of the Government Information (Public Access) Act will not be published.

Article 6a.19

1. An undertaking that is designated pursuant to Article 6a.18, paragraph 1, will provide upon request and within a reasonable period of time the types of leased lines from the minimum package of leased lines for which it has been designated.

2. Rules shall be laid down by ministerial regulation for the implementation of Annex VII to Council Directive no. 2002/22/EEC which an undertaking as referred to in paragraph 1 is required to observe in the provision of the types of leased lines from the minimum package of leased lines for which it has been designated. The Board may thereby be assigned tasks and powers for the implementation of the Annex as referred to in the first sentence.

§ 6a.6 Vertically integrated public undertakings that possess a position of economic power as referred to in Article 82 of the EEC Treaty

Article 6a.20

1. In this article, ‘public undertaking’ is understood to mean an undertaking on which a legal person created pursuant to public law can exercise a dominant influence either directly or indirectly.

2. If an undertaking has the legal form of a legal person under private law, a dominating influence as referred to in paragraph 1 may be presumed to be exercised if a legal person created pursuant to public law directly or indirectly:

a. possesses the majority of voting rights attached to the shares issued by the legal person, or

b. appoints more than half of the members of the board or supervisory body.

3. A vertically integrated public undertaking that provides electronic communications networks, thereby holding a position of economic power in the common market or an essential part thereof as referred to in Article 82 of the EEC Treaty, will grant other undertakings upon their request access under the same conditions as those which apply to itself or its subsidiaries under the same circumstances.

4. The obligation as referred to in paragraph 3 is not applicable to a vertically integrated public undertaking in so far as this obligation already arises from an obligation

imposed or upheld by the Board pursuant to Article 6a.2, paragraph 1, in conjunction with Article 6a.8.

CHAPTER 6b. CONSULTATION

Article 6b.1

1. Paragraph 3.5.6 of Section 3.5, with the exception of Article 3:30, paragraph 2, of the General Administrative Law Act is applicable to the preparation of a decision by the Board as referred to in Articles 6.2, in so far as a decision as referred to in that article has significant consequences for the market concerned, 6a.2, paragraph 1, 6a.3, 6a.16, paragraph 1 or 2, or 6a.18, paragraph 1 or 2. Contrary to Article 3:32, paragraph 1 of the General Administrative Law Act, the period within which objections may be put forward is five weeks.

2. Articles 3:19, paragraph 2, part a., and 3:21, paragraphs 2 and 3, of the General Administrative Law Act are applicable *mutatis mutandis*.

Article 6b.2

1. If a decision as referred to in Article 6b.1, paragraph 1, influences trade between the Member States, notwithstanding Article 6b.1, paragraph 1, the Board will submit the draft of the decision concerned to the Commission of the European Communities and the national regulatory authorities that are charged with the implementation of the articles as referred to in Article 7, paragraph 3, under a., of Council Directive no. 2002/21/EEC and the Board will give the said authorities the opportunity to make comments on the draft.

2. The Board will submit the draft of a decision as referred to in paragraph 1, including the grounds on which the draft is based, to the Commission of the European Communities and the national regulatory authorities as referred to in paragraph 1 no later than the date on which the decision was submitted for inspection in accordance with Article 6b.1, paragraph 1.

3. The Board will render a decision as referred to in paragraph 1 only after the period as referred to in Article 6b.1, paragraph 1, has expired.

4. In rendering its decision as referred to in paragraph 1, the Board will take into account as much as possible the comments that the Commission of the European Communities and the national regulatory authorities as referred to in paragraph 1 have made to the Board concerning the draft.

5. If the Commission of the European Communities states within the period as referred to in paragraph 3 that it is of the opinion that the said draft of a decision as referred to in paragraph 1 forms an obstacle to the internal European market or that it has serious doubts concerning the consistency of that draft with Community law, contrary to that stated in paragraph 3 the Board will not render a decision in accordance with paragraph 6 earlier than nine weeks after the period as referred to in Article 6b.1, paragraph 1, has expired.

6. If the Commission of the European Communities has made a statement as referred to in paragraph 5 in relation to a draft of a decision as referred to in paragraph 1, and has

rendered a decision in accordance with Article 7, paragraph 4, and Article 22, paragraph 2, of Council Directive no. 2002/21/EEC:

a. the Board will harmonise the draft with Community law in relation to the proposals made by the Commission of the European Communities in its decision, before proceeding to render its decision, or

b. the Board will decide not to adopt the draft decision concerned.

7. A decision as referred to in paragraph 6, part b., will be published in the Official Gazette.

8. The Board will send a copy of the decision rendered in accordance with this article to the Commission of the European Communities.

Article 6b.3

1. If the required speed precludes the application of the procedures as referred to in Articles 6b.1, paragraph 1, or 6b.2, the Board may in exceptional circumstances ignore the procedures in rendering a decision as referred to in Articles 6.2, 6a.2, paragraph 1, under a., 6a.16, paragraph 1, or 6a.18, paragraph 1, in order to safeguard competition or the interests of the users.

2. A decision as referred to in paragraph 1 is valid for a maximum period of 26 weeks.

Article 6b.4

If a national regulatory authority as referred to in Article 6b.2, paragraph 1, submits a draft of a decision to the Board pursuant to Article 7, paragraph 3, of Council Directive no. 2002/21/EEC, the Board will submit its comments to that national regulatory authority within the period set by that authority.

Article 6b.5

1. The procedure as referred to in Article 6b.1 is applicable to the preparation of a decision of the Board to impose, uphold or revoke an obligation as referred to in a ministerial regulation brought about on the basis of Article 6a.11.

2. The Board will submit a draft of a decision as referred to in paragraph 1 to the Commission of the European Communities and the national regulatory authorities that have been registered in accordance with Article 3, paragraph 6, of Council Directive no. 2002/21/EEC.

3. The Board will only render a decision as referred to in paragraph 1 after the Commission of the European Communities has given its approval thereto in accordance with Article 14, paragraph 2, of Council Directive no. 2002/19/EEC. In doing so, the Board will take account of the comments made by the national regulatory authorities.

Article 6b.6

The following shall be regarded as a single decision for the possibility of appeal pursuant to Chapter 8 of the General Administrative Law Act:

- a. a decision as referred to in Article 6a.2, paragraph 1, and the definition of the relevant market as referred to in Article 6a.1, paragraph 1 or 2, underlying such a decision, and the examination of this market as referred to in Article 6a.1, paragraph 3, or the examination of a transnational market as referred to in Article 6a.1, paragraph 4;
- b. a decision as referred to in Article 6a.3, paragraph 1, 2 or 3, and the definition of the relevant market as referred to in Article 6a.1, paragraph 1 or 2, underlying such a decision, and the examination of this market as referred to in Article 6a.1, paragraph 3, or the examination of a transnational market as referred to in Article 6a.1, paragraph 4;
- c. a decision as referred to in Article 6a.16, paragraph 1 or 2, and the definition of the relevant markets as referred to in Article 6a.1, paragraph 1 or 2, underlying such a decision, and the examination of these markets, as referred to in Article 6a.1, paragraph 3, or the examination of a transnational market as referred to in Article 6a.1, paragraph 4;
- d. a decision as referred to in Article 6a.18, paragraph 1 or 2, and the definition of the relevant market as referred to in Article 6a.1, paragraph 1 or 2, underlying such a decision, and the examination of this market as referred to in Article 6a.1, paragraph 3, or the examination of a transnational market as referred to in Article 6a.1, paragraph 4.

Z

Chapter 7 is to read as follows:

CHAPTER 7. END-USER INTERESTS

Article 7.1

1. A provider of the public telephone service will conclude a written or electronic agreement as referred to in Article 227a, paragraph 1, of Book 6 of the Netherlands Civil Code, if the opposite party is a consumer.

2. A provider of the public telephone service will include in an agreement as referred to in paragraph 1, if the opposite party is a consumer, information on the following subjects:

- a. the name and the business address of the provider;
- b. the services to be provided and the waiting time for the first connection to a public electronic communications service;
- c. the level of quality of the services offered;
- d. the maintenance services offered;
- e. the applicable tariff structure, the principal tariffs and the way in which information can be obtained on the applicable tariffs and maintenance charges;
- f. the term of the agreement, as well as the conditions under which the agreement or parts thereof can be extended or terminated;
- g. the compensation scheme or refund scheme that is applicable if the agreement, in so far as it concerns the quality level of the service provided, is not fulfilled, and
- h. the manner in which the Disputes Committee as referred to in Article 12.1 can be called upon or the procedure as referred to in Article 12.9 may be used.

3. A provider of a public electronic communications service other than the public telephone service that concludes a written or electronic agreement as referred to in Article

227a, paragraph 1, of Book 6 of the Netherlands Civil Code, will include in this agreement, if the opposite party is a consumer, information on the subjects as referred to in paragraph 2.

Article 7.2

1. A provider of a public electronic communications service that intends unilaterally to amend the agreement or part thereof on the grounds of a clause contained in that agreement, will offer the opposite party in any case the opportunity to terminate the agreement free of charge during the four weeks preceding the moment at which the intended amendment will come into force.

2. At least four weeks before the intended amendment as referred to in paragraph 1 comes into force, the provider as referred to in that paragraph will inform the opposite party in a satisfactory manner of the contents of the intended amendment and of the opportunity as referred to in that paragraph.

Article 7.3

1. Notwithstanding Article 11.9, rules shall be laid down by ministerial regulation for the implementation of Annex I, Part B, and II to Council Directive no. 2002/22/EEC. These rules concern in any case the provision by providers of public telephone networks of facilities as referred to in the first sentence of the said Annex I, Part B, to their end-users and the publication by providers of public telephone services of information on the applicable tariffs and conditions relating to access to and the use of these telephone services.

2. The Board may grant exemption from an obligation imposed pursuant to paragraph 1 for the implementation of Annex I, Part B to Council Directive no. 2002/22/EEC, if this is technically not possible or economically unfeasible. An exemption may be granted with restrictions. The Board may attach regulations to an exemption.

Article 7.4

1. Providers of public telephone services at a fixed location or public pay telephones that have been designated pursuant to Article 9.2 and providers of fixed public telephone services or public pay telephones that have been providing such services for more than fifty-two weeks will draw up each year before 1 April in a satisfactory manner a summary of the previous calendar year concerning the quality of the services provided by them on the basis of the parameters, definitions and measurement methods as specified in Annex III to Council Directive no. 2002/22/EEC. The summary as referred to in the first sentence will be made available to the Board before being published.

2. Further rules may be laid down by ministerial regulation with regard to the obligations as referred to in paragraph 1.

3. By or pursuant to a governmental decree, in so far as not provided for on the grounds of paragraph 1, rules may be laid down concerning:

a. the drawing up by providers of public electronic communications services of a periodic summary of the quality of the services they provide, based on the parameters,

definitions and measurement methods determined by or pursuant to this governmental decree;

b. the examination by the Board or an independent competent third party designated by the Board whether or not the summary is in accordance with the relevant rules, and

c. the publication of the summary and making it available to the Board.

4. The rules as referred to in paragraph 3 may vary for the categories of public electronic communications services to be determined by those rules.

5. Tasks and powers may be conferred on the Board with the rules as referred to in paragraphs 2 and 3.

Article 7.5

Rules shall be laid down by governmental decree concerning the provision to third parties of categories of numbers with accompanying information concerning the availability of telephone directories and a subscriber information service, with due regard for that laid down by or pursuant to Chapter 11.

Article 7.6

1. Providers of public telephone networks and public telephone services shall ensure that the end-users of that network and those services have access to the services of a telephonist and a subscriber information service.

2. Rules shall be laid down by governmental decree with which the subscriber information service as referred to in paragraph 1 shall comply.

Article 7.7

1. Providers of public telephone networks, public pay telephones and public telephone services will provide all users of their services with alarm numbers free of charge and without obstructing access.

2. An alarm number as referred to in paragraph 1, is understood to mean a number that is designated as an alarm number in a numbering plan as referred to in Article 4.1, paragraph 1.

3. Providers of public telephone networks, public pay telephones and public telephone services shall take the necessary measures to guarantee access to alarm numbers in the event of congestion in the public telephone network concerned.

4. Our Minister may grant an exemption from that laid down in paragraph 3, if it is not technically possible or is economically unfeasible to take the measures as referred to in that paragraph. An exemption may be granted with restrictions. Our Minister may attach regulations to an exemption.

Aa

The title of Chapter 8 is to read as follows:

CHAPTER 8. RULES RELATING TO THE TRANSMISSION OF PROGRAMMES, SYSTEMS FOR CONDITIONAL ACCESS, APPLICATION PROGRAMME INTERFACES AND ELECTRONIC PROGRAMME GUIDES

Ab

Articles 8.1 and 8.2 are cancelled.

Ac

Article 8.3 is to read as follows:

Article 8.3

Our Minister, in agreement with Our Minister of Education, Culture and Science, shall appoint at least one provider of a public electronic communications network that consists of radio broadcasting equipment that is suitable for the transmission of programmes, to broadcast programmes which are offered to it in accordance with the Media Act by Radio Netherlands International (*Stichting Radio Nederland Wereldomroep*) or institutions that have obtained broadcasting time within the meaning of Article 1, part ij., of the Media Act.

Ad

The title above Article 8.4 is cancelled.

Ae

Article 8.4 is cancelled.

Af

Article 8.4a will be amended as follows:

a. In paragraph 1, “broadcasting network or broadcasting transmission network” will be replaced by: public electronic communications network.

b. In paragraph 2, “broadcasting networks or broadcasting transmission networks” will be replaced by: public electronic communications networks.

Ag

Paragraphs 8.3 and 8.4 are cancelled.

Ah

A paragraph will be inserted after Article 8.4a, to read as follows:

§ 8.2 Systems for conditional access, application programme interfaces, electronic programme guides and access to a range of programmes

Article 8.5

1. Rules shall be laid down by governmental decree for the implementation of a binding decision of the Council of the European Union, the European Parliament and the Council jointly, or of the Commission of the European Communities pertaining to the provision of access by providers to systems for conditional access that are suitable and destined for the broadcasting of services that can be received with the aid of digital television or radio systems.

2. The rules as referred to in paragraph 1 concern in any case:

- a. the technical options of the systems for conditional access for the purpose of transferring control;
- b. the provision of access to systems for conditional access and the conditions under which this is to take place, and
- c. the keeping of separate accounts for the activities in relation to the provision of systems for conditional access and for other activities.

3. Rules may be laid down by governmental decree for the implementation of a binding decision as referred to in paragraph 1 pertaining to the granting of licences by holders of industrial proprietary rights to manufacturers of consumer equipment in which conditional access systems are used.

4. Tasks and powers may be conferred on the Board with the rules as referred to in paragraph 1.

Article 8.6

1. In order to safeguard the access of end-users to services to be specified by governmental decree that are transmitted by digital means and that can be received using television or radio systems, rules may be laid down by governmental decree pertaining to the provision of access to application programme interfaces or electronic programme guides by providers.

2. The rules as referred to in paragraph 1, with regard to the providers of application programme interfaces or electronic programme guides, concern in any case:

- a. the provision of access to application programme interfaces or electronic programme guides, as well as the conditions under which this is to take place;
- b. the provision of information concerning access and manner in which the information provided is used, and
- c. the keeping of separate accounts for the activities in relation to the range of application programme interfaces or electronic programme guides and for the other activities.

3. Tasks and powers may be conferred on the Board with the rules as referred to in paragraph 1.

Article 8.7

If the Board imposes an obligation as referred to in Article 6a.6 on an undertaking that provides public electronic communications networks for the transmission of programmes, this undertaking is also required to permit access to the range of programmes it has assembled, in so far as that range of programmes is not transmitted in encrypted form to all those connected to the networks concerned, on the understanding that the requested access only needs to be granted:

- a. if a provider of a programme requires the party to whom the programme is transmitted to contribute to the costs of that programme, including the transmission costs, and this provider, as a consequence of the manner of transmission, actually depends on the undertaking that provides the public electronic communications networks, and
- b. the undertaking that provides the public electronic communications networks has no transparent or objective grounds for denying access.

Ai

Article 9.1 is to read as follows:

Article 9.1

1. The following services are available to each end-user, regardless of his geographical location, for an affordable price and with a certain level of quality:

- a. following a reasonable request, a connection to the public telephone network at a fixed location and the provision of access to the public telephone service at a fixed location;
- b. public pay telephones;
- c. printed telephone directories;
- d. electronic telephone directories, and
- e. a subscriber information service.

2. Rules shall be laid down by or pursuant to a governmental decree pertaining to the quality of the services as referred to in paragraph 1.

3. For the implementation of Chapter II of Council Directive no. 2002/22/EEC, public electronic communications services or related facilities other than those referred to in paragraph 1 may be designated by governmental decree to be available at an affordable price and with a certain level of quality specified by or pursuant to that decree to certain categories of end-users to be specified in that decree regardless of their geographical location.

4. Rules may be laid down by or pursuant to a governmental decree regarding the price as referred to in paragraph 1 or 3. A distinction may be made between the groups of end-users regarding the rules on the price as referred to in the first sentence.

Aj

Article 9.2 will be amended as follows:

a. In paragraph 1, “public telecommunications services or facilities designated pursuant to Article 9.1, paragraph 1” will be replaced by: public electronic communications services or facilities as referred to in Article 9.1, paragraph 1 or 3.

b. Paragraphs 2 to 9 are renumbered as paragraphs 3 to 10.

c. A new paragraph will be inserted after paragraph 1, to read as follows:

2. For the implementation of Chapter II of Council Directive no. 2002/22/EEC, further rules shall be laid down by or pursuant to a governmental decree that are applicable where an order has been given to provide one or more services or facilities that form part of the universal service. Tasks and powers may hereby be conferred on the Board for the implementation of the Chapter as referred to in the first sentence.

d. Paragraph 3 is to read as follows:

3. Our Minister will make his intention to proceed with an order known to the provider of the public electronic communications network in the area of coverage to which most end-users who already make use of the public electronic communications service that is to be ordered are connected or, if it concerns a facility to be ordered, to the provider of the public electronic communications network in the area of coverage to which most end-users are connected who make use of the public electronic communications service to which the facility to be ordered is related. The intention will also state the public electronic communications service or facility to be provided, the area of coverage and the period for which the order will be given.

e. In paragraph 4, “paragraph 5” will be replaced by: paragraph 6.

f. Paragraph 5 will be amended as follows:

1. In the first sentence, “the announcement referred to in the first sentence of paragraph 2, the provider having significant power on the relevant market within the area of coverage” will be replaced by: the announcement as referred to in the first sentence of paragraph 3, the provider as referred to in paragraph 3.

2. In the second sentence, “Article 9.3, paragraph 1,” will be replaced by: Article 9.3, paragraph 2,.

g. In paragraph 6: “the notification referred to in paragraph 3, providers other than those with significant power on the relevant market within the area of coverage may submit an application to Our Minister” will be replaced by: the notification referred to in paragraph 4, providers other than the provider referred to in paragraph 3 may submit an application to Our Minister.

h. In the second sentence of paragraph 7, “Article 9.3, paragraph 1,” will be replaced by: Article 9.3, paragraph 2,.

i. Paragraph 9 will be amended as follows:

1. “paragraph 7” will be replaced by: paragraph 8.

2. “by providers having significant power on the relevant market within the area of coverage” will be replaced by: by providers as referred to in paragraph 3.

j. In paragraph 10, “paragraph 8” will be replaced by: paragraph 9.

Ak

Article 9.3 will be amended as follows:

a. In paragraph 1, “public telecommunications services” will be replaced by: public electronic communications services.

b. Article 9.3, paragraph 2, is to read as follows:

2. The net costs are the costs that a provider incurs as a consequence of an order for a particular service or facility and for which, as a consequence of the rules laid down by or pursuant to Article 9.1 concerning affordability no charge is made to the end-users, less other benefits that can be expressed in monetary terms that are related to the order, including immaterial benefits. For the implementation of Annex IV, Part A to Council Directive no. 2002/22/EEC, further rules may be laid down by ministerial regulation concerning the calculation of the net costs.

c. In paragraph 3, “Article 9.2, paragraph 4 or 5,” will be replaced by: Article 9.2, paragraph 5 or 7.

Al

Article 9.4 will be amended as follows:

a. Paragraph 1 is to read as follows:

1. If a fee is paid to the party that provides a public electronic communications service or facility pursuant to Article 9.3 on the grounds of an order, any party that provides a public electronic communications service that belongs to a particular category for the relevant service or facility as ordered by governmental decree, and which has a higher turnover in the Netherlands in the calendar year to which the fee to be paid concerns than the amount to be determined under a ministerial order, is required to pay a contribution to the Board.

b. In paragraph 4, “the categories of public telecommunications services designated pursuant to Article 9.1, paragraph 1” will be replaced by: the public electronic communications services as referred to in paragraph 1.

Am

An article will be inserted after Article 10.1a, to read as follows:

Article 10.1b

Rules shall be laid down by governmental decree pertaining to the information to be supplied by a provider of a public telecommunications network with regard to the technical specifications of the network termination points and the manner of publishing this information.

An

In Article 10.10, “Article 1.1, under x, 1° and 3°” will be replaced by: Article 1.1, under hh., 1° and 3°.

Ao

Article 11.1 is to read as follows:

Article 11.1

In this Chapter and the provisions deriving from it, the following shall be understood to mean:

- a. user: a natural person who makes use of a public electronic communications service for private or business purposes without necessarily being a subscriber to that service;
- b. communication data: data that is processed for transmitting communication by way of an electronic communications network or the billing thereof;
- c. processing of communication data: processing as referred to in Article 1, part b., of the Personal Data Protection Act (*Wet bescherming persoonsgegevens*), on the understanding that the actions concerned also relate to communication data of subscribers that are not natural persons;
- d. location data: data that is processed in an electronic communications network, with which the geographical position of the peripheral equipment of the user of a public electronic communications service is indicated;
- e. communication: information that is exchanged or transmitted between a finite number of parties by means of a public electronic communications service; this does not comprise the information that is transmitted through a broadcasting service by way of an electronic communications network, except when the information can be related to the identifiable subscriber or user who receives the information;
- f. call: a connection brought about by means of a public telephone service that makes possible reciprocal communication between users or subscribers without any appreciable delay;
- g. consent of a user or subscriber: consent of a party as referred to in Article 1, under i., of the Personal Data Protection Act, on the understanding that the consent may also concern data of subscribers that are not natural persons;
- h. service with added value: service that requires the processing of communication data or location data, not being communication data, and which goes beyond that which is necessary for the transmission of a communication or the billing thereof;

i. electronic message: text, voice, sound or image message that is sent over a public electronic communications network and can be stored in the network or peripheral equipment of the recipient until it is picked up by the recipient.

Ap

In Article 11.2, “the provider of a public telecommunications network and the provider of a public telecommunications service” will be replaced by: the provider of a public electronic communications network and the provider of a public electronic communications service.

Aq

Article 11.3, paragraph 2, under b., is to read as follows:

b. any means by which the risks referred to under a. can be prevented, in so far as it concerns measures other than those which the provider is obliged to take on the grounds of paragraph 1, as well as an indication of the expected costs.

Ar

Article 11.4 will be amended as follows:

a. In the opening words of paragraph 1, “public telecommunications service” will be replaced by: public electronic communications service.

b. In paragraph 1, under a., and in paragraph 2, “telecommunications services” will be replaced each time by: electronic communications services.

As

Article 11.5 is to read as follows:

Article 11.5

1. The provider of a public electronic communications network and the provider of a public electronic communications service shall remove or anonymise the communication data relating to subscribers or users processed and stored by them, as soon as this communication data is no longer required for the transmission of communication, notwithstanding paragraphs 2, 3 and 5.

2. The provider may process communication data that is necessary for the purpose of drawing up an invoice for a subscriber or anyone who has legally undertaken with respect to the provider to pay the invoice, or for the purpose of a payment relating to the access provided. The communication data may be processed until the end of the statutory period within which the invoice may be legally disputed or payment may be legally enforced.

3. The provider of electronic communications services may furthermore process the communication data referred to in paragraph 1, in so far as and for as long as this is necessary for:

a. market research or sales activities in relation to electronic communications services, or

b. the delivery of services with added value, provided the subscriber or the user to whom the communication data concerns has given his consent. The subscriber or user may withdraw the consent given for the processing of communication data at any time.

4. The provider shall notify the subscriber or user of the types of communication data that is processed for the purposes as referred to in paragraphs 2 and 3, as well as the duration of such processing. In so far as it concerns the processing of communication data for the purposes as referred to in paragraph 3, the information concerned will be provided before the consent of the subscriber or user as referred to in that paragraph has been obtained.

5. The processing of communication data in accordance with paragraphs 1 to 4 may only be undertaken by persons working under the authority of the provider for billing, managing traffic, handling requests for information from customers, detecting fraud as well as market research or sales activities relating to electronic communications services or the delivery of services with added value and shall be limited to that which is necessary in order to undertake these activities.

6. The provider may issue the communication data to persons and organisations that are charged with judging any dispute or settling a dispute as referred to in Articles 12.1, 12.2 in so far as applicable, or 12.9.

At

With the renumbering of Article 11.5a as 11.5b, a new article will be inserted after Article 11.5, to read as follows:

Article 11.5a

1. The processing of location data, not being communication data, relating to subscribers or users of public electronic communications networks or public electronic communications services, is only permitted if:

a. this data is anonymised, or

b. the subscriber or user concerned has given his consent for the processing of this data for the purpose of providing a service with added value.

2. Prior to obtaining consent as referred to in paragraph 1, part b., the provider of the service with added value will provide the subscriber or user with the following information:

a. the type of location data that will be processed;

b. the purposes for which the location data will be processed;

c. the duration of the processing, and

d. whether or not the data will be passed on to a third party for the purpose of delivering the service with added value.

3. The processing of the data for the purpose of delivering a service with added value as referred to in paragraph 1, part b., is only permitted in so far and for as long as this is necessary for delivering the service concerned. Contrary to the first sentence, the provider of the service with added value may only process such data as is necessary for drawing up an invoice. The last sentence of Article 11.5, paragraph 2, is applicable *mutatis mutandis*.

4. A subscriber or user may withdraw his consent for the processing of data relating to him at any time.

5. The provider of a service with added value shall offer the subscriber or user whose data is to be processed the opportunity to prevent temporarily at no charge in a straightforward manner the processing of his data for each transmission of communication or each connection with the public electronic communications network that is used for the delivery of the service concerned.

6. The processing of the data may only be undertaken by persons working under the authority of the provider or the third party as referred to in paragraph 2, under d., and is limited to such data as is necessary in order to provide the service with added value.

Au

Article 11.6 is to read as follows:

Article 11.6

1. Any party that publishes a generally available subscriber list or provides a generally available subscriber information service, before the personal data of the subscriber is to be included in the subscriber list or the subscriber file used in the subscriber information service, the subscriber will be notified free of charge of:

a. the purpose of the subscriber list and subscriber information service concerned and, in so far as it concerns an electronic version of the subscriber list, the usage options based on the search functions contained therein, and

b. the type of personal data that may be contained therein in view of the established purposes of the subscriber list and subscriber information service concerned.

2. Personal data of a subscriber will only be included in a generally available subscriber list and subscriber file that is used for a subscriber information service if the subscriber has given his consent and this data will be limited to the personal data the subscriber has specified. No charge may be made for not being included in a subscriber list or subscriber file used for a subscriber information service.

3. In so far as the processing of personal data in a generally available subscriber list and subscriber file used for a subscriber information service relates to other purposes than the provision of the option to search for numbers using data relating to the name in combination with data concerning the address and the house number, postcode and town of the subscriber, separate consent of the subscriber is required for each of these other purposes.

4. The subscriber is entitled to have his personal data contained in a generally available subscriber list or subscriber file used for a subscriber information service verified, modified or removed free of charge.

5. If a party other than the party that produces a generally available subscriber list or provides a generally available subscriber information service gathers personal data for that purpose, the obligations as referred to in paragraph 1 shall rest on that other party.

Av

Article 11.7 is to read as follows:

Article 11.7

1. The use of automatic calling systems without human intervention, faxes and electronic messages for transmitting unrequested communication to subscribers for commercial, idealistic or charitable purposes will only be permitted if the subscriber concerned has given prior consent for this, notwithstanding that laid down in paragraph 2.

2. Any party who has received electronic contact information for electronic messages as part of the sales of his product or service may use this information for transmitting communication for commercial purposes in relation to his own similar products or services, provided that with the obtaining of the contact data the customer is explicitly given the opportunity to submit an objection in a straightforward manner and free of charge against the use of his electronic contact information and, if the customer has not taken up this opportunity, he is offered the opportunity with each communication transmitted to submit an objection against the further use of his electronic contact information under the same conditions. Article 41, paragraph 2, of the Personal Data Protection Act is applicable *mutatis mutandis*.

3. The following information should be stated at all times when using electronic messages for the purposes as referred to in paragraph 1:

- a. the actual identity of the party on whose behalf the call is being made, and
- b. a valid postal address or number to which a recipient may direct a request to stop such communications.

4. The use of means other than those referred to in paragraph 1 for transmitting unrequested communication for commercial, idealistic or charitable purposes to subscribers is permitted unless the subscriber concerned has stated that he does not wish to receive communications by such means. In that case, the subscriber will not be charged for the facility that prevents such unrequested communications being made to him.

5. The party that transmits unrequested communication for commercial, idealistic or charitable purposes shall take appropriate measures to notify those concerned at least once a year of the opportunity to submit a statement as referred to in paragraph 4. The notification may be made through one or more daily newspapers, door-to-door newspapers or in another suitable manner.

Aw

Article 11.9 is to read as follows:

Article 11.9

1. The provider of a public electronic communications network and the provider of a public electronic communications service who provides number identification by means of that network or as part of that service, will offer:

a. to each calling user or subscriber the facility to block free of charge the provision of the number by the calling network termination point, or a number by which an individual user can be identified for each individual subscriber line, or to block the provision of numbers from calling network termination points or numbers by which individual users can be identified for each individual subscriber line;

b. to each subscriber called, the facilities:

1° to prevent the provision of the number of the calling network termination point or the number by which an individual user can be identified;

2° to refuse calls for which the provision of the number of the calling network termination point or a number by which the individual user can be identified is blocked;

3° if number identification within the meaning of Article 1.1, part cc., under 2° is provided, to block the provision of the number of the called network termination point or a number by which an individual user can be identified to the calling network termination point free of charge.

2. More detailed rules shall be laid down by ministerial regulation concerning:

a. the possibilities for blocking and refusal;

b. the conditions under which the subscriber can prevent identification of the number of the calling network termination points or a number by which an individual user can be identified;

c. the manner in which number identification can be implemented in international electronic communication traffic, and

d. the manner in which the providers can inform users and subscribers on the use of number identification.

Ax

Article 11.10 will be amended as follows:

a. In paragraph 1 in the opening words, “Any provider” will be replaced by: “The provider of a public electronic communications network and the provider of a public electronic communications service”, and “telecommunication” by: electronic communication.

b. With the renumbering of paragraphs 2 to 9 as paragraphs 3 to 10, a paragraph is inserted to read as follows:

2. The provider of a public electronic communications network and the provider of a public electronic communications service, which can process location data concerning subscribers or users, is obliged to provide the designated administrators of an alarm number for public services, as referred to in paragraph 1, if communication is handled through such an alarm number, with the relevant location data at the same time, even if the subscriber or user, in so far as it concerns the location data as referred to in Article 11.5a, has made use of the facility by virtue of paragraph 5 of that article, temporarily to block the processing of location data relevant to him.

c. In paragraph 3, “the data referred to in paragraph 1, under b.” will be replaced by: the data referred to in paragraph 1, under b., and paragraph 2.

d. In paragraph 8, “the data referred to in paragraph 1, under a. and b.” will be replaced by: the data referred to in paragraph 1, under a. and b., and in paragraph 2.

Ay

An article will be inserted after Article 11.10, to read as follows:

Article 11.11

1. A subscriber who is being harassed by annoying or malicious calls, whereby the provision of the number of the calling network termination point has been blocked, may ask the provider of a public electronic communications network or a public electronic communications service to provide him with the number of the calling subscriber together with the name and address related to that number.

2. A request as referred to in paragraph 1 shall meet the following requirements:

a. the request is made in writing, and contains the name and address of the requesting party as well as the number to which the calls were made;

b. the request contains a description of the nature and seriousness of the harassment experienced as a consequence of the calls which the request concerns, and

c. the request contains an indication of the dates and times at which the calls concerned have been made.

3. The requester shall inform the provider immediately of annoying or malicious calls that are made after the request has been submitted as referred to in paragraph 1.

4. Following the request, the provider will instigate an investigation in order to establish whether to proceed to provide the data as referred to in paragraph 1.

5. If the investigation shows that the calling number belongs to a subscriber of a different provider, the provider concerned will lend its co-operation in response to a request to that effect from the provider charged with the investigation, and will provide, if the investigation gives cause for such, the name and address relating to the calling number to the provider charged with the investigation.

6. The provider shall notify the subscriber whose data it concerns that such data is being provided to a requesting party.

7. Further rules may be laid down by governmental decree pertaining:

a. the investigation, as referred to in paragraph 4;

b. the provision of data, as referred to in paragraph 4;

c. the obligation to co-operate, as referred to in paragraph 5;

d. notification of the provision of data, as referred to in paragraph 6.

Az

Two paragraphs are to be inserted after Article 11.11, to read as follows:

§ 11.3 Exemption

Article 11.12

1. The Board may grant a provider of a public electronic communications network and a provider of a public electronic communications service an exemption from the obligations arising from Articles 11.4, paragraph 1, part b., and 11.9 to 11.11.

2. An exemption as referred to in paragraph 1 can only be granted, if:

- a. it concerns subscriber lines connected to analogue telephone exchanges, and
- b. compliance with the obligations concerned is technically unfeasible or entails an unreasonable financial burden for the provider.

3. An exemption may be granted under restrictions. Regulations may be attached to an exemption.

§11.4 Exceptions

Article 11.13

1. Providers of public electronic communications networks and public electronic communications services may ignore the application of Articles 11.5, 11.5a and 11.9, paragraph 1, if this is necessary in the interests of:

- a. national security;
- b. the prevention, tracing and prosecution of criminal offences.

2. Contrary to Article 11.5, paragraph 1, providers of public electronic communications networks and public electronic communications services may process traffic data if and for as long as it is necessary for an investigation as referred to in Article 11.11, paragraphs 4 and 5. After the provision of the data as referred to in Article 11.11, paragraph 1, the traffic data will be removed.

Ba

The title of Chapter 12 is to read as follows:

CHAPTER 12. DISPUTES

Bb

A paragraph heading is to be inserted before Article 12.1, to read as follows:

§ 12.1 Settling of disputes by the Disputes Committee

Bc

Article 12.1 is to read as follows:

Article 12.1

Providers of a public telephone service or other public electronic communications services to be designated by governmental decree shall join a government-recognised Disputes Committee which handles disputes over contracts for the delivery of a public electronic communications service between a provider as mentioned above and a consumer.

Bd

Two paragraphs are to be inserted after Article 12.1, to read as follows:

§ 12.2 Settling of disputes by the Board

§12.2.1 Disputes between market parties

Article 12.2

1. If a dispute has arisen between holders of a licence, between providers, between providers and undertakings, or between undertakings, over compliance with an obligation by or pursuant to this Act resting on a holder of a licence, provider or undertaking that provides public electronic communications networks, related facilities or public electronic communications services, the Board may settle the dispute upon the request of a party involved in that dispute, unless the task of settling that dispute is conferred on another organisation on the grounds of this Act.

2. A dispute as referred to in paragraph 1 is also understood to mean a dispute concerning the question whether, if the holders of a licence, providers and undertakings referred to in that paragraph have concluded a contract on the basis of an obligation resting on one or more of them by or pursuant to this Act, the obligations existing between them on this matter are, or the manner in which these agreements are complied with is, in conflict with that laid down by or pursuant to this Act.

3. Paragraphs 1 and 2 are applicable *mutatis mutandis* if a dispute has arisen between those as referred to in Article 3.11, paragraph 4.

Article 12.3

The Board is not competent to settle a dispute submitted on the grounds of Article 12.2, if the parties involved in the dispute request that the Board does not continue to handle the dispute.

Article 12.4

The parties involved in a dispute shall provide the Board with all information that is relevant for assessing the dispute within two weeks after receipt of a request as referred to in Article 12.2.

Article 12.5

1. The Board shall render a decision on a request as referred to in Article 12.2 within seventeen weeks after receipt of that request.

2. Notwithstanding paragraph 1, in urgent cases the Board may render a provisional decision that will apply between the providers concerned until the definitive decision has been made by the Board.

3. In exceptional cases the Board may extend the period as referred to in paragraph 1. The Board shall inform the providers concerned of this extension, and will state the period within which the Board will settle the dispute, on the understanding that this period is not longer than eight weeks after the expiry of the period as referred to in paragraph 1.

Article 12.6

A party involved in a dispute shall comply with the decision rendered by the Board on the grounds of Article 12.2. The Board may set deadlines for such compliance.

Article 12.7

The decision as referred to in Article 12.2 will be published in the Official Gazette. Information as referred to in Article 10, paragraph 1, part c., of the Government Information (Public Access) Act will not be published.

Article 12.8

1. The Board shall consult with the national regulatory authority concerned which has been charged with settling disputes, about the settling of a dispute that has transnational aspects and has been submitted to the Board in accordance with this paragraph, or which has been submitted to the national regulatory authority concerned and has been submitted by that authority to the Board.

2. Contrary to Article 12.5, paragraph 1 the Board will render a decision on a request as referred to in paragraph 1, within 24 weeks after receiving this request.

§12.2.2 Disputes between consumers and providers or undertakings

Article 12.9

1. If a dispute has arisen between a consumer and a provider or an undertaking that provides public electronic communications networks or public electronic communications services, over the violation by that provider or undertaking of rules laid down by or pursuant to this Act for the implementation of Council Directive no. 2002/22/EEC, not being a dispute as referred to in Article 12.1, at the request of the consumer concerned the Board may settle the dispute.

2. If the Board finds in favour of the consumer, and the said consumer owes a fee to the Board for settling the dispute by or pursuant to Article 16.1, the Board may determine that this fee is to be reimbursed by a provider or undertaking as referred to in paragraph 1.

3. A provider or undertaking involved in a dispute shall comply with the regulations laid down by the Board on the grounds of paragraph 1. The Board may set a deadline for such compliance.

4. Articles 12.3 to 12.5, 12.7 and 12.8 are applicable *mutatis mutandis*.

§12.3 Settling of disputes by the Minister

Article 12.10

1. If holders of a licence as referred to in Article 3.9, paragraph 1, cannot reach agreement on the conditions under which the sets of frequencies assigned to them can be put into joint use, Our Minister may lay down regulations at the request of one or more of them pertaining to the drawing up of an agreement as referred to in Article 3.9, paragraph 1.

2. Our Minister may revoke a decision as referred to in paragraph 1 at the request of the joint licence holders.

3. Articles 12.4, 12.5, paragraph 1, 12.6 and 12.7 are applicable *mutatis mutandis*.

Be

Article 15.1 is to read as follows:

Article 15.1

1. The civil servants appointed by a decree of Our Minister shall be charged with the supervision of compliance with the provisions given by or pursuant to this Act, in so far as this concerns the provisions pertaining to:

a. the use of sets of frequencies, with the exception of those provisions that pertain to the provision of public electronic communications networks or public electronic communications services and not the technical aspects of that use;

b. prioritising alarm numbers as referred to in Article 7.7, paragraph 3 or 4;

c. public electronic communications networks as referred to in Article 8.3;

d. the issuing of an assignment to provide services or facilities falling under universal service as referred to in Article 9.2, paragraphs 1 and 3 to 10;

e. the requirements to be set for equipment as set out in Chapter 10;

f. authorised wiretapping as set out in Chapter 13;

g. exceptional circumstances as set out in Chapter 14;

h. other subjects as referred to in Articles 12.4, concerning the powers of Our Minister, 18.1, concerning the powers of Our Minister, 18.2, concerning the powers of Our Minister, 18.4, paragraph 2, 18.7, concerning the powers of Our Minister, 18.9, 18.12, concerning the powers of Our Minister, 18.16, 18.17, 20.2, concerning the powers of Our Minister, and 20.14.

2. Civil servants to be appointed by decision of the Director-General of the Dutch Competition Authority shall be charged with the supervision of compliance with Article 6a.20, paragraph 3.

3. Civil servants to be appointed by decision of the Board shall be charged with the supervision of compliance by or pursuant to provisions in this Act other than those referred to in paragraphs 1 and 2.

4. A decision as referred to in paragraphs 1, 2 and 3 shall be published in the Official Gazette.

Bf

Three new paragraphs are to be added to Article 15.2, to read as follows:

3. In the case of violation of Article 6a.20, paragraph 3, the Director-General of the Dutch Competition Authority may impose an order on the violating party for periodic penalty payments. Articles 56, paragraphs 2 to 4, and 58 of the Competition Act are applicable *mutatis mutandis*.

4. The necessary speed as referred to in Article 5:24, paragraph 5, of the General Administrative Law Act for the application of paragraph 1 is present in any case if the non-compliance with the provisions referred to in paragraph 1 forms a serious and direct threat to public order, public safety or public health.

5. The necessary speed as referred to in Article 5:24, paragraph 5, of the General Administrative Law Act for the application of paragraph 2 is present in any case if the non-compliance with the provisions referred to in paragraph 2 will cause serious economic or operating problems for other providers of a public electronic communications network, a public electronic communications service or accompanying facilities or for users of a public electronic communications network, or a public electronic communications service.

Bg

The title of paragraph 15.2 is to read as follows:

Paragraph 15.2 Penalty and order for periodic penalty payments

Bh

In Article 15.4, with the renumbering of paragraphs 3 to 5 as paragraphs 4 to 6, a paragraph is inserted, to read as follows:

3. In the case of a violation of Article 6a.20, paragraph 3, the Director-General of the Dutch Competition Authority may impose a fine amounting to a maximum of €450,000 on the undertaking concerned.

Bi

In Articles 15.5, paragraph 1, 15.6 and 15.7, paragraphs 1 and 2, “civil servants referred to in Article 15.1, paragraph 1 or paragraph 3” will be replaced by: civil servants referred to in Article 15.1, paragraph 1, 2 or 3.

Bj

In Article 15.8, paragraph 1, “civil servant within the meaning of Article 15.1, paragraph 1 or paragraph 3” will be replaced by: civil servant within the meaning of Article 15.1, paragraph 1, 2 or 3.

Bk

In Articles 15.8, paragraph 4, 15.9, paragraph 2, 15.10, paragraphs 3 and 4, and 15.14, paragraph 1, “Our Minister or the Board” will be replaced by: Our Minister, the Board or the Director-General of the Dutch Competition Authority.

Bl

Article 15.10, paragraphs 1 and 2, is to read as follows:

1. A fine as referred to in Article 15.4, paragraph 1 or 2, shall be imposed by a decree of Our Minister or the Board. A fine as referred to in Article 15.4, paragraph 3, or an order for periodic penalty payments as referred to in Article 15.2, paragraph 3, shall be imposed by a decision of the Director-General of the Dutch Competition Authority.

2. The decision will in any case state:

a. the violation for which it has been imposed, as well as the statutory rule that was violated;

b. if the fine is to be imposed, the amount of the fine, as well as an explanation of the amount of this fine;

c. if an order is imposed, the contents of the order and the period for which it applies.

Bm

Article 18.2 is to read as follows:

Article 18.2

Rules may be laid down by governmental decree that are necessary for the implementation of:

a. Council Directive no. 2002/21/EEC or related directives of the Council of the European Union or of the European Parliament and the Council jointly;

b. Directives of the Commission of the European Communities which are based on Article 86, paragraph 3, of the Treaty Establishing the European Community and which pertain to the electronic communications sector.

Bn

Article 18.3 will be amended as follows:

a. In paragraph 1 the following will be inserted after “to give advice on”: the intention to exclude one or more providers from obtaining a licence on the grounds of Article 3.3, paragraph 10, or on.

b. Paragraph 2 is cancelled.

c. Paragraphs 3 and 4 are to be renumbered as paragraph 2 and paragraph 3.

d. In paragraph 2, “Article 24” will be replaced by: Articles 24 and 88.

e. A paragraph will be inserted, to read as follows:

4. In the interests of effective and efficient decision-making, the Board and the Media Authority (*Commissariaat voor de Media*), as referred to in Article 9 of the Media Act, will come to agreements on the manner of dealing with issues of mutual importance.

Bo

In Articles 18.4 and 18.5, part a., “provider of a public telecommunications network over whose network international public telecommunications traffic” will be replaced by: provider of a public electronic communications network over whose network international public electronic communications traffic.

Bp

In Article 18.5, part b., “provider of a public telecommunications network” will be replaced by: provider of a public electronic communications network, and “provider of a broadcasting transmission network” will be replaced by: provider of a public electronic communications network that consists of radio transmission equipment that is suitable for disseminating programmes.

Bq

In Articles 18.6, paragraph 1, 18.8, 18.9, paragraph 5, and 18.13, paragraph 2, “providers of public telecommunications networks or public telecommunications services” or “providers of public telecommunications networks and public telecommunications services” will be replaced by: providers of public electronic communications networks or public electronic communications services.

Br

Article 18.6 will be amended as follows:

a. In paragraph 1, “telecommunication” will be replaced by: electronic communication.

b. In paragraph 2, “telecommunication activities” will be replaced by: electronic communication activities.

Bs

Article 18.7 will be amended as follows:

a. In Article 18.7, paragraph 2, the following is to be inserted after “shall be obliged to provide it”: within the period to be set by Our Minister or the Board.

b. A paragraph will be added, to read as follows:

3. With a view to promoting an open and competitive market in the electronic communications sector, the Board will publish information on providers of public electronic communications networks, associated facilities or public electronic communications services in a manner to be determined by the Board, in so far as that information is related to obligations laid down by or pursuant to Chapters 4 to 9 and 11 of this Act. Information as referred to in Article 10, paragraph 1, part c., of the Government Information (Public Access) Act will not be published.

Bt

In Article 18.8 “public telecommunications networks and public telecommunications services” will be replaced by: public electronic communications networks and public electronic communications services.

Bu

Article 18.9 will be amended as follows:

a. In paragraphs 1, 2 and 3, “providers of public telecommunications networks and of public telecommunications services” will be replaced by: providers of public electronic communications networks or public electronic communications services.

b. In paragraph 1, part a., and paragraph 2, part a., “public telecommunications networks” will be replaced by: public electronic communications networks.

c. In paragraph 1, part b., and paragraph 2, part b., “public telecommunications services” will be replaced by: public electronic communications services.

Bv

Article 18.14 is to read as follows:

Article 18.14

1. A governmental decree laid down pursuant to Article 9.1, paragraph 2, 3 or 4, will be submitted to both Chambers of the States General. It shall come into force on the date established by Royal Decree after four weeks have passed since its submission, unless the wish is expressed by or on behalf of one of the Chambers or by at least one-fifth of the constitutionally determined number of members of one of the Chambers, for the subject to be regulated by law. In that case, a Bill to that effect will be submitted as quickly as

possible. If the Bill is withdrawn or if one of the Chambers of the States General decides not to accept the Bill, the governmental decree will be revoked.

2. Paragraph 1 is not applicable in so far as Chapter II of Council Directive no. 2002/22/EEC is implemented for the first time by governmental decree on the grounds of Article 9.1, paragraph 2 or 4.

3. A governmental decree laid down pursuant to Articles 3.1, paragraph 1, 4.11, paragraph 2, or 4.11, paragraph 3, will come into force no earlier than four weeks after the date of publication of the Statute Book in which it has been published. Both Chambers of the States General shall be notified immediately of the publication.

Bw

In Article 18.18 “Article 2.2, paragraph 3, part f.,” will be replaced by: Article 2.2, paragraph 4, part b. or c.,.

Bx

Four articles are to be inserted after Article 18.18, to read as follows:

Article 18.19

Contrary to Article 24 of the Independent Post and Telecommunications Authority Act (*Wet onafhankelijke post- en telecommunicatieautoriteit*), or Article 91 of the Competition Act, the Board and the Director-General of the Dutch Competition Authority will provide each other upon request with the data or information that is or may be of significance for the exercising of the tasks and powers that have been assigned to or conferred on the Board by or pursuant to the Telecommunications Act, provided that:

- a. the secrecy of the data or information is sufficiently safeguarded, and
- b. it is sufficiently safeguarded that the data or information will not be used for a purpose other than that for which it is to be provided.

Article 18.20

1. The Board will provide, upon a request from the Commission of the European Communities or a national regulatory authority, the data or information that the Commission or the said national regulatory authority needs for the exercising of its tasks by virtue of Community law, provided that:

- a. the secrecy of the data or information, in so far as the Board is of the opinion that it is confidential business data or information, is sufficiently safeguarded,
- b. it is sufficiently safeguarded that the data or information will not be used for a purpose other than that for which it has been provided, and
- c. the request pertains to data or information that the Board has obtained by virtue of its tasks and powers on the grounds of this Act.

2. If the Board is of the opinion that the data or information is confidential business data or information, the Board will state explicitly, with reasons, when providing this data

or information to the Commission of the European Communities or the national regulatory authority that the information may not be made available to third parties.

3. If the Board provides the Commission of the European Communities with data or information that the Board has obtained from a provider of a public electronic communications network, a public electronic communications service or associated facilities, the Board will inform the provider concerned of this fact.

Article 18.21

1. Rules shall be laid down by ministerial regulation pertaining to the application of standards or specifications made obligatory in accordance with Article 17, paragraph 4, of Council Directive no. 2002/21/EEC, which are published in the Official Journal of the European Communities.

2. A change to the standards or specifications as referred to in paragraph 1, shall apply as of the date on which that change has been published in the Official Journal of the European Communities.

3. Rules may be laid down by ministerial regulation pertaining to the application of the standards or specifications as referred to in Article 17, paragraph 1, of Council Directive no. 2002/21/EEC and published in the Official Journal of the European Communities, pertaining to:

a. the categories of electronic communications networks, electronic communications services, associated facilities or services to be designated under these rules, or services if the application of these standards or specifications is necessary to guarantee end-to-end connections or to improve the freedom of choice of users, or

b. the use of application programme interfaces if the application of these standards or specifications is necessary for promoting the application of open application programme interfaces with the delivery or provision of digital interactive television services.

Article 18.22

An amendment to Council Directive no. 2002/19/EEC, Council Directive no. 2002/20/EEC, Council Directive no. 2002/21/EEC or Council Directive no. 2002/22/EEC shall apply for the application of the Telecommunications Act on the date on which the relevant amendment to the directive concerned comes into force, unless another date is laid down by ministerial decree that is published in the Official Gazette.

By

Article 20.1 is to read as follows:

Article 20.1

1. Subject to Articles 9.3 and 9.4, contrary to the procedure described in Article 9.2, KPN Telecom B.V. shall be designated as a provider pursuant to Article 9.2 for the application of that laid down by or pursuant to this Act for each of the public electronic communications services or facilities referred to in Article 9.1, paragraph 1.

2. The obligation arising from the previous paragraph for KPN Telecom B.V. to provide the public electronic communications services and facilities as referred to in Article 9.1, paragraph 1, will come to an end one year after the moment at which:

- a. KPN Telecom B.V. has notified Our Minister in writing that it no longer wishes to comply with an obligation to provide a particular service or facility, or
- b. Our Minister has notified KPN Telecom B.V. in writing that an obligation to provide a particular service or facility no longer exists.

Bz

Articles 20.11 and 20.12 are cancelled.

Article II

The PTT Nederland N.V. Enabling Act (*Machtigingswet Koninklijke PTT Nederland N.V.*) will be amended as follows:

A

Article 1 is cancelled.

B

Article 2 is to read as follows:

Article 2

Our Minister of Finance is authorised on behalf of the State to participate in the issue of capital by Koninklijke KPN N.V. or by TPG N.V.

C

In Articles 3, 4 and 5, “TNT Post Groep N.V.” will be replaced each time by: TPG N.V.

D

Articles 6 to 9 are cancelled.

E

In Article 10, paragraph 1, the following amendments will be made:

1. In the first sentence, “the State Enterprise” will be replaced by: the State Enterprise for Post, Telegraph and Telephony (*Staatsbedrijf de Posterijen, Telegrafie en Telefonie*).

2. In the third sentence, “Our Minister” will be replaced by: Our Minister of Transport and Public Works.

F

Chapter III, as well as Articles 16 to 29 are cancelled.

Article III

The Media Act will be amended as follows:

A

Article 1 will be amended as follows:

a. In part o., “Article 1.1, part ij.” will be replaced by: Article 1.1, part ii.

b. Part q. is to read as follows:

q. broadcasting network: electronic communications network, as referred to in Article 1.1, part e., of the Telecommunications Act, which is used to distribute programmes, mainly through cables.

B

Article 82i will be amended as follows:

Paragraph 4 is to read as follows:

4. The Media Authority may grant a provider of a broadcasting network full or partial exemption upon request from the obligation as referred to in paragraph 1 if the costs of full compliance with this obligation are not in proportion to the importance that the parties connected to the broadcasting network are assured of receiving all the programmes as referred to in paragraph 1.

C

Article 82k, paragraph 7, is to read as follows:

7. Paragraphs 1 to 6 are not applicable to an undertaking that provides a broadcasting network and to which the Media Authority has granted an exemption on the grounds of Article 82i, paragraph 4.

Article IV

The Netherlands Civil Code will be amended as follows:

A

Article 15a of Book 3 will be amended as follows:

a. In paragraph 2, part e., and paragraph 3, “Article 1.1, part dd. of the Telecommunications Act” will be replaced by: Article 1.1, part ss. of the Telecommunications Act.

b. In paragraph 2, part f., and paragraph 3, “Article 1.1, part gg. of the Telecommunications Act” will be replaced by: Article 1.1, part vv. of the Telecommunications Act.

c. In paragraph 5, “Article 1.1, part ff. of the Telecommunications Act” will be replaced by: Article 1.1, part uu. of the Telecommunications Act.

B

In the opening words of Article 15b of Book 3, “Article 1.1, part dd. of the Telecommunications Act” will be replaced by: Article 1.1, part ss. of the Telecommunications Act.

C

In Article 196b, paragraph 1, of Book 6, “Article 1.1, part dd. of the Telecommunications Act” will be replaced by: Article 1.1, part ss. of the Telecommunications Act.

D

Article 46h of Book 7 will be amended as follows:

a. Paragraph 2 will be amended as follows:

1. The words “and faxes for making unrequested calls” will be replaced by: , faxes and electronic messages for transmitting unrequested communication.

2. After “granted permission” the following will be inserted: notwithstanding that laid down in paragraph 3.

b. With the renumbering of paragraphs 3 and 4 as paragraphs 5 and 6, two paragraphs will be inserted, to read as follows:

3. Any party that has received electronic contact information for electronic messages as part of the sale of an article may use this information for transmitting communication to facilitate a remote purchase of its own similar articles, provided that at the time the contact information was obtained the customer was given a clear and explicit opportunity to submit his objection free of charge and in a straightforward manner to the use of this electronic contact information, and, if the customer has not made use of this opportunity, with each communication transmitted he is given the opportunity to submit his objection,

under the same conditions, to the further use of his electronic contact information. Article 41, paragraph 2, of the Personal Data Protection Act is applicable *mutatis mutandis*.

4. When electronic messages are used to facilitate a remote purchase, the following information must be stated at all times:

a. the actual identity of the party on whose behalf the communication is being transmitted, and

b. a valid postal address or number to which the recipient may direct a request to terminate such communication.

c. In paragraph 5, “making unrequested calls or sending unrequested messages” will be replaced by: the transmission of unrequested communication or the sending of unrequested messages, and “calls” by: communication.

d. In paragraph 6, “The party that makes unrequested calls or sends unrequested messages for facilitating a remote purchase” will be replaced by: The party that transmits unrequested communication or sends unrequested messages to facilitate a remote purchase, and “paragraph 3” will be replaced each time by: paragraph 5.

e. A paragraph will be inserted, to read as follows:

7. No costs will be charged to the persons referred to in those paragraphs for the measures as referred to in paragraphs 2 and 5.

Article V

The Criminal Code will be amended as follows:

In Articles 96a, paragraph 5, 100, paragraph 1, and 101, paragraph 1, “Article 2.1, paragraph 1 of the Telecommunications Act” will be replaced by: Article 2.1, paragraph 4 of the Telecommunications Act.

Article VI

The Intelligence and Security Services Act 2002 (*Wet op de inlichtingen- en veiligheidsdiensten 2002*) will be amended as follows:

In Articles 25, paragraph 4, part a., 27, paragraph 3, part b., 28, paragraph 3, part a., and paragraph 5, part a., “Article 1.1, under t.,” will be replaced by: Article 1.1, under bb.,

Article VII

Article 1 of the Economic Offences Act (*Wet op de economische delicten*) will be amended as follows:

a. under 2°, the following amendments will be made in the part of the sentence pertaining to the Telecommunications Act:

1. “Article 2.1, paragraph 1,” will be replaced by: Article 2.1, paragraphs 1 and 5, first sentence,;
2. “3.8” will be replaced by: 3.8, paragraphs 1 to 3,;
3. “4.2, paragraphs 5 and 8” will be replaced by: 4.2, paragraphs 5 and 10;
4. after “10.17,” the following will be inserted: 11.7, paragraph 3,.

b. under 4^o, in the part of the sentence pertaining to the Telecommunications Act, “Articles 2.3” will be replaced by: Articles 2.3, paragraph 3, and “7.6” will be replaced by: 7.7.

Article VIII

The Copyright Act 1912 (*Auteurswet 1912*) will be amended as follows:

In Articles 12, paragraph 1, under 5^o, 17a, paragraph 3, part a., and 26a, paragraph 1, “a broadcasting network as referred to in Article 1.1, part o., of the Telecommunications Act” will be replaced each time by: a broadcasting network as referred to in Article 1, part q., of the Media Act.

Article IX

The Neighbouring Rights Act (*Wet op de naburige rechten*) will be amended as follows:

In Articles 1, 14a, paragraph 1, and 14d., “broadcasting network as referred to in Article 1.1, part o., of the Telecommunications Act” will be replaced by: broadcasting network as referred to in Article 1, part q., of the Media Act.

Article X

Article 15, part b., of the Independent Post and Telecommunications Authority Act is to read as follows:

b. the undertaking of the tasks and the exercising of powers that have been conferred on the Board in the Telecommunications Act.

Article XI

Article 1.1 of the Telecommunications Act, as it read before this Act came into force, is applicable to the definitions used in Articles XII to XVII, XXI, XXII and XXVI.

Article XII

1. The notification as referred to in Article 2.1, paragraph 1, of the Telecommunications Act, does not need to be made by:

a. the party that has been registered by the Board before the date on which this Act came into force;

b. the holder of a licence for the use of sets of frequencies, for which no registration was required on the grounds of Article 2.1, paragraph 2, under a., of the Telecommunications Act as it read before the date on which this Act came into force.

2. A registration that is made on the grounds of Article 2.1, paragraph 1, of the Telecommunications Act as it read before this Act came into force, shall be regarded as a notification as referred to in Article 2.1, paragraph 1, of the Telecommunications Act.

3. A licence for the use of sets of frequencies that are intended for the provision of a public electronic communications network or a public electronic communications service, shall be regarded as a notification as referred to in Article 2.1, paragraph 1, of the Telecommunications Act. Our Minister shall provide the Board with the necessary information for such purposes.

4. A legal person registered on the grounds of paragraph 2 or 3 may submit a request to the Board up to six months after the date on which this Act came into force for an explanation as referred to in Article 2.4, paragraph 1, of the Telecommunications Act.

Article XIII

1. In accordance with the principles of general European competition law and as soon as possible after this Act comes into effect, the Board will determine the relevant markets in the electronic communications sector, not being transnational markets at the same time, in which providers are active and with obligations by virtue of Article XIV, paragraphs 1 to 3, or which are required to comply with reasonable requests for unbundled access, as referred to in Article 3, paragraph 2, of EEC Regulation no. 2887/2000 of the European Parliament and the Council of the European Union of 18 December 2000 pertaining to the unbundled access to the connection network (OJ L 336/4), with the exception of the relevant markets that are already required to be determined pursuant to Article 6a.1, paragraph 1, of the Telecommunications Act. The markets that are determined by virtue of the first sentence are deemed to be determined on the grounds of Article 6a.1, paragraph 2, of the Telecommunications Act.

2. The Board shall ensure that decisions as referred to in Articles 6a.2, paragraph 1, 6a.3, paragraph 1, and 6a.16, paragraph 1, of the Telecommunications Act that are based on a relevant market or transnational market in which providers of fixed public telephone networks or fixed public telephone services are active and with obligations by virtue of Article XIV, paragraph 1, or Article 3, paragraph 2, of the Regulation referred to in paragraph 1, come into effect simultaneously.

3. The Board shall ensure that decisions as referred to in Articles 6a.2, paragraph 1, and 6a.3, paragraph 1, of the Telecommunications Act that are based on a relevant market or transnational market in which providers of mobile public telephone networks or mobile public telephone services are active and with obligations by virtue of Article XIV, paragraph 2, come into effect simultaneously.

4. The Board shall ensure that decisions as referred to in Articles 6a.2, paragraph 1, 6a.3, paragraph 1, and 6a.18, paragraph 1, of the Telecommunications Act that are based on a relevant market or a transnational market in which providers of leased line networks or leased lines are active and with obligations by virtue of Article XIV, paragraph 3, come into effect simultaneously.

Article XIV

1. Providers of fixed public telephone networks or fixed public telephone services which are designated providers at the moment this Act comes into force on the grounds of Article 6.4, paragraph 1, of the Telecommunications Act as it read before this Act came into force, shall retain the obligations attached to this designation until the moment that the decisions as referred to in Article XIII, paragraph 2, come into effect.

2. Providers of mobile public telephone networks or mobile public telephone services which are designated providers at the moment this Act comes into force on the grounds of Article 6.4, paragraph 1 or 2, of the Telecommunications Act, as it read before this Act came into force, shall retain the obligations attached thereto until the moment the decisions as referred to in Article XIII, paragraph 3, come into effect.

3. Providers of leased line networks or leased lines which are designated providers at the moment this Act comes into force on the grounds of Article 6.4, paragraph 1, or 7.2 of the Telecommunications Act, as they read before this Act came into force, shall retain the obligations attached thereto until the moment the decisions as referred to in Article XIII, paragraph 4, come into effect.

4. The obligations as referred to in paragraphs 1 to 3 also entail obligations pertaining to interconnection as referred to in Article 6.1, paragraphs 1, 2 and 5, of the Telecommunications Act, as this read before the moment this Act came into force, in so far as the request for effecting interconnection assumes a different provider to the one as referred to in paragraph 1, 2 or 3.

5. If twelve months after the moment this Act comes into force a provider as referred to in paragraphs 1 to 4 has obligations on the grounds of the said paragraphs, these obligations are cancelled by operation of law.

6. Providers of fixed public telephone networks that are designated providers on 24 July 2003 on the grounds of Article 6.4, paragraph 1 of the Telecommunications Act, as it read before the moment this Act came into force, will continue to be a registered operator as referred to in Article 2, part a., of EEC Regulation no. 2887/2000 of the European Parliament and the Council of the European Union of 18 December 2000 pertaining to the unbundled access to the connection network (OJ L 336/4), until twelve months after this Act comes into force, or until the moment that the decisions as referred to in Article XIII, paragraph 2, come into effect, whichever shall be the earlier.

7. Article 6.10, paragraphs 1 to 4 of the Telecommunications Act, as it read before the moment this Act came into force, will remain in effect for twelve months after the moment this Act comes into force.

8. The Board will retain the tasks and powers conferred on it at the time this Act came into force in relation to the obligations as referred to in paragraphs 1 to 4, 6 and 7, with the exception of tasks and powers pertaining to the settlement of disputes as referred to in Articles 6.3, 7.7 and 7.8 of the Telecommunications Act, as it read before this Act came into force, for a period of twelve months after this Act comes into force.

Article XV

1. In accordance with the principles of general European competition law and as soon as possible after the moment this Act comes into force, the Board shall determine the

relevant markets, not being transnational markets at the same time, pertaining to the granting of access to fixed public electronic communications networks for disseminating programmes as referred to in Article 1, part f., of the Media Act, with the exception of the relevant markets that already have to be determined by virtue of Article 6a.1, paragraph 1, of the Telecommunications Act. The markets that are determined by virtue of the first sentence are deemed to be determined on the grounds of Article 6a.1, paragraph 2, of the Telecommunications Act.

2. The Board shall ensure that decisions as referred to in Articles 6a.2, paragraph 1, or 6a.3, paragraph 1, of the Telecommunications Act pertaining to the dissemination of programmes as referred to in Article 1, part f., of the Media Act by means of fixed public electronic communications networks, will come into effect simultaneously.

Article XVI

1. With regard to electronic communications networks that were designated as broadcasting networks before the moment this Act came into force, Article 8.7, as it read before this Act came into force will remain applicable for as long as the decisions as referred to in Article XIV, paragraph 2, have not yet come into effect.

2. After the moment that the decisions as referred to in paragraph 1 come into effect, this Act is applicable with regard to the rendering of a decision on a request on the grounds of the said Article 8.7 that was made before that moment.

3. With regard to the handling of an objection that was made or appeal that was lodged against a decision upon request as referred to in paragraph 2 before the moment the decisions came into effect as referred to in paragraph 1, this Act is applicable after that moment.

Article XVII

1. If before the moment this Act comes into force a request is made as referred to in Article 6.3, paragraph 1 or 2, of the Telecommunications Act, as it read before that moment, for the settlement of a dispute relating to interconnection whereby no provider is involved on whom obligations rest on the grounds of Article XIV, and the Board has not rendered a decision on this request before the aforesaid moment, this request will be regarded as a request as referred to in Article 12.2 of the Telecommunications Act.

2. With regard to rendering a decision on a request as referred to in paragraph 1, the law as it was applicable after the moment this Act came into force is applicable.

Article XVIII

1. If before the moment this Act comes into force a request is made as referred to in Article 6.3, paragraph 1 or 2, of the Telecommunications Act as it read before that moment, for the settlement of a dispute relating to interconnection whereby a provider is involved that is a designated provider on the grounds of Article 6.4 of the Telecommunications Act as it read before the aforesaid moment, and the Board has not rendered a decision before that moment, Articles 6.1, 6.3 and 6.5 to 6.8 of the

Telecommunications Act as it read before the aforesaid moment remain applicable with regard to the handling of that request.

2. If in the period between the moment this Act comes into force and the moment a decision comes into effect as referred to in Article XIII, or the moment as referred to in Article XIV, paragraph 5, a dispute has arisen relating to interconnection, and a provider is involved in that dispute on whom obligations rest as referred to in Article XIV, the Board may settle the dispute at the request of one of them. The Board will render its decision within seventeen weeks of such a request being made.

3. In giving the regulations as referred to in paragraph 2, the Board will apply Article XIV, paragraph 4, and Articles 6.5 to 6.8 of the Telecommunications Act, as these read before the moment this Act came into force.

4. If before the moment a decision as referred to in Article XIII comes into effect, or before the moment as referred to in Article XIV, paragraph 5, no decision has been rendered on a request as referred to in paragraph 1 or 2, this request will be regarded as a request as referred to in Article 12.2 of the Telecommunications Act and with regard to the rendering of a decision on this request, the law as was applicable after the aforesaid decision referred to in Article XIII came into effect or the moment as referred to in Article XIV shall be applicable.

Article XIX

1. If before the moment this Act comes into force a request is made as referred to in Article 6.3, paragraph 1 or 2, of the Telecommunications Act as it read before that moment, for the settlement of a dispute, not being a dispute as referred to in Article XVIII, paragraph 1, whereby a provider is involved that is a designated provider on the grounds of Article 6.4 of the Telecommunications Act as it read before the aforesaid moment, and the Board has not rendered a decision before that moment, Articles 6.3 and 6.5 to 6.10 of the Telecommunications Act in so far as applicable and as it read before the aforesaid moment remain applicable.

2. If in the period between the moment this Act comes into force and the moment a decision comes into effect as referred to in Article XIII, or the moment as referred to in Article XIV, paragraph 5, a dispute has arisen between a provider on whom obligations rest as referred to in Article XIV and another provider relating to these obligations, not being a dispute as referred to in Article XVIII, paragraph 1, the Board may settle the dispute at the request of one of them. The Board will render its decision within sixteen weeks of such a request being made.

3. In giving the regulations as referred to in paragraph 2, the Board will apply Article XIV and Articles 6.5 to 6.10 of the Telecommunications Act, as these read before the moment this Act comes into force.

4. If at or after the moment a decision as referred to in Article XIII comes into effect, or at the moment as referred to in Article XIV, paragraph 5, the Board has not rendered a decision on a request as referred to in paragraph 1 or 2, this request will be regarded as a request as referred to in Article 12.2 of the Telecommunications Act and with regard to the rendering of a decision on this request, the law as was applicable after the aforesaid decision referred to in Article XIII came into effect or the moment as referred to in Article XIV shall be applicable.

Article XX

If before the moment this Act comes into force a request for an opinion has been made as referred to in Article 7.7 of the Telecommunications Act as it read before the moment this Act came into force, and the Board has not given its opinion on the request before that moment, the law as was applicable before this Act came into force remains applicable with regard to the giving of an opinion.

Article XXI

1. With regard to the handling of an objection that was made before or after the moment this Act came into force against a decision as referred to in Article 6.3, paragraph 1 or 2, of the Telecommunications Act as it read before that moment, relating to a dispute on interconnection, and with the request underlying that decision no party is involved that is a designated provider on the grounds of Article 6.4 of the Telecommunications Act as it read before that moment, the law as was applicable after the moment this Act came into force is applicable.

2. With regard to the handling of an objection that was made before or after the moment this Act came into force and was directed against a decision on a dispute as referred to in paragraph 1 and against which an objection was also made before that moment, the law as was applicable after this Act came into force is applicable.

3. With regard to the handling of an appeal that was lodged before or after the moment this Act came into force, against a decision on a dispute as referred to in paragraph 1, the law as was applicable before the moment this Act came into force remains applicable.

4. With regard to the handling of an appeal that was lodged before or after the moment this Act comes into force and is directed against a decision on a dispute as referred to in paragraph 1, and against which an appeal was also lodged before that moment, the law as was applicable before the moment this Act came into force remains applicable.

Article XXII

1. With regard to the handling of an objection that was made before or after the moment this Act came into force against a decision as referred to in Article 6.3, paragraph 1 or 2, on a dispute relating to interconnection whereby a provider is involved that is a designated provider on the grounds of Article 6.4 of the Telecommunications Act, as it read before the aforesaid moment, the law as was applicable before the moment this Act came into force remains applicable.

2. With regard to the handling of an objection that was made before or after the moment this Act comes into force and was directed against a decision on a dispute as referred to in paragraph 1 and against which an objection was also made before that moment, the law as was applicable before that moment remains applicable.

3. If a decision as referred to in Article XIII has come into effect or if Article XIV, paragraph 5, is applicable, and no decision has been rendered on the objection as referred to in paragraph 1 or 2 before that moment, with regard to the handling of that objection

the law as it applies after the coming into effect of the decision referred to in that article or at the moment as referred to in Article XIV, paragraph 5, is applicable.

4. With regard to the handling of an appeal that was lodged before or after the moment this Act came into force, against a decision on a dispute as referred to in paragraph 1, the law as was applicable before the moment this Act came into force remains applicable.

5. With regard to the handling of an appeal that was lodged before or after the moment this Act came into force and is directed against a decision on a dispute as referred to in paragraph 1, and against which an appeal was also lodged before that moment, the law as was applicable before that moment remains applicable.

Article XXIII

1. With regard to the handling of an objection that was made before or after the moment this Act came into force against a decision as referred to in Article 6.3, paragraph 1 or 2, of the Telecommunications Act, as it read before that moment, on a dispute not being a dispute as referred to in Article XVIII, paragraph 1, and whereby a provider is involved that is a designated provider on the grounds of Article 6.4 of the Telecommunications Act, as it read before the aforesaid moment, the law as was applicable before the moment this Act came into force remains applicable.

2. With regard to the handling of an objection that was made before or after the moment this Act came into force and was directed against a decision on a dispute as referred to in paragraph 1 and against which an objection was also made before that moment, the law as was applicable before that moment remains applicable.

3. If a decision as referred to in Article XIII has come into effect or if Article XIV, paragraph 5, is applicable, and no decision has been made on the objection as referred to in paragraph 1 or 2 before that moment, with regard to the handling of that objection the law as it applies after the coming into effect of the decision referred to in Article XIII or at the moment as referred to in Article XIV, paragraph 5, is applicable.

4. With regard to the handling of an appeal that was lodged before or after the moment this Act came into force, directed against a decision on a dispute as referred to in paragraph 1, the law as was applicable before the moment this Act came into force remains applicable.

5. With regard to the handling of an appeal that was lodged before or after the moment this Act came into force and is directed against a decision on a dispute as referred to in paragraph 1, and against which an appeal was also lodged before that moment, the law as was applicable before the moment this Act came into force remains applicable.

Article XXIV

1. If before the moment a decision as referred to in Article XIII comes into force, or the moment as referred to in Article XIV, paragraph 5, an objection is made against a decision taken on the grounds of Article XVIII, paragraph 2, on a dispute as referred to in that article, with regard to the handling of that objection Article XIV, paragraph 4, and Articles 6.5 to 6.8 of the Telecommunications Act, as these read before this Act came into force are applicable.

2. If after the moment a decision as referred to in Article XIII comes into force, or the moment as referred to in Article XIV, paragraph 5, an objection is made against a decision rendered on the grounds of Article XVIII, paragraph 2, on a dispute as referred to in paragraph 1, the law as applied after the moment that the decision referred to in Article XIII came into force or the moment as referred to in Article XIV, paragraph 5, is applicable.

3. If a decision as referred to in Article XIII has come into effect or if Article XIV, paragraph 5, is applicable, and no decision on the objection as referred to in paragraph 1 was rendered before the moment concerned, with regard to the handling of that objection the law as was applicable after the decision as referred to in Article XIII came into effect or the moment as referred to in Article XIV, paragraph 5, is applicable.

4. If before the moment a decision as referred to in Article XIII comes into effect, or the moment as referred to in Article XIV, paragraph 5, an appeal is lodged against a decision on a dispute as referred to in paragraph 1, with regard to the handling of that appeal the law as was applicable before the decision as referred to in Article XIII came into effect or the moment as referred to in Article XIV, paragraph 5, is applicable.

5. If after the moment a decision as referred to in Article XIII comes into effect, or the moment as referred to in Article XIV, paragraph 5, an appeal is lodged against a decision as referred to in paragraph 2 or 3, with regard to the handling of that appeal the law as was applicable after the decision as referred to in Article XIII came into effect or the moment as referred to in Article XIV, paragraph 5, is applicable.

Article XXV

1. If before the moment a decision as referred to in Article XIII comes into effect, or the moment as referred to in Article XIV, paragraph 5, an objection is made against a decision rendered on the grounds of Article XIX, paragraph 2, on a dispute as referred to in that article, with regard to the handling of that objection Article XIV, paragraph 4, and Articles 6.5 to 6.10 of the Telecommunications Act, as these read before this Act came into force are applicable.

2. If after the moment a decision as referred to in Article XIII comes into effect, or the moment as referred to in Article XIV, paragraph 5, an objection is made against a decision taken on the grounds of Article XIX, paragraph 2, on a dispute as referred to in paragraph 1, the law as was applicable after the moment that the decision referred to in Article XIII came into effect, or the moment as referred to in Article XIV, paragraph 5, is applicable.

3. If a decision as referred to in Article XIII has come into effect or if Article XIV, paragraph 5, is applicable, and no decision on the objection as referred to in paragraph 1 was rendered before the moment concerned, with regard to the handling of that objection the law as was applicable after the decision as referred to in Article XIII came into effect or the moment as referred to in Article XIV, paragraph 5, is applicable.

4. If before or after the moment a decision as referred to in Article XIII comes into effect, or the moment as referred to in Article XIV, paragraph 5, an appeal is lodged against a decision as referred to in paragraph 1, with regard to the handling of that appeal the law as was applicable before the decision as referred to in Article XIII came into effect, or the moment as referred to in Article XIV, paragraph 5, is applicable.

5. If after the moment a decision as referred to in Article XIII comes into effect, or the moment as referred to in Article XIV, paragraph 5, an appeal is lodged against a decision as referred to in paragraph 2 or 3, with regard to the handling of that appeal the law as was applicable after the decision as referred to in Article XIII came into effect, or the moment as referred to in Article XIV, paragraph 5, is applicable.

Article XXVI

1. With regard to the handling of an objection that was made or an appeal that was lodged before or after the moment this Act came into force, against a decision concerning an opinion as referred to in Article 7.7 of the Telecommunications Act as it read before that moment, the law as was applicable before that moment remains applicable.

2. With regard to the handling of an objection that was made or an appeal that was lodged before or after the moment this Act came into force and is directed against a decision against which an objection was also made or an appeal was also lodged before that moment, the law as was applicable before that moment remains applicable.

Article XXVII

If Article I, Part As., of this Act comes into force, the following shall apply:

a. with regard to the processing of traffic data as referred to in Article 11.5, paragraph 2 of the Telecommunications Act, the provider shall provide the subscriber with the information as referred to in Article 11.5, paragraph 4, within six months;

b. the consent as referred to in Article 11.5, paragraph 3, is not required for the traffic data already in use for the purpose as referred to in Article 11.5, paragraph 3, part a., of the Telecommunications Act at the moment this Act comes into force;

c. with regard to the traffic data as referred to in part b., the provider shall notify the subscriber of the information as referred to in Article 11.5, paragraph 4, of the Telecommunications Act, within six months. The subscriber shall be deemed to have given his consent with regard to this use, unless he has notified the provider concerned in writing within a period of two months after the notification was sent that he does not give his consent for the use concerned.

Article XXVIII

If Article I, Part Au., of this Act comes into force, the following shall apply:

a. Article 11.6 of the Telecommunications Act is not applicable to editions of printed, generally available subscriber lists and generally available subscriber lists that are published in electronic form, other than by means of an electronic communications network or an electronic communications service, if these editions are published or prepared for publication before the date that the aforesaid article comes into force;

b. Anyone who publishes a generally available subscriber list or provides a generally available subscriber information service, shall inform the subscriber to a public telephone service whose personal data are included in the subscriber list or in the subscriber file used for the subscriber information service of the information as referred to in Article 11.6, paragraph 1, within six months of Article 11.6 coming into force. In doing so, the

subscriber will be given the opportunity to object to personal data relating to him being contained in the subscriber list or in the subscriber file used for the subscriber information service. If the subscriber does make an objection, Article 41, paragraph 2, of the Personal Data Protection Act is applicable *mutatis mutandis*.

Article XXIX

If this Act comes into force earlier than the Act of 2 November 2000, pertaining to the repeal of the Radio Broadcasting Act 1935 (*Radio-Omroep-Zender-Wet 1935*) and any statutory provisions relating thereto (Statute Book 491), Articles IV and V of that Act are cancelled.

Article XXX

If the Act of 2 November 2000, pertaining to the repeal of the Radio Broadcasting Act 1935 and any statutory provisions relating thereto (Statute Book 491) comes into force earlier than this Act, Article 5.11 of the Telecommunications Act is cancelled.

Article XXXI

If the Bill submitted by Royal Message of 19 March 2001 for amendment of the Competition Act in connection with the reorganisation of the Dutch Competition Authority as an independent administrative body (27 639) becomes an Act and comes into force before this Act comes into force, this Act will be amended as follows:

- a. In Article I, Part A, Article 1.1, part c., will read as follows:
 - c. Board of the Competition Authority: Board of the Dutch Competition Authority as referred to in Article 2 of the Competition Act;
- b. In Article I, Parts Be, Bf, Bh, Bk, Bl and Bx, “Director-General of the Dutch Competition Authority” will be replaced each time by: the Board of the Competition Authority.

Article XXXII

If the Bill submitted by Royal Message of 19 March 2001 for amendment of the Competition Act in connection with the reorganisation of the Dutch Competition Authority as an independent administrative body (27 639) becomes an Act before this Act comes into force, the Telecommunications Act will be amended as follows:

A

- Article 1.1, part c., is to read as follows:
- c. Board of the Competition Authority: Board of the Dutch Competition Authority as referred to in Article 2 of the Competition Act;

B

In Articles 15.1, paragraph 2, 15.2, paragraph 3, 15.4, paragraph 3, 15.8, paragraph 4, 15.9, paragraph 2, 15.10, paragraphs 1 to 4, and 18.19 “the Director-General of the Dutch Competition Authority” will be replaced by: the Board of the Competition Authority.

Article XXXIII

After this Act comes into force:

- a. the decree for the alternative assignment of numbers rests on Article 4.2, paragraph 9 of the Telecommunications Act;
- b. the decree for peripheral equipment and radio equipment also rests on Article 10.1b of the Telecommunications Act;
- c. the Decree for 1-1-2 alarm centres also rests on Article 11.10, paragraph 5, of the Telecommunications Act.

Article XXXIV

The text of the Telecommunications Act will be published in the Statute Book.

Article XXXV

This Act comes into force as of a date to be determined by Royal Decree.

We hereby order and command that this shall be published in the Statute Book and that all Ministries, Authorities, Bodies and civil servants to whom this shall concern shall ensure its careful enforcement.

Given,

The State Secretary of Economic Affairs