

Nonbinding translation. The Danish version, as printed in the Danish Legal Gazette (Issue A), prevails.

Act No. 470 af 1 of July 1998

Act amending the Act on Universal Service Obligation (USO) and Certain Consumer Interests within the Telecommunications Sector; Act on Assignment and Use of Numbering Resources etc.; Act on Certain Conditions in the Telecommunications Field; Act on Competitive Conditions and Interconnection in the Telecommunications Sector; and the Act amending the Act on Competitive Conditions and Interconnection in the Telecommunications Sector (Calculation of Interconnection Tariffs etc.) (Increased Consumer Protection, Right to Enter into Service Provider Agreements, Lease of Physical Infrastructure Sections etc.)

This Act contains provisions implementing Directive 98/10/EC of the European Parliament and of the Council of 26 February 1998 on the application of open network provision (ONP) to voice telephony and on universal service for telecommunications in a competitive environment, cf. OJ no. 101 of 1 April 1998, and parts of Directive 97/51/EC of the European Parliament and of the Council of 6 October 1997 to amend Council Directives 90/387/EEC and 92/44/EEC for the purpose of adaptation to a competitive environment in telecommunications; see OJ no. 295 of 29 October 1997.

Section 1

Act No. 466 of 12 June 1996 on Universal Service Obligation (USO) and Certain Consumer Interests within the Telecommunications Sector, as amended by Act No. 397 of 10 June 1997 and Act No. 1090 of 29 December 1997, shall be amended as follows:

1. In section 2, amend "section 13(2), 2nd period" to read: "section 13(3)".

2. In section 10, insert as subsections (6) and (7):

"(6) In connection with the National Telecom Agency's fixing of maximum prices under subsection (1), the National Telecom Agency shall obtain an opinion from the Competition Council as to whether the USO provider's proposal for maximum prices is in accordance with the Competition Act.

(7) The Competition Council shall give an opinion as mentioned in subsection (6) not later than 14 days after being requested to do so. The opinion shall be binding on the National Telecom Agency and constitute part of the basis for the National Telecom Agency's decision under subsection (1)."

3. Section 13 shall be amended to read as follows:

"13. (1) The Minister of Research and Information Technology may lay down more specific rules on the provision of telecommunications networks and telecommunications services available to the public, to satisfy the need for ensuring basic user rights in connection with the negotiation of agreements for provision of telecommunications networks and telecommunications services.

(2) Rules under subsection (1) may include the following:

- 1) that the basis for any customer relationship shall be a written contract,
- 2) minimum requirements specifying what conditions shall be included in contracts as mentioned in no.

1, including a requirement for all contracts to specify prices, supply time for initial connection, quality and service levels,

compensation and/or refund arrangements for subscribers which apply if the contracted service is not met, as well as terms for termination and disconnection in case of default on the part of the enduser,

3) minimum requirements for contract terms regarding the consequences of nonpayment on the part of the enduser, including in particular a framework for access to terminate or suspend a customer relationship,

4) minimum requirements for providers' publication of adequate and up-to-date information in all areas mentioned in no. 2, including the requirement that the provider's technical interfaces and specifications should be publicly available,

5) minimum requirements regarding connection and use of terminal equipment and provision of special technical interfaces, services and facilities, including any requirement for these to be made available free of charge,

6) any minimum requirements for the quality of the services provided, including requirements for regular measurement thereof and publication of measuring results,

7) minimum requirements for procedures to be used by providers for dealing with complaints from endusers, including the requirement that such complaints shall be examined by a special internal investigation unit,

8) requirements for certification of charging, billing, invoicing, complaints processing and investigation systems as well as quality requirements for such systems, and

9) provisions with a view to meeting the needs of special user groups, including disabled persons.

(3) Rules as mentioned in subsections (1) and (2) may also be laid down for telecommunications networks and telecommunications services that are not available to the public.

(4) Subject to more specific rules to be laid down by the National Telecom Agency, providers of telecommunications networks or telecommunications services as mentioned in subsection (1) shall supply the National Telecom Agency with information about financial, statistical and other aspects for the purpose of preparing reports etc. about matters relating to the provision of such telecommunications networks and telecommunications services.

(5) The Minister of Research and Information Technology may decide that rules laid down pursuant to subsection (1) shall not apply to analogue exchanges."

4. Section 14(3), third sentence, shall be amended to read as follows:

"In connection with the decision of a case, the National Telecom Agency, with a view to ensuring compliance with the provisions of this Act and rules issued in pursuance thereof, may issue orders to USO providers or to other providers of telecommunications networks or telecommunications services, including orders to modify existing contract and subscription terms to the extent that these do not comply with the requirements made, as well as orders requiring a provider to comply with contract and subscription terms in relation to the enduser, including any modifications thereof that may have been ordered."

5. Section 14(4) shall be amended to read as follows:

"(4) The National Telecom Agency may refer a complaint for decision by the Telecommunications Consumer Board if, due to special conditions of an evidentiary nature, the complaint is not deemed suitable for hearing by the National Telecom Agency. Cases that may be referred include noncompliance with:

- 1) subscription terms approved under section 5(1),
- 2) section 5(3),
- 3) terms laid down under section 6(3) and (4), section 7(3) and (4), and section 8(2) and (3),
- 4) maximum prices fixed under section 10, and
- 5) rules issued under section 12(4) and section 13."

6. In section 14(8), insert the following text as the second sentence:

"In addition, the National Telecom Agency may carry out technical investigations for the purpose of elucidating the case or may request such assistance from other parties."

7. In section 17, insert as subsection (5):

"(5) Notwithstanding subsection (1), complaints relating to such parts of the National Telecom Agency's decisions as are made on the basis of the opinions referred to in section 10(6) and (7) shall be brought before the Competition Appeals Tribunal. Section 19(4), section 20(2) and (3) and section 21(3) of the Competition Act shall apply correspondingly to complaints lodged with the Competition Appeals Tribunal under this Act."

8. Section 19, first sentence, shall be amended to read as follows:

"The National Telecom Agency, the Telecommunications Consumer Board or individuals so authorized by the Agency or the Board shall, subject to a court order and on presenting proper identification, be given access to public and private properties and localities in order to carry out technical investigations as mentioned in section 14(8) and section 16(2)."

9. In section 19, second sentence, delete: "cf. section 16(2)".

Section 2

Act No. 392 of 10 June 1997 on Assignment and Use of Numbering Resources etc. shall be amended as follows:

1. In section 11, insert as subsection (5):

"(5) An enduser may demand to be included in all general, publicly available directory databases and registers. On request, the enduser shall be entitled to verify information about his own directory data with the provider of the directory database or register, and, if necessary, correct or request removal of the relevant entry. Access to verify one's own directory data shall be given in accordance with the ordinary legislation on data protection"

2. In section 12(1), amend "section 11(1), (3) and (4)", to: "section 11(1), (3), (4) and (5)".

Section 3

The Act on Certain Conditions in the Telecommunications Field, embodied in Consolidated Act No. 501 of 22 June 1995, as amended by section 1 of Act No. 469 of 12 June 1996 and Act No. 398 of 10 June 1997, shall be amended as follows:

1. Section 3(1), no. 1, shall be amended to read as follows:

"1) Securing access to telecommunications services vital to society, including relay and text telephone services, directory enquiry services and the public emergency call service."

Section 4

Act No. 467 of 12 June 1996 on Competitive Conditions and Interconnection in the Telecommunications Sector, as amended by Act No. 391 of 10 June 1997, shall be amended as follows:

1. Section 1(2) shall be amended to read as follows:

"(2) This Act shall apply to agreements on the exchange of traffic between telecommunications networks or telecommunications services (switched interconnection), agreements on lease of infrastructure capacity including leased lines, physical infrastructure sections etc., and agreements on special network access (service provider agreements). The Minister of Research and Information Technology shall lay down more specific rules as to who may require that agreements on interconnection be established, cf. subsection (3)."

2. Section 1(3) shall be amended to read as follows:

(3) In this Act, interconnection means:

1) Physical or logical linking of telecommunications networks to enable the endusers of a provider to communicate with other endusers of the same provider or with endusers of another provider, or to give endusers access to telecommunications services made available by another provider (switched interconnection).

2) Lease of infrastructure capacity, including leased lines, physical infrastructure sections etc.

3) Service provider agreements, including agreements on special network access, for instance in the form of access via network termination points other than those offered to endusers, and agreements on access to wholesale purchasing of subscriptions and traffic minutes for the purpose of resale."

3. Section 2(2) shall be amended to read as follows:

"(2) Providers of public telecommunications networks or telecommunications services who have significant market power shall meet all reasonable requests for establishing or modifying agreements on switched interconnection, cf. section 1(3), no. 1, within the following areas:

1) Telephony networks and basic telephony services.

2) Data communications networks and basic data communications services.

3) Mobile communications networks and basic mobile communications services.

4) Other cable or radiobased telecommunications infrastructure, except satellite communications."

4. In section 2, insert the following new subsection after subsection (2):

"(3) Providers of public telecommunications networks or telecommunications services who have significant market power shall meet all reasonable requests for establishing or modifying service provider agreements, cf. section 1(3), no. 3, within the following areas:

1) Basic telephony services.

2) Basic data communications services.

3) Basic mobile communications services."

Subsections (3)-(9) will then become subsections (4)-(10).

5. In section 2(3), which will become section 2(4), insert the following after "lease of infrastructure capacity": ", as defined in section 1(3), no. 2,".

6. In section 2(5), which will become section 2(6), amend "(4)" to "(5)".

7. In section 2(6), which will become section 2(7), amend "(2) and (3)" to "(2) and (4)".

8. In section 2(7), which will become section 2(8), insert after "switched interconnection, cf. section 1(3), no. 1,": "or establishment of service provider agreements; cf. section 1(3), no. 3,".

9. In section 2(8), which will become 2(9), amend "no. 1" to: "nos. 1 and 3".

10. Section 2(9), which will become 2(10), shall be amended to read as follows:

"(10) Interconnection agreements under subsections (2)-(4) shall give access to interconnection on objective, transparent and nondiscriminatory terms. As a consequence, providers of public telecommunications networks or telecommunications services who have significant market power shall, at the request of the National Telecom Agency or the party requesting negotiation of an interconnection agreement, produce documentation to demonstrate that under similar conditions the provider is using the same terms towards other providers who are making the same services available, and that the provider is making interconnection services available to other parties on the same terms and of the same quality as are made available to the provider's own services or to services under the provider's subsidiaries or partners where this is relevant. On the negotiation of interconnection agreements as mentioned in section 1(3), no. 3, the documentation referred to in the second sentence above shall only be submitted to the National Telecom Agency."

11. In section 2, insert as subsections (11)-(13):

"(11) Providers of public telecommunications networks or telecommunications services who have significant market power shall make all necessary information and specifications available on request to providers who are considering the negotiation of interconnection agreements. Such details shall include information on new interconnection services and changes in the existing provision of services planned for implementation within the next six months, unless the National Telecom Agency approves that such

information may be withheld. Information on new interconnection services shall be published as soon as possible.

(12) Providers of public telecommunications networks or telecommunications services who have significant market power shall give a party requesting negotiation of interconnection agreements as defined in section 1(3) access to interconnection at the geographical locations and to the extent requested. To the extent practically feasible, providers of public telecommunications networks or telecommunications services who have significant market power shall give the party requesting negotiation of an interconnection agreement access to place on the provider's premises such party's own exchanges and other equipment intended to transmit and control signals between specific termination points, as well as access to carry out the operation and maintenance etc. thereof himself. If it is not possible to implement the provisions given in the second sentence hereof and the party requesting negotiation of an interconnection agreement does not have significant market power, the provider shall make the necessary transmission capacity available free of charge up to the premises to which access is requested. The obligation to secure the necessary transmission capacity shall be limited to a distance equal to the distance between the premises to which access is requested and the nearest other equivalent access alternative.

(13) The Minister of Research and Information Technology may lay down more specific rules regarding the negotiation of interconnection agreements and may, in this connection, lay down minimum requirements as to what provisions, terms and conditions etc. such agreements shall contain."

12. In section 2a(1), insert after "interconnection": "as mentioned in section 1(3), nos. 1 and 2,".

13. In section 2a(1) and (2), amend "the market for leased lines" to: "the market for lease of infrastructure capacity, cf. section 1(3), no. 2,".

14. In section 2a(2), amend "leased lines" to: "lease of infrastructure capacity, cf. section 1(3), no. 2,".

15. In section 2a, insert the following as subsection (5):

"(5) If deemed appropriate by the National Telecom Agency to ensure effective competition, the Agency may decide that providers with significant market power in the fixed network or mobile communications market shall give access to interconnection as mentioned in section 1(3), no. 3, at costbased prices, and may, in this connection, decide that such providers shall give access to interconnection at prices determined and documented according to subsections (1)-(4) and section 7(4). In exercising its general supervisory authority, cf. section 5, the National Telecom Agency may make such decisions at its own initiative and shall decide whether intervention on the part of the National Telecom Agency is justified in order to ensure effective competition if one of the parties requests so under the conciliation and decisionmaking procedure referred to in sections 6-8. In connection with the negotiation of interconnection agreements as mentioned in section 1(3), no. 3, where subsections (1)-(4) and section 7(4) are applicable, documentation as mentioned in subsection (2) shall only be submitted to the National Telecom Agency. Both the National Telecom Agency and the party requesting negotiation of an agreement may request that documentation be presented."

16. In section 2b(1), amend "the market for leased lines" to: "the market for lease of infrastructure capacity, cf. section 1(3), no. 2,".

17. In section 3(1)-(3) and (6), amend "subsections (2) and (3)" to: "subsections (2)-(4)".

18. In section 4(1)-(3), amend "section 2(2) and (3)," to: "section 1(3), nos. 1 and 2,".

19. In section 5(1), amend "subsection (9)" to: "subsection (10)".

20. In section 6(1), amend "subsections (2) and (3)" to: "subsections (2) and (4)".

21. In section 7b, insert after "infrastructure capacity": "or negotiation of crossborder service provider agreements".

22. Section 14(3), second sentence, shall be amended to read as follows:

"Section 19(4), section 20(2)(3) and section 21(3) of the Competition Act as well as administrative regulations issued in pursuance thereof shall apply correspondingly to complaints submitted to the Competition Appeals Tribunal under this Act."

23. In section 17(1), amend "subsections (2) and (3)" to: "subsections (2) and (4)".

24. Section 17(4) shall be amended to read as follows:

"(4) Parts 2 and 3 of the Competition Act shall apply to providers of telecommunications networks and telecommunications services unless otherwise prescribed by telecommunications legislation, including rules laid down in pursuance thereof."

25. In section 18(1), no. 1, amend "subsection (8)" to: "subsection (9)".

Section 5

Act No. 391 of 10 June 1997 to amend the Act on Competitive Conditions and Interconnection in the Telecommunications Sector (Calculation of Interconnection Tariffs etc.) shall be amended as follows:

1. Section 2(2) shall be amended to read as follows:

"(2) The Minister of Research and Information Technology shall decide the date on which section 2a of the Act on Competitive Conditions and Interconnection in the Telecommunications Sector, as set out in section 1, no. 5, of the present Act, shall come into force, and, in doing so, may decide to let the provision come into force for one or more, or for all, interconnection products."

2. Section 2(3)(11) shall be repealed.

Section 6

(1) This Act shall come into force on 15 July 1998.

(2) Cases referred by the National Telecom Agency to the Telecommunications Consumer Board prior to the coming into force of this Act shall be finalized according to the rules and regulations previously in force.

Section 7

(1) Until the coming into force of section 2a in the Act on Competitive Conditions and Interconnection in the Telecommunications Sector, as set out in section 1, no. 5, in Act No. 391 of 10 June 1997, and as amended by section 4, nos. 12-15, of the present Act, providers of public telecommunications networks or telecommunications services who have significant market power in the total market for fixed network and

mobile communications, in the market for lease of infrastructure capacity or in the fixed network market, when negotiating interconnection agreements under section 2(2) and (4) of the Act on Competitive Conditions and Interconnection in the Telecommunications Sector, as amended by section 4, nos. 3 and 5 of the present Act, shall give access to interconnection at prices calculated according to subsections (2)-(8) and regulations issued in pursuance of subsection (9). Until the coming into force of section 2a of the Act on Competitive Conditions and Interconnection in the Telecommunications Sector, as set out in section 1, no. 5, in Act No. 391 of 10 June 1997, and as amended by section 4, nos. 12-15, of the present Act, providers of public telecommunications networks or telecommunications services who have significant market power in the fixed network or mobile communications market, in situations where the National Telecom Agency so decides, shall give access to interconnection as mentioned in section 2(3) of the Act on Competitive Conditions and Interconnection in the Telecommunications Sector, as set out in section 4, no. 4, of the present Act, at prices calculated according to subsections (10) and (11) and regulations issued in pursuance of subsection (9).

(2) In connection with agreements on switched interconnection, the total price for an interconnection service shall not exceed the sum of the following amounts:

- 1) The additional operating costs involved in realizing the interconnection.
 - 2) A proportional share of the amounts written off and paid by way of interest on the new investments necessary to realize the interconnection.
 - 3) A proportional share of the amounts written off and paid by way of interest on other investments in such part of the network as is used to realize the interconnection.
 - 4) A proportional share of the operating costs that are closely linked to the production of the interconnection service. The share of the operating costs of which a proportional share may be included in the interconnection price shall be fixed on the basis of the market share in the relevant market.
 - 5) A reasonable profit.
- (3) Costs relating to subscriber lines may not be included in connection with the fixing of interconnection prices for switched interconnection.
- (4) New investments necessary to realize the interconnection and which are exclusively to the benefit of the party requesting interconnection shall be paid in full by the party in question when the interconnection is established.
- (5) The proportional share referred to in subsection (2), nos. 2-4, shall mean the percentage of interconnected traffic in relation to the total traffic in such part of the network as is used to realize the interconnection.
- (6) At the request of the National Telecom Agency or the party requesting negotiation of an interconnection agreement, providers who have significant market power in the total market for fixed network and mobile communications, in the market for lease of infrastructure capacity or in the fixed network market shall produce documentation to demonstrate that the interconnection prices charged in connection with switched interconnection have been calculated according to the rules of subsection (2) and that the price charged for lease of infrastructure capacity has been calculated according to the rules of subsection (8).

(7) The National Telecom Agency may reduce the interconnection prices calculated according to

subsection (2) if documentation can be produced to show that the price level of similar interconnection services in similar Danish or foreign interconnection agreements is lower than the interconnection prices calculated according to subsection (2).

(8) The price for lease of infrastructure capacity shall be calculated as indicated in subsection (2), always provided that the proportional share referred to in subsection (2), nos. 2-4, shall mean the percentage of interconnected traffic in relation to the total capacity in such part of the network as is used to realize the interconnection, and that the cost element referred to in subsection (2), no. 4, shall be calculated as a proportional share of the operating costs associated with the network leased in whole or in part.

(9) The Minister of Research and Information Technology shall lay down more specific rules regarding the fixing and calculation of interconnection prices under subsections (2), (8) and (10). In this connection, the Minister of Research and Information Technology may fix differentiated profit percentages as mentioned in subsection (2), no. 5, for the individual interconnection products.

(10) If deemed appropriate by the National Telecom Agency to ensure effective competition, the Agency may decide that providers with significant market power in the fixed network or mobile communications market shall give access to interconnection as mentioned in section 1(3), no. 3, of the Act on Competitive Conditions and Interconnection in the Telecommunications Sector, as set out in section 4, no. 2, of the present Act, at costbased prices, and may, in this connection, decide that such providers shall give access to interconnection at prices calculated on the basis of the enduser price such as this appears from list prices for subscriptions and call charges, adjusted for saved costs. This adjustment shall amount to 21%.

(11) Where the National Telecom Agency has made a decision under subsection (10), providers with significant market power in the market for fixed network or mobile communications shall, at the request of the National Telecom Agency or the party requesting negotiation of a service provider agreement, produce documentation to demonstrate that the prices charged have been calculated according to the rules of subsection (10). The documentation referred to in the first sentence hereof shall only be submitted to the National Telecom Agency.

(12) Section 5(1), section 7(4), section 9, and section 15 of the Act on Competitive Conditions and Interconnection in the Telecommunications Sector shall apply correspondingly in connection with the fixing of interconnection prices under subsections (2)-(11).