

*NB: Translation from Finnish. Legally binding only in Finnish and Swedish.*  
Ministry of Transport and Communications, Finland

# **Information Society Code**

(917/2014)

## PART I

### **GENERAL PROVISIONS**

#### Chapter 1

#### **Objectives of the Act and Definitions**

##### Section 1

##### *Objectives of the Act*

The objective of the Act is to foster the supply and use of electronic communications services and to ensure that everyone across Finland has access to communications networks and services at reasonable conditions. A further objective of the Act is to secure the efficient and interference-free use of radio frequencies, to foster competition, and to ensure that communications networks and services are technologically advanced, of high quality, reliable, safe, and inexpensive. This Act also aims to ensure the confidentiality of electronic communication and the protection of privacy.

##### Section 2

##### *Application of specific provisions*

Sections 136–145 and 247 of this Act apply to operators referred to in these provisions in situations where:

- 1) the operator is established in the territory of Finland or otherwise subject to Finnish law;
- 2) the operator is not established in a Member State of the European Union but the operator's main equipment to be used in providing communications are located or maintained in Finland;
- 3) the operator is not established in a Member State of the European Union but the service user is in Finland and it is obvious from the contents of the service or its marketing that the service is targeted at Finland.

This section does not limit the application of provisions in the Finnish private international law.

## Section 3

*Definitions*

For the purposes of this Act:

1) *audiovisual programme* means a movie, television programme, communication of an event to an audience, or other comparable unit comprised of primarily moving images and related sounds;

2) *audiovisual content service* means television broadcasting and video-on-demand services offered to the public as a livelihood;

3) *Internet access service* means a communications service enabling access to services available on the Internet;

4) *mass communications network* means a communications network primarily used for transferring or transmitting television and radio programmes or other material conveyed in identical form to all recipients;

5) *cable duct* means a protective structure used in constructing a public communications network for the purpose of accommodating telecommunications cables;

6) *fixed installation* means a combination of communications network devices that are installed in a predefined place for permanent use;

7) *user* means a natural person who as a subscriber or otherwise uses a communications service or an added value service;

8) *associated service* means a system subject to a conditional right of use; electronic programme guide; number conversion system; identification, location and presence service as well as similar service associated with communications networks or services that allows the offering of a communications network or service or supports the provision of services through them;

9) *associated facilities* means an associated service and a building; entry to building and building cabling; cable duct; mast and other physical structure, function or element related to a communications network or service that allows the offering of a communications network or service or supports the provision of services through them;

10) *added value service* means a service based on the processing of traffic data or location data for a purpose other than delivery of a communication;

11) *terrestrial mass communications network* means a mass communications network that functions by means of freely propagating radio waves;

12) *programme* means a pre-selected composition of audiovisual or radio programmes;

13) *amateur radio communication* means radio communication using amateur radio stations carried out among themselves by persons who have demonstrated adequate proficiency for the purpose of self-training, intercommunication or radio-technical experimentation and without seeking financial benefit;

14) *radio equipment* means equipment or its significant component designed to transmit (*radio transmitter*) or receive (*radio receiver*) electromagnetic radio waves for the purpose of radio communication or for some other purpose;

15) *radio frequency* means the frequency of an electromagnetic wave freely propagated in space and which is less than 3 000 GHz;

16) *radio broadcasting* means the simultaneous transmission of radio programmes intended for reception by the audience according to a programme schedule;

17) *radio communication* means the transfer, transmission or reception of information by using radio frequencies;

18) *location data* means data which is available from a communications network or terminal device, shows the geographic location of a subscriber connection or terminal device, and is used for a purpose other than the delivery of a communication;

19) *state of establishment* means any State where an information society service provider in fact pursues an economic activity using a fixed establishment;

20) *sponsorship* means any financing or other economic support of audiovisual content services, audiovisual programmes, radio programmes or radio broadcasting with a view to promoting the product sales of the sponsor or its reputation, and the sponsor does not produce programmes or radio programmes nor does it provide content services or carry out radio broadcasting;

21) *protected name or trademark* means a name or trademark that has been entered into the trade register or into the registers of trademarks, associations, foundations, or political parties; or an established name, a secondary mark or trademark referred to in the Business Names Act (128/1979) or Trademarks Act (7/1964); or a name of a public body, unincorporated state enterprise, independent public corporation, public association, or diplomatic mission of a foreign State or its bodies;

22) *electronic communication* means information that is distributed electronically;

23) *telecommunications device* means radio equipment, telecommunications terminal equipment and communications network devices;

24) *teleshopping* means television broadcasts of sales or purchase offers;

25) *telecommunications terminal equipment* means equipment which, for the purpose of transmitting, processing or receiving messages, is designed to be joined by means of cabling and wiring, radio, optically or in some other electromagnetic manner, either directly to a subscriber connection in a public communications network or to function in conjunction with such a network by being directly or indirectly linked to a subscriber connection in a public communications network;

26) *television broadcasting* means the authentic and simultaneous transmission of programmes consisting of audiovisual programmes to the audience on the basis of a programme schedule;

27) *telecommunications operator* means a network operator or a communications service operator offering services to a set of users that is not subject to any prior restriction, i.e. provides public telecommunications services;

28) *information security* means the administrative and technical measures taken to ensure that data are only accessible by those who are entitled to use it, that data can only be modified by those who are entitled to do so, and that data and information systems can be used by those who are entitled to use them;

29) *information society service* means services provided as electronic distance services usually requested by recipients against payment;

30) *subscriber* means a legal or natural person who is party to an agreement concerning the provision of a communications service or an added value service for a purpose other than telecommunications operations;

31) *subscriber connection* means the part of a fixed communications network between the subscriber's connection and the devices that make it possible to route communication;

32) *video-on-demand service* means a service provided for the viewing of audiovisual programmes on the basis of a catalogue of programmes;

33) *safety radio communication* means radio communication employed to safeguard and rescue human lives and property;

34) *network service* means a service a telecommunications operator (*network operator*) provides comprising a communications network in its ownership or for other reasons in its possession for the purposes of transmitting or distributing messages;

35) *domain name* means second-level address information on the Internet under the national country code Top Level Domain .fi or the region code Top Level Domain .ax consisting of letters, digits or other characters or their combination in the form of a name;

36) *communications provider* means a telecommunications operator, corporate subscriber or other party that conveys electronic communications for other than personal or comparable customary private purposes;

37) *communications service* means a service consisting either completely or primarily of transmitting messages in a communications network, and of transfer and transmission service in a mass communications network;

38) *communications network device* means a device designed for use in transferring or routing messages in a communications network;

39) *communications network* means a system comprising cables and devices joined to each other for the purpose of transmitting or distributing messages by wire, radio waves, optically or by other electromagnetic means;

40) *traffic data* means information associated with a legal or natural person used to transmit a message and information on the call sign of a radio station, on the type of radio transmitter or the user of the radio transmitter, and on the starting time, duration or transmission site of a radio transmission;

41) *corporate or association subscriber* means an undertaking or organisation which subscribes to a communications service or an added value service and which processes users' messages, traffic data or location data in its communications network;

42) *public telephone service* means a communications service used to make and receive national and international calls using a number in a national or international numbering plan;

43) *public communications network* means a communications network used to provide communications services to a set of users that is not subject to any prior restriction.

## PART II

### TELECOMMUNICATIONS SUBJECT TO NOTIFICATION AND LICENCING

#### Chapter 2

#### Telecommunications Subject to Notification

#### Section 4

##### *A telecommunications operator's obligation to notify*

A telecommunications operator submits an electronic notification to the Finnish Communications Regulatory Authority (Ficora) before commencing operations, if it engages in:

- 1) general telecommunications (*telecommunications notification*);
- 2) other than television broadcasting subject to a licence, if the service provider is established in Finland (*broadcasting notification*);
- 3) video-on-demand audiovisual services, if the service provider is established in Finland (*notification of video-on-demand audiovisual services*); and
- 4) linear pay-television services in terrestrial digital mass communications network using a protection decoding system (*pay-television service notification*).

The notification duty referred to in subsection 1 does not apply to public telecommunications that is temporary in nature or otherwise of minor significance.

Further provisions on the type of telecommunications considered to be temporary or of minor significance may be given by Ministry of Transport and Communications decree.

All identification and contact information of an enterprise, organisation or association necessary for the purposes of supervision, as well as a description of the operations, shall be entered in a telecommunications notification referred to in subsection 1. Ficora may issue further regulations on the information to be submitted as well as the form and delivery of the notification.

Ficora shall be notified of any changes affecting the information entered in a telecommunications notification or if the operator discontinues operations.

If, for unforeseen reasons, a telecommunications operator or pay-television service provider can no longer offer the communications service or other service agreed to with the subscriber and does not follow the procedure for cancelling the agreement, the operator shall promptly but no later than two weeks prior to termination of services notify the subscriber and Ficora of the termination of services. At the same time, the telecommunications operator shall notify the subscriber of the means available to save the subscriber's messages.

If termination of a communications service referred to in subsection 6 is caused by disconnection of a network service, the network operator under whose network the service provider operates shall notify the telecommunications operator providing the service and Ficora no later than four weeks before disconnection of the network service.

## Section 5

### *Notification register*

Ficora shall keep a public register of notifications referred to in Section 4.

Ficora shall provide confirmation of the receipt of a telecommunications notification within a week of receipt. The confirmation notice shall indicate the rights and obligations related to the concerned operations in Finland under this Act.

## Chapter 3

### **Network Licence**

## Section 6

### *Telecommunications subject to a licence*

A licence is required to provide a network service that uses radio frequencies in a digital terrestrial mass communications network or in a mobile network practising public telecommunications.

The above provisions shall also apply to a mobile network functioning as a public authority network and operating in more than one municipality.

By derogation from subsection 1 above, a licence is not required to provide a network service in a digital terrestrial mass communications network if:

- 1) the operations last no more than a month and the used television transmitter's radiation power does not exceed 50 watt; or
- 2) the television transmitter's radiation power is so low, considering the location where it will be used, that its operation will only extend to a limited area.

## Section 7

### *Announcing that a licence is available for application*

The Government shall announce that a licence is available for application when frequencies that are technically appropriate and appropriate for efficient frequency use become available for the purposes of telecommunications subject to a licence in accordance with a frequency allocation plan approved in a decree laid down pursuant to Section 95(3)(1).

A licence granted by Ficora, however, is not announced to be available for application.

## Section 8

### *Licensing procedure*

The Government grants licences for telecommunications operations in the meaning of section 6(1) and for public authority network operations in the meaning of section 6(2) free of charge as laid down in section 10.

If new frequencies that are technically appropriate and appropriate for efficient frequency use are added to public telecommunications in a mobile network, the Government may decide on granting a licence by auction as laid down in Section 11.

## Section 9

### *Granting a telecommunications licence for temporary operation*

A licence to provide a network service in a digital terrestrial mass communications network is granted by Ficora, if the operations last no more than three months and if the radiation power of the transmitter does not exceed two kilowatt.

Ficora shall grant the licence for operations referred to in subsection 1 if radio frequencies can be allocated for the operations and there is no justified reason to suspect the applicant of violating the provisions of this Act.

Ficora may grant a new licence for operations referred to in subsection 1 to the same operator for areas with overlap of coverage, even partial overlap, at the earliest two months from expiry of the previous licence.

## Section 10

### *Issuing licences by comparative procedure*

A licence shall be granted if:

- 1) the applicant has sufficient economic resources to meet the network operator obligations;
- and
- 2) the licencing authority has no justifiable reason to suspect that the applicant will violate the provisions of this Act; and
- 3) the licencing authority does not have weighty reasons to suspect that granting a licence to the applicant would apparently risk national security.

A licence for providing network service in a public authority network shall be granted if the applicant, in addition to fulfilling the requirements referred to in subsection 1, has the ability and professional skills needed in regard to the special nature of the operation.

If a licence referred to in subsection 1 cannot be granted to all applicants due to the scarcity of radio frequencies, it shall be granted to applicants whose operation best promotes the purposes laid down in section 1 of this Act.

All information required by the licencing authority that is necessary to assess compliance with the licence requirements referred to in section 1 shall be given in a licence application.

A decision on a licence granted by the Government shall be made within six weeks of the close of the application period. In special cases the Government may extend the six-week deadline by eight months at most if this is necessary to ensure that the application procedure is fair, reasonable, clear and transparent or to supplement the information in the applications or for other special reasons. Any extension to the deadline shall be announced publicly.

## Section 11

### *Issuing licences through an auction process*

The Government shall grant a licence referred to in section 8(2) to an enterprise, organisation or association that has made the highest valid bid for the frequency band or frequency pair in the auction, unless the licencing authority has especially weighty reasons to suspect that granting the licence to the applicant in question would apparently risk national security.

Practical arrangements related to the auction are the responsibility of Ficora. The auction shall be unbiased, clear, open, non-discriminatory and technology and service neutral.

Provisions regarding the number of frequency bands and frequency pairs to be granted, the maximum number of frequencies to be allocated to an enterprise and organisation, the auction model to be used and the starting bids for the frequencies to be auctioned shall be given by Government Decree.

The auction may be conducted using an electronic auction system. The auction may include one or more rounds with ascending bids. All bids submitted in the auction are binding until the end of the auction.

Ficora announces the auction concluded after a bidding round during which no new bids have been placed for any frequency pair or frequency band.

The highest valid bid placed for each frequency pair or frequency band at the conclusion of the auction wins the auction.

## Section 12

### *Further regulations on the auction process*

Ficora may issue further regulations on the process and procedures applied in the auction. The regulations may relate to:

- 1) registration for auction and deadlines;
- 2) placing of bids;
- 3) raising of bids;
- 4) switching of bids between frequency pairs and frequency bands in a way that will not lower the value of placed bids due to the switching;
- 5) definitions of eligibility in each bidding round;
- 6) definitions of the highest standing bid;
- 7) discontinuance or cancellation of the auction due to force majeure or other technical reason;
- 8) other similar rules and technical arrangements of the auction.

## Section 13

### *Participation in the auction*

An enterprise, organisation or association wishing to participate in the auction shall inform Ficora in advance of its participation and pay a participation fee laid down in section 286.

Only one enterprise of a corporate group referred to in Chapter 1(6) of the Accounting Act (1336/1997) is allowed to participate in the auction.

No cooperation concerning the auction is allowed between parties participating in the auction. Prohibited collusion is considered to include:

- 1) agreements concerning the contents of the bids;
- 2) exchange of information concerning the contents of the bids during the auction process; and
- 3) any other contact between the applicants with the aim to affect the process and result of the auction.

## Section 14

### *Openness of information in the auction process*

The name and other information of the enterprise, organisation or association provided in the auction registration are not public before the conclusion of the auction process.

The winning bids are disclosed after the auction process has been concluded. Other bids made by an enterprise, organisation or association are confidential. During the auction Ficora may issue the total amount in EUR of the bids placed on each round. The bidders are also provided with the information on the number of bids made for the frequencies and the amount of the highest bid in EUR.

Other provisions on the openness of information are issued in the Act on the Openness of Government Activities (621/1999).

Notwithstanding secrecy provisions, Ficora shall, at request, disclose information referred to in subsections 1 and 2 necessary for supervision and control to the Ministry of Transport and Communications it has obtained while carrying out duties under this Chapter.

## Section 15

### *Rejection of auction bids*

If the effective control in the enterprise, organisation or association changes before the licence is granted so that the enterprise, organisation or association no longer meets the requirements for entering the auction laid down in section 13, Ficora shall reject the bid made by the enterprise, organisation or association.

Ficora may decide to reject a bid made by an enterprise, organisation or association, if the enterprise, organisation or association has provided fundamentally incorrect information of matters significant to the auction or if it otherwise violates the provisions of Chapter 3 or Finnish Communications Regulatory Authority regulations and, despite being requested to do so, fails to immediately rectify its actions.

The Government may decide to reject a bid made by an enterprise, organisation or association, if it has especially weighty reasons to suspect that granting a licence to the applicant would apparently risk national security.

## Section 16

### *Network licence terms*

Licences are granted by the Government for a fixed period of up to 20 years.

The geographical operating area of the telecommunications operator and the network coverage area may be defined in the licence.

The following terms may be incorporated into a licence:

- 1) requirements promoting the aims in section 1;
- 2) terms supplementing the requirements in section 243 or technical regulations of Ficora specified in section 244 concerning the technical characteristics of communications networks or the efficient use of frequencies;
- 3) terms that concern the amount of capacity reserved for a programming licence holder or cooperation between programming licence holders in matters relating to capacity distribution or electronic programme guides;
- 4) terms on the broadcasting technology or encryption of broadcasts;
- 5) terms regarding the obligation of a licence holder to eliminate any interference caused by its operations to other radio communications complying with the regulations and to compensate the affected parties for the costs they incur in the process of eliminating such interference.

A network licence for providing network service in a terrestrial mass communications network may be granted on the condition that the licence holder ensures that the Finnish Broadcasting Company Ltd and a programming licence holder referred to in section 22 and in section 3(1) of the Provincial Act on Radio and Television Broadcasting Operations (Ålands författningssamling (2011:95), Åland Island Statute Book) obtain the necessary capacity for operating the activity.

By means of the licence terms referred to above, the Government shall ensure that the radio and television operators referred to in subsection 4 have access to the capacity necessary for the operations in all circumstances.

### Section 17

#### *Amendment to the operating licence*

A licence may be altered during its validity period with the consent of the licence holder or otherwise if it is necessary for special reasons due to technical development, international treaty obligations, or an essential change in the operating conditions of an activity subject to a licence, change in market conditions or due to other essential changes.

The terms of an operating licence granted by the Government may be amended upon application by the licence holder. The Government shall, before issuing a decision, inform the licence holder of how re-examination conducted by the Government would influence the operating licence, and allow the licence holder a reasonable time limit to withdraw the application.

### Section 18

#### *Transfer of a licence*

A licence may only be transferred within a group of undertakings in the meaning of Chapter 1, section 6 of the Accounting Act. Such a transfer shall be notified immediately to the Government licencing authority.

If the control in the meaning of section 1(5) of the Accounting Act or the effective control in respect of the licence holder changes, such a change shall be notified immediately to the

licencing authority. The Government shall decide on whether to cancel the licence within two months of the notification.

The Government may decide not to cancel the licence if it is apparent that:

- 1) the requirements for granting a licence pursuant to section 10 have been met; and
- 2) operations continue according to the licence terms.

The licence holder may request the Government to inform in advance of the effect the change in the effective control will have on the licence. The Government shall issue a decision within two months of the application.

If a change in the effective control concerns an undertaking acquisition that in accordance with the Act on Competition Restrictions (948/2011) has to be reported to the Finnish Competition Authority, or in accordance with the Council Regulation (EC) No 139/2004 on the control of concentrations between undertakings (the “EC Merger Regulation”) has to be reported to the European Commission, hereinafter the “*Commission*”, the decision has to be issued by the Government no later than two months after the definitive decision concerning the undertaking acquisition was made.

At the request of a licence holder the Government may transfer a licence granted by the auctioning process referred to in section 11, provided that it has no especially weighty reasons to suspect that the transfer might prevent competition or endanger interference-free radio communications or apparently risk national security. The Government shall make a decision within two months of the reception of a transfer application.

A network licence transfer referred to in subsection 6 may also apply to only a part of the frequencies included in the licence. The licence holder shall explain in the transfer application as to who would be responsible for paying the licence fee provided in section 287 after the transfer.

All rights and responsibilities of the licence holder shall transfer to the new licence holder. Along with the licence transfer the related frequency reservation referred to in section 44 or radio licence referred to in section 39 shall also transfer in part or in full. The transferor of the licence shall immediately notify of the transfer to Ficora.

## Section 19

### *Cancellation of a network licence*

The Government may cancel a network licence in part or in full, if:

- 1) the licence holder has repeatedly and seriously violated the provisions of this Act or the licence terms referred to in section 16;
- 2) the licence holder with a licence referred to in section 6(1) no longer has sufficient economic resources to meet its obligations in view of the nature and extent of the operation;
- 3) the network for which the licence was granted is not used for operations for which the radio frequencies were intended; or
- 4) the licence holder has not started operations in practice referred to in the licence within two years of the start of the licence period, unless the Government, following the licence holder’s application, orders otherwise due to technological development or reasons of overall economic conditions.

A further requirement for cancellation is that the network licence holder, despite being requested to do so, fails, within a reasonable period of at least one month, to rectify its conduct, replenish its economic resources to a sufficient level or prove it has started operations.

The Government may cancel a licence if the effective control in respect of the licence holder changes, except for a transfer within the same group of undertakings as referred to in Section 18(1–2).

## Section 20

### *Leasing of the right to use frequencies*

A licence holder with a licence granted by auction referred to in section 8(2) may lease out the right to use the frequencies referred to in the licence to another enterprise, organisation or association. However, the licence holder continues to be responsible for the obligations referred to in section 39 regarding a radio licence and the frequency reservation referred to in section 44.

Leasing out the right to use the frequencies is subject to Government approval. Upon the licence holder's application, the Government may approve the leasing of access rights, provided that it has no especially weighty reasons to suspect that the leasing would apparently risk national security. The Government shall make a decision on the approval within two months of the arrival of the application.

## Section 21

### *Relinquishing the licence*

A licence holder may relinquish a licence by informing the licencing authority about it before the end of the licence period.

No licence fee referred to in section 287 for the remaining licence period shall be collected from a licence holder that has fully relinquished its licence. The licence fee of a licence holder that has partially relinquished its licence shall be reduced accordingly for the remaining licence period. Licence fees paid prior to relinquishing a licence will not be reimbursed.

## Chapter 4

### **Programming Licence for Digital Television or Radio Broadcasting Operations**

## Section 22

### *Digital television and radio broadcasting subject to a licence*

A programming licence is required for television and radio broadcasting in a digital terrestrial mass communications network excluding operations in which:

- 1) audiovisual content services or radio broadcasts can only be received in an educational institution, hospital, hotel or similar institution, or
- 2) considering the number of programmes or the recurrence of broadcasts the provision of audiovisual contents is not regular and not the main purpose of the service.

Pursuant to section 7 of the Act on the Yleisradio Oy (Finnish Broadcasting Company) (1380/1993), the Finnish Broadcasting Company Ltd has the right to carry out digital public service television and radio broadcasting without a licence.

## Section 23

### *Programming licence application procedure*

A programming licence for digital television or radio broadcasting shall be applied for with Ficora. The application shall include:

- 1) name, contact information and domicile of the applicant;
- 2) statement on the planned duration of the operation;
- 3) statement regarding the transmission technology to be used, maximum capacity required for distribution and availability of capacity;
- 4) statement regarding applicant's solvency and ability to carry out regular television broadcasting;
- 5) statement regarding the requirements for granting a licence referred to in section 26, if the licence is sought for television and radio programmes that are in the public interest;
- 6) public version of the application, which Ficora may publish as prescribed in subsection 2.

If there is free capacity, Ficora shall publish without delay the licence application received and, at the same time, announce the time period during which other applicants may apply for a programming licence. Ficora may also initiate the announcement of available frequency capacity and how to apply for them. A programming licence may be granted no earlier than one month from publication of the application or notification by Ficora.

If there is television broadcasting capacity available for public interest programmes referred to in section 26, Ficora shall publish a notification of the available capacity and also the time period for applying with Ficora.

#### Section 24

##### *Right of the Finnish Broadcasting Company Ltd to television network capacity*

It is the licencing authority's responsibility to ensure that the Finnish Broadcasting Company Ltd obtains for its public service operation the necessary terrestrial television network transmission capacity provided to it by Government Decree pursuant to section 95(1) and that the undertaking is able to use it appropriately.

#### Section 25

##### *Granting a programming licence*

Ficora grants a programming licence referred to in section 22(1) to an applicant:

- 1) who has paid the application fee set out in section 285;
- 2) who is solvent and has the apparent ability to broadcast regularly according to the programming licence;
- 3) for whom there is no justified reason to suspect of violating the provisions of this Act; and
- 4) who has submitted an adequate statement regarding programme distribution management.

If needed, Ficora shall consult with the Ministry of Transport and Communications and act in cooperation with it.

If there is not adequate transmission capacity for all applicants that meet the requirements of subsection 1 or if granting a programming licence could have a significant effect on the general development of the communications market, the licence is granted by the Government. Ficora shall publish the information and notify the applicant that the matter has been transferred to a competent authority. Within two weeks of the transfer, an applicant for a licence may submit an application augmented by the planned programme content to the Government.

If the licence matter was transferred to the Government for decision, the Government shall resolve the matter within two months of the transfer. In special cases the Government may

extend the two-month deadline by eight months at most if this is necessary to ensure that the application procedure is fair, reasonable, clear and transparent or to supplement the information in the applications or for other special reasons. Any extension to the deadline shall be announced publicly.

The Government shall, taking into consideration the television broadcasting of the area in question as a whole, aim at promoting freedom of speech as well as safeguarding the diversity of the provision of programmes and the needs of special groups of the public in a way that best promotes the aims provided in section 1.

## Section 26

### *Granting a licence for public interest television operations*

The capacity needed for public interest television operations is prescribed by Government Decree issued on the basis of section 95(1) to safeguard freedom of speech, the diversity of communications and the multitude of programmes.

Ficora shall follow the procedure in sections 23 and 25(1) in granting a programming licence for public interest multiplexes referred to in subsection 1.

A programming licence must be granted if:

- 1) the applicant has paid the application fee set out in section 285;
  - 2) the broadcasts are freely available;
  - 3) the broadcasts are available throughout Finland with the exception of the Åland Islands Region;
  - 4) the broadcasts contain daily Finnish or Swedish programmes;
  - 5) the broadcasts contain daily news and current affair programmes;
  - 6) the broadcasts contain audio-subtitling and subtitling services referred to in section 211;
- and
- 7) the applicant has submitted an adequate statement regarding programme distribution management.

In preparing the decision, Ficora shall, if needed, consult with the Ministry of Transport and Communications and act in cooperation with it.

If there is not adequate transmission capacity for all applicants that meet the requirements of subsection 3 or if granting a programming licence could have a significant effect on the general development of the communications market, the licence is granted by the Government. Ficora shall publish the information and notify the applicant that the matter has been transferred to a competent authority. Within two weeks of the transfer, an applicant for a licence may submit an application augmented by the planned programme content to the Government.

The Government shall grant a licence to the applicant who best meets the requirements laid down in subsection 3 and section 25(1) and (5). The Government shall decide on the matter within the time period referred to in section 25(4).

A public interest programming licence may only be granted to one undertaking of a group referred to in Chapter 1(6) of the Accounting Act.

It is the licencing authority's duty to oversee that the public interest programming licence holder will have adequate terrestrial television capacity necessary for the broadcasting.

## Section 27

### *Programming licence terms*

A programming licence may be granted for a maximum period of ten (10) years.

A programming licence holder who has been granted a programming licence in a multiplex for public interest television broadcasting shall meet the requirements regarding the diversity of television programming referred to in section 26(3) throughout the validity period of the licence.

The Government may incorporate terms into a programming licence that concern:

- 1) geographical coverage of audiovisual programmes;
- 2) daily broadcasting time; or
- 3) transmission technology and capacity.

The Government shall have the right to attach terms to the licence that relate to the programme service and are necessary to safeguard the diversity of programmes and the needs of special groups of the public.

## Section 28

### *Temporary programming licence*

Ficora shall grant a programming licence for short-term television or radio broadcasting operations in a digital terrestrial mass communications network without following the procedure referred to in sections 23 and 25, where there is no justifiable reason to suspect that the applicant will violate the provisions of this Act and:

- 1) the operations do not last more than three months; or
- 2) weekly operations do not last more than eight hours.

An operator holding a licence referred to in subsection 1(1) may not be granted a licence for successive three-month periods.

Ficora may grant a licence referred to in subsection 1(2) for a maximum period of one year.

## Section 29

### *Amendments to a programming licence*

The licencing authority may alter a programming licence during its validity period upon request by or with the consent of the licence holder or otherwise if it is necessary for special reasons due to technical development, international treaty obligations, an essential change in the operating conditions of an activity subject to a licence, changes in market conditions or other essential changes.

## Section 30

### *Transfer of a programming licence*

A programming licence may only be transferred within a group of undertakings in the meaning of Chapter 1(6) of the Accounting Act. Such a transfer shall be notified immediately to Ficora.

If the control in the meaning of Section 1(5) of the Accounting Act or the effective control in respect of the licence holder changes, such a change shall be notified immediately to the licencing authority, which shall decide within two months from the notification whether to cancel the licence due to the change in the effective control.

The licencing authority may decide not to cancel the licence if it is apparent that:

- 1) the requirements for granting a licence pursuant to Sections 25 and 26 have been met; and
- 2) operations continue according to the licence terms.

The programming licence holder may request from the licencing authority to be informed in advance of the effect the change in the effective control will have on the licence. The licencing authority shall issue a decision within two months of the application's arrival.

If a change in the effective control concerns an undertaking acquisition that in accordance with the Act on Competition Restrictions has to be reported to the Finnish Competition Authority, or in accordance with the EC Merger Regulation has to be reported to the Commission, the decision has to be issued by the licencing authority no later than two months after the definitive decision concerning the undertaking acquisition was made.

### Section 31

#### *Lapse of a programming licence*

A programming licence granted for television or radio broadcasting ceases to be valid if no regular activity in accordance with the licence has been started within six months from the first date of the licence period or if regular broadcasting has been interrupted for a period exceeding 30 days. Broadcasting can be considered to meet the licence requirements only if operations are carried out in all the frequencies or regions to which the licence entitles. Ficora shall notify the licence holder of the lapse. If amendments are made to a frequency block or frequency band in the programming licence and no operations have been started within six months from the entry into force of the amendment regarding the band that was amended, the programming licence ceases to be valid in terms of the amendments.

If there is a particularly weighty reason related to the operating requirements, the licencing authority may grant a permission to deviate from the provisions laid down in subsection 1. The licence holder shall apply for an exceptional permit from the licencing authority before the licence lapses.

### Section 32

#### *Cancelling of a programming licence*

The licencing authority may cancel the licence in part or in full, if:

- 1) the programming licence holder has repeatedly and seriously violated the provisions of this Act or the licence terms referred to in sections 27 or 37;
- 2) the licence holder no longer has sufficient economic resources to meet its obligations in view of the nature and extent of the operation.

A further requirement for cancellation is that the licence holder, despite being requested to do so, fails to rectify its conduct or replenish its economic resources to a sufficient level within a reasonable period of at least one month.

The licencing authority may cancel a programming licence if the effective control in respect of the licence holder changes, except for a transfer within the same group of undertakings as referred to in section 30(1)–(2).

The licencing authority may cancel the licence in part or in full, if this is necessary due to a change in the frequency allocation plan of frequencies allocated to operations subject to a licence.

If the programming licence holder is declared bankrupt, the licence shall become invalid immediately.

### Section 33

#### *Relinquishing the programming licence*

A programming licence holder may relinquish the licence by notifying the granting licencing authority before the end of the licence period.

## Chapter 5

### **Programming Licence for Analogue Radio Broadcasting Operations**

#### Section 34

##### *Analogue radio broadcasting subject to a licence*

A programming licence is required for radio broadcasting operations in an analogue terrestrial mass communications network. The programming licence shall be applied for with Ficora.

Analogue radio broadcasting operations that last a maximum of three months do not require a programming licence. In addition, minor radio broadcasting operations in a limited area may be carried out without a programming licence.

Pursuant to section 7 of the Act on the Yleisradio Oy (Finnish Broadcasting Company), the Finnish Broadcasting Company Ltd has the right to carry out analogue public service radio broadcasting without a licence.

#### Section 35

##### *Application procedure for a programming licence for analogue radio broadcasting*

Ficora shall publish a notice declaring programming licences for analogue radio broadcasting open for application, if there are open frequencies intended for radio broadcasting subject to a licence pursuant to a Finnish Communications Regulatory Authority regulation issued by virtue of section 96. At the same time, Ficora shall announce the time period during which applicants must submit their application to Ficora.

The application shall include:

- 1) name, contact information and domicile of the applicant;
- 2) statement on the planned duration of the operation;
- 3) statement regarding applicant's solvency and ability to carry out regular radio broadcasting;
- 4) frequency or frequency unit applied for; and
- 5) statement regarding the planned coverage area.

#### Section 36

##### *Granting a licence for analogue radio broadcasting operations*

Ficora shall grant a programming licence referred to in section 34 to an applicant:

- 1) who has paid the application fee set out in section 285;
- 2) who is solvent and has the apparent ability to broadcast regularly according to the programming licence;
- 3) for whom there is no justified reason to suspect the applicant of violating the provisions of this Act.

If needed, Ficora shall consult with the Ministry of Transport and Communications and act in cooperation with it.

If there are not adequate frequencies for all applicants that meet the requirements of subsection 1 or if granting a programme licence could have a significant effect on the general development of the communications market, the licence is granted by the Government. Ficora shall publish the information and at the same time notify the applicant that the matter has been transferred to a competent authority. Within two weeks of the transfer, an applicant for a licence may submit an application augmented by the planned programme content to the Government.

The Government shall decide on the matter within the time period referred to in section 25(4).

When declaring licences open for application and granting them, the Government licencing authority shall, taking into consideration the radio broadcasting of the area in question as a whole, aim at promoting freedom of speech as well as safeguarding the diversity of the provision of programmes as well as the needs of special groups of the public as set forth in section 1.

### Section 37

#### *Terms for a programming licence for analogue radio broadcasting*

The licencing authority shall grant the programming licences for a limited time, for a maximum period of ten (10) years.

The programming licence specifies the frequency block the licence holder may use to carry out operations subject to a licence.

The Government may incorporate terms into a programming licence that concern audio coverage area and daily broadcasting time.

The Government has the right to attach to the licences terms relating to the programme service that are necessary to safeguard the diversity of programmes and the needs of special groups of the public.

In addition, the provisions of section 29 on amending, section 30 on transferring, section 31 on lapsing, section 32 on cancelling and section 33 on relinquishing a programming licence shall also apply.

### Section 38

#### *Right of the Finnish Broadcasting Company Ltd to analogue radio network frequencies*

It is the licencing authority's responsibility to ensure that the Finnish Broadcasting Company Ltd obtains for its public service operation the necessary radio network frequencies granted to it by Government Decree pursuant to section 95(1) and that the company is able to use them appropriately.

## Chapter 6

### **Radio Licence**

#### Section 39

##### *Radio licence*

A radio licence from Ficora is required for the possession and use of radio transmitters, unless otherwise laid down in this section.

A radio licence for radio frequencies allocated to be used by electronic communications services shall be granted within six weeks after Ficora has received all documents necessary to resolve the matter. When granting a radio licence pursuant to so section 40, Ficora may extend the six-week deadline by eight months at most if this is necessary to ensure that the application procedure is fair, reasonable, clear and transparent or to supplement the information in the applications or for other special reasons. Any extension to the deadline shall be announced publicly.

No radio licence is required for the possession and use of a radio transmitter if the radio transmitter functions only on the collective frequency designated for it by Ficora and if its conformity has been confirmed in the manner laid down in this Act. Ficora may issue regulations restricting the use of such radio transmitters if this is necessary to ensure the efficient and appropriate use of frequencies and for the prevention or removal of interference.

Ficora may regulate that a written register notification that is valid no longer than five years for the possession and use of a radio transmitter referred to in subsection 3 must be submitted.

No radio licence is required for the possession of a radio transmitter if the radio transmitter has been permanently rendered technically inoperable for radio communication or if it is otherwise evident that the possession is not for the purpose of radio communication.

Ficora issues regulations on the procedure by which approval as a licence referred to in subsection 1 can be given to licences, other authorisations, or markings indicating the right to use a radio transmitter, which have been issued by the competent authority of another country.

The Finnish Defence Forces and the Finnish Border Guard do not require a radio licence for the possession and use of a radio transmitter for the sole purpose of military defence.

Police officers of a foreign State do not need a radio licence for the possession and use of a radio transmitter to be used in pursuit referred to in Article 41, or in cross-border surveillance referred to in Article 40, of the Convention implementing the Schengen Agreement of 14 June 1985 on the gradual abolition of checks at the common borders signed at Schengen by the Benelux countries, the Federal Republic of Germany and the French Republic (Finnish Treaty Series 23/2001).

Representatives of foreign States do not need a radio licence for the possession and use of a radio transmitter to be used during a state or working visit if Ficora has been notified of the possession and use of the radio transmitter and has been given the information requested by it on the configuration of the radio transmitter.

Personnel of a foreign State as referred to in the Tampere Convention on the Provision of Telecommunication Resources for Disaster Mitigation and Relief Operations (Finnish Treaty Series 15/2005) do not need a radio licence for the possession and use of a radio transmitter to be used in relief operations and disaster mitigation as referred to in the Convention if Ficora has been notified of the possession and use of the radio transmitter and has been given the information requested by it on the configuration of the radio transmitter and the intended use.

## Section 40

### *Granting a radio licence*

Ficora grants radio licences. The application shall include the information necessary for processing the application as requested by Ficora.

If granting an individual radio licence could have an effect on the general development of the communications market, Ficora shall consult with the Ministry of Transport and Communications and act in cooperation with it. If granting a radio licence could have a

significant effect on the general development of the communications market, the licence is granted by the Government.

Radio licences are granted for a maximum of ten (10) years at a time. However, a radio licence for a radio transmitter to be used in providing telecommunications that require a licence as referred to in section 6, a licence for a radio transmitter to be used for digital television and radio broadcasting as referred to in section 22 or a radio transmitter to be used for analogue radio broadcasting referred to in section 34 are granted for up to 20 years at a time.

Ficora shall grant a radio licence to an operator that was granted a licence by auction referred to in section 11 or a transferee of such a licence after the licence holder has paid the first instalment of the licence fee referred to in section 287.

A new radio licence may be granted to an operator who has received a radio licence for operations referred to in section 34(2) lasting no longer than three months for areas with overlap of coverage, even partial overlap, at the earliest two months from expiry of the previous licence.

A radio licence for minor radio broadcasting in a limited area referred to in section 34(2) shall be granted for a maximum of one year at a time.

#### Section 41

##### *Terms for granting a radio licence or frequency reservation*

Unless otherwise provided in subsections 2–4, a radio licence or a frequency reservation that meets the requirements laid down in section 44 must be granted if:

1) the licence or frequency reservation applied for pertains to a frequency band which, pursuant to a Government Decree issued by virtue of section 95(1) or to an regulation issued by Ficora by virtue of section 96(1), has been allocated for the use referred to in the application;

2) it is possible to allocate technically appropriate radio frequencies within the frequency band for use or reservation by the applicant;

3) the radio transmitter's conformity has been confirmed; and

4) Ficora has no justifiable cause to suspect that the applicant will violate the provisions or regulations concerning radio communications or the radio licence terms.

If there is an unpaid sum concerning the applicant's previous radio licence or frequency reservation that pertains to the same type of equipment as the new licence or reservation being applied for, and the overdue amount is not insignificant, the licence or reservation may be denied.

If the applicant aims to provide telecommunications subject to a licence as referred to in section 6, to pursue television broadcasting that requires a licence as referred to in section 22 or radio broadcasting referred to in section 34, no radio licence or frequency reservation can be granted unless the applicant has the necessary network or programming licence.

If only a proportion of applicants can be granted a radio licence or frequency reservation due to a scarcity of radio frequencies, the licence or reservation shall be granted to those applicants whose operations best promote the purposes of this Act laid down in section 1.

Applicants for or holders of a radio licence, as well as other telecommunications operators if necessary, are obliged to provide Ficora with the information requested by it that is necessary in making the licence decision referred to in subsection 4.

#### Section 42

##### *Licence terms*

Ficora may incorporate terms into the radio licence if these are necessary to ensure the efficient and appropriate use of frequencies, efficiency of the communications markets and for the prevention or removal of interference. In the licence terms, Ficora may further regulate that the radio licence be kept in the immediate vicinity of the radio transmitter.

The licence terms for radio transmitters presenting a considerable risk of causing interference may include a requirement that such transmitters must not be taken into use until this has been approved by Ficora on the basis of an inspection. Ficora will issue regulations on the types of radio transmitter deemed to present a considerable risk of causing interference and will issue further regulations on the inspection procedure and on the adjustment of transmitters and other comparable requirements to be met before approval can be given for taking the equipment into use.

#### Section 43

##### *Consulting obligation*

The parties representing users of communications services and telecommunications operators shall be reserved an opportunity to present their views on granting a radio licence for general telecommunications, on a regulation issued by Ficora pursuant to section 39(3), on a Government Decree issued pursuant to section 95(1) and on a Finnish Communications Regulatory Authority regulation issued pursuant to section 96(1) prior to their issuance. The parties representing users of communications services and telecommunications operators shall be reserved an opportunity within one month to present their views on any amendment to a rule, decision or regulation. Exceptions to the one-month time limit can be made in exceptional circumstances. The consulting obligation does not apply if the proposed amendments are minor and they are agreed upon with the radio licence holder.

#### Section 44

##### *Radio frequency reservations*

An application may be made to reserve the radio frequencies needed for use of a radio transmitter before applying for a radio licence if this is justified for planning or implementation of a radio system or if the acquisition of a radio transmitter necessitates advance information on the radio frequencies available.

The frequency reservation is granted for a maximum of one year at a time. The frequency reservation will expire if a radio licence is granted for the use of a radio transmitter referred to in section 39.

#### Section 45

##### *Granting a frequency reservation*

Radio frequency reservations are granted by Ficora. The application shall include information requested by Ficora and necessary for processing the application.

Ficora will grant a holder of a network licence referred to in section 6 or a programming licence referred to in section 34 a frequency reservation without application upon validity of the licence.

If the validity of a radio licence for operations in accordance with a network licence referred to in section 6 and a programming licence referred to in section 34 expires while the licence is still valid, the frequency reservation becomes valid again without an application.

#### Section 46

##### *Renewal of a radio licence without application*

Ficora may renew a radio licence without application by the licence holder for a maximum of ten years at a time, if the licence holder has given written consent to the renewal.

Ficora may not renew a radio licence if the requirements of section 41 for granting a licence are not met or the requirements of section 49 for cancelling a radio licence are met.

#### Section 47

##### *Amending a radio licence*

During the validity period of a radio licence, Ficora may amend the licence terms without the consent of the licence holder if this is essential because of a change in the confirmed allocation plan for a radio frequency, regulations on frequencies or international treaty obligations, or if it is justified for the prevention or removal of interference in radio communications or on the basis of the radio frequency band's primary purpose of use.

For a network licence holder who has been granted a licence referred to in section 6(1), radio licence terms can also be amended if this is necessary due to a change in the economic or technical environment of the telecommunications operator or due to a new telecommunications operator entering the market or other change in market conditions that will necessitate a reorganisation of radio frequency use.

The terms of a radio licence may also be amended by application of a radio licence holder. If a radio licence holder for an electronic communications service applies for an amendment to radio licence terms, Ficora shall, before issuing a decision, inform the licence holder of how re-examination would influence the radio licence, and allow the licence holder a reasonable time limit to withdraw the application.

If the technology used in the provision of electronic communications services is not specified in the licence, the licence holder shall notify Ficora of the technology to be used prior to commencing operations. If the licence holder changes the technology used, it shall notify Ficora prior to implementing any changes.

#### Section 48

##### *Transfer and lease of a radio licence*

A radio licence for other than network or programming operations subject to a licence may be transferred. However, the transfer of a radio licence may be prohibited in the licence if the use of the radio transmitter requires a proficiency certificate referred to in section 265 or if the licence transfer would have a significant effect on the general development of the communications market.

Such transfer shall be notified without delay to Ficora. Ficora may within a month of the reception of the notice reject the transfer of a radio licence if it is obvious that the requirements of section 41 for rejecting a radio licence are met.

Relinquishing a licence to someone to whom a licence holder leases out or otherwise temporarily grants use of its radio transmitter is not considered transfer of a radio licence. In

such cases the licence holder remains responsible for ensuring that the radio transmitter is used in accordance with the licence terms.

If the licence holder merges with another limited liability company as referred to in the Companies Act (624/2006), the radio licence will be transferred to the receiving undertaking. If the business activity performed by the licence holder and to which the radio licence pertains is given up completely, the radio licence will be transferred to the receiving party. If the holder of the radio licence is declared bankrupt and the administration of the bankrupt's estate notifies Ficora without delay that the estate is to continue the business activity of the licence holder, the radio licence will be transferred to the bankrupt's estate.

#### Section 49

##### *Cancellation of radio licences and frequency reservations*

Ficora may, in full or in part, cancel a radio licence or a frequency reservation, if:

1) the licence holder, despite the measures laid down in sections 330–332, seriously or repeatedly violates this Act or the provisions, regulations or licence terms issued by virtue of it in a way that is significant in terms of maintaining interference-free radio communications, or significantly violates the obligation to pay for a radio licence or radio frequency reservation;

2) the licence holder, deliberately or through negligence, transmits a false distress signal referred to in section 10 of Chapter 34 of the Criminal Code (39/1889), or disturbs or harms safety radio communications in some other way;

3) the licence holder does not use the radio frequencies allocated in the licence and fails to start using them within a reasonable time limit set by Ficora;

4) a radio transmitter uses radio frequencies in an inappropriate way on account of its technical characteristics;

5) the requirements referred to in section 96(6) for the secondary use of a frequency band in use of a licence holder are no longer being met;

6) a licence granted for television and radio broadcasting ceases to be valid;

7) a licence referred to in section 6 ceases to be valid; or

8) international treaties binding on Finland require such cancellation.

No separate appeal can be made against the decision setting a time limit referred to in subsection 1(3) above.

#### Section 50

##### *Decision on interference protection*

Ficora may, upon application by a radio frequency user, decide on measures to protect a fixed radio receiving station against interference if the decision can be made without causing unreasonable economic or other damage to other users of radio frequencies in comparison with the advantage to be obtained through the protection.

In the decision, which will remain in force for up to 10 years at a time, terms may be imposed on the construction, location and use of the station being protected. The decision may be cancelled or its terms amended if there is a significant change in the circumstances prevailing when the decision was made.

### PART III

## IMPOSING OBLIGATIONS AND UNIVERSAL SERVICE

### Chapter 7

#### Grounds for Obligations

##### Section 51

###### *Market definition*

Ficora shall define the relevant communications markets at regular intervals and carry out a market analysis as laid down in section 52.

##### Section 52

###### *Market analysis and a decision on significant market power*

At regular intervals, Ficora shall carry out a market analysis of relevant wholesale and retail markets in order to assess the competitive situation. A market analysis shall be conducted no later than two years after the Commission's Recommendation on relevant markets if the market concerned has not been defined earlier, and at least at three-year intervals, if the market concerned has been previously defined. The three-year time limit may be extended for up to three additional years, if such request is submitted by Ficora to the Commission, and the Commission does not object to the request within one month of receiving it.

In the case of transnational markets, Ficora shall, while conducting a market analysis, work in cooperation with the regulatory authority of the State concerned belonging to the European Economic Area, hereinafter "*EEA State*".

By decision, Ficora shall declare an operator to be an operator with significant market power if, on the basis of market analysis, it is seen in a particular market to exert economic influence, alone or with others, that allows it to operate, to a considerable extent, independently of competitors, consumers or other users. If an operator has significant market power in a particular market, it may also be considered to have the same position in related markets if it is able to extend its market power from the first markets to related markets and thereby strengthen its market power in those markets.

Ficora shall amend a decision on significant market power if a market analysis shows that significant changes have occurred in the competitive situation in the market. By decision, Ficora shall remove an operators' status in certain markets if a market analysis reveals that the operator is no longer considered to be an operator with significant market power in the meaning of subsection 3.

##### Section 53

###### *Obligations imposed on an operator with significant market power in the wholesale markets*

By issuing a decision accordingly, Ficora shall impose on an operator with significant market power obligations referred to in sections 56, 61, 65 and Chapter 10 if they are needed to eliminate barriers to competition or to promote competition in the relevant markets in question.

The obligations referred to in subsection 1 shall be in correct proportion to the aim being addressed, and in imposing them, the following in particular shall be taken into account:

- 1) the appropriateness of access rights in technical and economic terms, taking into account the degree of development of the markets and the type of access rights;
- 2) feasibility of the access rights, taking into account the capacity available;
- 3) the requirements concerning data protection and information security;
- 4) the investment made and risks taken by the operator with significant market power;
- 5) the need to safeguard competition in the long term;
- 6) relevant industrial property rights and copyrights;
- 7) the provision of services at European level.

In its decision regarding significant market power, Ficora shall assess the impact the obligations imposed on the operator will have on the markets.

Ficora shall amend a decision referred to in subsection 1 if significant changes occur in the matters referred to in subsections 1 or 2 or in the competitive situation in the markets.

#### Section 54

##### *Obligations imposed on an operator with significant market power in a retail market*

If Ficora, following a market analysis, finds that no competition exists in that defined retail market and that the obligations imposed on an operator with significant market power in the wholesale market do not sufficiently promote competition in the retail market, , Ficora shall impose, in order to secure efficient competition, by decision and where necessary, additional obligations referred to in subsection 2 on the retail market operator with significant market power.

In order to achieve the aim referred to in subsection 1, Ficora may order that an operator with significant market power operating in a retail market:

- 1) may not charge unreasonable prices;
- 2) may not prevent access to the market or restrict competition by unjustifiably low pricing;
- 3) may not favour certain users in an unwarranted manner;
- 4) may not tie a specific product or service to other products or services.

Any additional obligation imposed shall be in correct proportion to the aim being addressed.

Ficora shall amend a decision referred to in subsection 1 if there are significant changes in the competitive situation in the market.

#### Section 55

##### *Obligations imposed on an operator other than with significant market power*

By a decision, Ficora may impose on a telecommunications operator or an undertaking referred to in section 57(2) an obligation to relinquish access rights referred to in section 57 or an interconnection obligation referred to in section 62, as well as other obligations related to relinquishing of access rights and interconnection referred to in sections 67–69, 72 and 74. The imposition on the obligations can be based on other reasons than significant market power provided they meet the requirements laid down later in the Act.

The obligations imposed shall be unbiased, fair, proportionate and non-discriminatory.

Ficora shall amend a decision referred to in subsection 1 if significant changes occur in the circumstances that required the obligation to be imposed.

## **Obligations to Relinquish Access Rights**

### Section 56

#### *Obligation to relinquish access rights based on significant market power*

By a decision under section 53, Ficora may impose an obligation on an operator with significant market power to relinquish reasonable access rights to a communications network, or to an associated operation or service related to communications networks or services. Such an access right may include the following obligations:

- 1) relinquish access rights to communications networks and network elements;
- 2) relinquish access rights to communications network capacity;
- 3) provide co-location and other shared use of associated facilities, including relinquishing access rights to cable ducts, equipment facilities or radio mast antenna sites;
- 4) relinquish access rights to such associated services that allow the provision of a communications network or service or that support the provision of services in such a network or through such a service;
- 5) provide facilities for roaming on mobile networks and other services needed to interoperability of end-to-end services to users;
- 6) offer the user the possibility to access the services of a telephone service provider available in the telecommunications area via both a selection code per call and pre-selection that may be overridden with a selection code, if necessary;
- 7) relinquish other reasonable access rights comparable to those referred to in subsection 1.

Ficora may impose time limits related to the obligation to relinquish access rights referred to in subsection 1.

The obligation referred to in subsection 1 does not apply, however, if relinquishing access rights endangers data protection or national security or if it is technically inappropriate from the viewpoint of the operator or is otherwise unreasonable.

### Section 57

#### *Obligation to relinquish access rights based on other than significant market power*

By a decision under section 55, Ficora may impose an obligation on a telecommunications operator to relinquish access rights on other grounds than significant market power:

- 1) to another telecommunications operator of a subscriber connection or part thereof, for parallel use of a subscriber connection or transmission capacity as well as minor equipment facility if the operator controls user connections to the communications network and if the imposition of the obligation is necessary to ensure the benefit to users;
- 2) to a digital television or radio electronic programme guide if this is necessary to ensure that information on digital television and radio broadcasts covered by the transmission obligation referred to in section 227 are made available to the public in an electronic programme guide.
- 3) to a programming interface for a digital television or radio system if it is necessary to ensure that information on digital television and radio broadcasts covered by the transmission obligation referred to in section 227 can be connected to the programming interface used.
- 4) to a cable duct or radio mast antenna site or associated equipment facility if the construction of a parallel cable duct or radio mast is not appropriate for reasons of environmental protection, nature conservation or land use planning or other comparable reason.

Ficora may impose an obligation to lease out a radio mast antenna site and equipment facility referred to in subsection 1(4) and on the grounds referred to in subsection 1(4) on another than a telecommunications operator, if the operator leases out the antenna site and associated equipment facility to another telecommunications operator.

The obligation referred to in subsection 1 does not apply, however, if relinquishing access rights endangers national security or data protection or if it is technically inappropriate from the viewpoint of the operator or is otherwise unreasonable.

## Section 58

### *Co-location and sharing*

Ficora may oblige the network operator to allow sharing and co-location of a property for other telecommunications operators if a network operator:

- 1) has placed a telecommunications cable or radio mast, related equipment, minor structures or poles referred to in section 233 in an area owned or controlled by another;
- 2) has placed a mobile network base station, related equipment or cable in a building owned or controlled by another party as referred to in section 233; or
- 3) has affixed necessary equipment to buildings and structures in a manner referred to in section 236;

Ficora may impose an obligation referred to in subsection 1, if the construction and location cannot otherwise be organised satisfactorily and at a reasonable cost. A further requirement for imposing the obligation is that it shall not prevent or unreasonably restrict the network operator's own use.

In the event that the parties concerned do not agree on costs related to sharing or co-location, Ficora may issue further regulations on apportioning the costs.

## Section 59

### *Own use or reasonable future needs*

Notwithstanding any obligation imposed under section 56 or 57, the obligation shall not apply if the object of the access rights is used by the telecommunications operator itself or by an undertaking referred to in section 57(2), or if it is necessary for the reasonable own future needs of these undertakings.

## Chapter 9

### **Interconnection**

## Section 60

### *Obligation to negotiate*

*Interconnection* means the physical and functional connecting of different communications networks to ensure that users can access communications networks and communications services of other telecommunications operators.

A network operator has an obligation to negotiate in good faith on interconnection with another network operator.

## Section 61

### *Interconnection obligations of an operator with significant market power*

By a decision under section 53, Ficora may impose an obligation on an operator with significant market power to connect a communications network to the communications network of another telecommunications operator (*interconnection obligation*). An operator shall thus negotiate on interconnection with the other network operator under terms and conditions consistent with interconnection obligations imposed on it by virtue of said decision.

In addition to the interconnection obligation referred to in subsection 1, Ficora may impose an obligation to to make their services interoperablewith services of another telecommunications operator to the extent necessary.

A telecommunications operator on which Ficora has imposed an interconnection obligation shall comply with the provisions of sections 63 and 64 unless an agreement can otherwise be reached on the content of the interconnection obligation.

## Section 62

### *Interconnection obligations of a telecommunications operator*

By a decision under section 55, Ficora may impose on a telecommunications operator:

1) an interconnection obligation referred to in section 61, if the telecommunications operator controls user connections to the communications network and if the imposition of the obligation is necessary to ensure the interconnection of communications networks; and

2) in addition to the interconnection obligation referred to in subsection 1, an obligation to make their services interoperable with services of another telecommunications operator to the extent necessary.

## Section 63

### *Establishing interconnection*

Interconnection shall be established at the point specified by the network operator requesting the interconnection unless this is technically inappropriate or unreasonable from the perspective of the telecommunications operator with the obligation to establish the interconnection.

Interconnection shall be established as quickly as is technically possible.

The charge for the use of the telephone network of the network operator requesting the interconnection that is collected from the telecommunications operator with the obligation to establish the interconnection shall not be unreasonable.

## Section 64

### *Interconnection of international telephone networks*

International calls shall be routed to an international telecommunications service via a long-distance telecommunications service selected by the telecommunications operator providing the international service.

All providers of public international telephone services shall provide access to all local telephone services.

## Section 65

*Charge for the use of a telephone network*

A telecommunications operator with an interconnection obligation shall specify a separate price for the charges collected from another telecommunications operator for use of the telephone network to form a connection where this connection is between the telephone network of the telecommunications operator and the telephone network of another telecommunications operator (*call origination*) and the connection is established:

- 1) to a toll-free number; or
- 2) to a service number or national subscriber number.

By a decision under section 53, Ficora may impose an obligation on an operator with significant market power to charge separately for call origination other than referred to in subsection 1.

A telecommunications operator with an interconnection obligation shall specify a separate price for the charges collected from another telecommunications operator for the use of the telephone network to form a connection, where this connection is from the telephone network of another telecommunications operator to the telecommunications operator's own telephone network (*call termination*).

## Section 66

*Prohibition on bulk discounts*

The charge collected for interconnection of telephone networks shall not be dependent on the amount of telecommunications transmitted.

## Chapter 10

**Other obligations**

## Section 67

*Technical obligations related to the obligation to relinquish access rights*

In a decision concerning an obligation to relinquish access rights and interconnection, Ficora may impose on a telecommunications operator and an operator referred to in section 57(2) such technical obligations or conditions on the use of the obligation to relinquish access rights that are necessary for the technical implementation of the obligation to relinquish access rights.

## Section 68

*Non-discrimination obligation*

In a decision under section 53 or 55, Ficora may impose on a telecommunications operator and an undertaking referred to in section 57(2) a non-discrimination obligation regarding the relinquishing of access rights or interconnection.

*Non-discrimination* means an obligation to apply the same price structure (*non-discriminatory pricing*) or terms (*non-discriminatory terms*), which treats telecommunications operators in similar situations equally. If a telecommunications operator or an undertaking referred to in section 57(2) uses a certain service itself or provides it to a subsidiary or other similar party, it shall also offer an equivalent service on equivalent terms to any competing telecommunications operator.

## Section 69

### *Transparency obligation*

By a decision under section 53 or 55, Ficora may impose an obligation on a telecommunications operator or an undertaking referred to in section 57(2) to publish relevant information with regard to relinquishing access rights or interconnection, such as information on service delivery terms, technical specifications, tariff information and agreements made, to the extent that it does not include business secrets or confidential information.

If a non-discrimination obligation referred to in section 68 has been imposed on a telecommunications operator or an undertaking referred to in section 57(2), an obligation to publish a reference offer related to access rights or interconnection may also be imposed. The reference offer shall be sufficiently detailed so that requesters of access rights will not have to pay for products that are not necessary for the service.

Notwithstanding the information in subsections 1 and 2, if an obligation to relinquish access rights to its communications network or part thereof, Ficora shall impose on it an obligation to publish a reference offer. Such reference offer shall contain at least the significant information related to relinquishing access rights.

## Section 70

### *Accounting separation obligation*

By a decision under section 53, Ficora may impose an obligation on an operator with significant market power to separate in its accounts regulated operations from the other service provision activities of the telecommunications operator, if it is necessary for the monitoring of the compliance with non-discriminatory pricing.

In its decision, Ficora shall itemise the products and services that are the objects of separation, the information to be clarified by means of the accounting separation procedures and the main features of the procedures.

The telecommunications operator's auditors shall inspect the accounting separation calculations and give a separate opinion on them to the telecommunications operator.

The accounting separation calculations and the auditor's opinion shall be submitted to Ficora.

## Section 71

### *Pricing and other terms for relinquishing access rights and for interconnection*

By a decision under section 53, Ficora may impose obligations related to access rights and interconnection pricing on an operator with significant market power, where a market analysis in the meaning of section 52 indicates that a lack of effective competition means that the operator concerned may sustain prices at an excessively high level, or may apply a price squeeze, to the detriment of end-users.

The obligation referred to in subsection 1 above may include pricing of a regulated product or service and price setting. Ficora may impose on an operator with significant market power with regard to relinquishing access rights and for interconnection an obligation regarding:

- 1) cost-oriented pricing;
- 2) pricing based on a reduction of the retail price (retail minus); or
- 3) fair and reasonable pricing.

A cost-oriented price means a price that is reasonable taking into account the costs of an efficient operation in producing regulated products or services. The prices available in comparable competitive markets may be taken into account in defining the cost-oriented price.

If a cost-oriented pricing obligation referred to in subsection 2(1) has been imposed on a telecommunications operator with significant market power, Ficora may also impose on the operator of significant market power an obligation regarding the pricing of a regulated product or service not to charge more than the maximum price set in advance by Ficora. A maximum price may be set in cases where pricing against the pricing obligation would be detrimental to said markets and the obligation referred to in subsection 2(1) would not be sufficient to remove barriers to competition or promote competition in these markets. The maximum price shall be set for a maximum period of three years.

The pricing obligations referred to in subsections 1–4 shall:

- 1) promote efficiency and sustainable competition in the communications markets;
- 2) create benefits for users of communications services;
- 3) be proportionate in relation to their aims;
- 4) support enterprises' investments in the future; and
- 5) allow a reasonable return on capital tied to regulated operations.

## Section 72

### *Pricing obligation not based on significant market power*

In a decision under section 55, Ficora may impose on a telecommunications operator and an undertaking referred to in section 57(2) pricing obligations referred to in section 71(2)–(5) when relinquishing access rights or interconnection, if it is necessary to ensure the relinquishing of access rights or interconnection.

## Section 73

### *Pricing clarification obligation and cost accounting*

If, under this Act or in a decision of Ficora, a cost-orientation or non-discriminatory pricing obligation has been imposed on a telecommunications operator or an undertaking referred to in section 57(2) or section 196, the operator has an obligation to prove that the price charged for its product or service is cost-oriented and non-discriminatory when a pricing matter is being handled by Ficora.

Ficora does not assess the compliance with pricing regulations retroactively.

In assessing the compliance with the pricing obligation, Ficora is not bound to the cost calculation principles used by the telecommunications operator.

In assessing the pricing obligation, Ficora may, in an individual case, decide on the maximum price to be charged.

## Section 74

### *Cost-accounting procedures*

By a decision under section 53 or 55, Ficora may impose an obligation on a telecommunications operator or an undertaking referred to in section 57(2) to use cost-accounting procedures if this is necessary in order to supervise the operator's pricing obligation.

An operator may itself select the cost-accounting procedures it uses. The operator shall draw up for Ficora a description of the cost-accounting procedures that show at least the main cost categories and the rules by which the costs are allocated.

Ficora may issue further regulations on data gathered by means of the cost-accounting procedures or on the description of the procedure. The regulations may relate to:

- 1) the information necessary to demonstrate a link between the cost-accounting procedure and pricing;
- 2) the content and form of the description of the cost-accounting procedure;
- 3) the submission of the description of the cost-accounting procedure to Ficora.

## Section 75

### *Supervision of cost-accounting procedures*

An operator shall decide on an approved and independent auditor referred to in the Auditing Act (459/2007) to inspect the cost-accounting procedures of the operator in conjunction with the operator's auditing process. The auditor must prepare a report on the inspection. The operator shall submit the report to Ficora by the end of August following the end of the operator's financial period.

Ficora may issue further regulations on the type of data and material that needs to be included in the auditor's report. The regulations may relate to:

- 1) general information about the operator to be audited, and the auditing method;
- 2) material that shall be audited;
- 3) criteria for determining whether the operator meets the obligations imposed on its activities;
- 4) attachments to the auditor's report;

Ficora shall publish an annual report on how operators have complied with the cost-accounting procedures.

## Section 76

### *Obligation for functional separation*

By a decision under section 53, Ficora may impose an obligation on an operator with significant market power to separate an operational entity from other business activities of the telecommunications operator if important and persisting market failures have been identified in the market of the network service concerned and if the obligations referred to in section 53 have not had an impact on the competitive situation in the market.

The new operational entity created as a result of separation shall supply its services both to its parent undertaking and to competing telecommunications operators under the same non-discriminatory conditions.

Ficora shall, prior to imposing an obligation for functional separation, submit a fully reasoned draft proposal to the Commission that shall include at least the following:

- 1) evidence on important and persisting market failures in the market concerned;
- 2) evidence demonstrating that the obligations referred to in section 53 have not had an impact on the competitive situation in the market;

- 3) a reasoned assessment that there is no or little prospect of change in the competitive situation in the market within a reasonable time-frame;
- 4) an analysis of the impact of the obligation on the communications market and on the telecommunications operator subject to it;
- 5) a clarification on the exact content of the separation obligation;
- 6) a list of products and services subject to the separation obligation;
- 7) a clarification on matters related to the independency of the personnel of the new operational entity and the supervision of the telecommunications operator.

#### Section 77

##### *Obligation to notify a change in ownership*

An operator with significant market power shall inform Ficora in advance and in a timely manner of any intention to transfer its local access network or a substantial part thereof to a separate business entity it has established or to a separate legal entity under different ownership.

Ficora shall, after having received a notification, perform a new market analysis in the meaning of section 52 in the market related to the communications network concerned if the transaction has a significant impact on the market concerned.

#### Section 78

##### *Deposit and security*

A telecommunications operator may demand a reasonable deposit or security from another telecommunications operator for relinquishing access rights or for charges paid for interconnection.

#### Section 79

##### *Collection of telecommunications fees*

A telecommunications operator that has entered into a subscriber connection agreement, and on which an interconnection obligation referred to in section 61 or 62 has been imposed, has an obligation to collect the payments of the telecommunications operator providing the communications service at a cost-oriented and non-discriminatory price or to supply to the operator the information necessary for fee collection, as determined by the operator providing the communications service. A reasonable transition period shall be reserved for the telecommunications operator that has entered into a subscriber connection agreement before the telecommunications operator providing the communications service begins collecting the fees.

Information on the subscriber connection number of the party liable to pay shall be transmitted during the period of telecommunication. If the transmission of the subscriber number is not technically possible, the telecommunications operator that has entered into the subscriber connection agreement has an obligation to supply the information necessary for billing to another telecommunications operator or, if this is not possible, to collect the fees without a charge.

#### Section 80

*Confidentiality of information between telecommunications operators*

A telecommunications operator may use information on another telecommunications operator obtained in connection with the relinquishing of access rights under Chapter 7 and 8 or interconnection under Chapter 9 and section 79 of this Act only for the purpose for which it was given. Information may only be handled by those persons in the service of the telecommunications operator who necessarily need the information in the course of their work. Information shall also otherwise be handled in such a way that the business secrets of another telecommunications operator are not endangered.

A telecommunications operator that causes damage to another telecommunications operator by acting contrary to subsection 1 has an obligation to compensate any damage caused by the action.

Section 81

*Liability for damages*

A telecommunications operator that deliberately or through negligence violates the obligations imposed under sections 53–55 is liable to compensate damage it has caused to another telecommunications operator.

Compensation for damage consists of compensation for costs, the price difference and other direct financial losses caused by the telecommunications operator's activities referred to in subsection 1.

The compensation can be adjusted if full liability for damages is considered an unreasonable burden with regard to the nature of the offence, the extent of damage, the circumstances of the parties and other factors.

The right to compensation expires if the action for damages is not brought within three years of the date on which the telecommunications operator received or should have received the information on the damages.

In handling the action for damages referred to in subsection 1, the court may request an opinion on the matter from Ficora.

Chapter 11

**Procedure**

Section 82

*Consultation on market definition, market analysis and significant market power*

Ficora shall reserve an opportunity for the Commission and the Body of European Regulators for Electronic Communications to present their statements within a period of one month before any of the following measures affecting trade between EEA States are taken:

- 1) a market definition deviating from the Commission recommendation;
- 2) a market analysis;
- 3) a decision concerning significant market power;
- 4) a decision referred to in section 76.

Ficora shall postpone the decision referred to in subsection 1 for two months, if the Commission has notified that it considers the proposed decision to contradict European Union

law. Ficora shall within six months of the Commission's notification cancel the decision referred to in subsection 1 or amend the decision if this is required by the Commission.

If Ficora amends the proposed decision referred to in subsection 1 at the Commission's request, Ficora shall reserve an opportunity for the parties involved whose right or benefit are affected by the decision to present their statements on the proposed amended decision. When issuing a final decision, Ficora shall also take due account of statements referred to in subsection 1. Ficora shall submit the decision to the Commission for its information.

### Section 83

#### *Consulting related to obligation to be imposed on operators*

Ficora shall reserve an opportunity for the Commission and the Body of European Regulators for Electronic Communications to present their statements within a period of one month before a decision affecting trade between EEA States is taken by which Ficora imposes obligations referred to in Chapters 8–10 on an operator with significant market power, excluding a decision referred to in section 57(1)(4) or section 58 or 76.

If the Commission considers that the proposed decision of Ficora referred to in subsection 1 would create a barrier to the common markets, or if the Commission has serious doubts that the proposed decision does not accord with European Union law, Ficora shall postpone the decision for a further three months from the Commission's notification. Ficora shall in such a case continue preparing the decision in close cooperation with the Commission and the Body of European Regulators for Electronic Communications.

Within the three-month period referred to in subsection 2, Ficora may either amend its proposed decision or cancel it. If Ficora amends its proposed decision or decides to keep the proposed decision valid as such, the Commission may issue a recommendation concerning the proposed decision or cancel its notification referred to in subsection 2. Ficora shall within a period of one month after having received the Commission's recommendation submit its final decision to the Commission and the Body of European Regulators for Electronic Communications for their information. The time limit may nevertheless be extended if this is necessary in order to consult the parties concerned.

If Ficora decides not to amend or cancel the decision despite the Commission's recommendation, it shall give reasons for its decision.

### Section 84

#### *Procedure in an urgent case*

Market definitions, market analyses and Finnish Communications Regulatory Authority decisions on significant market power or on obligations to be imposed on telecommunications operators may be made without consulting the Commission and the Body of European Regulators for Electronic Communications if the measure is:

- 1) urgent;
- 2) necessary to safeguard competition and the interests of consumers;
- 3) temporary; and
- 4) in correct proportion to the aim being addressed.

Ficora shall without delay submit the market definition, market analysis or decision referred to in subsection 1 to the Commission and the Body of European Regulators for Electronic Communications for their information.

## Chapter 12

**Universal service**

## Section 85

*Designating a universal service provider*

*Universal service* means provision of public telephone services and appropriate Internet access in a fixed location and provision of directory inquiry services and telephone directory services.

Ficora shall designate one or more telecommunications operators, operators providing a directory inquiry service or operators providing a telephone directory service as a universal service provider if this is necessary in order to ensure universal service provision in a certain geographic area. The designation procedure shall be efficient, unbiased, open and non-discriminatory. An operator with the best possible prerequisites to provide universal service that meets the requirements shall be assigned as the universal service provider.

Ficora shall amend a decision referred to in subsection 2 if there are significant changes in matters on which the decision is based.

## Section 86

*Universal service obligation concerning the provision of public telephone services*

A telecommunications operator that Ficora has designated as a universal service provider in public telephone services as referred to in section 85 shall provide, at a reasonable price and regardless of the geographical location, a subscriber connection to the public communications network at the subscriber's or user's permanent place of residence or location. The telecommunications operator shall provide a subscriber connection within a reasonable period from the order.

The subscriber connection to be provided shall allow all users, including those with disabilities, to use emergency services, make and receive national and international calls and use other ordinary telephone services.

Further provisions on the special needs of persons with disabilities shall be issued by Government Decree. Prior to this, Ficora shall produce a clarification on those needs.

Ficora may issue further regulations on how the connection is to be implemented technically or on what technical features the connection shall have in order to allow use by persons with disabilities.

## Section 87

*Universal service obligation concerning the provision of Internet access service*

A telecommunications operator that Ficora has designated as a universal service provider in Internet access services as referred to in section 85 shall provide, at a reasonable price from the perspective of the average user and regardless of the geographical location, a subscriber connection to the public communications network at the subscriber's or user's permanent place of residence or location. The telecommunications undertaking shall provide a connection within a reasonable period from the order.

The connection provided shall also allow an appropriate Internet access for all subscribers and users, taking into account prevailing connection speed available to the majority of subscribers, technological feasibility and costs.

Provisions on the minimum speed of an appropriate Internet access are laid down by Ministry of Transport and Communications Decree. Prior to the issuance of the Decree, Ficora shall, where necessary, examine the data transfer service markets, prevailing connection speeds available to the majority of subscribers and level of technological development, as well as produce an estimate of the financial impacts of regulation on telecommunications operators.

Ficora may issue further regulations on how the connection is to be implemented technically or on what technical features the connection shall have.

## Section 88

### *Other obligations and rights related to providing a subscriber connection*

A universal service provider may also provide the services referred to in sections 86 and 87 through several subscriber connections if this does not cause unreasonable additional costs to the subscriber and user.

A universal service provider is obliged to offer a subscriber who is a natural person the possibility to pay compensation for the construction of a subscriber connection referred to in sections 86 and 87 in several instalments. A universal service provider is allowed to refuse the obligation only if there are reasonable grounds for refusal arising from solvency of a subscriber who is a natural person.

A universal service provider has the right to refuse to enter into an agreement for a subscriber connection referred to in sections 86 and 87 with a subscriber that is being prosecuted or has been sentenced in the past year for disrupting communications using a telecommunications operator's subscriber connection or has outstanding, matured indisputable debts incurred from the use of another telecommunications operator's subscriber connection.

## Section 89

### *Universal service obligation concerning the provision of directory inquiry service*

An operator that Ficora has assigned as a universal service provider for directory inquiry services and telephone directory services as referred to in section 85 is obliged to provide users and subscribers access to a publicly available, comprehensive and reasonably priced directory inquiry services or telephone directory services

A telephone directory may be in printed or electronic form and shall be updated at least once a year.

Ficora may issue further regulations on technical measures necessary to meet the obligation referred to in subsection 1.

## Section 90

### *Universal service obligation concerning network service*

A network operator that Ficora has designated as a universal service provider as referred to in section 85 is obliged, at a cost-based price, to provide the service operator designated as a universal service provider with a network service needed for connecting to a communications network.

## Section 91

*Obligation of a universal service provider to inform of its universal service obligations and offer universal service products and services*

A universal service provider shall effectively inform of its universal service obligations and offer universal products and services.

A universal service provider shall publish data and information on its universal service products and services as to ensure that they are easily available to subscribers and users.

## Section 92

*Monitoring of universal service prices*

Ficora shall monitor the pricing of universal service, compare it to the general price level of communications services and assess the pricing of universal service in relation to the general consumer price level and income level of the population.

## Section 93

*Net costs of universal service*

*Net costs of universal service* shall refer to the costs due to the production of a service which a universal service provider cannot cover with the returns brought in by the service.

If it is evident that the provision of universal service constitutes an unreasonable financial encumbrance to the universal service provider and if the operator so requests, Ficora must calculate the net costs of universal service.

In calculating the net costs of universal service, Ficora is not bound by the information given by the universal service provider or by the cost calculation principles of the operator.

## Section 94

*Cost reimbursement to the universal service provider*

The part of the net costs constituting an unreasonable financial encumbrance shall be compensated to the universal service provider from state funds, if the provider so requests, taking into consideration:

- 1) size of the provider;
- 2) quality of the operations;
- 3) turnover of the operator's telecommunications, directory inquiry service, and telephone directory service; and
- 4) other elements comparable to those referred in subsections 1–3.

The Ministry of Transport and Communications shall make a decision on compensation of the costs, referred to above in subsection 1, on the basis of the net cost calculation by Ficora. Compensation with retroactive effect shall be paid for a maximum period of one year from the application date.

## PART IV

## SPECTRUM AND NUMBERING

### Chapter 13

#### Spectrum Administration

#### Section 95

##### *Government Decree on radio frequency usage and on the frequency plan*

The general principles on the use of frequencies referred to in subsection 3 are confirmed by Government Decree. Technology and service neutrality shall be complied with when issuing provisions on the use of frequencies suitable for the provision of communications services.

The Government may, in the Decree referred to in subsection 1, derogate from:

- 1) technology neutrality of network and communications services if this is necessary to:
  - a) avoid harmful interference;
  - b) protect public health against electromagnetic fields;
  - c) ensure technical quality of the service, common use of radio frequencies or the fulfilment of public interest objectives; and
- 2) service neutrality, if this is necessary to:
  - a) ensure the safety of human life;
  - b) promote social, regional or geographical cohesion;
  - c) avoid inefficient use of frequencies;
  - d) promote cultural and linguistic diversity as well as media pluralism.

The Government Decree referred to in subsection 1 shall confirm the frequency allocation plan:

- 1) for frequency bands intended for telecommunications activities that require a network licence as referred to in section 6;
- 2) for frequency bands intended for television and radio broadcasting that requires a licence as referred to in sections 22 and 34;
- 3) for the frequency bands referred to in section 96(5);
- 4) for frequency bands intended for product development, testing and educational purposes; and
- 5) for frequency bands intended for public service television and radio broadcasting as referred to in section 7 of the Act on Yleisradio Oy.

Before the Government confirms a frequency Ficora plan, an opportunity shall be reserved for telecommunications operators, the Finnish Broadcasting Company Ltd and other parties representing frequency band user groups to present their views on the plan. The Government shall re-examine the frequency Ficora plan if it is possible to assign additional frequency bands for public service or activities subject to a licence as referred to in subsection 3 or if a party referred to in this subsection presents a justifiable request for re-examination.

#### Section 96

##### *Finnish Communications Regulatory Authority regulations on frequency use*

Ficora issues regulations on the use of radio frequencies for different purposes, with due consideration to the international regulations and recommendations on radio frequency use as well as the Government Decree issued pursuant to section 95(1). The regulations shall contain

information on the intended use of frequency bands and on the most important radio-technical characteristics required of radio equipment using the frequency bands.

Ficora shall re-examine regulations issued pursuant to subsection 1, if it is possible to assign additional frequencies for the activity subject to a licence referred to in section 95(3) or if a telecommunications operator or other party representing frequency band user groups presents a justifiable request for re-examination.

When issuing regulations on the use of frequencies suitable for the provision of electronic communications services, Ficora shall comply with technology and service neutrality.

Ficora may, in the regulation referred to in subsection 1, derogate from:

- 1) technology neutrality of network and communications services if this is necessary to:
  - a) avoid harmful interference;
  - b) protect public health against electromagnetic fields;
  - c) ensure technical quality of the service, common use of radio frequencies or the fulfilment of general interest objectives; and
- 2) service neutrality, if this is necessary to:
  - a) ensure the safety of human life;
  - b) promote social, regional or geographical cohesion;
  - c) avoid inefficient use of frequencies; and
  - d) promote cultural and linguistic diversity as well as media pluralism.

When preparing the regulations referred to in subsection 1, Ficora must work in cooperation with the Ministry of Transport and Communications. If a regulation concerning use of an individual frequency band could have a significant effect on the general development of the communications market, the frequency Ficora plan for the frequency band in question will require confirmation by a Government Decree issued pursuant to section 95(1).

In order to promote common use of radio frequencies, provided there is justifiable cause, Ficora may also permit other radio communications than those which accord with the purpose of use for a radio frequency band assigned by a Government Decree pursuant to section 95(1) or by a regulation as referred to in subsection 1 if these other radio communications would not restrict use of the frequency band for its primary purposes nor cause interference in the radio communications appropriate to the primary purposes.

## Section 97

### *Special regulations regarding spectrum administration*

This Act applies to radio equipment on board Finnish vessels and aircraft and in any Finnish equipment sent into space, even when this equipment is not within Finnish territory.

Ficora issues regulations on the radio frequencies that can be used by electrical appliances, other than radio equipment, that are designed to generate radio waves and are used for scientific, industrial, medical or other corresponding purposes, as well as the conditions that must be observed in the use of such appliances.

Ficora issues regulations concerning the construction and use of amateur radio stations as well as other regulations to be followed in the amateur service concerning the frequencies to be used, transmission powers, spurious emissions, addressing of transmissions and unidirectional transmissions.

A radio licence whose granting provisions are laid down in section 40, a radio frequency reservation referred to in section 44, a proficiency certificate referred to in section 265, a certificate endorsement referred to in section 266, and a decision concerning a call sign of a radio station by virtue of section 304(1)(5) may be signed using a digital signature.

## Chapter 14

**Numbering**

## Section 98

*Telecommunications areas*

The division of Finland into telecommunications areas is decided by Ficora.

The division into telecommunications areas shall be appropriate. In establishing telecommunications areas, special attention shall be paid to the amount of telecommunications in different localities and its orientation, the technical structure of communications networks and the most efficient use of numbers.

## Section 99

*Finnish Communications Regulatory Authority numbering regulations*

Numbers and identifiers shall be distributed taking into account:

- 1) clarity and efficiency of numbering; and
- 2) international obligations regarding numbers and identifiers.

Ficora may issue further regulations on numbering. Ficora may order the type of numbers and identifiers that may be used in telecommunications and the purpose for which they are to be used. A Finnish Communications Regulatory Authority regulation on numbering may also specify the geographical area of use for the numbers and identifiers.

Separate provisions shall be issued on Internet domain names.

## Section 100

*Numbering decisions*

The numbers and identifiers to be issued for the use of telecommunications operators and other persons are decided by Ficora.

Numbers and identifiers shall be distributed in a manner that treats telecommunications operators and other persons as fairly as possible taking into account the nature and extent of operations.

Ficora shall decide on the issuing of a number or identifier (*numbering decision*) within three weeks of receipt of an application. However, if a number or identifier is of exceptional economic value, the numbering decision may be made within six weeks of receipt of the application.

In a numbering decision, the holder of the right to use a number or identifier may be required to start using the number within a reasonable time.

A numbering decision may remain in force until further notice or for a fixed period appropriate to the service being provided. In a numbering decision, Ficora may order that the number be used to offer a specified service and it may impose other conditions on the use of the number necessary to ensure the clarity and efficiency of numbering or the benefits of users.

## Section 101

*Revocation of right to use a number or identifier*

By decision, Ficora may revoke the right to use a number or identifier if:

- 1) the holder of the right to use the number or identifier does not pay the fee for the numbering decision;
- 2) the use of the number or identifier is against the numbering decision; or
- 3) the number or identifier is not taken into use within a reasonable time after the numbering decision or its use has been discontinued, or the holder of the right to use the number or identifier does not rectify his conduct within a one-month deadline in spite of being requested to do so.

The right to use a number or an identifier may also be revoked for another similar, very weighty reason relating to the clarity and efficiency of numbering or to the interests of the users, if the holder of the right to use the number or identifier has been given a chance to present his/her view on the matter within a one-month deadline. A consultation is not necessary if the operator holding the access rights has discontinued its operations or the holder of the access rights has ceased to exist due to some other reason.

## Section 102

### *Obligations concerning telephone number portability*

A telecommunications operator shall ensure without delay that a subscriber who has entered into an agreement with the telecommunications operator may, if he or she so wishes, retain his or her telephone number when changing the telecommunications operator providing the service. The validity of a fixed-term communications service agreement concerning the telephone number shall not release a telecommunications operator from the number portability obligation. In a fixed telephone network, a subscriber number specific to a telecommunications area may only be ported within the telecommunications area.

A telecommunications operator shall not charge a subscriber for the porting of a telephone number to another telecommunications operator. A telecommunications operator may, however, collect from the other telecommunications operator a one-off payment if the technical process of porting the number generates one-off costs. The one-off payment shall not, however, be so high as to deter the use of the service. In individual cases Ficora may decide on a maximum amount of the one-off payment.

The telephone number portability obligation referred to in subsection 1 does not apply to the telecommunications operator when the porting takes place between a fixed telephone network and a mobile communications network.

A telecommunications operator in a telephone network shall, for its part, ensure that users have access to a public, comprehensive and charge-free information service giving information on ported telephone numbers.

## Section 103

### *Technical regulations on telephone number portability*

Ficora may issue technical regulations on telephone number portability.

Regulations issued by Ficora may relate to:

- 1) telephone numbers that for technical reasons are exempted from the portability obligation;
- 2) technical implementation of portability;
- 3) routing calls to a ported number;
- 4) organisation of an information service on ported telephone numbers;

5) other similar technical requirements for number portability comparable to those referred to in subsections 1–4.

#### Section 104

##### *Telecommunications in the European Economic Area*

A telecommunications operator in a telephone network shall, for its part, ensure that calls can also be made from EEA States to any non-geographic number in use in Finland wherever this is technically and economically possible.

The obligation referred to in subsection 1 does not apply to a telecommunications operator if the receiver of a call has restricted incoming calls from certain geographical areas for commercial reasons.

Ficora may issue further regulations on technical measures necessary to meet the obligation referred to in subsection 1.

#### Section 105

##### *General international prefix*

A telecommunications operator in a telephone network shall, for its part, ensure that users are able to make international calls using the general international prefix 00.

Ficora may issue further regulations on technical measures necessary to meet the obligation referred to in subsection 1.

### PART V

#### **RIGHTS OF SUBSCRIBERS AND USERS IN CONNECTION WITH COMMUNICATIONS SERVICES**

#### Section 106

##### *Scope and preemptory nature of provisions*

The provisions in this Chapter may not be deviated from using agreements to the detriment of a consumer.

The following sections 118–123, 125(2–4) as well as 126, 134(1) and 135 shall apply to agreements other than with consumers only if not agreed otherwise.

The following sections 108, 112, 118, 119, 121, 122, 128 and 134 shall not apply to an independent communications service provided at no charge.

#### Chapter 15

##### **Communications service agreement**

#### Section 107

*Agreement terms and tariff information*

A telecommunications operator has an obligation to draw up standard agreement terms for consumer agreements on communications services and to use them when entering into agreements with consumers. The agreements shall not include any terms or limitations unfair to the consumer. The terms of the agreement shall be worded in clear and understandable language.

A telecommunications operator shall publish standard agreement terms and tariff information on communications services and ensure that they are easily available to users without charge.

Section 108

*Communications service agreement*

A communications service agreement between a telecommunications operator and a subscriber shall be made in writing.

The agreement shall specify the name and contact information of the telecommunications operator. The agreement shall specify at least the following:

- 1) the validity date and duration of the agreement and a possible renewal procedure;
  - 2) the nature and features of the services and the types of maintenance service provided; in Internet access services also the data transfer rate variation;
  - 3) the delivery time of a communications service;
  - 4) the procedure for giving notice to terminate the agreement and the reasons for termination;
  - 5) the sanctions for any error or delay;
  - 6) how the subscriber is informed of amendments to the agreement terms;
  - 7) the subscriber's and user's rights if the agreement terms are amended;
  - 8) pricing basis or applied tariffs;
  - 9) the subscriber's right to obtain information on the calculation of the bill;
  - 10) the subscriber's right to complain about a telecommunications bill;
  - 11) the sanctions for neglect of payment;
  - 12) the telecommunications operator's right to terminate the provision of a service or to restrict the use of a service.
  - 13) the spending limit referred to above in section 112(1) and consumer instructions on how to monitor the accumulation of costs on the bill;
  - 14) whether the subscriber connection allows access to emergency services and whether caller location information is provided in an emergency situation;
  - 15) information on any procedures put in place by the telecommunications operator to measure and shape telecommunications traffic so as to avoid network connection overload;
  - 16) information on how the procedures referred to in subsection 15 could impact service quality;
  - 17) types of customer services provided;
  - 18) any restrictions imposed on the use of the terminal equipment supplied;
  - 19) the subscriber's and user's options to choose whether or not to include his or her contact information in a telephone directory and the data the subscriber wishes to include;
  - 20) payment methods offered and any differences in price due to payment method;
  - 21) the type of action that might be taken by the telecommunications operator in reaction to information security threats;
- In addition, the agreement shall state the right of the consumer to refer a dispute on the agreement for the decision of the Consumer Complaint Board.

## Section 109

*Duration of a communications service agreement*

A communications service agreement shall be valid until further notice unless otherwise agreed.

A telecommunications operator may enter into a time-limited agreement with the consumer for a maximum period of 24 months. If the telecommunications operator offers an agreement exceeding 12 months, the consumer shall also be offered the possibility to enter into a time-limited agreement of 12 months.

A telecommunications operator shall not extend a time-limited agreement by another time-limited agreement without concluding a new agreement in writing with the subscriber.

## Section 110

*Network neutrality*

An Internet access service provider may not restrict a subscriber's or user's opportunity to use an Internet access service, except:

- 1) in a way necessary for implementing the main features of Internet access service quality, data transfer rate variation or other services that are clearly and extensively defined in the communications service agreement;
- 2) on the basis of a decision issued by an authority or court;
- 3) for the purpose of information security or to remedy an interruption in a way provided in sections 243, 272 and 273 or in some other similar way provided in law;
- 4) for the purpose of meeting quality requirements referred to in sections 243 and 244.

The restrictions referred to in paragraphs 1 and 4 of subsection 1 above shall be implemented in a non-discriminatory manner and they may not:

- 1) restrict the intended use of an Internet access service;
- 2) prevent or restrict a subscriber's or user's ability to use the applications and services they wish;
- 3) unreasonably slow down the Internet access service.

An Internet access service provider must ensure in service marketing and by other means that the subscriber and user have access to adequate information about the essential effects that the restrictions referred to in subsection 1 above possibly have on the use of the service.

Ficora may issue further regulations on the assessment of restrictions and procedures and their use in safeguarding the availability and quality of an Internet access service.

Ficora may issue a decision obliging the Internet access service provider to:

- 1) undertake measures necessary to prevent the interruption referred to in subsection 2; or
- 2) refrain from measures and restrictions that will cause an interruption referred to in subsection 2.

When issuing regulations and decisions in accordance with subsections 4 and 5, Ficora shall take into account the general quality, prices and properties of Internet access services available to users.

## Section 111

*Right to use an internal communications network*

A housing undertaking or a real estate undertaking or a similar entity that, within a real estate or between real estates, owns or manages a fixed communications network connected to a public communications network is obliged to relinquish on non-discriminatory terms to a telecommunications operator, which was chosen by a subscriber, access rights to the available capacity of an internal communications network of a real estate or a group of real estates in order to transmit communications services to the user's terminal equipment inside the real estate.

#### Section 112

##### *Deposit, security and spending limit*

A telecommunications operator or consumer may set a reasonable spending limit in euros for the subscriber connection.

A telecommunications operator may require from a consumer a deposit or security for a telephone network subscriber connection agreement only when entering into the agreement and only for special reasons such as foreseeable insolvency or some other comparable circumstance. The deposit or security may not exceed the total amount of payments expected to accrue for the services provided before the telecommunications operator can bar the use of a subscriber connection due to neglected payments.

#### Section 113

##### *Tie-in sales*

If a telecommunications operator combines agreements concerning terminal equipment and network services at the time of purchase in a way that influences the purchasing price of the items (*tie-in sales*), the operator shall also provide the subscriber with a similar communications service without the terminal equipment.

Marketing material shall provide the information referred to in Chapter 2(12) of the Consumer Protection Act (38/1978) and the total amount of additional costs to be incurred to the consumer for tie-in sales.

A telecommunications operator may bar the use of another operator's subscriber connection on a mobile phone included in tie-in sales. At the request of the consumer the barring shall be removed without delay once the subscriber connection agreement ends. The consumer shall not be charged for the removal of the barring.

#### Section 114

##### *Amending an agreement*

The telecommunications operator may amend the terms, including payments, in a communications service agreement valid until further notice to the detriment of the consumer only:

- 1) on grounds specified in the agreement terms, assuming that the content of the agreement does not change essentially as a whole;
- 2) on the basis of a change in legislation or a decision by the authorities;

A telecommunications operator also has the right to make minor amendments to the agreement terms of a communications service agreement valid until further notice, provided they have no effect on the main content of the agreement.

The terms of a time-limited communications service agreement shall not be changed during the agreement period to the detriment of the consumer. The terms can, however, be changed because of legislative amendments or decisions of government authorities.

A telecommunications operator shall notify the subscriber of any changes in the agreement terms no later than one month before the amended terms enter into force. A telecommunications operator shall inform the subscriber at the same time of his or her right to give notice of termination with immediate effect if the subscriber does not accept the amended agreement terms.

## Section 115

### *Closure of a communications service or restriction on its use*

A telecommunications operator has the right to restrict the use of a communications service or to close it if the subscriber has not paid a matured payment for that service.

The closure or restriction right does not apply, however, if:

- 1) the matured payment is less than EUR 50;
- 2) the matured payment is for receipt of a service other than a communications service;
- 3) The matured payment is paid within two weeks of the date on which the request for payment is sent;
- 4) the consumer proves that the neglect to pay is due to illness, unemployment or other comparable reason beyond his or her control, and the matured payment is paid within one month from the date on which a request for payment is sent;
- 5) the subscriber submits a complaint about the bill before the due date and pays the undisputed part of the bill by the due date.

A telecommunications operator also has the right to close a communications service or restrict its use if:

- 1) the subscriber is declared bankrupt or a public authority has found him or her to be otherwise insolvent and the subscriber does not set a reasonable security;
  - 2) the subscriber does not comply with the other agreement terms, despite a request to do so;
- or
- 3) the subscriber or user has been charged with a disruption of communications using a subscriber connection.

A telecommunications operator also has the right to restrict the use of a communications service if the user exceeds the spending limit referred to in section 112(1). The telecommunications operator shall inform the user in advance of restricting the use and shall instruct the user on how to prevent the restriction.

A telecommunications operator shall have the right not to connect calls or otherwise bar the use of such a communications service if it is evident that the service seeks unlawful financial benefit and if fees resulting from the service accumulate on the subscriber's communications service bill.

The provisions in this section regarding a telecommunications operator's right to prevent the use of a communications service does not limit the operator's obligation to restrict such use by competent authority or court decision.

## Section 116

### *Terminating an agreement*

The subscriber may terminate a communications service agreement orally or in writing. The subscriber has the right to terminate a communications service agreement valid until further

notice at two weeks' notice. The subscriber has the right to terminate a communications service agreement with immediate effect, if a telecommunications operator gives notification that it is amending the agreement terms to the detriment of the subscriber. The subscriber shall not have a right to terminate a time-limited communications service agreement if the amendments result from changes in tax laws.

The telecommunications operator shall send the subscriber a written confirmation of the termination notice.

A telecommunications operator shall cancel a communications service agreement in writing.

In connection with a tie-in sale, a consumer has the right to terminate the agreement as of two weeks from giving notice of the termination, if he or she pays the costs of the time remaining under the agreement as well as other costs agreed upon for such an event.

A consumer has, despite being party to a time-limited agreement, the right to terminate the agreement as of two weeks from giving notice of the termination, if he or she has financial difficulties due to sickness, unemployment or some other similar reason which cannot be attributed to him or her, or if keeping the agreement valid is unreasonable for the consumer for some other special reason. The telecommunications operator shall not charge the consumer for the fees pertaining to the remainder of the communications service agreement period. The telecommunications operator shall nevertheless have the right to reclaim terminal equipment supplied in connection with tie-in sales.

#### Section 117

##### *Cancelling an agreement*

The subscriber may cancel a communications service agreement due to a defect or delay by the telecommunications operator, if the breach of agreement is considerable. The subscriber may cancel a communications service agreement orally or in writing.

A telecommunications operator has the right to cancel a communications service agreement if:

- 1) the subscriber connection has been closed under section 115 for at least one month and the reasons for closure still apply; or
- 2) the subscriber or user has been sentenced for disrupting telecommunications using a communications service.

A telecommunications operator shall cancel a communications service agreement in writing.

#### Section 118

##### *A delay in the delivery of a communications service and the right to refrain from paying*

Delivery of a communications service is deemed delayed, if the service has not been delivered at the agreed time for reasons that are not attributable to the subscriber or user.

The subscriber is obliged to make payments based on the communications service agreement only after the connection has been made available to the subscriber. After the service connection is available, the subscriber has the right to refrain from paying amounts of the payment that are necessary to ensure compensation for the delay.

#### Section 119

##### *Standard compensation*

In a case referred to in section 118, a subscriber has the right to a standard compensation. The minimum amount of the compensation is EUR 20 for each full or partial week of delay but not more than EUR 160.

The right to a standard compensation does not, however, apply, if the telecommunications operator proves that the delay is due to an obstacle beyond its control which it cannot reasonably be expected to have considered when entering into the agreement, and the consequences of which could not have been reasonably avoided or overcome.

If the delay is due to a person who has been of help to the telecommunications operator in fulfilling the agreement or part thereof, the telecommunications operator is discharged from liability only if the person in question was also free of liability in accordance with subsection 2.

## Section 120

### *Defect in the delivery of a communications service*

Delivery of a communications service is defective if the quality or mode of delivery of the communications service does not correspond to what can be deemed to have been agreed.

The delivery of a communications service is defective, if:

1) the quality of the communications service does not meet the requirements of law or Ficora regulation issued by virtue of law;

2) the delivery of the communications service has been continuously or repeatedly interrupted for a reason other than that referred to in subsection 2 and the interruption cannot be deemed insignificant considering the reason and circumstances; or

3) the communications service does not match the marketing information or differs from what a subscriber can normally expect from a similar service.

A communications service is not deemed defective, if a telecommunications operator temporarily, without the consent of the subscriber interrupts the communications service or limits its use for a total of not more than 24 hours per calendar month, if the interruption is necessary due to a construction or maintenance work or for reasons of information security. Interference to the user caused by the interruption must be in terms of its manner and timing as minor as possible. There must be sufficient information available about the interruption.

## Section 121

### *Remedying a defect*

The subscriber has the right to demand that the telecommunications operator remedy a defect or redeliver a defective performance without any charge to the subscriber. The telecommunications operator is not, however, obliged to remedy a defect if this would cause unreasonable costs or detriment to the operator. When assessing whether the costs and detriment are unreasonable, special attention shall be paid to the significance of the defect and the value of the performance if it were in accordance with the agreement.

Even if the subscriber did not require that the defect or defective performance be rectified, the telecommunications operator may, at its own expense, do this if it offers to do so immediately after the subscriber has notified the operator of the defect. The subscriber may refuse rectification of the defect if it would cause considerable inconvenience or involve a threat of uncompensated costs to the subscriber, or for another special reason.

The telecommunications operator shall not invoke the fact that it did not have a chance to rectify the defect if the subscriber rectified the defect and if, considering the circumstances, it

cannot reasonably be expected that the subscriber would have waited for the telecommunications operator's rectification.

## Section 122

### *Price reduction and standard refund*

If the defect cannot be rectified or correct delivery is not possible or if such a rectification has not been made within reasonable time after the subscriber has notified of the defect, the subscriber has the right to a price reduction proportionate to the defect.

If a defect is based on an interrupted delivery referred to in section 120, the subscriber has the right to a standard refund. The minimum amount of the refund is EUR 20 for each full or partial week of interruption but not more than EUR 160. If a standard refund is paid to the subscriber, the subscriber has no right to a price reduction referred to in subsection 1 for the same interruption.

The right to a standard refund does not, however, apply, if the telecommunications operator proves that the interruption is due to an obstacle beyond its control which it cannot reasonably be expected to have considered when entering into the agreement, and the consequences of which could not have been reasonably avoided or overcome.

## Section 123

### *Liability for damages*

The subscriber has the right to a compensation for damages suffered from a delay, interruption or other defect in the communications service. The subscriber is entitled to compensation for damages referred to in section 119 if the damages exceed the amount of standard compensation paid.

A telecommunications operator is liable for consequential damages suffered from a delay, interruption or other defect in the communications service only if the damage was caused by negligence on the part of the telecommunications operator. Consequential damages include:

- 1) loss of income for the subscriber caused by the interruption, delay or by measures resulting from them;
- 2) damages caused by obligations under another agreement;
- 3) significant loss in the operating efficiency of a communications service that does not cause direct financial loss, and a comparable substantial inconvenience.

## Section 124

### *Obligation to notify a defect or delay*

The subscriber shall not argue a delay, if he or she does not notify the telecommunications operator of the delay within a reasonable time after the service has been delivered. The subscriber shall not argue a defect if he or she does not notify the telecommunications operator of the defect within a reasonable time after he or she has or should have discovered the defect.

Notwithstanding subsection 1 the subscriber may argue a defect or delay if the telecommunications operator has been grossly negligent or dishonourable and unworthy, or if the communications service does not conform to the requirements of law or a Finnish Communications Regulatory Authority regulation issued by virtue of law.

## Section 125

*Unlawful use of a communications service*

A telecommunications operator shall close a communications service or prevent its use without delay if the subscriber, user, the police, an insurance company or another telecommunications operator reports that a smart card used in managing communications service has been lost, that it is in someone's unlawful possession or has been unlawfully used and requests that the communications service be closed or its use prevented.

The subscriber can be held responsible for unlawful use of a communications service only if the disappearance, unlawful possession or unlawful use is due to the subscriber's or user's more than slight negligence.

The subscriber shall not be held responsible for unlawful use of a communications service insofar as the communications service has been used after the subscriber or user has notified the telecommunications operator as referred to in subsection 1.

If a smart card used in managing the communications service has been used in performing transactions in a manner referred to in section 1(2)(6) of the Payment Services Act (290/2010), the provisions of the Payment Services Act shall apply to subscriber responsibility in unlawful transactions.

## Section 126

*Reopening a closed communications service*

On the request of the subscriber, the telecommunications operator shall reopen a communications service closed under sections 115 or 125 or remove a restriction on use as soon as the restriction on the use or closure of the service is no longer justified.

The telecommunications operator has the right to charge a reasonable fee for reopening a communications service or for removing a restriction on its use. The operator shall not, however, charge for removing a restriction on use referred to in section 115(4).

## Section 127

*Obligation of a telecommunications operator to restrict the use of a communications service*

A telecommunications operator with a communications network or its elements used by another telecommunications operator to provide a communications service or which collects fees on behalf of another telecommunications operator shall bar the use of the other telecommunications operator's communications service, on request, if:

- 1) the requirements under section 115 are met; and
- 2) the telecommunications operator requesting the barring is not itself able to bar the use of its communications service.

## Section 128

*Joint responsibility of the telecommunications operator, service provider and seller*

A consumer who has the right to refrain from paying or receive a refund, compensation or other payment from a business operator due to the operator's breach of contract shall have the same right in relation to the telecommunications operator that has charged the consumer for a

commodity. However, the telecommunications operator shall not be required to pay the consumer more than what it has received in payments from the consumer.

If the agreement about the commodity is terminated, the user may argue termination in relation to the telecommunications operator that charged the fee for the commodity.

A telecommunications operator that has paid a consumer pursuant to this section has the right to collect the amount paid from a business operator or telecommunications operator that has an agreement with the business operator.

#### Section 129

##### *Providing information on miscellaneous changes*

A telecommunications operator shall in an efficient manner and in good time provide subscribers with information on:

- 1) changes in numbering affecting the telephone network;
- 2) any procedures to measure the performance capacity of a communications network put in place by the telecommunications operator in order to measure and shape telecommunications traffic and to avoid overburdening a network connection;
- 3) how the procedures referred to in subsection 2 impact service quality;
- 4) details of products and services designed for persons with disabilities;
- 5) any changes affecting access to emergency services or caller location information.

#### Section 130

##### *Obligation to publish information on service quality*

By decision, Ficora may impose an obligation on a telecommunications operator or a directory inquiry service to publish comparable and up-to-date data on the quality of the services it offers.

The decision by Ficora shall specify the data to be published and the publishing method.

### Chapter 16

#### **Special Provisions Applicable to Public Telephone Service**

#### Section 131

##### *Automatic call forwarding*

If a subscriber so requests, a telecommunications operator shall, at no charge, remove any automatic call forwarding to the user's subscriber connection that has been placed by a third party.

#### Section 132

##### *Subscriber connection identification*

A telecommunications operator shall offer a calling line identification service for identification of incoming calls prior to answering. It must be possible to prevent displaying the caller's number on the receiving subscriber's telephone.

A telecommunications operator offering a calling line identification service shall offer subscribers an easy way of barring:

- 1) identification of his or her subscriber connection;
- 2) identification of the subscriber connections of incoming calls;
- 3) reception of calls whose subscriber connection identification is barred, if this is technically possible without undue cost; and
- 4) identification of the subscriber connection to which incoming calls have been forwarded.

The services referred to in paragraphs 1, 2 and 4 of subsection 2 must be free of charge to the subscriber.

A telecommunications operator offering a calling line identification service shall offer the user an easy way of barring subscriber connection identification separately for each outgoing call, at no charge.

A telecommunications operator shall notify subscribers and users of the services referred to in this section.

A telecommunications operator shall ensure that the barring functions referred to in subsections 2 and 4 can be bypassed when disclosing data to emergency services authorities under section 321 or when complying with the right of the police to access information under separate provisions. Information to be saved pursuant to section 157 shall be only disclosed to authorities that by law have a right to them.

Ficora may issue technical regulations concerning the bypassing of the barring of subscriber connection identification referred to in subsections 2, 4 and 6.

### Section 133

#### *Right to monitor accumulation of fees*

A telecommunications operator in a mobile telephone network shall provide a subscriber and user with a free-of-charge opportunity to monitor the fees resulting from the use of the subscriber connection.

### Section 134

#### *Bill itemisation and connection-specific itemisation*

A telecommunications operator shall, without charge or request, provide itemised bills on the use of the subscriber connection. The bill shall without difficulty indicate at least the following billing items:

- 1) local calls and network charges collected for calls referred to in paragraphs 2–4;
- 2) long-distance calls;
- 3) international calls;
- 4) mobile network calls;
- 5) subscriber connection basic rates;
- 6) SMS, picture messages and other messages;
- 7) data transfer services;
- 8) services provided at additional charges as referred to in subsection 2.

For services at additional charges referred to in subsection 1(8), the telecommunications operator shall indicate in the itemised bill:

1) the amount charged, time and recipient in connections related to transactions referred to in section 1(2)(6) of the Payment Services Act, unless otherwise provided in the Payment Services Act;

2) the amount charged, time and recipient in connections related to a commodity to which the Payment Services Act does not apply or payment for a service in an automatic service and for which the subscriber incurs mainly charges that do not result from use of the communications service;

3) service types other than connections referred to in subsections 1 and 2, resulting in charges other than from use of the communications service.

The data referred to in subsection 2 shall not contain data related to communications subject to privacy protection.

Upon request by the subscriber, the telecommunications operator shall provide the itemised bill free-of-charge. Unless otherwise provided in subsections 2 or 3, such an itemisation shall be provided in a form where the last three digits of the phone number are obscured or the itemisation otherwise rendered such that the other party of the communication cannot be identified.

A telecommunications operator shall, if the user so requests, release the call itemisation of a bill with the complete phone numbers or other traffic data of communications service of the parties to the communication. Minors under the age of 15 are represented by their guardian. In addition, provisions on the representation of a minor are laid down in the Act on Child Custody and Right of Access (361/1983). Legally incompetent persons other than minors shall be represented by their guardian. Provisions on representation of an incompetent person are laid down in the Guardianship Services Act (442/1999).

Free-of-charge services shall not be indicated in an itemised bill. The subscriber has the right to obtain a non-itemised bill on request.

Ficora may issue further regulations concerning the content and implementation of itemisation referred to in this section.

### Section 135

#### *User's right to restrict the use of a subscriber connection for purposes other than the receipt of a communications service*

On the request of the subscriber, the telecommunications operator shall, without compensation, bar the use of a subscriber connection for purposes other than a communications service and call origination to a specific traffic type if the barring is technically easy to implement. If the barring is later removed on the request of the subscriber, the telecommunications operator may charge a fee for doing so.

Ficora may issue further regulations on the minimum call-barring categories for call origination that shall be provided to the subscriber, as well as regulations on the technical implementation of call-barring services and on the provision of call price information.

A telecommunications operator has the right to bar the use of a service other than a communications service if:

1) the subscriber does not pay a matured bill for the other service within two weeks of the date on which the request for payment was sent;

2) the subscriber exceeds the spending limit referred to in section 112;

3) this is necessary to prevent misuse and damages.

The telecommunications operator shall notify the subscriber without delay about the barring of use referred in subsection 3.

A telecommunications operator shall have the right not to connect calls or otherwise bar the use of a service other than communications service if it is evident that the service seeks unlawful financial benefit and incurs charges for the subscriber.

## PART VI

### CONFIDENTIALITY OF COMMUNICATIONS AND PROTECTION OF PRIVACY

#### Chapter 17

#### **Processing Electronic Messages and Traffic Data**

##### Section 136

##### *Confidentiality of messages and traffic data*

Parties to communication are entitled to process their own electronic messages and the traffic data associated with these messages unless otherwise provided by law.

Radio communication intended for public reception and its traffic data may be processed unless otherwise provided by law. The following is considered such radio communication:

- 1) television and radio broadcasting;
- 2) emergency calls;
- 3) radio communications using a public calling channel;
- 4) amateur radio service;
- 5) shortwave radio communications in the 27 MHz frequency band;
- 6) radio communications other than that referred to in subsections 1–5 intended for general reception.

Other electronic messages and traffic data may be processed with the consent of the party to the communication or if so provided by law.

Whoever receives or obtains in any other way knowledge of an electronic message, radio communication or traffic data not intended for him or her shall not disclose or make use of the content or traffic data of such a message, or the knowledge of its existence, without the consent of a party to the communication, unless otherwise provided by law.

##### Section 137

##### *General processing principles of a communications provider*

Processing electronic messages and traffic data are only allowed to the extent necessary for the purpose of such processing, and it may not limit the confidentiality of messages or the protection of privacy any more than is necessary.

Electronic messages and traffic data may only be disclosed to those parties entitled to process them in the given situation.

After processing, electronic messages and traffic data must be destroyed or rendered such that they cannot be associated with the subscriber or user involved, unless otherwise provided by law.

Electronic messages and traffic data may only be processed by a natural person employed by or acting on behalf of a communications provider or subscriber for the purpose of processing electronic messages and traffic data to perform the functions referred to separately in this Chapter.

#### Section 138

##### *Processing data for the purposes of transmitting communications and implementing a service and ensuring information security*

Messages and traffic data may only be processed to the extent necessary for transmitting communications, implementing the agreed service and for the purpose of ensuring information security as provided in section 272.

Communications providers and added value service providers shall inform subscribers or users about what traffic data are being processed for the service referred to in subsection 1 and how long the processing will last.

#### Section 139

##### *Processing for billing purposes*

Communications service providers may process traffic data necessary for defining fees between themselves and for billing purposes.

An information society service provider may process traffic data received from a telecommunications operator which is necessary for the billing of image recordings, sound recordings and other fee-based services offered over a communications network administered by that telecommunications operator, and any other data necessary for billing. Information society service providers are entitled to obtain this data from telecommunications operators.

Billing-related data must be stored for a minimum of three months from the due date of the bill or the saving of the traffic data, whichever is later. Such data must not, however, be stored beyond the time the debt becomes statute-barred under the Act on Statute-Barred Debt (728/2003). However, in the case of a dispute over a bill, the data pertaining to that bill must be stored until the matter has been settled or resolved and entered into legal force.

Communications providers shall inform subscribers or users about what traffic data are being processed and how long the processing will last.

#### Section 140

##### *Processing for marketing purposes*

A communications provider may, for the purpose of marketing its services, process traffic data to such an extent and for such a period of time as the marketing requires if the subscriber or user to whom the data applies has given consent thereto.

The party giving such consent must have the opportunity to cancel his or her consent regarding the processing of traffic data.

#### Section 141

##### *Processing for the purposes of technical development*

Communications providers may process traffic data for the purposes of technical development of transmitting communications or communications services.

Prior to the start of the processing referred to in subsection 1, subscribers or users shall be informed of what traffic data are to be processed and how long the processing will last. The information can be given only once.

#### Section 142

##### *Processing for the purposes of statistical analysis*

For the purposes of statistical analysis, automatic data processing may be used by a communications provider for processing traffic data if:

- 1) the analysis cannot be made by any other means without undue difficulty; and
- 2) no individual natural person can be identified in the analysis.

Provisions of subsection 1 shall also apply to a subscribing legal person's right to process the traffic data related to its subscription and terminal device.

#### Section 143

##### *Right to process data in cases of misuse*

A communications provider may process traffic data for detecting, preventing or investigating any non-paying use of fee-based services or similar cases of misuse.

Ficora may issue further regulations on the technical implementation of the processing of traffic data referred to in subsection 1.

#### Section 144

##### *Processing for the purpose of detecting a technical fault or error*

A communications provider may process traffic data if this is necessary for the purpose of detecting, preventing or investigating a technical fault or error in the transmission of communications.

#### Section 145

##### *Saving information on data processing*

A communications provider shall save further event log information on any processing of traffic data relevant to confidentiality and privacy security, if this is technically feasible and does not cause unreasonable additional costs. This event information must show the time and duration of the processing and the person performing the processing. The event information shall be stored for two years from the date on which it was saved.

Ficora may issue further regulations on the technical implementation of the saving and storing referred to in subsection 1.

### Chapter 18

#### **Special Provisions for Corporate or Association Subscribers**

## Section 146

*A corporate or association subscriber's right to process data in cases of misuse*

A corporate or association subscriber has the right to process traffic data to prevent or investigate unauthorised use of information society services or communications network or service, or to prevent and investigate the disclosure of business secrets referred to in Chapter 30(11) of the Criminal Code as provided in sections 147–156 of this Act.

Unauthorised use of a communications network or service may include installation of a device, software or service in the communications network of a corporate or association subscriber, unlawfully providing a third party with access to the communications network or service of a corporate or association subscriber, or any other comparable use of a communications network or service if it contradicts the instructions provided in section 147(3).

The right referred to above in subsection 1 does not apply to the traffic data of telephone services in a fixed or mobile network.

## Section 147

*A corporate or association subscriber's duty of care in cases of misuse*

Before starting to process traffic data and in order to prevent unauthorised use of information society services or communications network or services liable to charge, a corporate or association subscriber shall:

- 1) restrict access to its communications network and service and to their use and take other steps in order to protect the use of its communications network and service with the help of appropriate information security measures;
- 2) define the type of electronic messages that may be transmitted and searched through its communications network and how its communications network and service may be used and the addresses to which no messages may be communicated.

In order to prevent business secrets from being disclosed, a corporate or association subscriber shall, before starting to process traffic data:

- 1) restrict access to business secrets and take other steps in order to protect the use and data of its communications network and service with the help of appropriate information security measures;
- 2) define how business secrets may be transferred, delivered or otherwise handled in a communications network and define the type of addresses to which messages may not be sent by people entitled to handle business secrets.

A corporate or association subscriber shall provide the users of a communications network or service with written instructions on preventing misuse referred to in subsections 1 and 2.

## Section 148

*A corporate or association subscriber's duty of planning and cooperation in cases of misuse*

A corporate or association subscriber shall, before starting to process traffic data referred to in section 146(1), name the people whose duties involve traffic data processing or define the duties involved. Traffic data may only be processed by people responsible for maintenance and information security of a corporate or association subscriber's communications network or service and by people responsible for security.

If the corporate or association subscriber is an employer that falls within the scope of cooperation legislation, it shall:

1) discuss the reasons and procedures to be followed in traffic data processing referred to in sections 146–156 in a cooperation procedure referred to in Chapter 4 of the Act on Cooperation within Undertakings (334/2007), in the Act on Cooperation within Government Agencies (1233/2013), and in the Act on Cooperation between the Employer and Employees in Municipalities (449/2007);

2) inform employees or their representatives about the decisions taken regarding traffic data processing as provided in section 21(2) of the Act on the Protection of Privacy in Working Life (759/2004).

If the corporate or association subscriber is an employer that does not fall within the scope of cooperation legislation, it shall consult the employees about issues referred to in subsection 2(1) of this section and inform the employees about them as provided in section 21(1) and (2) of the Act on the Protection of Privacy in Working Life.

If the corporate or association subscriber is not the employer, it shall inform the users of the procedures to be followed in traffic data processing referred to in sections 146–156.

#### Section 149

*A corporate or association subscriber's right to process data for investigating unauthorised use of a fee-based information society service, communications network or communications service*

A corporate or association subscriber may process traffic data with the help of an automatic search function that may be based on the size, aggregate size, type, number, connection mode or target addresses of the messages.

A corporate or association subscriber may process traffic data manually, if there are reasonable grounds to suspect that a communications network, communications service or an information society service subject to a fee is used against the instructions referred to in section 147(3) and if:

- 1) a deviation in communications has been detected by the automatic search;
- 2) the costs of using an information society service subject to a fee have risen to an unusually high level;
- 3) a communications network is detected to use an unlawfully installed device, software or service; or
- 4) in an individual case, some identifiable circumstance comparable to subsections 1–3 leads to the conclusion that a communications network, communications service or an information society service subject to a fee is used against the instructions referred to in section 147(3).

A requirement for the processing referred to in subsections 1 and 2 above is that the event or act would probably cause significant hindrance or damage to the corporate or association subscriber.

A further requirement for the processing referred to in subsection 2 above is that the data are necessary for investigating the unauthorised use and the parties responsible for it and for ending the unauthorised use.

#### Section 150

*A corporate or association subscriber's right to process data for investigating disclosures of business secrets*

A corporate or association subscriber may process traffic data with the help of an automatic search function that may be based on the size, aggregate size, type, number, connection mode or target addresses of the electronic messages.

A corporate or association subscriber may process traffic data manually, if there are reasonable grounds to suspect that a business secret has been disclosed to a third party without permission via a communications network or communications service:

- 1) a deviation in communications has been detected by the automatic search;
- 2) a business secret is published or used without permission; or
- 3) in an individual case, some identifiable circumstance comparable to subsections 1 or 2 leads to the conclusion that access to a business secret has been disclosed to a third party without permission.

The requirement for the processing referred to in subsections 1 and 2 above is that the business secrets suspected to have been disclosed are of major significance to the corporate or association subscriber's or its cooperation partner's business or to the results of technological or other development work likely to be important for establishing or practising a livelihood.

A further requirement for the processing referred to in subsection 2 above is that the data are necessary for investigating the disclosure of the business secret and the parties responsible for it.

#### Section 151

##### *Special restrictions to the right to process data in cases of misuse*

An automatic search shall not be targeted and traffic data shall not be searched or manually processed for finding out data referred to in Chapter 17(24)(2) and (3) of the Code of Judicial Procedure.

In order to investigate the disclosure of business secrets, a corporate or association subscriber that is an employer may only process the traffic data of users to whom the corporate or association subscriber has provided access to business secrets or of users who through some other means accepted by the corporate or association subscriber have access to business secrets.

#### Section 152

##### *A corporate or association subscriber's obligation to inform the user in cases of misuse*

A corporate or association subscriber shall draw up a report of manual processing of traffic data referred to in sections 149(2) and 150(2) indicating:

- 1) the grounds for the processing, and the time and duration of the processing;
- 2) the reason for using manual processing of traffic data;
- 3) names of the processors involved;
- 4) name of the individual who has made the processing decision.

Individuals involved in the processing shall sign the report. The report shall be kept for at least two years from the end of the processing referred to in sections 149 or 150.

A report referred to in subsection 1 above shall be delivered to the user of the communications network or service involved as soon as it is possible without endangering the purpose of the processing itself. No report needs to be delivered, however, to users whose traffic data have been processed as mass data so that the processor did not gain knowledge of the traffic data. Notwithstanding confidentiality requirements, the user has the right to submit the report and the related data for the purpose of managing matters related to the user's interests or rights.

## Section 153

*A corporate or association subscriber's obligation to inform the employees' representative in cases of misuse*

If the corporate or association subscriber is an employer, it shall draw up an annual report to the employees' representative of manual processing of traffic data referred to in sections 149(2) and 150(2), showing the grounds for and the number of times of traffic data processing during the year.

A report referred to in subsection 1 above shall be delivered to a local union representative elected under a collective agreement or a collective agreement for civil servants, or, if no local union representative has been elected, to elected representatives referred to in Chapter 13(3) of the Employment Contracts Act (55/2001). If the employees of a personnel group have not elected a representative or a local union representative, the report shall be delivered to a cooperation representative referred to in section 8 of the Act on Cooperation within Undertakings, or to a cooperation representative referred to in section 3 of the Act on Cooperation between the Employer and Employees in Municipalities, or to a representative referred to in section 6(2) of the Act on Cooperation within Government Agencies. If these have not been elected either, the report shall be delivered to all employees of the personnel group in question.

Employee representatives and employees referred to in subsection 2 shall treat any business secret infringements and suspected business secret infringements brought to their attention as confidential throughout their employment relationship. The provisions laid down in the Act on the Openness of Government Activities and elsewhere in law shall apply to secrecy obligation of public servants. Notwithstanding the provisions above, information may be disclosed to the supervision authorities.

## Section 154

*Prior notification and annual report to the Data Protection Ombudsman in cases of misuse*

A corporate or association subscriber shall inform the Data Protection Ombudsman in advance of processing traffic data. A prior notification shall explain:

- 1) the grounds and procedures for the measures to be followed in processing traffic data referred to in sections 149 and 150;
- 2) the duties referred to in section 148(1);
- 3) the way in which the corporate or association subscriber has met its obligation to provide information before the processing referred to in section 148(2)(2) or (3).

A corporate or association subscriber shall inform the Data Protection Ombudsman annually of manual processing of traffic data after the processing has taken place. The report shall reveal the grounds for and the number of times of traffic data processing during the year.

## Section 155

*A corporate or association subscriber's right to store traffic data in cases of misuse*

Provisions of sections 146–154 do not provide a corporate or association subscriber the right to store traffic data in its registers longer than laid down in law.

## Section 156

*A corporate or association subscriber's right to forward data in cases of misuse*

Notwithstanding the provisions of section 137, a corporate or association subscriber has the right, in connection with a report of an offence or a request for an investigation it has filed as an injured party, to forward to the police for investigation traffic data regarding the electronic messages of a user of a corporate or association subscriber's communications network or service that has been received in accordance with sections 146–155.

Chapter 19

**Information Related to Authorities**

Section 157

*Obligation to store data for the purposes of the authorities*

Notwithstanding the provisions of this Part concerning the processing of traffic data, an undertaking designated by a separate decision of the Ministry of the Interior that has submitted a telecommunications notification (*operator under the retention obligation*) shall ensure, under the conditions prescribed below, that data under the retention obligation as referred to in subsections 2 and 3 are retained in accordance with retention times laid down in subsection 4. Data to be retained may be used only for the purposes of solving and considering charges for criminal acts referred to in Chapter 10(6)(2) of the Coercive Measures Act (806/2011).

The retention obligation applies to data related to:

- 1) a telephone service or SMS service provided by an operator under the retention obligation including calls for which a connection has been established but the call remains unanswered or is prevented from being connected due to network management measures;
- 2) Internet telephone service provided by an operator under the retention obligation, meaning service provided by a service operator enabling calls that are based on Internet protocol through to the end customer;
- 3) Internet access service provided by an operator under the retention obligation;

In services referred to in subsection 2(1 and 2) above the retention obligation applies to the name and address of a registered user or a subscriber, subscription identifier and data that can be used to identify a communications service user or communications, including call transfers, according to the type, receiver, time and duration of communications. With regard to service referred to in subsection 2(1) the retention obligation applies to data that can be used to identify the device used and the location of the device and the subscriber connection it uses in the beginning of communications. With regard to the service referred to in subsection 2(3) above the retention obligation applies to the name and address of a subscriber and registered user, subscription identifier, installation address, and data that can be used to identify the communications service user, the device used in communications and the time and duration of the service. The data to be retained must be limited to what is necessary for identifying the facts referred to above in this section, with due consideration to the technical implementation of the service

The data of the services referred to above in subsection 2(1) must be retained for 12 months, the data of the services referred to in subsection 2(3) for 9 months and the data of the services referred to in subsection 2(2) for 6 months. The data retention time starts with the time of the communications.

The retention obligation does not apply to the contents of a message or traffic data generated through the browsing of websites.

A requirement for the retention obligation is that the data are available and generated or processed in connection with publicly available communications services provided on the basis of this Act or the provisions of the Personal Data Act (523/1999).

Further provisions on a more specific definition of data under the retention obligation may be issued by Government Decree.

Technical details of data under the retention obligation are defined in a Finnish Communications Regulatory Authority regulation.

#### Section 158

##### *Obligations and procedures for processing data retained for the purposes of the authorities*

Before implementing the retention obligation, an operator under the retention obligation shall discuss with the Ministry of the Interior the needs of the authorities concerning data retention. The operator under retention obligation decides on the technical implementation of the retention. The implementation shall follow the principles of cost-efficiency. In addition, the business needs of the operator under the retention obligation, the technical features of the systems, and the needs of the authority paying for the costs for the retention should be considered. Data should be retained in such a way as to avoid the same data being retained by several undertakings.

The Ministry of the Interior has the right to acquire from an external service provider a system to which the data in this group can be transferred. An operator under the retention obligation has the right to store information that has not yet been completely processed for its own use.

Section 247 shall apply to the obligation of an operator under the retention obligation to ensure information security. An operator under the retention obligation shall name the persons entitled to process data to be retained or duties involving their processing. An operator under the retention obligation shall ensure that information about data retention and its purposes is available to the subscriber.

It must be ensured that the data retained can be transmitted to the authorities entitled to it without undue delay. An operator under the retention obligation shall, together with a network operator if necessary, ensure that the obligation is met in such a way that the available data referred to in section 157 processed by the network operator in providing the service of the operator under the retention obligation shall be retained.

Further provisions on meeting the retention obligation may be given by Government Decree.

Further provisions on information security and the technical details of data retention may be given by Ficora.

#### Section 159

##### *Statistics concerning the use of data to be retained for the purposes of the authorities*

The Ministry of the Interior shall provide the Parliamentary Ombudsman on a yearly basis with statistics on using data retained by virtue of this Act. The statistics shall include:

- 1) the cases in which retained data were provided to the authorities;
- 2) the cases where the authorities' requests for retained data could not be met;
- 3) the time elapsed between the date on which the data were retained and the date on which the authorities requested for the data.

The Ministry of the Interior shall also take the statistics referred to in subsection above into account in its reports about telecommunications interception and monitoring to the Parliamentary Ombudsman by virtue of the Police Act (872/2011), Coercive Measures Act or any other Act.

## Chapter 20

### **Location Data and Other Subscriber Connection or Terminal Device Location Data**

#### Section 160

##### *Processing and disclosure of location data*

Location data that can be associated with a natural person may be processed for the purpose of offering and using added value services, provided the subscriber or user to whom the data pertain has given consent or unless such consent is unambiguously implied from the context or otherwise provided by law.

The consent referred to in subsection 1 above shall not constitute derogation from other provisions on a user's or subscriber's right to obtain location data.

Location data may only be processed in the extent required by the purpose of the processing and it may not limit the protection of privacy any more than is necessary. After processing the location data must be destroyed or rendered such that they cannot be associated with the subscriber or user involved, unless otherwise provided by law.

Persons employed by added value service providers and anyone acting on their behalf may process location data subject to the provisions of this Chapter.

Whoever receives or obtains in any other way knowledge of location data not intended for him or her shall not disclose or make use of the data, or the knowledge of its existence, without the consent of the party to whom the data applies, unless otherwise provided by law.

#### Section 161

##### *Obligation to provide information*

The added value service provider shall ensure that the person to be located has easy and continuous access to information on the precision of the location data processed, the precise purpose and duration of the processing and whether location data can be disclosed to a third party for the purpose of providing added value services. Before disclosing location data, an added value service provider shall take appropriate steps to ensure that such information is available to the person to be located prior to the consent referred to in section 160(1).

#### Section 162

##### *Subscribers' and users' rights*

The party to be located shall have the opportunity to easily and at no separate charge cancel the consent referred to in section 160(1), unless otherwise provided by law. The person to be located shall have the opportunity to easily and at no separate charge temporarily ban the processing of location data, if this is technically feasible and does not cause unreasonable additional costs.

A user is entitled to receive from an added value service provider or communications provider the traffic data possessed by them showing the location data and traffic data appearing at the subscriber connection or terminal device at a given moment.

The prohibiting of the processing of location data and the service-specific consent and right to information is decided in the case of minors under the age of 15 by their guardian. In addition, provisions on the representation of a minor are laid down in the Child Custody and Right of Access Act. Legally incompetent persons other than minors shall be represented by their guardian, unless this is impossible by virtue of the technical implementation of the service. Provisions on representation of an incompetent person are laid down in the Guardianship Services Act.

## PART VII

### SPECIAL PROVISIONS APPLICABLE TO ELECTRONIC SERVICES

#### Chapter 21

#### Domain Names

##### Section 163

##### *Scope of application*

This Chapter applies to Internet domain names that end with the national country code Top Level Domain of Finland (*country code fi*) or with the region code Top Level Domain of Åland (*region code ax*) as well as to domain name administration and provision of domain names.

The provisions in this Chapter regarding the domain name register maintained by Ficora shall also apply to the register of domain names ending with region codes ax.

##### Section 164

##### *Finnish Communications Regulatory Authority domain name activities and provision of domain names*

For the purpose of domain name application and for other general use, Ficora shall keep a public register of domain names ending with the fi-code (*domain name register*) and a database of the technical data of domain names for directing Internet traffic (fi-root).

Only an operator who has made a domain name notification referred to in Section 165 (*domain name registrar*) may make entries in the domain name register. Ficora may register single-character and other domain names for domain name administration purposes free of charge. Ficora may add entries to the domain name register that are necessary to achieve the objectives of this Act.

A domain name may be registered for a legal person, a business operator or other association or a natural person (*domain name holder*).

##### Section 165

*Domain name registrar's duty to notify*

A domain name registrar shall submit a written notification to the authority in charge of domain names before launching its operations. The notification shall include the service provider's identification, the email address used for hearings and service of notices as well as other information relevant for supervision.

The domain name registrar shall notify Ficora in writing of any changes in the service provider information in the domain name application. A domain name registrar shall inform Ficora and its customers two weeks in advance of terminating operations. Ficora shall notify customers without delay about a prohibition decision made pursuant to section 171(2).

Ficora may issue further regulations on the notification and its content.

Section 166

*Form and content of a domain name*

A domain name shall include at least two but no more than 63 characters.

At the time of registration, a domain name shall not be:

- 1) based on a protected name or trademark owned by another party, unless the domain name holder can present a good, acceptable reason for registering the domain name; or
- 2) similar to a protected name or trademark owned by another party, if the clear intent of registering the domain name is to benefit from it or to cause damage.

Ficora may issue further regulations on specifications, form, length and permissible characters necessary for a functional domain name.

Section 167

*Entering data in the domain name register and publishing information*

A domain name shall be registered in the domain name holder's name. The domain name registrar shall enter in the domain name register the domain name holder's correct, up-to-date and identifying information as well as the email address to be used for hearing and service of notices.

Ficora may publish information on the domain name register on its Internet pages. The domain name and the holder's name of natural persons may be published on the Internet. The provisions of section 16 of the Act on the Openness of Government Activities shall apply to access to register information.

The domain name shall be valid for no more than five years at a time. A domain name holder may renew the name for a maximum period of five years at a time.

Ficora may issue further regulations on the technical implementation of registration and the information to be submitted.

Section 168

*Transfer of a domain name and switch of domain name registrars*

A domain name may be transferred to another party during its validity period. A domain name registrar shall transfer the domain name within reasonable time from receiving the request. If the transfer is not made within a reasonable time, Ficora shall transfer the domain name. An application for a transfer shall not be processed, if a decision on revocation or termination of a domain name is pending with Ficora.

Ficora may return a domain name to its original holder if the domain name was transferred without the holder's consent and the holder requests a correction of the entry, and the recipient of the transfer does not present an acceptable reason for the transfer within a set period.

A domain name holder may switch domain name registrars while a domain name is valid. The domain name registrar shall take the measures required to make this switch within a reasonable time from receiving the request. If the transfer to another domain name registrar is not made within a reasonable time, Ficora shall transfer the domain name.

Ficora may issue further regulations on the technical implementation and time periods for transfers and switching domain name registrars.

## Section 169

### *Removal of a domain name entry*

Ficora may remove a domain name from the domain name register and the root fi if the information referred to in section 167(1) is in essential parts insufficient or defective, and the domain name holder has not, regardless of a request, corrected or complemented the data.

Ficora will remove a domain name from the domain name register and root fi without consulting the holder if the domain name validity period has expired.

If a holder of a right referred to in section 166(2) asks for revocation of a domain name, Ficora may remove a domain name that was entered in violation of the provisions of this Act from the domain name register and the root fi and register it in the name of the holder of the right.

Ficora may remove a domain name for a maximum period of one year from the root fi without consulting the holder, if the domain name holder has applied for several domain names that are derivatives of a protected name or trademark and the holder of the protected name or trademark requests the revocation of the domain name.

A terminated domain name will become available for registration after one month from revocation.

Ficora may remove a domain name, if a court of law has issued a res judicata decision forbidding its use.

## Section 170

### *Other obligations of the domain name registrar*

A domain name registrar shall:

- 1) prior to registering a domain name, provide the data related to content and form of the domain name in accordance with this Act;
- 2) keep the data in the domain name register up-to-date;
- 3) be able to enter data in the domain name register using the technical systems prescribed by Ficora;
- 4) sufficiently and effectively notify the domain name holder of the domain name's expiry date;
- 5) remove a domain name from the domain name register upon request by a domain name holder prior to its expiry date;
- 6) ensure the information security of its operations;
- 7) notify Ficora without undue delay of significant violations of information security in its domain name services and of anything that essentially prevents or disturbs such services. A domain name registrar shall also make a notification of the estimated duration and

consequences of the disturbance or threats of such disturbances, and of measures undertaken to rectify the situation and prevent the reoccurrence of such violations.

Ficora may issue further regulations on the information to be provided to a domain name holder, information security of operations, whether a violation referred to in subsection 1(7) is significant and the content, form and delivery of a notification.

## Section 171

### *Organising domain name administration*

Ficora shall:

- 1) manage the country code fi;
- 2) maintain and develop the fi-code domain name system;
- 3) be responsible for data transfer connections between name servers of the root fi and for interconnection traffic to the Internet;
- 4) supervise the operations of domain name registrars;
- 5) be responsible for the information security of the root fi;
- 6) at request provide certificates and extracts from the domain name register.

Ficora may issue a note to a domain name registrar that essentially or repeatedly violates this Act or rules, regulations or decisions issued by virtue of it. Ficora may issue a decision obliging the registrar to remedy the defect or neglect within a reasonable time period. If the registrar does not remedy the defect or neglect within the set time period, Ficora may forbid the domain name registrar from entering domain names or changes related to them in the domain name register for a maximum period of one year.

## Section 172

### *Ensuring domain name information security*

Ficora has the right to undertake the necessary measures in order to detect, prevent, investigate and commit to pre-trial investigation any significant information security violations aimed at public communications networks or services using .fi code domain names or their holders. Ficora may undertake these measures without consulting the domain name holder.

The necessary measures referred to in subsection 1 above may be actions targeted at root fi name server data and may include the following:

- 1) prevent and restrict traffic to the domain name;
- 2) reroute traffic to the domain name to another domain name address; and
- 3) any other comparable technical measures in the meaning of subsections 1–2.

Any measures referred to in this section shall be implemented with care, and they shall be commensurate with the seriousness of the information security violation being combated. Such measures shall not limit freedom of speech, the confidentiality of a message or the protection of privacy any more than is necessary for the purpose of safeguarding the goals referred to in subsection 1. Such measures shall be discontinued if the conditions for them specified in this section no longer exist.

## Chapter 22

### **Information society services**

## Section 173

*Restrictions on the scope*

The provisions of this Chapter shall not apply to:

- 1) taxation;
- 2) issues included in the scope of application of Directive 95/46/EC of the European Parliament and of the Council on the protection of individuals with regard to the processing of personal data and on the free movement of such data and of Directive 2002/58/EC of the European Parliament and of the Council concerning the processing of personal data and the protection of privacy in the telecommunications sector (Directive on Privacy and Electronic Communications);
- 3) activities of notaries public and of corresponding professionals which include the use of public authority;
- 4) activities of an attorney or a legal counsel in court;
- 5) lottery operations against payment.

The following sections 174 and 175 shall not apply to:

- 1) copyright, neighbouring rights, industrial property rights or the rights referred to in Council Directive 87/54/EEC on the legal protection of topographies of semiconductor products and in Directive 96/9/EC of the European Parliament and of the Council on the legal protection of databases;
- 2) issuance of electronic money, if the Member State has adopted some of the optional exemptions referred to in Article 9(1) of the Directive 2009/110/EC of the European Parliament and of the Council on the taking up, pursuit and prudential supervision of the business of electronic money institutions amending Directives 2005/60/EC and 2006/48/EC and repealing Directive 2000/46/EC;
- 3) advertising of units of undertakings for collective investment in transferable securities (*UCITS*) referred to in Article 44(2) of Council Directive 85/611/EEC on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities;
- 4) issues relating to freedom of establishment, free provision of insurance and to the law applicable on contracts of insurance;
- 5) freedom of the parties to choose the law applicable to contract;
- 6) contractual obligations in consumer contracts;
- 7) mandatory provisions of the law in a State where the property is located regarding the form of a contract when the right to the property is established or transferred by contract;
- 8) permissibility of unsolicited commercial email communication.

## Section 174

*Co-ordinated field and freedom to provide information society services*

*Co-ordinated field* means the requirements laid down in Member States' legal systems which information society service providers must comply with when commencing and continuing their operations, such as requirements concerning:

- 1) qualifications, authorisation, registration or notification to the authorities;
- 2) procedures, advertising and other marketing, the quality and content of the service, contracts or the liability of the service provider.

No requirements, falling within the co-ordinated field, which restrict provision of information society services in Finland, must be imposed on information society service providers established in another State of the European Economic Area. However, a court or some other competent authority may restrict provision of certain services in accordance with its separately prescribed powers, if:

- 1) restrictions are necessary to maintain public order or security, to safeguard public health or to protect consumers;
- 2) restrictions are directed at services which damage the objectives referred to in paragraph 1 or may seriously endanger their attainment; and
- 3) restrictions are in proportion to the objective.

Restrictions must not be implemented before the Member State where the service provider is established has been asked to take action in the matter, but the Member State of establishment has not implemented the action or the action has not been sufficient. In addition, the Commission of the European Union and the Member State where the service provider is established must be notified of the restrictions before their implementation.

In urgent cases, restrictions may be implemented, the provisions in subsection 3 notwithstanding. The Commission of the European Union and the Member State where the service provider is established shall be notified immediately of the restrictions and of the reasons why the case is considered urgent.

The provisions in subsections 3 and 4 shall not apply to crime investigations or when hearing the case in court.

#### Section 175

##### *Observance of Finnish law*

Competent authorities in Finland shall supervise that the information society service providers established in Finland observe the Finnish law in the co-ordinated field also when provision of services is solely or mainly directed at another Member State within the European Economic Area.

#### Section 176

##### *General obligation to provide information*

In addition to the provisions elsewhere in the law on obligations to give information, information society service providers must have at least the following information easily, immediately and continuously available to the recipients of the services and to the authorities:

- 1) the service provider's name, geographical address in the state of establishment, email address and other contact information through which the service provider may be contacted quickly, directly and effectively;
- 2) the trade register or any other corresponding public register where the service provider has possibly been entered and the service provider's company and corporate ID or any other corresponding identification in said register;
- 3) the contact information for the appropriate supervising authority if pursuit of the operations requires a licence or registration;
- 4) the VAT identification if the service provider is pursuing operations subject to VAT.

In addition to the provisions in paragraph 1, information society service providers which practice a regulated profession in the meaning of Directive 2005/36/EC of the European Parliament and of the Council on the recognition of professional qualifications must have available the following information:

- 1) any professional body or a corresponding association to which the service provider belongs;
- 2) the occupational title and the Member State where it was awarded;
- 3) a reference to the professional code of conduct applicable in the state of establishment and as to where and how it is accessible.

If information on the prices of goods or services is supplied when providing information society services, they shall be supplied clearly and unambiguously. The information must indicate whether VAT and delivery charges are included in the price. There are separate provisions on notifying about the price of a commodity.

#### Section 177

##### *Obligation to give information when placing an order*

In addition to the provisions elsewhere in the law on obligations to give information, the information society service providers shall, before recipients of the service place an order, have available to them clear and easy to understand information at least on the following matters:

- 1) technical stages when concluding a contract;
- 2) whether the service provider is storing the concluded contract and whether it is accessible to the other party;
- 3) technical means which may be used to identify and correct errors of entry before placing an order;
- 4) languages which may be used to conclude a contract;
- 5) codes of conduct concerning the matter, observed by the service provider, and where and how they are electronically accessible.

The provisions of subsection 1 shall not be applied to contracts concluded by solely using email or a corresponding personal method of communication. A contract may deviate from the provisions of paragraph 1 unless a consumer is a party to the contract.

#### Section 178

##### *Supply of contractual terms*

Information society service providers shall supply recipients of services with contractual terms so that the recipients may save and reproduce them.

#### Section 179

##### *Order and acknowledgement of receipt*

If an order is placed using technical means, information society service providers shall immediately electronically notify receipt of the order. There is no need to supply an acknowledgement of receipt if the ordered commodity is delivered electronically without delay.

Appropriate, effective and easy to use technical means must be made available by service providers to recipients of services allowing them to identify and correct entry errors before placing an order.

The provisions of subsections 1 and 2 shall not apply to contracts concluded by solely using email or a corresponding personal method of communication. A contract may deviate from the provisions of subsections 1 and 2 unless a consumer is a party to the contract.

## Section 180

*Time of receipt*

The order and the acknowledgement of receipt, referred to in section 179 above, is regarded as received when it is available to the party it was addressed to.

## Section 181

*Meeting the formal requirements on a contract electronically*

If a contract must be concluded in writing according to the law, this requirement is also met by an electronic contract with contents that cannot be unilaterally altered, and which remain accessible to the parties. If a contract must be signed according to the law, the separate provisions on electronic signatures shall be applied. The provisions of this subsection shall correspondingly apply to notifications and other measures by the parties relating to the contractual relation which according to the law must be in writing or signed.

If a notification relating to a contract must be supplied verifiably according to the law, this requirement may also be met by such an electronic method with which it can be demonstrated that the recipient has received the notification.

The provisions of subsections 1 and 2 shall not apply to a contract concerning a property deal or any other transfer of a property or a contract relating to family or estate law.

## Section 182

*Exemption from liability in data transfer services and network services*

When an information society service consists of the transmission in a communications network of information provided by a recipient of the service, or the provision of access to a communications network, the service provider is not liable for the content or transfer of the information transferred if it does not:

- 1) initiate the transfer;
- 2) select the receiver of the transfer; and
- 3) select or modify the information contained in the transfer.

The acts of transfer and provision of access referred to in subsection 1 include the automatic, intermediate and temporary storage of the information transferred in so far as storage takes place for the sole purpose of carrying out the transfer in the communications network, and provided that the information is not stored for any period longer than is reasonably necessary for the transfer.

## Section 183

*Exemption from liability when caching the information*

When an information society service consists of the transfer in a communications network of information provided by a recipient of the service, the service provider is not liable for the automatic, intermediate and temporary storage of that information, performed for the sole purpose of making more efficient the information's onward transmission to other recipients of the service upon their request, if the service provider:

- 1) does not modify the information;

- 2) complies with the conditions on access to the information;
- 3) complies with rules regarding the updating of the information, specified in a manner widely recognised and used in the industry;
- 4) does not interfere with the lawful use of technology, widely recognised and used in the industry, to obtain data on the use of the information; and
- 5) acts expeditiously to remove or to disable access to the information it has stored upon obtaining actual knowledge of the fact:
  - a) that the information at the initial source of the transmission has been removed from the network;
  - b) access to it has been disabled; or
  - c) a court or an administrative authority has ordered such removal or disablement.

#### Section 184

##### *Exemption from liability in hosting services*

When an information society service consists of the storage of information provided by a recipient (*content provider*) of the service upon his request, the service provider is not liable for the content of the information stored or transmitted at the request of a recipient of the service if it acts expeditiously to disable access to the information stored upon:

- 1) obtaining knowledge of a court order concerning it or if it concerns violation of copyright or neighbouring right upon obtaining the notification referred to in section 191;
- 2) otherwise obtaining actual knowledge of the fact that the stored information is clearly contrary to section 10 or 10(a) of Chapter 11 or section 18 or 18(a) of Chapter 17 of the Criminal Code.

The provisions in subsection 1 shall not apply if the content provider is acting under the authority or the control of the service provider.

#### Section 185

##### *Order to disable access to information*

Upon request from a public prosecutor or a person in charge of inquiries or on application by a party whose right the matter concerns, a court may order the information society service provider referred to in section 184 to disable access to the information stored by it if the information is clearly such that keeping its content available to the public or its transmission is prescribed punishable or as a basis for civil liability. The court shall urgently process the application. The application cannot be approved without an opportunity for the service provider and the content provider an opportunity to be consulted except if the consultation cannot be arranged as quickly as the urgency of the matter so necessarily requires.

A court order must also be made known to the content provider. If the content provider is not known, the court may order the information society service provider to take care of notification.

An order ceases to be in effect unless charges are raised for an offence based on the content or transmission of information referred to in the order or, when concerning a liability, action is brought within three months of issuing the order. On request by a public prosecutor, by an injured party or by an interested party within the time limit referred to above, the court may extend this time limit by a maximum of three months.

The information society service provider and the content provider have the right to apply for reversal of the order in the court where the order was issued. When dealing with a matter concerning reversal of the order, the provisions of Chapter 8 of the Code of Judicial Procedure

shall be observed. However, the court takes care of the necessary procedures to hear a public prosecutor. The reversal must be applied for within 14 days of the date when the applicant was notified of the order. The information must not be made available again when the hearing of the case concerning the reversal is pending unless otherwise ordered by the court dealing with the case. A public prosecutor has also the right to appeal the decision that reversed the order.

#### Section 186

##### *Competent court*

The application referred to in section 185 above shall be heard by the court of the information society service provider's domicile. However, the application may also be heard by the court in Helsinki. A chairman of the court alone may also constitute a quorum.

#### Section 187

##### *Legal safeguards for the content provider*

If the information society service provider has prevented access to information under section 184(1)(2), it shall immediately notify the content provider of this in writing or electronically so that the content of the notification cannot be unilaterally altered and it remains accessible to the parties. The notification must state the reason for prevention as well as information on the right of the content provider to bring the matter for a court hearing. The notification must be made in the mother tongue of the content provider, in Finnish or in Swedish. The notification may also be made in another language agreed with the content provider.

The content provider has the right to bring the matter concerning prevention to be heard by the court referred to in section 186 within 14 days from the receipt of the notification referred to in subsection 1. The provisions of section 185(4) shall be observed during the hearing of the case concerning prevention.

#### Section 188

##### *Information society service provider's obligation to take action to implement a decision by the authorities*

The provisions of sections 182–184 on the information society service provider's exemption from liability shall have no effect on the service provider's obligation, under any other law, to take necessary action to implement an order or a decision by a court or by any other competent authority.

#### Section 189

##### *Prevention of access to material infringing copyright or neighbouring right*

A holder of a copyright or his/her representative may request the information society service provider referred to in section 184 to prevent access to material infringing copyright as prescribed in this section and in sections 191–193. The same applies to a holder of a neighbouring right and his/her representative if it concerns material infringing this right.

A request must first be presented to the content provider whose material the request concerns. If the content provider cannot be identified or if he/she does not remove the material or prevent access to it expeditiously, the request may be submitted to the information society service provider by notification prescribed in section 191.

#### Section 190

##### *Information society service provider's contact point*

The information society service provider shall give a contact point where the notification referred to in section 191 and the plea referred to in section 192 may be delivered. The contact information of the contact point shall be easily and continuously accessible.

#### Section 191

##### *Form and content of the notification*

The notification referred to in section 189 shall be made in writing or electronically so that the content of the notification cannot be unilaterally altered and it remains available to the parties. The notification shall include:

- 1) the name and contact information of the notifying party;
- 2) an itemisation of the material, for which prevention of access is requested, and details of the location of the material;
- 3) confirmation by the notifying party that the material which the request concerns is, in its sincere opinion, illegally accessible in the communications network;
- 4) information concerning the fact that the notifying party has in vain submitted its request to the content provider or that the content provider could not be identified;
- 5) confirmation by the notifying party that he/she is the holder of copyright or neighbouring right or entitled to act on behalf of the holder of the right;
- 6) signature of the notifying party.

A notification that does not meet the requirements in subsection 1 is invalid. If the shortcomings in the notification solely concern the information referred to in subsection 1(2), the information society service provider shall, however, take reasonable steps to contact the notifying party and to communicate the shortcomings discovered.

#### Section 192

##### *Notification to the content provider and the plea*

The information society service provider shall immediately notify the content provider of prevention of access to the material supplied by him/her and to supply the content provider with a copy of the notification on the basis of which prevention was made.

If the content provider considers that prevention is groundless, he/she may get the material returned by delivering to the notifying party a plea in writing or electronically, as prescribed in section 191, within 14 days of receiving the notification. A copy of the plea shall be delivered to the service provider. The plea must include:

- 1) the name and contact information of the content provider;
- 2) the facts and other reasons under which prevention is considered groundless;
- 3) an itemisation of the material for which prevention is considered groundless;
- 4) signature by the content provider.

### Section 193

#### *Returning the material*

If the plea, meeting the requirements of section 192, is delivered within the time limit, the information society service provider must not prevent the material specified in the plea from being returned and kept available unless otherwise provided by an agreement between the service provider and the content provider or by an order or decision by a court or by any other authority.

### Section 194

#### *Liability to compensate*

A person who gives false information in the notification referred to in section 191 or in the plea referred to in section 192 shall be liable to compensate for the damage caused. However, there is no liability to compensate or it may be adjusted if the notifying party had reasonable grounds to assume that the information is correct or if the false information is only of minor significance, when taking into account the entire content of the notification or the plea.

## Chapter 23

### **Directory Inquiry Services**

### Section 195

#### *Availability of directory inquiry services*

A telecommunications operator in a telephone network shall, for its part, ensure that users have access to a generally available, comprehensive and reasonably priced directory inquiry service.

A telecommunications operator with which a subscriber has entered into an agreement on the use of a telephone subscriber connection shall ensure that the contact information concerning the user's name, address and telephone number is collected and published in a generally available, comprehensive and reasonably priced telephone directory.

Ficora may issue further regulations on technical measures necessary to meet the obligation referred to in subsection 1.

### Section 196

#### *Releasing contact information*

A telecommunications operator and directory inquiry service provider shall, on request, provide the contact information referred to in section 195(2) above in usable form to another undertaking for the purposes of providing a directory inquiry service. The contact information shall be released:

- 1) in usable form;
- 2) at a cost-oriented price; and
- 3) on non-discriminatory terms.

A telecommunications operator and inquiry directory service provider shall publish information on the price charged for releasing contact information.

An inquiry directory service provider shall not favour one telecommunications operator over another or otherwise act in a discriminatory manner.

#### Section 197

##### *Processing personal data*

A directory inquiry service provider is entitled to process personal data for the purpose of creating and providing directory inquiry services.

#### Section 198

##### *Publishing prohibition*

A telecommunications operator and directory service provider shall give any subscriber or user who is a natural person the opportunity to prohibit, at no charge, the inclusion of any part or all of his or her contact information in directory inquiry services. The telecommunications operator and any undertaking providing a directory inquiry service shall, if any subscriber who is a natural person so requests, remove and correct incorrect information at no charge.

A telecommunications operator or directory inquiry service provider shall allow undertakings and other organisations entered in directory inquiry services the right to have their contact information removed and incorrect contact information corrected.

#### Section 199

##### *Obligation to notify about the purpose and use of a directory service*

A telecommunications operator shall notify a subscriber who is a natural person about the purpose and use of any directory inquiry service that is publicly available or usable through any directory inquiry service. Such notification shall be given at no charge before the subscriber's information is entered in the service.

In addition, a telecommunications operator and directory inquiry service provider shall ensure that sufficiently itemised information about the undertakings to whom the subscriber's contact information was released pursuant to section 196(1) is easily available to the subscriber.

### Chapter 24

## **Electronic Direct Marketing and Cookies**

#### Section 200

##### *Direct marketing to natural persons*

Direct marketing by means of automated calling systems, facsimile machines, or email, text, voice, sound or image messages may only be directed at natural persons who have given their prior consent.

Direct marketing other than that referred to in subsection 1 to a natural person is allowed if the person has not specifically prohibited it. A natural person must be able to easily and at no charge prohibit direct marketing as referred to in this subsection.

Notwithstanding subsection 1, where a service provider or a product seller obtains from any customer who is a natural person his/her contact information for email, text, voice, sound or image messages in the context of the sale of a product or service, that service provider or product seller may use this contact information for direct marketing of his or her own products of the same product group and of other similar products or services. The service provider or product seller shall allow any customer who is a natural person the opportunity to prohibit, easily and at no charge, the use of contact information at the time when it is collected and in connection with any email, text, voice, sound or image message. The service provider or product seller shall notify the customer clearly of the possibility of such a prohibition.

#### Section 201

##### *Marketing prohibition of telephone subscriber connections*

Direct marketing of mobile telephone subscriber connections to a consumer by telephone is only allowed upon explicit request by the consumer.

The provisions of subsection 1 shall not apply to a telecommunications operator's marketing to its own mobile telephone customers.

#### Section 202

##### *Direct marketing to legal persons*

Direct marketing to legal persons is allowed if the recipient has not specifically prohibited it.

Any legal person shall be allowed the opportunity to prohibit, easily and at no separate charge, the use of its contact information in connection with any email, SMS, voice, sound or image message sent in direct marketing. The party undertaking direct marketing shall give clear notification of the possibility of such a prohibition.

#### Section 203

##### *Identification of direct marketing*

The recipient of an email, text, voice, sound or image message sent for the purpose of direct marketing as referred to in sections 200 and 202 above shall be able to recognise such a message as marketing clearly and unambiguously.

It is prohibited to send such an email, text, voice, sound or image message intended for direct marketing that:

- 1) disguises or conceals the identity of the sender on whose behalf the communication is made;
- 2) is without a valid address to which the recipient may send a request that such communications be ended;
- 3) solicits recipients to visit websites that contravene Chapter 2 of the Consumer Protection Act.

#### Section 204

##### *Preventing the reception of direct marketing*

Telecommunications operators and corporate or association subscribers are entitled, at a user's request, to prevent the reception of direct marketing as referred to in sections 200, 202 and 203.

Such measures shall be undertaken with care, and they must not restrict freedom of speech or limit the confidentiality of messages or the protection of privacy any more than is necessary.

#### Section 205

##### *Saving data on the use of a service on the user's terminal device and the use of such data*

The service provider may save cookies or other data concerning the use of the service in the user's terminal device, and use such data, if the user has given his or her consent thereto and the service provider gives the user comprehensible and complete information on the purposes of saving or using such data.

Provisions of subsection 1 above do not apply to any storage or use of data which is intended solely for the purpose of enabling the transmission of messages in communications networks or which is necessary for the service provider to provide a service that the subscriber or user has specifically requested.

The storage and use of data referred to above in this section is allowed only to the extent required for the service, and it may not limit the protection of privacy any more than is necessary.

### PART VIII

#### **AUDIOVISUAL SERVICES AND RADIO BROADCASTING**

##### Chapter 25

#### **Content of Television Broadcasts and Video-On-Demand Services**

#### Section 206

##### *Scope of application and restrictions*

This Chapter and Chapter 26 shall apply to audiovisual content services carried out by a natural person or an organisation or foundation established in Finland if the operations are carried out in one or more Member States of the European Economic Area or States party to the European Convention on Transfrontier Television (Finnish Treaty Series 1994/87), hereinafter the "*Council of Europe's Convention on Transfrontier Television*", as well as in cases referred to in section 339 to the retransmission of television and radio programmes.

This Chapter and Chapter 26 shall apply to radio broadcasting if a radio frequency granted by Finland or a distribution network established in Finland is used in the operations.

This part or section 339 shall not apply to:

- 1) operations where the audiovisual content services or radio transmissions may be received only in an educational unit, a hospital, a hotel or similar establishment; or
- 2) radio broadcasting referred to in section 34(2) above.

This Act shall not apply to:

- 1) services where the provision of audiovisual content with regard to the amount of programmes or repetitiveness of broadcasts is merely incidental and not its principal purpose; or
- 2) electronic versions of newspapers and magazines.

Sections 209 and 210 shall not apply to the activities referred to in sections 28 and 34(2) above.

#### Section 207

##### *Establishment*

An audiovisual content service provider shall be deemed to be established in Finland if:

- 1) the provider has its head office in Finland and if the decisions about programmes and their schedules are made in Finland; or
- 2) the operation has a significant connection to Finland, based on the programming schedule, decisions on programmes, employees' workplaces, commencement of operations, activities of economic significance, satellite base station or satellite capacity or other comparable circumstances.

Further provisions on a more specific definition of activities of economic significance referred to in subsection 1(2) may be issued by Government Decree.

#### Section 208

##### *Local television broadcasting*

The provisions of sections 209 and 210 shall not apply to broadcasting in local television networks or to transmissions which cannot be received in any Member State of the European Economic Area or in any State outside of Finland which is party to the European Convention on Transfrontier Television.

#### Section 209

##### *European content of programmes*

A broadcaster shall reserve a major part of its annual broadcasting time for European works. The broadcasting time referred to above does not include time reserved for:

- 1) news;
- 2) sports events;
- 3) competitive entertainment programmes;
- 4) advertising;
- 5) teletext services;
- 6) teleshopping.

Further provisions on what is considered European works referred to in subsection 1 in accordance with Article 1 of Directive 2010/13/EU of the European Parliament and of the Council on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services (Audiovisual Media Services Directive) shall be issued by Government Decree.

Video-on-demand audiovisual service providers shall promote the production and distribution of European works with the help of financial contributions to productions, programme acquisitions, enhanced visibility of European works or similar means.

## Section 210

### *Programmes by independent producers*

A television broadcaster shall reserve for programmes produced by independent European producers 19% of its broadcasting time referred to in section 209(1), or alternatively 19% of his or her programming budget. Half of the programmes included in said share of the independent producers referred to above have to have been produced within the past five years.

An independent producer means a producer of audiovisual programmes, the share capital of whom an individual audiovisual content service provider controls at most 25 % or several providers at most 50 %, and who, during the past three years, has produced no more than 90 % of its programmes for the same provider.

## Section 211

### *Programmes accessible to people with a visual or hearing disability*

Finnish and Swedish television programmes shall be accompanied by subtitling and other programmes shall be accompanied by explanation or service where the text of the subtitled programme is converted to voice (*audio-subtitling and subtitling service*) as laid down in this section.

Audio-subtitling and subtitling services shall be added to public service programme sets referred to in the Act on Yleisradio Oy (Finnish Broadcasting Company). Further provisions on programme sets of public interest referred to in section 26 to which audio-subtitling and subtitling services must be added will be given by Government Decree. Audio-subtitling and subtitling services do not need to be added to music presentations or sports programmes. The costs of implementing audio-subtitling and subtitling incurred by an operator other than a public service television broadcaster shall not exceed one per cent of the operator's prior financial period.

Provisions on programmes to which audio-subtitling and subtitling services must be added in progressively increasing allotments as a percentage of programme hours may be issued by Government Decree.

For the years 2011–2016, the allotment for public interest television programmes referred to in subsection 2 above can be 10–50 per cent and for public service programmes 50–100 per cent. Provisions on the technical implementation and broadcasting of audio-subtitling and subtitling services may be given by Government Decree. Approval of the programme hour-specific cost of implementing audio-subtitling and subtitling services shall be given by Government Decree for a period of two calendar years at a time.

## Section 212

### *Use of exclusive rights*

If a television broadcaster has purchased an exclusive right to broadcast an event which one of the Member States of the European Economic Area has included in the list referred to in Article 14(1) of the Audiovisual Media Services Directive and confirmed by the Commission of the European Union, it may not exercise its exclusive right in such a way as to deprive a substantial proportion of the public in that Member State of the possibility of following the coverage of the event on free television as provided for by the State in question.

Provisions of subsection 1 on the use of exclusive rights shall be correspondingly applied to events referred to in the list referred to in Article 9(a)(2) of the Protocol of Amendment (Treaty Series 118/2002) to the European Convention on Transfrontier Television.

Where necessary, it shall be designated by Government Decree which events are considered to be of such importance to society in Finland that their coverage shall be broadcast in the area of Finland so that a substantial proportion of the public can follow the coverage of the events free via live coverage or deferred coverage. A television broadcast of an event that is of importance to society as referred to in this subsection is deemed to have reached a substantial proportion of the public, if 90 per cent of the population are able to receive the broadcast without a separate charge.

If a television broadcaster that has purchased an exclusive right does not implement the transmission referred to in subsection 1 itself, it shall be liable to grant to another television broadcaster the right to broadcast the event if the latter requests it at least six months prior to the commencement of the event. The television broadcaster who conveys the right to broadcast shall have the right to full compensation for the conveyance.

### Section 213

#### *Procedure concerning the use of exclusive rights*

If no agreement can be reached on the conveyance of broadcasting rights referred to in section 212(4), a television broadcaster that has purchased an exclusive right or a television broadcaster that has requested the granting of the right in accordance with section 212(4) may bring the matter to Ficora for consideration no later than three months before the event starts. Ficora can decide what shall be deemed as full compensation as referred to in section 212(4). The compensation shall be based on prices that are paid for corresponding rights in the competitive markets. Ficora may impose some technical terms concerning the granting.

To enforce the decision referred to in this section, a conditional fine may be imposed. Provisions on fines are laid down in the Fines Act (1113/1990).

### Chapter 26

#### **Marketing**

### Section 214

#### *General principles*

Marketing shall be readily recognisable.

The images or voices of persons appearing regularly in news or current affairs programmes may not be used in marketing, excluding ideological and social advertising referred to in section 224.

Advertising and teleshopping shall be kept separate from audiovisual programmes and radio programmes by optical or acoustic means or by means of spatial division.

Teleshopping shall not exhort minors to contract for the sale or rental of goods and services.

Further provisions on marketing against good practice and marketing targeted at minors that is against good practice are given in Chapter 2(2) of the Consumer Protection Act.

### Section 215

*Insertion of advertising and teleshopping spots*

Advertising and teleshopping spots shall be inserted between audiovisual programmes in television programme service. They may also be inserted during audiovisual programmes in such a way that the integrity and value of the programme and the rights of the rights holders are not prejudiced.

In programmes consisting of autonomous parts, in sports programmes and similarly structured programmes containing intervals, advertising and teleshopping spots shall only be inserted between the parts or during breaks.

Isolated advertising and teleshopping spots are prohibited with the exception of sports programmes.

Section 216

*Interruption of certain audiovisual programmes with advertising*

The transmission of feature films and films made for television, current news programmes and children's programmes may be interrupted once by advertising or teleshopping spots for each 30-minute period.

Children's programmes may be interrupted by advertising or teleshopping spots only if their duration is more than 30 minutes.

Advertising and teleshopping shall not be inserted in any television broadcast of a religious service.

Section 217

*Marketing of certain products*

The provisions of the Act on the Measures to Decrease Smoking (1976/693) shall apply to the advertising and teleshopping spots for tobacco products. The provisions of the Alcohol Act (1994/1143) shall apply to the advertising and teleshopping spots for alcoholic beverages. The provisions on the marketing of medicines are laid down in the Medicines Act (395/1987).

Section 218

*Requirements for sponsored programmes and services*

A sponsor may not influence the content and scheduling of sponsored television or radio programmes or audiovisual content services or the insertion of programmes in such a way as to affect the responsibility and editorial independence of the audiovisual content service provider or radio broadcaster in respect of programmes.

Sponsored audiovisual and radio programmes shall be clearly identified by the name or logo of the sponsor at the beginning or end of the programmes.

Sponsored television or radio programmes must not encourage the purchase or rental of the products or services of the sponsor or a third party, in particular by making special promotional references to those products or services.

Section 219

*Forbidden sponsorship*

An undertaking whose principal activity is the manufacture or marketing of tobacco products may not sponsor programmes, audiovisual content services or radio broadcasting.

If the sponsor of a programme is an undertaking whose activities include the manufacture or sale of medicinal products and medical treatment, the name or logo of the undertaking may be shown in connection with the programme, taking into consideration the provisions of section 218. However, a medicinal product or medical treatment available only on prescription in Finland may not be promoted in this context.

News and current affairs programmes broadcast on television or in the radio may not be sponsored.

## Section 220

### *Product placement*

Any form inclusion of or reference to a product, a service or the trade mark thereof within an audiovisual programme, in return for payment or for similar consideration (*product placement*) shall be prohibited.

By way of derogation from subsection 1 above, product placement shall be admissible in the following cases:

- 1) in cinematographic works;
- 2) films and series made for audiovisual content services;
- 3) sports programmes;
- 4) light entertainment programmes.

The derogation provided for in subsection 2 shall not apply to children's programmes.

The provision of goods or product prizes for an audiovisual programme free of charge is considered to be product placement if they are of significant value. Product placement in the form of goods or product prizes is admissible with the exception of children's programmes.

## Section 221

### *Product placement implementation*

Product placement shall not:

- 1) influence the content of programmes or how they are placed in the programme;
- 2) encourage the purchase or rental of goods or services;
- 3) constitute advertisements or otherwise refer to products;
- 4) give undue prominence to products.

Product placement of the following products is prohibited:

- 1) tobacco products;
- 2) products from undertakings whose principal activity is the manufacture or sale of cigarettes and other tobacco products;
- 3) specific medicinal products or medical treatments available only on prescription.

Viewers shall be clearly informed of the existence of product placement in audiovisual programmes by means of text or signal that is used uniformly by all audiovisual content service providers. Programmes containing product placement shall be appropriately identified at the start and the end of the programme, and when a programme resumes after an advertising break. This identification shall not take the form of advertising.

By way of exception, product placement need not be identified provided that the audiovisual programme in question has neither been produced nor commissioned by the content service provider itself or an undertaking affiliated with the content service provider and knowledge of the product placement cannot be obtained with reasonable effort.

## Section 222

*Time limits for teleshopping spots and television advertising*

The proportion of broadcasting time devoted to teleshopping spots and television advertising shall not exceed 12 minutes per hour of daily broadcasting time, with the exception of channels exclusively devoted to teleshopping.

The provisions of subsection 1 shall not apply to:

- 1) a broadcaster's announcements of its own audiovisual programmes;
- 2) ancillary products directly derived from those programmes;
- 3) announcements related to sponsorship;
- 4) product placement;
- 5) ideological and social advertising referred to in Section 224;
- 6) teleshopping windows referred to in Section 225.

## Section 223

*Time limits for radio advertising*

Radio advertising shall be clearly identified as such by acoustic or other means, distinguishing them clearly from other programme service.

The broadcasting time devoted to radio advertising shall not exceed 20 per cent of the daily broadcasting time.

## Section 224

*Ideological and social advertising*

Advertising for the purpose of promoting a matter or cause or the visibility of the associated advertiser or a person's public image (*ideological and social advertising*) shall be kept separate from other parts of the programme service by optical, acoustic or spatial means.

Ideological and social advertising shall be inserted between audiovisual programmes or its autonomous parts. They may also be inserted during audiovisual programmes in such a way that the integrity and value of the programme and the rights of rights holders are not prejudiced. Public service announcements and charity appeals must not interrupt broadcasts of religious occasions.

The Act on Audiovisual Programmes (710/2011) shall apply to advertising in ideological and social advertising.

## Section 225

*Windows exclusively devoted to teleshopping*

Windows devoted to teleshopping broadcast by a channel not exclusively devoted to teleshopping shall be of a minimum uninterrupted duration of 15 minutes.

They must be clearly identified as teleshopping windows by optical and acoustic means, distinguishing them clearly from other programme service.

## Section 226

*Channels exclusively devoted to teleshopping and self-promotion*

As regards television channels broadcasting exclusively advertising, teleshopping or audiovisual programmes related to self-promotion for the broadcaster, the provisions of the Act on Audiovisual Programmes shall apply to the broadcasting of television programmes that are likely to cause detriment to the development of children due to their violent nature or sexual content or by provoking horror or in another comparable way.

Sections 209, 210 and 215(1) and section 222(1) of this Act shall not apply to television channels exclusively devoted to transmitting advertising, teleshopping or audiovisual programmes relating to self-promotion of the television broadcaster.

Chapter 27

**Must carry obligation of television programmes and Channel Numbering**

Section 227

*Must carry obligation of television programmes*

A telecommunications operator providing a network service in a cable television network has an obligation to transmit the following in the network without charge:

1) public service television and radio programmes that are receivable in the municipality in which the network is located, as referred to in section 7(1) of the Act on Yleisradio Oy, freely receivable material edited for programmes, and ancillary and supplementary services related to the programmes in terms of television and radio broadcasting in terrestrial mass communications networks;

2) television programmes that are receivable in the municipality in which the network is located and in the public interest referred to in section 26 and broadcast by virtue of a national programming licence;

3) freely receivable material supplied for a programme referred to in subsection 2, advertisements included in the programmes, and ancillary and supplementary services related to the programmes.

The must carry obligation referred to in subsection 1 above also applies to a telecommunications operator providing a network service in a cable television network, if:

1) the telecommunications operator uses other than traditional cable television technology in the transmission of programmes; and

2) the reception of the programmes is possible with conventional reception devices.

However, a telecommunications operator has no must carry obligation if the cable television network capacity is for the operator's use in its television or radio broadcasting or if it is necessary for this purpose in order to meet an operator's reasonable future need. In fulfilling its must carry obligation, a telecommunications operator need not make any improvements in network capacity that would require significant financial investments.

The programmes and associated services referred to in subsection 1 shall be provided to users free of charge. However, a telecommunications operator may require users to pay a reasonable fee for maintenance of the network.

The programmes and services referred to in subsection 1 above shall be provided to users unmodified and simultaneously with the original broadcast.

A community aerial system in a housing company or a real estate company, or any similar system administrator that owns or manages a joint antenna network within a real estate or

between real estates used for transmitting mass communications to users' terminals shall ensure that programmes and services referred to in section 1 are available to users at the real estate unmodified and simultaneously with the original broadcast.

#### Section 228

##### *Channel numbering*

A telecommunications operator in a terrestrial mass communications network and a television and radio broadcaster shall, for its part, ensure that the channel numbering of programmes is clear and appropriate from the users' point of view. In channel numbering, programmes of the Finnish Broadcasting Company Ltd and a licence holder referred to in section 26 shall receive priority.

Ficora may issue further regulations on channel numbering referred to in subsection 1.

### PART IX

## COMMUNICATIONS NETWORKS, SERVICES AND EQUIPMENT

#### Chapter 28

##### **Placement**

#### Section 229

##### *A telecommunications operator's right to place a telecommunications cable, base station and radio mast*

Pursuant to the provisions of this Chapter, a telecommunications operator has the right to place in an area owned or controlled by another for the purpose of public telecommunications:

- 1) a telecommunications cable and related equipment, minor structures and poles;
- 2) a mobile network radio mast, base station, related equipment, cable and minor structures;
- 3) a mobile network base station and related equipment and cable.

A mobile network base station and related equipment and cable referred to in subsection 1(3) may also be installed in a building owned or controlled by another, pursuant to the provisions of this Chapter. Provisions on further conditions for the placement of structures, network parts and equipment referred to in subsection 1 are provided elsewhere in law.

If no agreement is reached with the property or building owner on the placement referred to in subsections 1 or 2, the municipal building supervision authority makes a decision on the placement.

An agreement referred to in subsection 1 on the placement of telecommunications cables, radio masts, base stations and related structures and equipment are also binding on a new owner or holder of a building or property.

The provisions in this section regarding an owner or holder of a building or property also apply to owner or occupier of a public area.

#### Section 230

### *Placement plan*

If the parties do not reach an agreement on the placement in an area or building owned or controlled by another as referred to in section 229, the telecommunications operator shall draw up a plan for the placement (*placement plan*).

A placement plan shall include the following information:

- 1) a map showing the location of telecommunications cables, radio mast and related structures;
- 2) a map of land division showing the property and the existing base stations of the telecommunications operator in the area;
- 3) a document showing the details, construction method and construction timetable for the telecommunications cables, base station or radio mast and related structures and equipment;
- 4) a construction plan showing how the route of the telecommunications cable is to be marked in the ground.
- 5) statement regarding the need to obtain an authority permit for the setting-up;
- 6) maintenance plan for the structures, network parts and equipment to be set up;
- 7) estimate of the energy consumption of the equipment;
- 8) restorative measures after the need for placement ends.

### Section 231

#### *Publishing a placement plan*

The telecommunications operator shall send notice of the placement plan to all property and building owners and other persons whose benefits or rights are affected by the plan. The notice shall mention the property affected by the plan. The notice shall also mention that the property owners and anyone whose benefits or rights are affected by the plan has the right to file an objection to the placement plan by a certain date.

### Section 232

#### *Objections*

A property or building owner or other party whose benefit or right is affected by the placement plan has the right to file an objection with the telecommunications operator within 30 days of the publication of the plan referred to in section 231.

### Section 233

#### *Decision on action in an area or building owned or controlled by another*

If no agreement is reached on the location, the municipal building supervision authority may, by decision following an application by the telecommunications operator, grant an action permit to the telecommunications operator by confirming the placement plan referred to in section 230.

The placement plan can be confirmed if it meets the requirements set forth in section 234. The building supervision authority may request additional information from the telecommunications operator regarding fulfilment of conditions and require changes to the placement plan.

Before a decision referred to in subsection 1 on the placing has become legally valid, the municipal building supervision authority may for a justified reason grant a permit to carry out

construction work or take other action completely or in part, provided this does not defeat the purpose of an appeal (*right to commence*). In other regards, the provisions of section 144 of the Land Use and Building Act (132/1999) apply to the right to commence.

#### Section 234

##### *Requirements for the placement*

A telecommunications cable, radio mast and base station may not be located in conflict with a land-use plan and must not hinder the implementation of existing regional land use plans or local master plans. The placement shall not complicate drawing up land use plans.

The placement of a telecommunications cable, radio mast and base station serving public telecommunication connections referred to in section 229(1) requires that the placement cannot be organised satisfactorily by some other means and at reasonable cost. Causing undue harm to the property or building shall be avoided when a decision concerning the placement is made. The placement and maintenance of a telecommunications cable, radio mast or base station and the related equipment shall not cause hindrance or damage to the use of the real estate and building that could be avoided at reasonable expense.

Wherever possible, a telecommunications cable shall be placed in a highway area referred to in the Highways Act (503/2005) or in a public area referred to in the Act on Real Estate Formation (554/1995).

#### Section 235

##### *Amendment or removal of an action permit*

An action permit based on a decision referred to in section 233(1) may be amended or removed by decision of a municipal building supervision authority if agreed to by the parties.

An action permit may be amended or removed by municipal building supervision authority decision without a telecommunications operator's consent if:

- 1) the action permit has become unnecessary due to a change in circumstances or has lost a substantial part of its significance;
- 2) the burden caused by the action permit has become unreasonable for the property or building concerned and amendment or removal of the permit will not cause substantial harm to the permit holder; or
- 3) the action permit substantially hinders implementation of the local land use plan.

The right to commence referred to in section 233 applies to the decision by a municipal building supervision authority referred to in subsection 2.

#### Section 236

##### *A right related to action permit to undertake construction and maintenance work in an area or building belonging to another*

If it is necessary for the placement of a telecommunications cable or radio mast, a telecommunications operator with a right based on a decision under section 233(1) may, without the permission of the owner or holder, fell trees and remove other plants from the placement plan area, affix necessary equipment to buildings and structures and undertake other construction work in the area. For this purpose, anyone in the service of the telecommunications operator or the operator's subcontractor has the right to access a private area and affix the necessary markings on the ground.

In non-urgent cases, the telecommunications operator shall reserve an opportunity for the owner and holder of the area to carry out the measures referred to in subsection 1 himself or herself.

An owner or holder of a building shall allow a telecommunications operator with a right based on a decision referred to in section 233(1) to properly place a base station and related equipment in the building and connect the equipment to the communications network and power grid. If needed, the owner or holder shall allow the telecommunications operator to build any necessary premises. The owner or holder shall grant anyone in the service of the telecommunications operator or the operator's subcontractor access to the building and necessary premises for the purpose of setting-up and maintenance of the base station and related equipment.

A telecommunications operator shall restore the original condition of the area, premises and their surroundings after the work referred to in this section is completed.

#### Section 237

##### *Compensation for the placement*

The right to receive full compensation for any hindrance and damage caused by measures referred to in section 229(1)(1) lies with the property owner and holder, the municipality as owner and holder of a public area, and the State as the owner and holder of a public highway area.

A property owner and holder, an owner and holder of a building and the municipality as owner and holder of a public area are entitled to full compensation for placement referred to in section 229(1)(2)(3) and subsection 2 as provided in the Act on Redemption of Immovable Property and Special Rights (603/1977), hereinafter the "*Redemption Act*".

Unless agreement is reached on the compensation, the matter shall be resolved according to the Redemption Act.

#### Section 238

##### *Entry into a Land Information System*

An entry into a Land Information System shall be made upon decision by a municipal building supervision authority referred to in section 233(1) and 235(1) and (2).

#### Section 239

##### *Application fee*

A telecommunications operator applying for a licence referred to in section 233 is required to pay a fee to the local authority for carrying out their duties, in accordance with a tariff approved by the local authority.

Interest on delayed payments shall be charged pursuant to the Interest Act (633/1982).

Payments due under subsection 1 of this section are distrainable. The provisions on the collection of payment are laid down in the Act on the Recovery of Taxes and Fees by Recovery Proceedings (706/2007).

#### Section 240

### *Supervision of placement*

The municipal building supervision authority supervises that the placement within its boundaries complies with its decision based on section 233.

Where necessary, the municipality coordinates the placement of different telecommunications operators' telecommunications cables to ensure as not to cause hindrance and damage that could be avoided at reasonable costs.

#### Section 241

##### *Work that presents a risk of damaging telecommunications cables*

Before starting any excavation work, forest work, hydraulic engineering or other work that might endanger telecommunications cables, the party carrying out the work shall establish whether there are any telecommunications cables in the work area in order to avoid damage.

The telecommunications operator shall provide information on the location of telecommunications cables free of charge.

The telecommunications operator shall supply the party carrying out the work with the necessary information and instructions to avoid danger.

#### Section 242

##### *Availability and information security related to the data on location of telecommunications cable*

The telecommunications operator shall provide data on the location of telecommunications cable (*cable data*) in digital form. The telecommunications operator shall ensure that it is technically possible to provide cable data from one central location.

Cable data must be processed in a manner as to properly protect them against information security violations and threats.

Ficora may issue further technical regulations on the digital form of cable data and information security when processing them.

### Chapter 29

## **Quality Requirements for Communications Networks and Communications Services**

#### Section 243

##### *Quality requirements for a communications network and service*

Public communications networks and communications services and the communications networks and services connected to them shall be planned, built and maintained in such a manner that:

- 1) the technical quality of electronic communications is of a high standard and information security is ensured;
- 2) the networks and services withstand normal, foreseeable climatic, mechanical, electromagnetic and other external interference as well as information security threats;

- 3) their performance, functionality, quality and reliability can be monitored;
- 4) significant information security violations and threats against them and other defects and disruptions that significantly interrupt their functionality can be detected;
- 5) access to emergency services is secured as reliably as possible even in the event of network disruptions;
- 6) the health and assets of users or other persons are not put at risk;
- 7) the data protection, information security and other rights of users and other persons are not endangered;
- 8) their billing is reliable and accurate;
- 9) the networks and services do not cause unreasonable electromagnetic or other interference or information security threats;
- 10) they function together and can, if necessary, be connected to another communications network;
- 11) modifications made to them will not cause any unforeseeable disruptions for other communications networks or services;
- 12) if necessary, terminal equipment meeting the requirements of this Act can be connected to them, and they are, if necessary, compatible with a television receiver that meets the requirements of this Act;
- 13) the responsible telecommunications operator is also otherwise able to meet its obligations or those imposed under this Act;
- 14) they function as reliably as possible even in the exceptional circumstances referred to in the Emergency Powers Act (1552/2011) and in disruptive situations under normal circumstances;
- 15) emergency alert messages by authorities can be transmitted to the public as laid down in separate provisions;
- 16) requests for interception and monitoring, as well as other requests related to an authority's right to obtain information may be fulfilled in a manner as laid down in separate provisions.

These quality requirements referred to in paragraphs 1–4, 10, 11 and 14 of subsection 1 shall be commensurate with the number of users of the communications networks and services, the geographical area served, as well as their significance to the users.

The measures referred to in paragraphs 1, 2, 4, 7 and 9 of subsection 1 related to information security mean measures to ensure the security of operations, communications, equipment and programmes, as well as the security of information material. These measures shall be commensurate with the seriousness of threats, level of technical development to defend against the threat and costs incurred by these measures.

The quality requirements referred to in subsection 1 also apply to significant associated facilities and services related to communications networks and services.

## Section 244

### *Regulations on communications networks and communications services*

Ficora may issue regulations on the quality requirements, information security and interoperability of communications networks and communications services as referred to in section 243. The regulations may relate to:

- 1) priority rating, power supply, ensuring maintenance of integrity and redundancy routes;
- 2) electronic and physical protection of a communications network and the related site;
- 3) performance capacity, information security and functionality as well as their maintenance, follow-up and network management;

- 4) procedures in the event of faults and interference, as well as maintenance of information security and functionality;
- 5) structure of communications networks and technical characteristics of communications network termination points;
- 6) technical aspects of implementing and safeguarding emergency traffic;
- 7) technical aspects of billing;
- 8) interconnection, interoperability, signalling and synchronisation;
- 9) the technical characteristics of a cable television network, antenna system and community aerial system;
- 10) the technical characteristics of a television network that receives wide-screen television services and wide-screen television programmes;
- 11) the content and structure of the opening page of an electronic programme guide;
- 12) technical documentation and statistics as well as the form of related documents and their storage;
- 13) standards to be complied with;
- 14) other comparable technical requirements set for a communications network or communications service;
- 15) associated facilities and services to the extent that they affect the requirements for communications networks and communications services laid down in section 243.

#### Section 245

##### *Requirements for assisting the authorities*

A public authority performing interception or monitoring of communications must submit to Ficora a proposal on the operational quality requirements that the communications network and communications services have to meet.

Ficora decides on a case-by-case basis on the technical requirements imposed on the devices or features used in interception or monitoring communications after consulting the telecommunications operator and the public authority referred to in subsection 1.

A telecommunications operator shall without delay notify the authority referred to in subsection 1 of any changes to its communications networks or services already in their planning stage, if these are relevant to interception and monitoring or to the rights of other authorities to obtain information. In addition, the telecommunications operator shall provide any available information on the possible impact of such changes on the authority's own information systems.

Ficora may issue further regulations on the methods to be used for providing the information referred to in subsection 3.

#### Section 246

##### *Subscribers' and users' terminals and equipment*

A telecommunications operator shall not prevent a user from connecting to a public communications network any radio or telecommunications terminal equipment or any decoding equipment or television receiver that meets the requirements of this Act.

A subscriber or user may connect to a public communications network only radio or telecommunications terminal equipment that is in working order and conforms to the requirements of this Act.

A subscriber shall maintain equipment or a system to be connected to a public communications network in accordance with instructions from the telecommunications

operator so as not to endanger the information security of the public communications network or service.

#### Section 247

##### *Obligation of a communications provider or a provider of added value services to maintain information security*

When transmitting messages, communications providers must maintain the information security of their services, messages, traffic data and location data. However, corporate or association subscribers as communications providers are responsible for maintaining information security of messages, traffic data and location data of their users only.

Added value service providers shall maintain the information security of their services.

The information security measures must be commensurate with the seriousness of threats, level of technical development to defend against the threat and costs incurred by these measures.

Ficora may issue further regulations on information security referred to in subsections 1 and 2.

#### Section 248

##### *Principle of least convenience*

Any construction, maintenance, changes or information security measures made to communications networks or services by the operator shall be made in a way that causes as little inconvenience to other telecommunications operators as possible.

A telecommunications operator may without the consent of another telecommunications operator temporarily interrupt or restrict the use of a network or communications service if this is necessary to implement the measures referred to in subsection 1. Any interruption or changes shall be announced efficiently to other telecommunications operators whose networks or services they might affect.

#### Section 249

##### *Planning and telecommunications contracting for an internal communications network in a property or building*

A communications network internal to a property or building to be interconnected to a public communications network must meet the requirements of this Act. A communications network internal to a property or building shall be planned in a manner as to allow, if possible, a subscriber referred to in section 111 to choose a telecommunications operator.

A telecommunications operator must not require that the interconnection of a communications network internal to a property or building with a public communications network be built, installed and maintained (*telecommunications contracting*) only by a contractor selected by the telecommunications operator.

A telecommunications operator must not require that a communications network internal to a property or building be interconnected to the operator's own network so as to restrict the management of the internal networks and ability to choose a telecommunications operator.

Ficora may issue further regulations on the technical properties of communications networks to be considered when planning them and on the form and content of planning documents referred to in subsection 1 as well as the network termination points referred to in

subsection 3. Regulations may also be issued on other, similar technical systems affecting the management of networks internal to a property or building.

## Section 250

### *Public authority network*

*Public authority network* means a communications network built for the needs of government measures and state security, military defence, public order and security, border control, rescue activities, maritime rescue activities, emergency centre activities, immigration, first aid services, railway security or civil defence.

A public network interconnection can be made available to public authorities and other user groups essential to the discharging of the duties referred to in subsection 1. The Ministry of Transport and Communications decides on the user groups that have the right to use a public authority network.

Parts III and V do not apply to a public authority network. section 316 does not apply to communications in a public authority network related to the fulfilment of authority duties.

A telecommunications operator shall connect a public authority network to a public communications network on request and without charge. A telecommunications operator in a public authority network is not entitled to receive compensation for any telecommunications from a public communications network to a public authority network. A telecommunications operator in a public communications network has the right to receive compensation for telecommunications from a public authority network to a public communications network according to the tariffs of the telecommunications operator.

## Chapter 30

### **Placing Telecommunications, Network and Radio Equipment on the Market**

## Section 251

### *Terminal equipment interfaces*

A telecommunications operator shall publish up-to-date technical specifications on the public communications network interfaces to which the telecommunications terminal equipment may be connected. The specifications shall include sufficiently accurate information that may be used as a basis for manufacturing telecommunications terminal equipment and that can be used for services provided via the interface.

## Section 252

### *Parties responsible for representing the telecommunications device manufacturer*

The provisions of sections 256–263 and 315 shall also apply to their authorised representatives if the manufacturer is not situated in the European Economic Area. If neither the manufacturer nor its authorised representative is situated in the European Economic Area, the provisions of this Act shall also apply to the party that places the device on the market within the European Economic Area.

## Section 253

### *Import, sale, offering for sale, demonstration and use*

It is permitted to import to Finland for the purpose of sale or transfer, or, within Finland, to offer for sale, to sell or to transfer to another party, only such radio transmitters that comply with the essential requirements of this Act and which bear the required markings and are accompanied by a declaration of intended use and a declaration of conformity.

It is permitted to import to Finland for sale or transfer, or, within Finland, to offer for sale, only such radio receivers that comply with the essential requirements of this Act and which bear the required markings and are accompanied by a declaration of intended use and a declaration of conformity.

It is permitted to import to Finland for the purpose of sale or transfer, or, within Finland, to offer for sale, to sell or to transfer to another party, only such telecommunications terminal devices and network devices that comply with this Act and with the essential requirements laid down by virtue of it and which bear the required markings and are accompanied by a declaration of conformity. Telecommunications terminal devices shall also bear a marking that indicates the intended use.

Other telecommunications devices than that referred to in subsections 1–3 which is intended for placing on the market in Finland may be displayed, provided that prominent marking clearly indicates that such equipment may not be placed on the market until it has been verified that the device conforms with the essential requirements referred to in section 254.

A radio transmitter must not be used for radio communications if its conformity with the requirements laid down in sections 254 or 264 has not been verified. However, a radio transmitter may be used for radio communications if no licence is required on the basis of section 39(6)–(9) or if Ficora has granted a radio licence referred to in section 39(1) for its possession and use in research and development activities concerning radio equipment.

## Section 254

### *Essential requirements*

Telecommunications device must satisfy the following essential requirements:

- 1) requirements concerning the safety of electrical equipment;
- 2) requirements concerning the protection of public health and safety other than those in paragraph 1;
- 3) protection requirements concerning electromagnetic compatibility;
- 4) requirement that radio frequencies and orbital resources be used efficiently so as to avoid harmful interference.

Separate provisions shall be issued on electrical safety requirements of telecommunications devices. Voltage limits laid down in separate provisions do not apply to radio and telecommunications terminal device.

Ficora issues regulations on requirements regarding electromagnetic compatibility protection and further regulations on such special requirements concerning radio equipment and telecommunications terminal devices that are the subject of decision by the Commission that requires enforcement.

## Section 255

### *Notified body*

Ficora will, upon application, designate a notified body, which will have the task of issuing opinions on the conformity of radio equipment and telecommunications terminal device, stipulating specific radio test suites and certifying and supervising quality assurance systems for such equipment. A notified body may be designated for a limited period. The application must include the information necessary for processing the application as requested by Ficora.

A notified body shall be functionally and economically independent of any manufacturer of radio or telecommunications devices. It shall have liability insurance or some other corresponding arrangement that is adequate in view of the extent of its activities, and must have at its disposal a sufficient number of professionally skilled personnel and systems, equipment and tools required for its activities. The notified body shall possess a valid accreditation decision by an accreditation entity or other accreditation organ that is party to an agreement on mutual recognition as referred to in the Act on Verifying the Competence of Conformity Assessment Services (920/2005), verifying that the body is competent to act as a notified body in the meaning of subsection 1.

The activities of the notified body are supervised by Ficora. A notified body shall report on those changes in its activities that may influence its capacity to function as a notified body. If a notified body no longer fulfils the prescribed requirements or functions contrary to the provisions, Ficora may revoke the designation.

In performing its duties under this Act, the notified body shall comply with the provisions of the Administrative Procedure Act (434/2003), the Act on the Openness of Government Activities and the Language Act (423/2003).

Further provisions on the requirements to be imposed on notified bodies and on the documents demonstrating compliance with the requirements, which are to be attached to the application, will be issued by Decree of the Ministry of Transport and Communications.

## Section 256

### *Conformity assessment procedure*

The conformity of telecommunications devices must be demonstrated by means of:

- 1) internal production control;
- 2) internal production control that includes specific radio test suites;
- 3) internal production control that includes specific radio test suites and an opinion of a notified body;
- 4) internal production control that includes an opinion of a notified body;
- 5) an internal production audit as provided under the Electrical Safety Act (410/1996), or an internal production audit that includes an opinion from a notified body; or
- 6) full quality assurance.

During every procedure referred to in subsection 1, the telecommunications device manufacturer shall ensure that the device satisfies the essential requirements referred to in section 254 and shall draw up a document declaring that the equipment conforms to these requirements (*declaration of conformity*). The procedure referred to in subsection 1(2) above also requires that the equipment is tested using specific radio test suites. In the procedure referred to in subsection 1(3) and (4) above, a technical structure file based on the test results of the specific radio test suites and the technical documentation prepared for the device must also be presented to the notified body.

In assessment procedures other than in subsection 1(5), a negative opinion issued by a notified body concerning the technical structure file for the device does not prevent the manufacturer from placing the device on the market if the device satisfies the essential requirements referred to in section 254.

In the procedure referred to in subsection 1(6) above, the manufacturer shall, in the design, manufacture and inspection of the products, use a quality system certified by a notified body. For supervision purposes, the manufacturer shall provide the notified body with the necessary information and allow inspections of the manufacture, inspection, testing and storage facilities. If the quality system no longer fulfils the requirements laid down in this Act, the notified body may withdraw its certification.

The documentation for the conformity assessment procedure shall be drawn up in Finnish or Swedish or in a language accepted by the notified body or Ficora. The manufacturer must keep the documentation referred to above at the disposal of the national authorities of the States in the European Economic Area for at least ten (10) years after the last piece of telecommunications device has been manufactured. Ficora issues further regulations on the procedure to be followed in verifying the conformity of telecommunications devices and on the documentation to be drawn up in connection with this.

#### Section 257

##### *Verifying the conformity of a radio transmitter*

Where the manufacturer of a radio transmitter has applied the technical specification adopted by a recognised standards body under a mandate from the Commission of the European Union and for which the reference details have been published in the Official Journal of the European Union (*harmonised standard*), the conformity of the radio transmitter must be demonstrated using the assessment procedure referred to in section 256(1)(2, 3 or 6)

Where the manufacturer of a radio transmitter has not applied the harmonised standards or has applied them only in part, the conformity of the radio transmitter shall be demonstrated using the assessment procedure referred to in section 256(1)(3 or 6).

#### Section 258

##### *Verifying the conformity of a radio receiver*

The conformity of a radio receiver or the receiver components of a piece of radio equipment shall be demonstrated using the assessment procedure referred to in section 256(1)(1, 3 or 6). The conformity of a radio receiver designed solely for receiving television or radio programmes shall be demonstrated using the assessment procedure referred to in section 256(1)(1 or 5).

#### Section 259

##### *Verifying the conformity of telecommunications terminal device*

The conformity of telecommunications terminal device shall be demonstrated using the assessment procedure referred to in section 256(1)(1, 4 or 6).

#### Section 260

##### *Verifying the conformity of communications network devices*

The conformity of communications network devices must be demonstrated using the assessment procedure referred to in section 256(1)(5).

## Section 261

### *Fixed installations*

Fixed installations shall be carried out in compliance with good technical practice in such a way that the installation meets the protection requirements concerning electromagnetic compatibility referred to in section 254(1)(2). The conformity of a fixed installation in respect of its electromagnetic compatibility does not need to be demonstrated using the assessment procedure referred to section 256.

Notwithstanding the provisions of sections 253(3) and 260, the conformity of communications network devices designed for a specific fixed installation and not offered for sale does not need to be demonstrated in respect of the protection requirements concerning electromagnetic compatibility referred to in section 254(1)(2), nor does the marking provided by Ficora under section 262(1) need to be applied.

The holder of a fixed installation is obliged to appoint a person responsible for ensuring that the fixed installation accords with subsection 1 and to provide Ficora upon request with information on the person responsible.

Ficora may issue further regulations on the procedure to be followed in carrying out fixed installations and on the appointment and notification of persons responsible, as well as on the documentation concerning fixed installations and network devices designed for such installations, and on the obligation to register and store such documentation.

## Section 262

### *Marking and information to be supplied*

The telecommunications device manufacturer shall affix a marking on equipment assessed in accordance with section 256, in the manner specified by Ficora. Ficora may issue further regulations on marking in accordance with European Union legislation.

In addition to a declaration of conformity, radio equipment and telecommunications terminal devices must be accompanied by information on the intended use of the device (*declaration of intended use*). In the case of radio equipment, the sales package and instructions for use must contain sufficiently clear information indicating the European Union Member States or the geographical area within a Member State where the equipment is intended to be used. The information on telecommunications terminal devices must indicate clearly the public communications network termination points to which the device is intended to be connected.

The provisions of subsection 2 do not apply to radio receivers designed solely to receive television or radio programmes.

## Section 263

### *Notification of placing on the market*

If a radio transmitter assessed in accordance with section 257 operates on frequencies that have been allocated to another use by regulations issued by Ficora, the manufacturer shall notify Ficora of the intention to place the radio transmitter on the market.

Ficora issues further regulations on the notification procedure and on the information to be given in the notification.

## Section 264

*Requirements for certain types of radio equipment and telecommunications terminal devices*

The provisions of sections 254–259 and 262 do not apply to:

- 1) radio equipment which is intended to be used solely for amateur service and which is not available commercially;
- 2) radio equipment whose conformity is verified as ship equipment based on the Ship Safety Control Act (1503/2011);
- 3) radio equipment intended for aeronautical mobile service use on board an aircraft;
- 4) radio equipment held and used by the Defence Forces and Border Guard for the sole purpose of military defence;
- 5) radio equipment and telecommunications terminal devices to be used solely to ensure public safety or State security or in uncovering, solving or conducting pre-trial investigation of a criminal offence.

Ficora may issue regulations on the characteristics and technical construction of radio equipment and telecommunications terminal devices referred to in subsection 1(1) and (5) and on the conformity assessment procedure and marking of such devices.

## Chapter 31

### **Proficiency and Conformity**

#### Section 265

##### *Demonstrating proficiency*

Users of radio transmitters for the maritime mobile service or radio amateur service must have a proficiency certificate issued by Ficora, or a proficiency certificate issued by the competent authority of another country and recognised by Ficora as being valid in Finland.

Notwithstanding the provisions of subsection 1, the radio transmitter may also be used by another person under the direct supervision of the holder of the proficiency certificate. The provisions of subsection 1 do not apply to the Finnish Defence Forces or the Border Guard when they employ radio communication for military defence, nor to the radio equipment they possess solely for that purpose.

A proficiency certificate is obtained by taking a proficiency examination. Knowledge of the rules, guidelines and equipment pertaining to the type of radio communication in question and the necessary language skills must be demonstrated in the examination. The examination requirements are determined by Ficora, which also issues a decision appointing certain Ficora officials as examiners. Upon application, a party outside Ficora may be appointed as examiner. Examiners must have the skills and experience for the task. In performing its duties under this Act, the examiner shall comply with the provisions of the Administrative Procedure Act, the Act on the Openness of Government Activities and the Language Act. The provisions of the Act on Criteria for Charges Payable to the State (150/1992) apply to charges related to the examinations.

Ficora grants a proficiency certificate to an applicant who has passed the proficiency examination, provided there is no justifiable cause to suspect that the applicant will violate the provisions and regulations on radio communication.

Provisions on proficiency with regard to radio equipment intended for use on board an aircraft are laid down in the Aviation Act (1194/2009).

Ficora may cancel the appointment of an examiner referred to in subsection 3 if the examiner no longer fulfils the requirements for the appointment of examiners as laid down in the subsection or significantly violates the subsection's provisions concerning activities performed.

Ficora may, if necessary, issue further regulations concerning the work of examiners.

## Section 266

### *Maintaining proficiency*

The user of a radio transmitter intended for safety radio communication on a merchant vessel in international traffic must demonstrate that he/she has maintained the proficiency stated in the certificate referred to in section 265 within five years of the certificate being issued. Maintenance of the proficiency required may be demonstrated by:

- 1) presenting written evidence of seagoing service and use of safety radio equipment relevant to maintaining proficiency;
- 2) passing an examination; or
- 3) passing a course approved by Ficora instead of the examination.

Subsections 3, 4, 6 and 7 of section 265 apply to an examination referred to in subsection 1(2) above.

Ficora will, upon application, grant a certificate endorsement to a person who demonstrates, in the manner referred to in subsection 1, that he/she has maintained the proficiency required. Ficora may also accept as a demonstration of maintained proficiency a certificate attesting to this issued by a competent authority of another country.

## Section 267

### *Presentation of proficiency certificates and certificate endorsements, and their period of validity*

On request, the user of a radio transmitter for the maritime mobile service or the amateur service must present his/her proficiency certificate or certificate endorsement to representatives of Ficora, the police, the Border Guard or the Finnish Transport Safety Agency who are supervising compliance with the provisions concerning these certificates and endorsements.

A proficiency certificate is valid until further notice, and a certificate endorsement is valid for five years from the date on which it was issued, the date on which the examination was passed or the date on which the course certificate was issued.

The provisions of subsection 1 do not apply to radio equipment aboard warships of a foreign State, military aircraft of a foreign State, or other aircraft of a foreign State which are used solely for government purposes.

## Section 268

### *Revocation of a proficiency certificate or a certificate endorsement*

Ficora may revoke a proficiency certificate or a certificate endorsement if the holder of the certificate or endorsement transmits a false distress signal referred to in Chapter 34(10) of the Criminal Code by means of a radio transmitter, interferes in radio communications using a radio transmitter in a manner that is punishable under Chapter 38(5)–(7) of the Criminal Code,

repeatedly violates the provisions on radio communications or repeatedly and negligently causes harmful interference in radio communications.

## Chapter 32

### **Protection and Protection Decoding Systems**

#### Section 269

##### *Protecting electronic messages*

Messages and traffic data may be protected using any technical means available for the purpose, unless otherwise provided by law. Implementation of such protection must not interfere with the provision or use of any network service or communications service.

The illegal possession, use, manufacture, importing, offering for sale, leasing, distribution, sales promotion, installation and maintenance of any system or part of a decoding system is prohibited in cases where such a system or part thereof is intended primarily for unlawful decoding of technical protection and accessing protected television broadcasts, radio broadcasts or remote services personally requested by a recipient.

The provisions of subsection 2 also apply to a decoding system intended for accessing a separate technical system with conditional access, which protects services referred to in subsection 2.

#### Section 270

##### *Obligations imposed on an operator that uses a decoding system*

An operator that uses a decoding system has an obligation to ensure that the decoding system does not prevent the distribution or reception of television or radio programmes or related ancillary and supplementary services of another operator in a terrestrial digital television and radio network.

An operator using a decoding system has an obligation to supply another operator with the technical services required for the aforementioned distribution at a cost-oriented and non-discriminatory price.

The obligations referred to in subsection 1 above do not apply, however, if the fulfilment of the obligation would be technically inappropriate or otherwise unreasonable for the operator.

An operator providing decoding systems shall separate the operation referred to in subsection 1 from its other activities.

An operator referred to in subsection 1 above has an obligation to ensure that communications network transmission monitoring is possible.

An operator that uses a decoding system in a digital terrestrial mass communication network in providing linear pay-television services has an obligation to provide the television programmes referred to in Chapter 4 in a manner that ensures the reception of fee-based television services by means of one decoder card or other technical solution, if the pay television service follows a programme schedule that is announced in advance.

If no agreement is reached between operators on the costs incurred in offering technical services referred to in subsection 1 within six months of commencement of negotiations, and mediation referred to in section 314(2) has not yielded a solution, Ficora may decide on the compensation payable to the operator providing the technical services.

## Section 271

*Obligation of holder of industrial property rights to a decoding system*

The holder of industrial property rights to a decoding system for use in a digital television or radio network shall use terms that are fair, reasonable and non-discriminatory when granting these rights to a company manufacturing decoding systems.

The holder of the industrial property rights shall not impose terms for granting user rights that would prevent the co-use of the decoding system with other equipment or systems or would hamper such use unless the terms are necessary for reasons of equipment safety or for other technical reasons.

## PART X

**MEASURES TO ENSURE THE CONTINUITY OF COMMUNICATIONS AND SERVICES**

## Chapter 33

**Management of Information Security and Interference and Related Notifications**

## Section 272

*Measures taken to implement information security*

A telecommunications operator, an added value service provider or corporate or association subscriber, or any party acting on their behalf has the right to undertake necessary measures referred to in subsection 2 for ensuring information security:

- 1) in order to detect, prevent, investigate and commit to pre-trial investigation any disruptions in information security of communications networks or related services;
- 2) in order to safeguard the possibilities of the sender or recipient of the message for communications; or
- 3) in order to prevent preparations of means of payment fraud referred to in Chapter 37(11) of the Criminal Code planned to be implemented on a wide scale via communications services.

Measures referred to in subsection 1 above may include:

- 1) automatic analysis of message content;
- 2) automatic prevention or limitation of message transmission or reception;
- 3) automatic removal of malicious software that poses a threat to information security from messages;
- 4) any other comparable technical measures in the meaning of subsections 1–3.

If it is evident due to the message type, form or some other similar reason that the message contains malicious software or commands, and the measure referred to in subsection 2(1) cannot ensure the attainment of the goals referred to in subsection 1, the content of a single message may be processed manually. The sender and recipient of a message whose content

has been manually processed shall be informed of the processing, unless the information would apparently endanger the attainment of the goals referred to in subsection 1.

Any measures referred to in this section shall be implemented with care, and they shall be commensurate with the seriousness of the disruption being combated. Such measures shall not limit freedom of speech, the confidentiality of a message or the protection of privacy any more than is necessary for the purpose of attaining the goals referred to in subsection 1. Such measures must be discontinued if the conditions for them specified in this section no longer exist.

Ficora may issue further regulations on the technical implementation of the measures referred to in this section.

### Section 273

#### *Obligation to remedy a hindrance*

If a communications network, service or device creates serious economic or operational hindrance to other communications networks, services or connected services, device, the user or other person, the telecommunications operator or owner or holder of the communications network or device shall take immediate measures to correct the situation and, if necessary, disconnect the communications network, service or device.

Any measures referred to in this section shall be implemented with care, and they shall be commensurate with the seriousness of the disruption being combated. Such measures shall not limit freedom of speech, the confidentiality of a message or the protection of privacy any more than is necessary for the purpose of safeguarding the goals referred to in subsection 1. Such measures shall be discontinued if the conditions for them specified in this section no longer exist.

In cases referred to in subsection 1, Ficora may decide on repair measures, including disconnection of a network, service or equipment.

### Section 274

#### *Disturbance notifications to subscribers and users*

The telecommunications operator shall notify subscribers and users without undue delay of significant information security violations or threats to information security in the services and of anything else that prevents or significantly interferes communication services. If a significant violation or threat is posed to the information security of an added value service, the added value service provider shall immediately notify the user.

The telecommunications operator and added value service provider shall notify the user of the estimated duration of the violation or threat. In addition, they shall inform the subscriber or user of the measures available to them for combating the threat, of the probable costs of such measures, and inform the sources of further information available to them. The telecommunications operator and added value service provider shall retain the data regarding the notifications.

The telecommunications operator shall publish an appropriate notification of the measures taken in a situation referred to in subsection 1 and any effects they may have on the use of that service.

Ficora may issue further regulations on the content and form of the notifications and publication of information referred to in this section and on the retaining of notifications.

### Section 275

*Disturbance notifications to Ficora*

The telecommunications operator shall notify Ficora without undue delay of significant information security violations or threats to information security in the services and of anything else that prevents or significantly interferes communication services. A telecommunications operator shall also make a notification of the estimated duration and consequences of information security violations and threats, corrective measures taken as well as measures undertaken to prevent the reoccurrence of such violations. If notifying of information security violation is in the public interest, Ficora may order the telecommunications operator to provide information regarding the matter.

Ficora may issue further regulations on the significance of a violation referred to in subsection 1 as well as the content, form, and delivery of the notification.

Ficora provides the European Commission and the European Network and Information Security Agency with an annual summary report of notifications referred to in subsection 1.

Section 276

*Interference cooperation working group*

Ficora may designate an interference cooperation working group, consisting of representatives from:

- 1) telecommunications operators;
- 2) network and distribution network holders referred to in the Act on Electronic Markets (588/2013);
- 3) contractors working for operators referred to in subsections 1 and 2;
- 4) operators other than those referred to in subsections 1–3, whose participation is deemed appropriate.

The group's tasks are to:

- 1) plan and harmonise measures required to control the exceptional circumstances referred to in the Emergency Powers Act and disruptive situations under normal circumstances;
- 2) acquire and submit information needed to control interference situations to support decision-making of Ficora; and
- 3) communicate the information on interference situations collected and analysed by the group to parties who have the capability to reduce the damaging effects of interference on society.

In addition to the provisions in the Act on the Openness of Government Activities, Ficora may, notwithstanding secrecy provisions, disclose information needed to control interference situations to the cooperation work group members, if the information is necessary for the group in performing its duties and does not contain confidential messages, traffic data or location data.

The provisions on the obligation of secrecy and non-exploitation referred to in Chapter 6 of the Act on the Openness of Government Activities and criminal liability of a civil servant apply to the members of the cooperation working group in tasks complying with this section. Provisions on liability for damages are laid down in the Tort Liability Act (412/1974).

Section 277

*Removal of radio interference*

If the operation of radio equipment causes interference in safety radio communications, the use of the radio equipment shall be discontinued immediately.

If a radio transmitter causes interference in radio communications or to other radio equipment, the holder or owner of the radio transmitter shall eliminate or restrict the interference. If the interference is caused by the technical characteristics of a radio receiver, its separate antenna or antenna system, the elimination of the interference is the responsibility of the holder or owner of the radio receiver, unless otherwise provided in this Act or the licence terms.

Ficora may decide other measures concerning the technical characteristics or the use of the radio equipment that must be undertaken by the holder or owner of the radio equipment to prevent or restrict the interference and its effects.

If both the radio equipment causing the interference and the equipment suffering from the interference are in compliance with this Act and the provisions and regulations issued by virtue of it, and the interference is not of a minor nature or is not caused by interference immunity properties of a separate antenna or antenna system linked to a radio receiver, Ficora will present a proposal to the parties concerned regarding measures for the elimination of the interference or the restriction of its effects.

If the parties fail to agree on the measures necessary to eliminate the interference or on the amount or allocation of the costs caused thereby, Ficora settles the matter by decision.

The procedures referred to in subsections 2–4 above also apply when radio equipment causes interference to telecommunications networks, telecommunications terminal device or electrical appliances whose interference immunity properties are in accordance with the provisions and regulations issued under this Act and the Electrical Safety Act.

Ficora may issue further regulations on the technical features of a separate antenna or antenna system referred to in subsection 4 to be connected to a radio receiver.

## Chapter 34

### **Transmitting Emergency Calls and Messages from the Authorities**

#### Section 278

##### *Universal emergency call number*

A telecommunications operator in a telephone network shall, for its part, ensure that users are able to access the universal emergency call number 112 by phone and SMS message free of charge.

A telecommunications operator is obliged to disclose to an Emergency Response Centre, a Marine Rescue Coordination Centre, or a Marine Rescue Sub-Centre any significant defects or violations within a communications network, network service or communications service that might affect emergency call operating.

Ficora may issue further regulations on technical measures necessary to meet the obligation referred to in subsection 1.

#### Section 279

##### *Obligation to broadcast emergency alert messages*

An operator holding a radio broadcasting licence referred to in Section 34 or a programming licence for public interest television broadcasting referred to in Section 26 is obligated to

broadcast to the public an emergency alert message from the authorities without charge, as prescribed in separate provisions.

A television and radio broadcaster referred to in subsection 1 above shall ensure that an emergency alert message can be transmitted in the exceptional circumstances referred to in the Emergency Powers Act and in disruptive situations under normal circumstances.

The content of the emergency alert message must not be changed in transmission.

## Section 280

### *Obligation of a telecommunications operator to transmit a targeted message from the authorities*

*Targeted message from the authorities* means a targeted message in the event of an emergency and any other targeted message from the authorities. *Targeted emergency message* means a message to prevent an imminent threat to human lives, health, property or an imminent threat of considerable damage to property or the environment that will be communicated in a mobile network by means of an SMS, for example, to terminals or subscriber connections within a certain area or areas. *Other targeted message from the authorities* means a message to protect people and property that will be communicated in a mobile network by means of an SMS, for example, to terminals or subscriber connections within a certain area or areas when the threat to human lives, health or property is not imminent.

A telecommunications operator is obliged to transmit a targeted message from the authorities, if the message is delivered for transmission by an Emergency Response Centre, a Marine Rescue Coordination Centre or a Marine Rescue Sub-Centre.

Such a targeted message can be sent by an order of the rescue, police or frontier authorities, the Radiation and Nuclear Safety Authority, or the Meteorological Institute, each within their sector. A decision on other targeted communication from the authorities will be made by the competent ministry.

A targeted message from the authorities shall be communicated in languages decided by the authorities to terminals and subscriber connections that at the time of the message transmission are located within designated areas. A telecommunications operator shall not change the contents of a message from the authorities.

A targeted alert message shall be transmitted without a delay. Other targeted messages from the authorities shall be transmitted as soon as it is possible without causing unreasonable harm to standard network and communications services.

Ficora may issue further regulations on transmission and response times of and preparatory actions for targeted messages from the authorities.

## Chapter 35

### **Preparedness**

## Section 281

### *Obligation of contingency planning and preparations for exceptional circumstances*

A telecommunications operator shall ensure that its activities will continue with minimal disruption even in the exceptional circumstances referred to in the Emergency Powers Act and in disruptive situations under normal circumstances.

The radio frequency users and user groups essential to maintenance and supply security must ensure that the use of radio frequencies is efficient and sufficiently free of interference in disruptive situations under normal circumstances and under exceptional circumstances referred to in the Emergency Powers Act. The Ministry of Transport and Communications decides on essential users and user groups of radio frequencies on the proposal of the National Emergency Supply Agency.

## Section 282

### *Contingency planning*

A party referred to in section 281 under a contingency planning obligation shall assess the risks that may disrupt its activities and based on that shall devise contingency plans on how to continue operations in disruptive situations under normal circumstances using the powers laid down in Chapter 9 of the Emergency Powers Act.

Upon request, a party under the contingency planning obligation shall submit its contingency plan to Ficora. Ficora shall be notified of changes to the delivered information without delay.

Upon request by Ficora, an operator under the contingency planning obligation shall, in individual cases, state its preparedness for an individual interference or threat thereof, and which measure it has taken or plans on taking under its contingency plan.

The obligations referred to in this section do not apply to public authorities.

## Section 283

### *Location of a critical communications system*

A telecommunications operators shall ensure that a communications system that is critical to the communications service it provides as well as its guidance, maintenance and control may be returned to Finland without delay using the state authority referred to in section 60(1)(8) of the Emergency Powers Act and that the service or system it provides can be maintained from a location determined using the procedure referred to in subsection 1 of this section. This obligation does not apply to communications services of minor significance.

## Section 284

### *Further provisions on contingency planning*

Ficora may issue further regulations on the contingency preparation obligation. The regulations may cover:

- 1) documentation and their content on contingency preparations referred to in section 282;
- 2) technical measures to minimise the damaging effects of information security violations;
- 3) technical implementation of an obligation referred to in section 283;
- 4) use of frequencies;
- 5) other similar technical issues as referred to in subsections 1–4.

## PART XI

## AUTHORITY FEES AND COMPENSATION

### Chapter 36

#### Authority Fees

#### Section 285

##### *Application fee*

An applicant for a licence under this Act is required to pay the licencing authority a fee with the application, in the amount of:

- 1) EUR 5 000 for a network licence referred to in section 6(1) and a programming licence for terrestrial television broadcasting referred to in section 22(1);
- 2) EUR 1 500 for a programming licence for radio broadcasting referred to in section 22(1) and 34(1);
- 3) EUR 1 000 for a network licence referred to in section 9;
- 4) EUR 300 for a temporary programming licence referred to in section 28.

No application fee, however, is needed for a licence application concerning a public authority network.

The application fee is non-refundable, even if the licence application is withdrawn or rejected.

#### Section 286

##### *Auction participation fee*

An enterprise, organisation or association registered for an auction referred to in section 11 shall pay a participation fee to cover the administrative costs that will accrue to Ficora for arranging the auction. Provisions on the amount of the participation fee will be given by Government Decree.

The participation fee is non-refundable, even if the operator or association does not bid in the auction.

Ficora will issue a decision for the payment of the fee.

#### Section 287

##### *Licence fee*

A telecommunications operator that has been granted a network licence under section 11 shall pay a licence fee to the licensing authority. The licence fee is the highest valid bid provided in section 11(1).

The licence fee shall be paid annually in instalments during the licence period. Provisions on the payment schedule will be given by Government Decree. Ficora will issue a decision for the payment of the fee.

#### Section 288

##### *Market-based spectrum fee*

Ficora collects from a holder of a network licence for telecommunications and television operations granted by the Government free of charge pursuant to section 6, as well as from the Defence Forces, a market-based spectrum fee, payable to the Government. The fee shall be collected for frequencies that have been allocated:

- 1) to a network licence holder of a radio licence pursuant to section 39;
- 2) to the network of a holder of a radio licence pursuant to section 39 that is used for television operations other than for public interest television broadcasting;
- 3) for use by the Defence Forces by a Finnish Communications Regulatory Authority regulation pursuant to section 96.

The market-based spectrum fee is calculated according to the following formula:

$$B \cdot K1 \cdot Kasuk \cdot Ktark \cdot EUR\ 9\ 300$$

In the equation:

- 1) B means the frequency amount allocated to the licence holder's network or use of the Defence Forces given in megahertz (MHz).
- 2) K1 means the frequency band factor, which is determined on the basis of the technical and financial utilisation of the frequency band allocated to use.
- 3) Kasuk is the population coverage factor, which is determined on the basis of the number of inhabitants in the utilisation area in relation to Finland's population. The value of the population coverage factor is 1 for a utilisation area that covers all of Finland.
- 4) Ktark is the intended use factor, which is determined by the intended use of the frequencies.
- 5) The calculatory economic value of the frequencies is EUR 9 300 per MHz.

The frequency band factors are as follows:

146–174 MHz	1.9
174.001–240 MHz	2.0
400–862 MHz	2.0
862.001–960 MHz	1.4
1 215–2 200 MHz	1.0
2 200.001–2 700 MHz	0.6
3 400–4 200 MHz	0.4
12 000–14 500 MHz	0.25
17 100–19 700 MHz	0.25
19 700.001–39 000 MHz	0.2

The intended use factors are as follows:

telecommunications operations	1.0
television operations	0.25
military defence	0.15

## Section 289

### *Information society fee*

A telecommunications operator subject to notification or licence shall pay an annual information society fee to Ficora.

No information society fee is charged for the turnover from television or radio broadcasting or from retransmission of television or radio broadcasts.

The information society fee is 0.12 per cent of a telecommunications operator's turnover of operations in Finland, based on the financial period preceding the determination of the fee but no less than EUR 300. Further provisions on turnover as the basis for the information society fee are laid down in section 290.

Provisions on determining the information society fee for the first year of operations are laid down in section 292.

If a telecommunications operator discontinues its operations before the end of the payment period, the information security fee will not be returned.

#### Section 290

##### *Turnover as the basis for the determination of the information society fee*

If a telecommunications operator is part of a corporate group as referred to in Chapter 1(6) of the Accounting Act, the basis for the telecommunications operator's fee is the operator's share of the total turnover from telecommunications operations in Finland by the group's liable operators deducted by their mutual turnover from these operations. When the parent undertaking is not Finnish, the basis for the fee remains the same.

If there have been changes in the corporate structure between the end of the previous financial period and the time of issuing the communications market fee decision, the fee is determined on the basis of the operator's share of the total turnover from telecommunications operations in the previous closed financial period.

If telecommunications operations have been transferred to another undertaking between the end of the financial period of the previous year and the time of issuing the payment decision, the obligation to pay the fee falls on the undertaking that is involved in public telecommunications at the time of issuing the payment decision. In determining the fee, the confirmed turnover of the transferred telecommunications operations for the previous closed financial period shall be taken into account.

If the financial period of the telecommunications operator does not coincide with the calendar year, the turnover will be converted into a sum corresponding to a calendar year's turnover by multiplying it by 12 and then dividing it by the number of months in the financial period concerned.

Further provisions on how to submit data necessary for determining the fee to Ficora may be given by Ministry of Transport and Communications Decree.

#### Section 291

##### *Determining the information security fee*

The information security fee is collected annually in one instalment. The obligation to pay an information society fee is ordered by a decision of Ficora. Further provisions on the recovery of fees may be given by Ministry of Transport and Communications decree.

#### Section 292

##### *Submittal of data to Ficora and payment obligation in certain exceptional circumstances*

For the purpose of determining an information society fee, Ficora has the right to obtain from telecommunications operators turnover data from the period preceding the determination of the fee. Operators that are part of a group shall also give an account of the instalments from the group's mutual telecommunications operations that have been deducted from the

telecommunications turnover under section 290(1). A telecommunications operator shall submit the information to Ficora within one month of the adoption of the financial statement. A copy of the adopted financial statement and the group financial statement shall be submitted as an attachment.

If no sufficiently reliable account of the turnover is available due to missing financial statements or some other comparable, especially weighty reason, Ficora's estimate of the turnover may be used as the basis for the payment.

In the estimate due consideration must be given to:

- 1) telecommunications operator's extent of operations;
- 2) telecommunications operator's position in the market;
- 3) data about the telecommunications operator's services, number of clients and invoicing;
- 4) reference data about other telecommunications operators providing similar services;
- 5) other elements similar to those referred to in subsections 1–4 affecting the telecommunications operator's turnover.

Before taking any measures to estimate the turnover, Ficora shall recommend that the telecommunications operator submit the information needed for determining the information security fee within a reasonable period. The recommendation must point out that Ficora will estimate the turnover if no information is provided.

### Section 293

#### *Radio and television broadcasting supervision fee*

The Finnish Broadcasting Company Ltd and a television or radio broadcaster having a licence referred to in this Act are obliged to pay the radio and television broadcasting supervision fee.

The obligation to pay commences in the calendar year during which six (6) months have passed from the time the licence was granted to a television or radio broadcaster. The supervision fee for television and radio broadcasting will not be refunded even if the television or radio broadcaster discontinues its operations during the course of a calendar year.

### Section 294

#### *Supervision fees for television and radio broadcasting*

The annual supervision fees for television and radio broadcasting are as follows:

- 1) fee payable by the Finnish Broadcasting Company Ltd is EUR 165 000;
- 2) fee payable by a licence holder carrying out other than regional television broadcasting is EUR 16 000 for each television programme set complying with the licence, excluding parallel broadcasts;
- 3) fee payable by a licence holder carrying out regional television broadcasting is EUR 800 for each television programme set complying with the licence;
- 4) fee payable by a licence holder carrying out radio broadcasting on frequencies of national or similar licensed use is EUR 8 000 for each radio programme set complying with the licence;
- 5) fee payable by a licence holder carrying out radio broadcasting on frequencies of regional or local licensed use is EUR 800 for each radio programme set complying with the licence;
- 6) fee payable by a licence holder carrying out radio broadcasting solely in the television network is EUR 8 000 for each radio programme set complying with the licence.

The supervision fee for television and radio broadcasting is collected annually in two instalments. An obligation to pay the fee is ordered by Ficora.

## Section 295

*Domain name fee*

A registrar shall pay Ficora a domain name fee for entering a domain name into the domain name register and for renewing the entry. An application for entry into the register shall include an account of paying the fee.

Provisions on the amount of the fee are laid down in the Act on Criteria for Charges Payable to the State.

## Section 296

*Numbering fee*

A telecommunications operator and any other party obtaining a number or identifier shall pay Ficora a fixed fee to cover the costs incurred for the use of the number or identifier, numbering management and supervision. The amount of the fee is determined according to the proportion of the available addressing range that is taken by the number in use.

Provisions on the amount of the fee are laid down in the Act on Criteria for Charges Payable to the State.

## Section 297

*Collection of fees*

If the fee referred to in this Chapter is not settled by the due date, annual penalty interest on delayed payments shall be charged for the unpaid amount according to the interest rate referred to in section 4 of the Interest Act. Instead of the penalty interest, the authority may collect a default payment of five euros if the amount of the penalty interest would be less than that.

Fees under this Chapter are distrainable. Provisions on their enforcement are laid down in the Act on the Recovery of Taxes and Fees by Recovery Proceedings.

## Chapter 37

**Compensation from Authorities**

## Section 298

*Costs of contingency preparations*

A telecommunications operator and a television and radio broadcaster has the right to receive compensation for costs incurred in contingency preparation referred to in Chapter 35 from the national emergency supply fund referred to in the Security of Supply Act (1390/1992) if the costs are significant with regard to the nature and extent of the activities of the telecommunications operator or television or radio broadcaster.

The compensation for costs is decided by the National Emergency Supply Agency that must request a statement concerning the compensation application from the Ministry of Transport and Communications.

#### Section 299

##### *Costs incurred by systems acquired for assisting public authorities*

A telecommunications operator has the right to receive compensation from State funds for the direct costs of the investment and maintenance of systems, equipment and software acquired for the sole purpose of assisting public authorities. If necessary, decisions on the compensation for costs incurred are made by Ficora.

The compensation shall be payable by the authority for which the acquisition was made.

A telecommunications operator shall not use any systems, equipment or software funded by a public authority for its commercial activities unless specifically so agreed between the authority and the telecommunications operator.

#### Section 300

##### *Cost of an emergency alert message communication system*

An operator under the obligation to plan, construct and maintain communications networks and services referred to in section 243(1)(15) has the right to receive compensation for costs incurred in contingency preparation from the national emergency supply fund referred to in the Security of Supply Act only if the costs are significant with regard to the nature and extent of the activities of the operator.

The compensation for costs is decided by the National Emergency Supply Agency that must request a statement concerning the compensation application from the Ministry of Transport and Communications.

#### Section 301

##### *Costs of a communications system for targeted messages from the authorities*

A telecommunications operator has the right to receive compensation from State funds to meet the obligations related to contingency preparations referred to in section 280.

Compensation shall only be received for the direct costs of the investment, use and maintenance of systems, equipment and software acquired to meet the needs notified by a public authority. Compensation may also be received for the direct costs incurred from any measures ordered by a public authority. Decisions on the compensation for costs incurred are made by Ficora.

A telecommunications operator shall not use any systems, equipment or software funded by a public authority for its commercial activities unless specifically so agreed between the authority and the telecommunications operator.

## PART XII

### ACTIVITIES OF AUTHORITIES

## Chapter 38

**Guidance, Supervision and other Duties of Authorities**

## Section 302

*Overall guidance and development*

The Ministry of Transport and Communications is responsible for the overall guidance and development of the activities that fall within the scope of this Act.

The Government ensures that activities relating to the regulation of telecommunications operators and to Government ownership or decision-making power are separated from each other in a structurally efficient manner.

## Section 303

*Duties of Ficora*

The duty of Ficora is to supervise compliance with this Act and with the provisions and decisions issued by virtue of it, unless otherwise provided in this Act.

Ficora's decision-making power does not extend to agreement terms or compensation obligations between operators and subscribers, or matters related to the telecommunications operator's right of recourse or return obligation.

Ficora is not responsible for the supervision of requirements related to the protection of health and safety of humans as referred to in section 254(1)(2) if they fall under the supervision of another authority.

Ficora does not supervise the provisions laid down in Chapter 22, with the exception of sections 176–179 and 190.

Ficora does not supervise the provisions laid down in Chapter 28, with the exception of sections 241 and 242.

The duty of Ficora is to foster co-regulation or self-regulation, where due to the nature of a matter, co-regulation or self-regulation can safeguard the achievement of objectives laid down in this Act.

Ficora shall consult with the Ministry of Transport and Communications and cooperate with it in preparing regulations by virtue of this Act on matters that include an authorisation to issue decrees or that have a significant effect on the achievement of this Act's aims. Ficora shall consult with the Ministry of Finance in preparing regulations by virtue of this Act on matters which affect the general development of public administration or the development of government structures, steering systems or operations or the steering of government information management, general orientations for electronic communication and information security, information management cooperation between government and municipalities, and Government information management.

## Section 304

*Special duties of Ficora*

In addition to what is laid down elsewhere in this Act, the duties of Ficora are:

- 1) promote the functionality, freedom from interference and security of telecommunications;

- 2) participate in contingency planning as well as supervise and develop technical contingency measures for the purpose of exceptional circumstances;
- 3) administration of radio frequencies, telecommunications as well as administration of numbering and codes for communications networks and services;
- 4) coordinate telecommunications industry standards;
- 5) issue a call sign of a radio station required for the identification of radio transmissions, and, if necessary, issue regulations on the use of call signs;
- 6) collect and publish information about the availability, quality and prices of network services and communications services;
- 7) collect information on violations of and threats to information security in respect of network services, communications services and added value services as well as on defects and interference situations in communications networks and services;
- 8) disseminate information security matters as well as communications network and service matters;
- 9) investigate the reasons for interference in radio communications and disturbance to telecommunications networks, radio equipment, telecommunications terminal equipment and electrical appliances caused by radio or telecommunications terminal equipment;
- 10) investigate violations of and threats to information security in respect of network services, communications services and added value services;
- 11) notify the European Commission of such cooperation with a European Union Member State which results in the harmonisation of control measures pertaining to the information security of communications services provided across the borders of Member States which may have an effect on the functioning of the single market.

The provisions of sections 302, 303, 308, 309, 311–315, 325, 330, 332, 336, 340, 344 and 345 also apply to the supervision of compliance with Regulation (EU) No 531/2012 of the European Parliament and of the Council on roaming on public mobile communications networks within the Union, hereinafter the *EU Roaming Regulation*, the consequences of violation and resolution of disputes arising from the said Regulation.

## Section 305

### *Duties of the Data Protection Ombudsman*

The Data Protection Ombudsman shall supervise:

- 1) compliance with the provisions on corporate or association subscribers' processing of traffic data referred to in Chapter 18;
- 2) compliance with the provisions on the processing of location data referred to in Chapter 20;
- 3) compliance with the provisions on directory inquiry services, as referred to in sections 197–199;
- 4) compliance with the provisions on direct marketing in sections 200 and 202–204;
- 5) compliance with the provisions in Chapter 40 on right of access and obligation of secrecy with respect to location data.

A corporate or association subscriber may be charged a fee for the supervision duties referred to above in subsection 1(1). Provisions on duties subject to a charge and the amount of the charges are laid down in a Ministry of Justice decree in accordance with the criteria in the Act on Criteria for Charges Payable to the State (150/1992).

## Section 306

*Duties of the Consumer Ombudsman*

The Consumer Ombudsman supervises compliance with section 214(4) with regard to marketing targeted at children. By virtue of the Consumer Protection Act the Consumer Ombudsman also supervises the legality of contractual terms, marketing and procedures followed in customer relationships from the point of view of consumer protection. The Consumer Ombudsman may not interfere with advertising for ideological or societal purposes.

## Section 307

*Duties of certain other authorities*

Compliance with section 39 on radio licence and section 262(1) on marking of telecommunications device is supervised by the police and the Border Guard, in addition to Ficora. Compliance with section 266(1) on maintaining proficiency in radio communications for safety purposes and section 267(1) on presenting a proficiency certificate is supervised by the Finnish Transport Safety Agency, in addition to Ficora. Compliance with the provisions and regulations on importing telecommunications device is supervised by the Customs, in addition to Ficora.

## Section 308

*Cooperation among authorities*

The Ministry of Transport and Communications, Ficora, Data Protection Ombudsman, competition authorities and consumer authorities must cooperate in fulfilling their duties under this Act.

When necessary, Ficora shall work in cooperation with the equivalent regulatory authority of a state belonging to the European Economic Area or which is party to the European Convention on Transfrontier Television.

## Section 309

*Executive assistance*

Ficora has the right to obtain executive assistance from the police, the Customs, the Border Guard and the Finnish Transport Safety Agency for the purpose of supervising compliance with and implementation of this Act and the provisions and regulations issued by virtue of it. Ficora has the right to obtain executive assistance from the Defence Forces for the purpose of investigating the causes of interference in radio communications.

Upon request, Ficora may provide executive assistance in the form of expert assistance to another authority. The Ministry of Transport and Communications decides on providing executive assistance. The costs of executive assistance provided by Ficora shall be borne by the authority requesting the executive assistance, unless agreed to otherwise.

Providing executive assistance referred to in subsection 2 above does not give Ficora the right to disclose information to another authority on messages, traffic data, location data or the contents or existence of a confidential radio transmission.

## Procedure and Consultation

### Section 310

#### *Special consulting obligation*

In addition to the provisions of Administrative Judicial Procedure Act on the obligation to consult the authorities, parties representing telecommunications operators and users shall be reserved an opportunity to present their views prior to any issuance of a provision, decision or regulation regarding:

- 1) application notification of a licence;
- 2) regulations regarding telecommunications areas;
- 3) numbering decisions that significantly affect the communications market;
- 4) decisions pursuant to sections 51–79 if they significantly affect the communications market.

The licence holder and parties representing telecommunications operators and users shall be reserved an opportunity within one month to present their views on any amendments to licence terms or the cancellation of a licence. Exceptions to the one-month time limit can be made in exceptional situations.

### Section 311

#### *Publication duty of Ficora and the Government*

Ficora shall publish decisions referred to in sections 51–79, the regulation on the division into telecommunications areas, numbering decisions and decisions on disputes between telecommunications operators in a way that ensures that they are available to telecommunications operators and user groups.

The Government must publish licence application announcements and licence decisions in the manner referred to in subsection 1.

### Section 312

#### *Electronic notification*

With the consent of the concerned party, a notification of a matter falling within the competence of Ficora may be processed and a decision submitted by email. The decision or some other document relating to the matter is deemed to have been notified when the concerned party has sent a confirmation email to Ficora that the message has been read. If a document need not be supplied verifiably according to the law, the document is deemed to have been received on the third day from sending the message, unless provided otherwise.

Documents or decisions related to domain names may in any case be issued by email to the address provided to Ficora by the party concerned or by the registrar representing the party, in which case the decision or other document is deemed to have been received on the third day from sending the message, unless provided otherwise.

If a party to an administrative matter referred to in this Act or a registrar representing the party has delivered Ficora contact data that are in essential parts insufficient or defective, or has failed to give all essential contact data and these data have not been corrected or complemented later, and, therefore, a document or a decision relating to the matter can only be

notified as a public notice referred to in section 62 of the Administrative Procedure Act, Ficora may also notify the decision through a notification on its website.

A decision or another document is deemed to have been notified one month after publishing the notification. The notification shall include the date of publishing and the date on which the decision will be deemed to have been notified.

### Section 313

#### *Processing of supervision matters at Ficora*

Ficora may take up matters for examination upon request by a party or on its own initiative.

Ficora may prioritise its supervision duties laid down in this Act. Ficora may choose not to examine a matter, if:

- 1) it is likely that a matter is not related to actions contrary to the provisions of this Act or provisions laid down by virtue of it;
- 2) despite a suspected defect or neglect, the matter is of minor significance with regard to the functioning of the communication markets, reliability of communications services, ensuring freedom from interference in electronic communications and interests of service users; or
- 3) the measure request relating to the matter is obviously groundless.

A decision by Ficora not to examine a matter as referred to in subsection 2 shall be made as soon as it is possible.

### Section 314

#### *Resolution of disputes between operators by Ficora*

Ficora shall resolve a matter between a telecommunications operator and other undertaking initiated by virtue of sections 53–80 or 304(2) no later than four months from the date on which the matter becomes pending. The deadline does not apply to unusually extensive cases or cases initiated in exceptional circumstances. The obligations imposed on the parties in connection with the decision shall accord with the provisions of this Act.

Ficora shall promote cooperation among telecommunications operators and aim at resolving disputes between telecommunications operators primarily through mediation.

If mediation does not produce results within four months, Ficora shall at the request of a party to the dispute make a decision on the matter within four months from the end of mediation.

The provisions of subsections 1 and 2 also apply, where necessary, to the resolution of such cross-border disputes in which the parties involved are located in several EEA States. When resolving such cross-border disputes, Ficora shall work in cooperation with the regulatory authority of the EEA State concerned.

Ficora may also consult the Body of European Regulators for Electronic Communications in resolving a cross-border dispute. Where a request for an opinion has been made to the Body of European Regulators for Electronic Communications, Ficora shall not resolve the matter before the opinion has arrived or the deadline for its issuance has elapsed.

## Chapter 40

### **Processing of Data**

## Section 315

*General right of authorities to obtain information*

The Ministry of Transport and Communications, Ficora, the Data Protection Ombudsman, the Consumer Ombudsman and other authorities monitoring the compliance with the provisions of this Act are entitled to access information necessary for carrying out their duties under this Act from anyone whose rights and obligations are referred to in this Act or anyone acting on their behalf.

Anyone whose rights and obligations are provided under this Act or anyone acting on their behalf, shall be obliged, at request, to collect and, notwithstanding secrecy provisions and other restrictions on the disclosure of information, supply to the competent authorities any information necessary for carrying out their duties.

The information shall be supplied without delay, in the form requested by the public authority and without charge.

Notwithstanding the provisions of subsections 1 and 2, the Defence Forces or the Border Guard are not obligated to disclose information on the structure, use or location of radio communication equipment used solely for military defence, or data used for payment collection. The provisions of subsections 1 and 2 do not apply to information regarding radio equipment aboard warships of a foreign State, military aircraft of a foreign State, or other aircraft of a foreign State which are used solely for government purposes.

Separate provisions shall be issued on the obligation to collect and supply information as well as on the authorities' right to obtain information on messages, traffic data and location data.

## Section 316

*Processing and destroying message and location data*

Notwithstanding secrecy provisions and other restrictions on the disclosure of information, Ficora is entitled to access any traffic data and location data necessary for investigating a fault or service disruption or for clarifying matters related to billing. Anyone who is not acting as a communications service provider referred to in section 136(4) and who receives or obtains in any other way knowledge of messages or traffic data not intended for him or her, may disclose the information on the message or traffic data to Ficora, if it is necessary to clarify a fault.

Notwithstanding the secrecy provisions and other restrictions on the disclosure of information, Ficora and the Data Protection Ombudsman are entitled to access any traffic data, location data or messages, if the data are required for processing referred to in Part VI or for supervising the compliance with the provisions on the use of cookies or direct marketing referred to in Chapter 24, or for clarifying significant violations of or threats to information security. A further requirement is that Ficora or the Data Protection Ombudsman has reason to believe that the essential elements of any of the following crimes are present:

- 1) a breach of data protection in electronic communications under section 349 of this Act;
- 2) unauthorised use as referred to in Chapter 28(7) of the Criminal Code;
- 3) endangering data processing as referred to in Chapter 34(9a) of the Criminal Code;
- 4) possession of a data network offence device as referred to in Chapter 34(9)(b) of the Criminal Code;
- 5) criminal damage as referred to in Chapter 35(1)(2) of the Criminal Code;
- 6) secrecy offence as referred to in Chapter 38(1) of the Criminal Code;
- 7) message interception as referred to in Chapter 38(3) of the Criminal Code;

- 8) interference with communications as referred to in Chapter 38(5) of the Criminal Code;
- 9) petty interference with communications as referred to in Chapter 38(7a) of the Criminal Code;
- 10) computer break-in as referred to in Chapter 38(8) of the Criminal Code;
- 11) offence involving an illicit device for accessing protected services as referred to in Chapter 38(8b) of the Criminal Code; or
- 12) data protection offence as referred to in Chapter 38(9) of the Criminal Code.

Notwithstanding the secrecy provisions and other restrictions on the disclosure of information, Ficora is entitled to information on the existence of radio communications and traffic data, if this is necessary to identify and locate interference in radio communications, to remove or restrict the interference or prosecute the party causing the interference. Information on other than radio communication intended for general reception may only be given to Ficora if this is necessary for the purpose of identifying, locating, removing or restricting any interference in safety radio communications or prosecution of a party causing the interference.

Ficora and the Data Protection Ombudsman shall destroy any information on messages, traffic data and location data received under this section when this information is no longer necessary for carrying out the duties provided for in this section or the processing of any criminal case concerning the duties. Information on messages, traffic data and location data shall be destroyed no later than two years, or 10 years in the case of information pertaining to an investigation of a violation of information security, from the end of the calendar year during which the information was received or a decision or sentence in a criminal case entered into legal force.

The right of access to information provided in this section does not apply to the information referred to in Chapter 15(14) of the Act on Credit Institutions (610/2014) or in Chapter 17(24)(2–3) of the Code of Judicial Procedure.

#### Section 317

##### *Identifying and locating a party causing interference in radio communications*

Ficora may monitor and use traffic data of a radio transmission other than those intended for general reception if this is necessary for the purpose of identifying and locating a party causing the interference or a radio transmitter without a licence, removing or restricting any interference, or prosecution of a party causing interference. Information on the contents of a radio transmission not intended for general reception may be inspected and information obtained thereby disclosed only if it is essential for the purpose of identifying, locating, removing or restricting interference in safety radio communications or for prosecution of a party causing interference.

The provisions of section 136(4), do not prevent information being given to Ficora about the existence of a radio transmission and about its traffic data if this is necessary for the purpose of identifying and locating any interference in radio communications, removing or restricting any interference, or prosecution of a party causing interference. Information on the contents of a radio transmission may be given only if it is essential for the purpose of identifying, locating, removing or restricting interference in safety radio communications or for prosecution of a party causing interference.

Ficora shall destroy information on confidential radio communications when it is no longer needed for ensuring adequately interference-free radio communications or for processing administrative matters or criminal cases in connection with interference. The information shall be destroyed no later than two years, or if the information is needed for securing interference-free safety radio communications, no later than 10 years, after the end of the calendar year

during which the information was received or the decision or sentence in an administrative matter or criminal case in connection with the interference gained legal force.

#### Section 318

##### *Supply of information of the authorities*

Notwithstanding secrecy provisions or other restrictions on the disclosure of information, the Ministry of Transport and Communications, Ficora, the Data Protection Ombudsman and the Finnish Competition Authority have the right to supply documents that they have received or drawn up in the course of performing their legal duties or disclose confidential information to each other, if this is necessary for performing their legal duties.

The Ministry of Transport and Communications and Ficora have a right to supply any confidential documents or disclose confidential information necessary for communications market supervision to the Commission or the regulatory authority of another EEA State.

The right to supply and disclose referred to in this section does not apply to information on messages, traffic data, location data or the contents or existence of a confidential radio transmission.

The Ministry of Transport and Communications or Ficora may use a confidential document that has been obtained from a foreign public authority only for the purpose for which it was given.

#### Section 319

##### *Secrecy obligation and disclosure of information related to messages*

Any information on messages, traffic data, location data and the content of confidential radio transmissions received or acquired by Ficora and the Data Protection Ombudsman under sections 316 and 317 shall be kept secret.

Notwithstanding the secrecy provision of subsection 1 or other restrictions on the disclosure of information, Ficora is entitled to disclose traffic data and other information received in connection with collecting information on and investigating violations of information security to the following:

- 1) communications providers, added value service providers, corporates or associations, subscribers and users who have been abused in a violation of information security, who have or are likely to become the subject of a violation of information security, and if Ficora has reason to believe that a crime referred to in section 316(2)(1–12) has been committed;
- 2) competent authorities or other bodies that operate in another state preventing or investigating information security violations in communications networks and services.

Ficora is entitled to disclose data referred to in subsection 2 only to the extent necessary to prevent and investigate violations of information security. The disclosure of data shall not limit the confidentiality of messages or the protection of privacy any more than is necessary.

The provisions of subsection 1 shall not prevent the disclosure of traffic data to other authorities if it is necessary to solve a radio interference violation, prosecute the party that caused it or to remove or restrict radio interference.

In defining authorities and other parties referred to in subsection 2(2), Ficora shall work in cooperation with the Ministry of Transport and Communications. If the decision on an object of the disclosure could have a significant effect on society or on the general development of the communications market, the Ministry of Transport and Communications decides to which authorities or other parties Ficora may disclose information referred to in subsection 2.

## Section 320

*The right of the Defence Forces and the Border Guard to obtain information*

The Defence Forces and the Border Guard have the right, notwithstanding the confidentiality obligation, to obtain from Ficora any information on frequency usage that is important for contingency planning and precautionary measures for exceptional circumstances. The right to obtain information does not apply to information on messages, traffic data, location data or the contents or existence of a confidential radio transmission.

## Section 321

*The right of emergency services authorities to obtain information*

A telecommunications operator is obliged to disclose the following to an Emergency Response Centre, a Marine Rescue Coordination Centre, a Marine Rescue Sub-Centre or the police for processing purposes:

- 1) subscriber connection identifier and location data of the subscriber connection and terminal device from which an emergency call is placed, and information on the subscriber, user and installation address; and
- 2) identifier and location data showing the location of the user terminal device and subscriber connection to which the emergency call applies if, in the considered opinion of the authority receiving the emergency call, the user is in obvious distress or immediate danger.

The information referred to in subsection 1 above shall be released notwithstanding the secrecy obligation referred to in section 136 and the requirements for processing location data specified in sections 160–161, and without reference to what the subscriber or user may have agreed with the telecommunications operator concerning the secrecy of such information.

An added value service provider has the right to disclose information referred to in subsection 1 to the respective authority.

## Section 322

*Certain other authorities' right to obtain information*

The right of authorities to receive traffic data for the purpose of preventing, uncovering or investigating crimes is laid down in the Police Act, Border Guard Act (578/2005), Act on the Processing of Personal Data by the Border Guard (579/2005), Customs Act (1466/1994), and Coercive Measures Act.

Data to be retained under section 157 of this Act is only obtainable from service providers by the authorities who have a legal right to obtain the data.

## Section 323

*Non-remuneration of measures and information supply ordered by an authority*

A telecommunications operator shall without charge supply a public authority with any information in its possession:

- 1) necessary to maintain public order and safety, investigate, uncover and prevent crime or maintain rescue operations in performing prescribed duties; and
- 2) to which the authority has a right for which separate provisions are issued.

A telecommunications operator shall install free of charge measures that allow interception by the authorities as provided in law .

In cases where the health or lives of humans are at risk, the disclosure of the information or measure shall be implemented urgently.

A public authority shall implement at its own expense a system with which it may receive and process the information referred to in subsection 1 or carry out interception referred to in subsection 2. The public authority shall also be responsible for the costs of connecting the system to a public communications network or service. The telecommunications operator shall perform switching of emergency traffic without charge.

Ficora may issue further regulations on the implementation of measures and disclosure of information and their time periods referred to in subsections 1 and 2.

## Chapter 41

### **Inspections and Prevention of Radio Interference**

#### Section 324

##### *Limitations to the scope*

The provisions of sections 326, 327 and 329(3) do not apply to the Finnish Defence Forces or the Border Guard when they employ radio communication for military defence, nor to the radio equipment they possess solely for that purpose.

The provisions of sections 326 and 329(2 and 3) do not apply to radio equipment aboard warships of a foreign State, military aircraft of a foreign State, or other aircraft of a foreign State which are used solely for government purposes.

The provisions of section 326(1 and 2) and 329(2) do not apply to radio transmitters of warships or aircraft of a foreign State other than those referred to in subsection 2. Likewise, section 329(3) does not apply to said radio transmitters if the holder or user of the transmitter can present a licence or certificate when requested complying with the provisions in sections 267(1) and 326(3).

#### Section 325

##### *Ficora's right of inspection*

Ficora has the right to perform a technical safety and function inspection or financial inspection of a telecommunications operator in order to supervise compliance with the obligations imposed under this Act and in provisions, regulations and decisions issued under it. Provisions on the inspection are laid down in section 39 of the Administrative Procedure Act.

A public authority network may also be subject to a technical or safety inspection.

Ficora has the right to have the technical and safety inspection performed by an independent expert. When expert inspectors carry out duties referred to in this Act, the provisions concerning criminal liability of a civil servant apply to them. Provisions on liability for damages are laid down in the Tort Liability Act.

In the inspections, Ficora and anyone working for it has the right to access the telecommunications operator's equipment facilities and other premises and, notwithstanding

secrecy provisions, obtain for examination documents and information that are necessary for its supervision duty.

The inspections shall not be performed in premises that are used as permanent residence.

## Section 326

### *Inspection of telecommunications device*

For supervision of compliance with this Act and the provisions, regulations and decisions issued by virtue of it, Ficora has the right to perform an inspection at the location of:

1) a radio transmitter for the possession of which a radio licence referred to in this Act or for the use of which a proficiency certificate or a certificate endorsement referred to in this Act is required;

2) radio equipment or telecommunications terminal device that is found, or on reasonable grounds is suspected, to have operated or to be operating in violation of the provisions or regulations or of causing interference;

3) an electrical appliance referred to in section 97(2) that is found, or on reasonable grounds is suspected, to have operated or to be operating in violation of the provisions or regulations or of causing interference;

4) radio equipment or telecommunications terminal device that is offered for sale or is intended to be placed on the market.

5) a decoding system referred to in section 269(2).

Ficora also has the right to enter a location where the equipment or device referred to in subsection 1 is, on reasonable grounds, suspected to be found. However, an inspection may be carried out in a place used as a permanent residential space only if it is necessary for the examination and there are special grounds to suspect that the provisions in section 348(1)(1–3) of this Act or sections 5–7 or 8(b) of Chapter 38 of the Criminal Code have been violated.

Upon request, the holder, user or owner of radio equipment shall present the radio licence in its possession to Ficora, the Border Guard or the police.

## Section 327

### *Removing telecommunications device for examination*

If, on reasonable grounds, it is suspected that sections 253, 262(2) or 263 or 269 have been violated, an inspector shall have the right to remove the device and its documents for examination and to prohibit the device from being used, offered for sale, transferred, misplaced or destroyed during the time of the examination, which shall be conducted without delay. The party whose device has been removed for examination must be furnished with an official document stating the property removed for examination and the reason for the examination.

If the telecommunications device removed for examination complies with the requirements of this Act and the provisions and regulations issued by virtue of it and the value of the device has decreased because of the examination, compensation for the device corresponding to its current price shall be payable, on request, to the owner.

If the telecommunications device fundamentally violates this Act or the provisions or regulations issued by virtue of it, Ficora may oblige the device manufacturer or importer to compensate it for the costs incurred in the examination and to remove the device from the market.

## Section 328

*Ensuring efficient and interference-free use of radio frequencies*

Ficora has the right to inspect radio communications and its technical implementation to ensure the efficient and interference-free use of radio frequencies.

Section 329

*Prevention of interference*

Ficora has the right to prohibit telecommunications device from being imported, offered for sale, sold, transferred or used, and to prohibit the use of certain types of electrical appliance referred to in section 97(2), if the device or appliance has caused harmful interference or is, on reasonable grounds, suspected to cause harmful interference.

Ficora also has the right to prohibit radio equipment from being imported, offered for sale, sold, transferred or used if, on reasonable grounds, it is suspected that the radio equipment will interfere the planned use of radio frequencies referred to in sections 95 or 96.

Ficora has the right to inspect radio equipment, and to remove it for examination, if reasonable grounds exist to suspect that it does not comply with this Act or with the provisions or regulations issued by virtue of it or it has caused or is, on reasonable grounds, suspected to cause harmful interference. If it is found that the radio equipment or its use significantly violates this Act or the provisions and regulations issued by virtue of it, or that the radio equipment or its use could cause harmful interference, Ficora may render the radio equipment temporarily inoperable, provided that this does not cause the holder of the radio equipment harm or damage that would be unreasonable under the circumstances. The provisions of section 327 otherwise apply to removal of radio equipment for examination.

Chapter 42

**Supervision decisions and coercive measures**

Section 330

*Supervision decision*

If anyone violates this Act or provisions, regulations, decisions or licence terms issued under it, Ficora, the Data Protection Ombudsman and the municipal building supervision authority, in carrying out their duties under this Act, may issue a complaint and order them to rectify the error or neglect within a specified reasonable time period.

The provisions of Chapter 2(16), (17), (19), and (20) of the Consumer Protection Act apply to the compliance with the provisions referred to in section 306 and supervised by the Consumer Ombudsman.

Section 331

*Interim decision*

If an error or omission concerning provisions, regulations, decisions or licence terms of this Act or those issued under or by virtue of this Act represents an immediate and serious threat to public safety, public security or public health or creates serious economic or operational

hindrance to other undertakings, subscribers or users or to the functioning of communications networks and services, Ficora may without delay decide on necessary interim measures regardless of the time limit referred to in section 330.

Prior to issuing a decision on an interim measure, Ficora shall reserve the party concerned an opportunity to be consulted except if the consultation cannot be arranged as quickly as the urgency of the matter requires.

As an interim measure, Ficora may terminate the operations representing a threat or serious hindrance. Ficora may also restrict the use of frequencies or order a comparable coercive measure. Interim measures may be valid for a maximum period of three months. Ficora may extend the interim measures by a period of up to three months if the fault or neglect has not been rectified within the prescribed period. An appeal may be made separately against a decision concerning interim measures in the same manner as against a decision referred to in subsection 1.

### Section 332

#### *Conditional fines, threat of termination and threat of completion*

A conditional fine, a threat of termination or a threat of having the act done at the defaulter's expense may be imposed in support of the obligation referred to in sections 330 or 331 above.

The threat of termination referred to in subsection 1 shall not apply to obligations referred to in sections 176–179 or 190.

Provisions on conditional fines, threat of termination and threat of completion are laid down in the Act on Conditionally Imposed Fines. The costs of action taken at the defaulter's expense are paid provisionally from government funds and recovered from the defaulter. The recovered costs are distrainable. The provisions on their enforcement are laid down in the Act on the Recovery of Taxes and Fees by Recovery Proceedings.

### Section 333

#### *Penalty payment by a telecommunications operator*

A telecommunications operator that acts in violation of the obligation laid down by virtue of provisions of sections 53–55 and despite being requested to do so, fails to rectify its actions within a reasonable period of at least three months may be ordered to pay a penalty.

A penalty shall not be ordered if the action has no significant effect on the markets or if the ordering of the penalty is otherwise unjustified with regard to the safeguarding of competition. An order to pay a penalty need not be made if the telecommunications operator has been or will be ordered to pay a penalty referred to in the Act on Competition Restrictions for a corresponding act or omission.

In determining a penalty, regard shall be had to the nature and extent of the action, its duration and any penalty imposed for a similar breach or neglect under the Act on Competition Restrictions. The minimum amount of the penalty is EUR 1 000 and the maximum is EUR 1 million euros. If the act or omission has especially significant effects on the market, the stated amount may be exceeded. The penalty may, however, be no more than five per cent of the turnover of the telecommunications operator for the provision of electronic communications networks and services in the previous year.

The penalty is determined by the Market Court upon proposal of Ficora. The provisions of the Act on Court Proceedings in the Market Court (100/2013) shall apply to the processing of a case in the Market Court. Any penalty is ordered to be paid to the State.

## Section 334

### *Penalty payment by a television or radio broadcaster*

A television or radio broadcaster that acts in violation of the provisions of sections 25 and 26 and despite being requested to do so, fails to rectify its actions within a period set by an authority referred to in section 303 or 306, may be ordered to pay a penalty.

A penalty payment shall not be ordered if the action has no significant effect on the attainment of the objectives laid down in Chapters 25 and 26, or if the ordering of the penalty is otherwise clearly unjustified with regard to the safeguarding of the objectives.

In determining a penalty payment, regard must be taken to the nature, extent and duration of the action. The minimum amount of the penalty payment is EUR 1 000 and the maximum is EUR 1 million. If the act or omission has especially significant effects on the attainment of the objectives referred to in sections 25 and 26, the stated amount may be exceeded. The penalty payment may, however, be no more than five per cent of the television or radio broadcaster's turnover for the operations subject to a licence during the previous year.

The penalty payment is determined by the Market Court on the proposal of Ficora or in cases referred to in section 214, on the proposal of the Consumer Ombudsman. The provisions of the Act on Court Proceedings in the Market Court apply to the processing of a case in the Market Court. Any penalty is ordered to be paid to the State.

## Section 335

### *Enforcement of penalty payments*

Penalty payments are distrainable. The provisions of the Act on the Recovery of Taxes and Fees by Recovery Proceedings apply to enforcement of a penalty payment. Enforcement of penalties is attended to by the Legal Registers Centre. Provisions on the duty of authorities to notify, on the refund of a penalty payment and on other corresponding factors that are of significance to penalty enforcement as well as further provisions on the enforcement of a penalty payment may be given by Government Decree.

## Section 336

### *Prohibiting an unfair term of agreement in telecommunication services*

Ficora may prohibit from continuing the application of an agreement term in breach of section 107 or from renewing the application of such, or a similar term, where this is necessary in order to protect the consumer.

Ficora may impose a conditional fine in support of the prohibition. A decision to pay the conditional fine is issued by the Market Court.

A decision of Ficora referred to in subsection 1 or 2 shall not be subject to an appeal. A telecommunications operator may refer a prohibition decision for processing by the Market Court within 30 days following a notification of the decision of Ficora. Otherwise the decision remains in force. Provisions of the Act on Court Proceedings in the Market Court apply to the processing of a case in the Market Court.

## Section 337

### *Closing a number or service*

The Consumer Ombudsman may under penalty of a fine order a telecommunications operator to close a number or otherwise bar the use of a service if it is evident that the service seeks unlawful financial benefit by providing information in marketing material that is essentially false or misleading with regard to subscribers and users, and if fees resulting from the service accumulate on the subscriber's communications service bill. The Consumer Ombudsman may also issue a temporary decision, which remains in force until a final decision has been reached in the case.

In a decision under subsection 1, the Consumer Ombudsman shall order a telecommunications operator immediately after having been informed of the decision to discontinue billing for the content service and terminate the payment of credits, which have accumulated or are yet to accumulate from the service, to the service provider or another telecommunications operator.

Prior to issuing a decision under subsection 1, the Consumer Ombudsman shall reserve an opportunity for the telecommunications operator and service provider to present their views, except if the consultation cannot be arranged as quickly as is necessarily required by the urgency of the matter.

A decision of the Consumer Ombudsman referred to in subsection 1 shall not be subject to an appeal. A telecommunications operator or a party whose service has been barred may refer a decision other than temporary to the Market Court within 30 days following a notification of the decision. Otherwise the decision remains in force. Provisions of the Act on Court Proceedings in the Market Court apply to the processing of a case in the Market Court.

If a decision of the Consumer Ombudsman referred to in subsection 1 remains in force, a telecommunications operator shall without delay and no later than 30 days from the final resolution of the matter reimburse users in full for the fees paid by them for the service. If assets accumulated to the telecommunications operator for the service are insufficient to cover the debts due to all users, the assets shall be returned in proportion to the debts due. An annual reference rate referred to in section 12 of the Interest Act shall be charged for the amount to be reimbursed.

### Section 338

#### *Suspension of television broadcasting*

Ficora may order suspension of television broadcasting referred to in section 3 in full or in part, if the operator, despite the measures laid down in sections 330–332 or 334, seriously and repeatedly violates this Act or provisions and regulations issued by virtue of it.

### Section 339

#### *Suspension of retransmission*

The Government may order that the retransmission of television broadcasts from outside Finland be suspended for a maximum period of one month if the said broadcast has repeatedly and clearly

- 1) been guilty of ethnic agitation punishable under Chapter 11(10) of the Criminal Code; or
- 2) grossly violated the provisions of section 6 of the Act on Audiovisual Programmes.

If a television broadcaster responsible for television programming referred to in subsection 1 is established in an EEA Member State, the procedure as laid down in Article 3(2) of Audiovisual Media Services Directive shall be followed in ordering the suspension of the retransmission of a television programme. If the television broadcaster is established in a State outside the European Economic Area but is a party to the European Convention on

Transfrontier Television, the procedure provided in Article 24(1) and (2) of said Convention shall be applied in ordering the retransmission of a television broadcast suspended.

#### Section 340

##### *Prohibiting telecommunication operations*

If, despite the consequences referred to in sections 331–334, a telecommunications operator seriously and significantly breaches or fails to comply with the provisions of this Act or regulations or decisions issued under it, Ficora may prohibit the telecommunications operator from engaging in telecommunications. Ficora may prohibit a telecommunications operator's activities in full or in part.

Until a decision referred to in section 52 has been made, Ficora may prohibit provision of a service or a service entity which results in significant hindrance to competition.

#### Section 341

##### *House search or bodily search*

If strong grounds exist to suspect that a criminal offence referred to in Chapter 38(7) of the Criminal Code or section 348(1)(2 and 3) of this Act has been committed in a place governed by the provisions on domiciliary peace, a house search, search of an area or bodily search may be conducted, notwithstanding the provisions of Chapter 8(2)(1), (4) and 31(1) of the Coercive Measures Act, in order to find illegal radio equipment or telecommunications terminal equipment or to solve the offence. A prerequisite is that the search or inspection is necessary to achieve its aims.

### Chapter 43

#### **Appeals**

#### Section 342

##### *Rectification request*

A service operator under the retention obligation may request rectification to a data retention decision referred to in section 157 with the Ministry of the Interior.

Rectification to a decision by Ficora concerning a radio licence referred to in section 39, a radio frequency reservation decision referred to in section 44, a number decision referred to in section 100, a market-based spectrum fee referred to in Section 288 and an information society fee referred to in section 289 may be requested from Ficora.

Rectification to a decision concerning the quality assurance system for radio equipment of a notified body referred to in section 255(1) and a negative decision by an outside party appointed by Ficora as examiner for proficiency exams referred to in section 265(3) may be requested from Ficora.

The rectification proceedings are laid down in Chapter 7a of the Administrative Procedure Act.

#### Section 343

*Appeals to the Market Court*

An appeal against a decision by Ficora pursuant to Chapter 21, sections 295 and (312)(2) and (3) shall be made with the Market Court. In its decision, Ficora may decide that the decision shall be complied with regardless of any appeal, unless decided otherwise by the Market Court.

The provisions of the Act on Court Proceedings in the Market Court apply to the handling of an appeal referred to in subsection 1 in the Market Court.

Ficora has the right to file an appeal against a decision of the Market Court.

Section 344

*Appeals with the Administrative Court*

An appeal against a decision of the Ministry of Transport and Communications, the Data Protection Ombudsman and a municipal building supervision authority and a decision of Ficora other than an administrative decision referred to in section 342 or a decision of Ficora or the Ministry of the Interior concerning a claim for rectification may be filed with the Administrative Court as provided for in the Administrative Judicial Procedure Act (586/1996), unless otherwise provided below.

With the exception of decisions referred to in sections 233 and 235, a decision of an authority may be enforced notwithstanding an appeal, unless otherwise provided by the appellate authority.

In derogation from subsection 2, a Finnish Communications Regulatory Authority decision on the conveyance of broadcasting rights referred to in section 213 shall be complied with despite any appeal, unless otherwise provided by the appellate authority.

Ficora has the right to appeal against an Administrative Court decision in which the Administrative Court has repealed or amended a decision of Ficora referred to in subsection 1.

Section 345

*Appeal to the Supreme Administrative Court*

An appeal may be filed against a decision of an Administrative Court in a matter concerning cancelling a programming licence referred to in section 32, in a matter concerning cancellation of radio licences referred to in section 49, in a matter concerning location referred to in section 233, in a matter concerning amendment or removal of an action permit referred to in section 235, and in a matter concerning cancelling a designation of a notified body referred to in section 255 as provided in the Administrative Judicial Procedure Act. An appeal against a decision of an Administrative Court in other matters may be filed with a leave to appeal from the Supreme Administrative Court.

An appeal may be filed with the Supreme Administrative Court against:

- 1) a Government decision made by virtue of this Act;
- 2) a decision of Ficora issued by virtue of sections 52–55 or if it concerns supervision of compliance with such a decision;
- 3) a decision of the Finnish Communications Regulatory issued by virtue of section 85;
- 4) a decision of Ficora in accordance with section 314 on supervision related to the EU Roaming Directive;

5) a decision of the Market Court by virtue of this Act, with the exception of a decision referred to in sections 336 and 337, for which an appeal in accordance with the provisions of the Act on the Court Proceedings in the Market Court is filed.

A decision of the Government or Ficora referred to in subsection 2(1–4) shall be complied with despite any appeal, unless the appellate authority orders otherwise. The appeal shall be handled urgently.

## PART XIII

### OTHER PROVISIONS

#### Chapter 44

#### Penal Provisions

##### Section 346

##### *Television and radio broadcasting violation*

Anyone who deliberately carries out television or radio broadcasting without a programming licence referred to in section 22(1), in sections 26 and 28 or 34(1) or without submitting a notification in accordance with section 4(1) or in violation of a prohibition issued under sections 338 and 339, shall be sentenced to a fine for a *television or radio broadcasting violation*.

A penalty shall not be ordered if the offence is minor.

##### Section 347

##### *Decoding system violation*

Anyone who violates a prohibition related to any decoding system or part of a decoding system provided in section 269(2) in a manner other than prescribed in Chapter 38(8)(b) of the Criminal Code shall be imposed a fine for a *decoding system violation*, unless a more severe penalty is provided elsewhere in law.

A prosecutor may not bring charges for a decoding system violation unless the injured party reports the offence for prosecution or unless prosecution is required due to significant public interest.

A penalty shall not be ordered if the offence is minor.

##### Section 348

##### *Telecommunications device violation*

Anyone who deliberately

1) possesses or uses a radio transmitter without the radio licence required in section 39, or uses a radio transmitter without the required proficiency referred to in section 265 or in section 266;

2) violates a prohibition on prevention or restriction of interference referred to in section 329 or supervision decision referred to in section 330;

3) violates a prohibition concerning import, sale, offering for sale, transfer to another party or display of telecommunications devices referred to in section 253, or a prohibition issued in connection with the removal of devices for examination referred to in section 327; or

4) violates a provision on conformity assessment of radio receiver and radio equipment referred to in section 258, conformity assessment of telecommunications terminal equipment referred to in section 259, conformity assessment of communications network devices referred to in section 260 or safekeeping of the documents relating to conformity assessment referred to in section 256(5), or obligation to notify the placing of the equipment on the market referred to in section 263, or marking of telecommunications devices referred to in section 262(1), or issuing a declaration on intended use of radio or telecommunications terminal device referred to in section 262(2), will be sentenced to a fine for a *telecommunications device violation*, unless a more severe punishment is prescribed in another Act.

Whoever violates a prohibition or obligation ordered by virtue of section 332 and enforced by a penalty payment or a threat of suspension of activities cannot be sentenced under subsection 1 to punishment for the same act.

A penalty shall not be ordered if the offence is minor.

## Section 349

### *Data protection violation in electronic communications*

Anyone who deliberately

1) neglects its obligation to request consent and provide information referred to in section 205(1);

2) neglects its obligation to ensure the information security of its services or traffic data and location data referred to in section 247;

3) neglects its notification obligation under section 275(1) or section 278(2),

4) processes traffic data in violation of what is provided in sections 136–144 or location data in violation of sections 160(1–4) or 161 or neglects its information duty regarding processing of data or neglects orders from the authorities;

5) neglects to comply with the provisions of sections 152–154 regarding drawing up and issuing a report or a prior notification to the user, the employees' representative or the Data Protection Ombudsman;

6) neglects its obligations to save information on data processing referred to in section 145 or obligations laid down in section 158(3);

7) neglects the provisions on the rights of users and subscribers laid down in section 162;

8) neglects the provisions on itemisation of a bill laid down in section 134;

9) neglects to comply with the provisions of sections 197–199 regarding the processing of personal data contained in directory inquiry services, the notifying of subscribers regarding the purpose and use of such services, the removing and rectifying of information, the right to prohibit use or the rights of legal persons; or

10) practices direct marketing, markets a telephone subscription or stores and processes data in violation of sections 200–203 or 205;

shall be imposed a fine for a *data protection violation in electronic communications*, unless a more severe penalty is provided elsewhere in law.

A penalty shall not be ordered if the offence is minor.

## Section 350

*References to the Criminal Code*

Provisions on a penalty for a decoding system violation are laid down in Chapter 38(8)(b) of the Criminal Code.

Provisions on a penalty for message interception are laid down in Chapter 38, section 3, on aggravated message interception in Chapter 38(4), and on computer break-ins in Chapter 38(8) of the Criminal Code. The penalty for a breach of the obligation of secrecy provided in sections 136(4) and 160(5) of this Act is subject to Chapter 38(1 or 2) of the Criminal Code, unless the offence is punishable under Chapter 40(5) of the Criminal Code or unless a more severe penalty is provided elsewhere in law.

## Chapter 45

**Entry into Force**

## Section 351

*Entry into force*

This Act enters into force on 1 January 2015.

This Act repeals the:

- 1) Act on Television and Radio Operations (744/1998);
- 2) Act on Radio Frequencies and Telecommunications Equipment (1015/2001);
- 3) Act on the Prohibition of Certain Decoding Systems (1117/2001);
- 4) Act on Provision of Information Society Services (458/2002);
- 5) Domain Name Act (228/2003);
- 6) Communications Market Act (393/2003);
- 7) Act on the Protection of Privacy in Electronic Communications (516/2004);
- 8) Act on Auctioning Certain Radio Frequencies (462/2009).

Chapter 15 and section 135 of this Act enter into force on 1 July 2015.

The Domain Name Act is applied until 4 September 2016. Chapter 21 on domain names, sections 295 and 312(2) and (3) of this Act on parties representing a registrar enter into force on 5 September 2016.

Section 201 of this Act is in force until 1 July 2015.

Section 227(1)(2-3) of this Act are in force until 31 December 2016.

Section 288(1)(3) of this Act enters into force on 1 January 2024.

Section 304(2) of this Act is in force until 30 June 2022.

Section 43(3 and 4) of the Communications Market Act applies until 31 December 2015.

## Section 352

*Transitional provisions*

Provisions in force at the time of the entry into force of this Act apply to the processing of administrative matters pending at the time of the entry into force of this Act.

A network or a programming licence, a radio receiver licence, a call sign of a radio station and a proficiency certificate in force at the time of the entry into force of this Act remains in force for the period referred to in the certificate or call sign.

The Act on Auctioning Certain Radio Frequencies applies to licences granted by virtue of it until their expiration.

The rights and obligations of telecommunications operators laid down in the Communications Market Act remain in force until Ficora has made its first decision on significant market power complying with section 52 of this Act and, as a result, imposed rights and obligations under this Act on telecommunications operators. The termination of rights and obligations of telecommunications operators under the Communications Market Act will be confirmed by a separate Finnish Communications Regulatory Authority decision as needed.

The rights and obligations of telecommunications operators laid down in section 59 the Communications Market Act remain in force until Ficora has made its first decision on the application of the assignment procedure complying with section 85 of this Act.

An obligation under section 134(1)(3) of the Communications Market Act to transmit in the network without charge freely receivable television programmes that are in the public interest and broadcast by virtue of a national programming licence, which are the programmes of MTV3 by MTV Oy, Nelonen by Sanoma Entertainment Oy and Fox by Fox International Channels Netherlands Holding B.V., remains in force until licences complying with section 26 of this Act enter into force. The obligation provided in section 19a of the Act on Television and Radio Operations to make the programming available for people with visual or hearing impairments remain in force until the Government has issued a decree referred to in section 211(2) of this Act.

An obligation of a television broadcaster under section 15(1 and 2) of the Act on Television and Radio Operations to transmit emergency warnings to the public in television programmes remains in force until licences complying with section 26 of this Act enter into force.

An obligation of a radio broadcaster under section 15a(1 and 2) of the Act on Television and Radio Operations to transmit emergency warnings to the public in radio programmes remains in force for the period referred to in the programming licence issued to a radio broadcaster by virtue of section 7(1) of the Act on Television and Radio Operations.

Section 229(4) of this Act does not apply to agreements entered into prior to the entry into force of this Act.

Section 288(1)(1) applies to licences granted after the entry into force of this Act.

If, in another Act or provisions issued by virtue of such Act or a decision issued by virtue of an Act repealed by this Act, references are made to an Act that was repealed by this Act, the reference is deemed to mean a corresponding provision in this Act.