

ACT

of 30 June 2011

on the Launch of Digital Terrestrial Television^{1), 2)}

Chapter 1

General Provisions

Article 1.

The Act lays down:

- 1) the manner of launching digital terrestrial television;
- 2) the obligations of the operator of multiplex I and the operator of multiplex II;
- 3) the obligations of the broadcasters: Telewizja Polska S.A., Telewizja Polsat S.A., TVN S.A., Polskie Media S.A., Telewizja Puls Sp. z o.o., that transmit television programme services by analogue terrestrial diffusion on the date of entry into force of this Act, and of the minister in charge of communications
 - with regard to an information campaign on digital television.

Article 2.

Any reference in this Act to:

- 1) „multiplex” shall mean the multiplex referred to in Article 2 subparagraph 20a of the Act of 16 July 2004 - „Telecommunications Law” (official journal „Dz.U.” No. 171, item 1800, as subsequently amended³⁾);
- 2) „broadcaster” shall mean the broadcaster referred to in Article 4 subparagraph 5 of the Broadcasting Act of 29 December 1992 (official journal „Dz.U.” of 2011 No. 43, item 226, No. 85, item 459 and No. 112, item 654);
- 3) „digital receiver” shall mean the digital receiver referred to in Article 2 subparagraph 23a of the Act of 16 July 2004 - „Telecommunications Law”;
- 4) „transitory period” shall mean the period of utilization of frequencies in the broadcasting service for the purposes of simultaneous transmission of television programme services by analogue and digital terrestrial diffusion;
- 5) „operator of a broadcasting network” shall mean the operator of a broadcasting network referred to in Article 2 subparagraph 23c of the Act of 16 July 2004 - „Telecommunications Law”;
- 6) „multiplex signal” shall mean the multiplex signal referred to in Article 2 subparagraph 38a of the Act of 16 July 2004 - „Telecommunications Law”;
- 7) „user” shall mean a person who possesses a digital receiver whose condition allows for immediate reception of a television programme service.

Article 3.

1. The launch of digital terrestrial television shall consist in:
 - 1) the simultaneous transmission of television programme services by analogue and digital terrestrial diffusion in the transitory period;
 - 2) the switch off of transmission of television programme services by analogue terrestrial diffusion by the broadcasters referred to in Article 4 paragraph 1.
2. Digital terrestrial television shall be launched in respective areas of the territory of the Republic of Poland, hereinafter referred to as the "territory of the RP", in keeping with the time-limits set by the President of the Office of Electronic Communications, hereinafter referred to as the "President of the OEC", not later than by 31 July 2013.

Article 4.

1. Telewizja Polska S.A. that on the date of entry into force of this Act transmits the following television programme services: "Telewizja Polska I", "Telewizja Polska II" and regional television programme services by analogue terrestrial diffusion, as well as Telewizja Polsat S.A., TVN S.A., Polskie Media S.A., Telewizja Puls Sp. z o.o. that on the date of entry into force of this Act transmit television programme services on the basis of licences for the transmission of these programme services by analogue terrestrial diffusion, shall cease to utilize the frequencies used for this purpose in the broadcasting service by 31 July 2013, subject to paragraph 2.
2. A broadcaster that on the date of entry into force of this Act transmits the programme service referred to in paragraph 1 shall cease to utilize the frequencies used for this purpose in the broadcasting service on the respective areas of the territory of the RP before 31 July 2013, if such a time-limit has been set by the President of the OEC pursuant to Article 3 paragraph 2.
3. In case of change of the start and end dates of the transitory period on respective areas of the territory of the RP the President of the OEC shall forthwith notify the minister in charge of communications of such change.
4. The minister in charge of communications and the President of the OEC shall announce the time-limits referred to in Article 3 paragraph 2 and the areas of the territory of the RP on which broadcasters that transmit television programme services by analogue terrestrial diffusion shall cease to utilize the frequencies used for this purpose in the broadcasting service, in the Public Information Bulletin [*Biuletyn Informacji Publicznej*], on the page of an authority supporting the minister in charge of communications and the Office of Electronic Communications, respectively.

Article 5.

The broadcasting of a television programme service by digital terrestrial diffusion by a broadcaster, in case such a programme service used to be broadcast by analogue terrestrial diffusion by the broadcaster, shall not constitute a separate field of exploitation as defined by Article 50 of the Act of 4 February 1994 on Copyright and Neighbouring Rights (official journal „Dz.U.” of 2006 No. 90, item 631, as subsequently amended⁴⁾).

Article 6.

1. A business operator whose business consists in the sale of digital receivers may sell a digital receiver that does not meet the technical and performance requirements set forth in regulations issued pursuant to Article 132 paragraph 3 of the Act of 16 July 2004 - „Telecommunications Law”, only after informing the buyer about this fact:
 - 1) in writing, not later than upon conclusion of a contract and receipt of the buyer's acknowledgement of taking note of such information, subject to subparagraph 2;
 - 2) by means of remote communication, not later than at the time an offer to conclude a contract is made to the buyer and upon receipt of the buyer's acknowledgement of taking note of such information, in case of contracts of sale executed by means of remote communication referred to in Article 6 paragraph 1 of the Act of 2 March 2000 on Protection of Certain Rights of Consumers and on Liability for Damage Caused by a Dangerous Product (official journal „Dz.U.” No. 22, item 271, as subsequently amended⁵⁾).
2. A business operator whose business consists in the sale of digital receivers shall put in a visible and easily accessible place the following information for a potential buyer: „Only digital receivers that conform to the requirements set forth in regulations concerning technical and performance requirements for consumer devices for the reception of digital terrestrial television broadcasts enable the reception of digital terrestrial television on the territory of the Republic of Poland”.
3. The obligations set forth in paragraphs 1 and 2 shall expire on 31 July 2014.
4. The acknowledgement referred to in paragraph 1 shall be made by way of a declaration issued by the buyer and containing his/her first name and surname. The declaration shall be issued:
 - 1) in writing, in the case referred to in paragraph 1 subparagraph 1;
 - 2) by means of remote communication, in a manner that ensures identification of the person submitting the declaration, in the case referred to in paragraph 1 subparagraph 2.

5. A business operator whose business consists in the sale of digital receivers shall keep the declaration referred to in paragraph 4 for the period of two years counting from the end of a calendar year in which it was made.

Chapter 2

Operator of Multiplex I and Operator of Multiplex II

Article 7.

1. Telewizja Polska S.A., pursuant to the decision, issued by the President of the OEC, on reservation of frequencies in the broadcasting service for the purposes of transmission or retransmission of television programme services by digital terrestrial diffusion, determined in the frequency management plan for multiplex I pursuant to Article 112 paragraph 2 of the Act of 16 July 2004 - „Telecommunications Law”, as well as the broadcasters of television programme services who obtained licences for the transmission of programme services in multiplex I, shall be the operator of multiplex I until the date of expiry of frequency reservation decisions.
2. Telewizja Polska S.A. shall transmit television programme services "Telewizja Polska I", "Telewizja Polska II" and regional television programme services in multiplex I on the basis of the frequency reservation decision referred to in paragraph 1, until the area of the Republic of Poland inhabited by at least 95% of the population is covered by the signal of these programme services, by utilizing the frequencies determined in the frequency management plan for multiplex III pursuant to Article 112 paragraph 2 of the Act of 16 July 2004 - „Telecommunications Law”, not longer however than until 27 April 2014.
3. The Chairman of the National Broadcasting Council, hereinafter referred to as the "Chairman of the NBC" shall by 31 December 2012 announce in the Official Journal of the Republic of Poland "*Monitor Polski*" availability of licences for transmission of television programme services by digital terrestrial diffusion by utilizing the frequencies determined in the frequency management plan for multiplex I that will be used in this multiplex after the time-limit referred to in paragraph 2.
4. When making the announcement referred to in paragraph 3, the Chairman of the NBC shall take into account, in particular, the necessity to ensure programming diversity in the offer of television programme services transmitted by digital terrestrial diffusion.

Article 8.

Pursuant to the decision, issued by the President of the OEC, on reservation of frequency in the broadcasting service for the purposes of transmission or retransmission of television programme services by digital terrestrial diffusion, , determined in the frequency management plan for multiplex II pursuant to Article 112 paragraph 2 of the Act of 16 July 2004 - „Telecommunications Law”, the broadcasters: Telewizja Polsat S.A., TVN S.A., Polskie Media S.A. and Telewizja Puls Sp. z o.o. that on the date of entry into force of this Act transmit television programme services on the basis of licences for transmission of these programme services by analogue terrestrial diffusion, shall be the operator of multiplex II until the date of expiry of frequency reservation decisions.

Article 9.

1. The operator of multiplex I shall guarantee to the users a free-of-charge access to television programme services:
 - 1) for which the broadcasters were awarded licences for their transmission in multiplex I;
 - 2) transmitted by Telewizja Polska S.A.: "Telewizja Polska I", "Telewizja Polska II" and regional television programme services, pursuant to Article 7 paragraph 2.
2. The operator of multiplex II shall guarantee to the users a free-of-charge access to television programme services transmitted or retransmitted in this multiplex.
3. The operator of multiplex I shall ensure, by 31 July 2013 at the latest, coverage of the territory of the RP inhabited by at least 95% of the population with the signal of multiplex I, in accordance with the conditions set forth in the frequency reservation decision referred to in Article 7.

4. The operator of multiplex II shall ensure, by 31 July 2013 at the latest, coverage of the territory of the RP inhabited by at least 95% of the population with the signal of multiplex II, in accordance with the conditions set forth in the frequency reservation decision referred to in Article 8.

Article 10.

1. The broadcasters for whom frequencies were reserved in the broadcasting service for the purposes of transmission or retransmission of television programme services by digital terrestrial diffusion, determined in the frequency management plan for multiplex I and multiplex II pursuant to Article 112 paragraph 2 of the Act of 16 July 2004 - „Telecommunications Law”, should conclude an agreement for the transmission of signal of these television programme services within 30 days of entry into force of the Act.
2. The broadcasters for the benefit of whom frequencies will be reserved in the broadcasting service for the purposes of transmission or retransmission of television programme services by digital terrestrial diffusion, determined in the frequency management plan for multiplex I pursuant to Article 112 paragraph 2 of the Act of 16 July 2004 - „Telecommunications Law”, should conclude an agreement for the transmission of signal of these television programme services within 30 days of issue of the frequency reservation decision by the President of the OEC.

Article 11.

Provisions of the Act of 16 July 2004 - „Telecommunications Law” shall apply to matters not governed in this Chapter.

Chapter 3

Information Campaign on Digital Television

Article 12.

1. The broadcasters referred to in Article 4 paragraph 1 shall transmit, at their own expense, in television programme services referred to in Article 4 paragraph 1 broadcasts on digital television with information on:
 - 1) the date of switch off of transmission of the television programme service by analogue terrestrial diffusion;
 - 2) the methods of adapting television sets for the digital reception of television programme services, in particular for the reception of programme services by digital terrestrial diffusion;
 - 3) the number of a toll-free helpline and the address of the web page, referred to in Article 16 paragraph 1 subparagraph 3, where users may obtain information on, in particular, the method of adapting television sets for the digital reception of television programme services, including for the reception of television programme services by digital terrestrial diffusion.
2. Telewizja Polska S.A. shall at its own expense transmit broadcasts informing about dates of launch of digital television, determined by the President of the OEC, pursuant to Article 3 paragraph 2, on the areas of the territory of the RP covered by their range, in regional television programme services.
3. The broadcasts referred to in paragraph 1 shall be in the form of three-minute programmes transmitted once a week from 17:00 to 21:00, as well as in the form of announcements and messages transmitted twice each day of the week, for 30 seconds, from 6:00 - 23:00, subject to paragraph 6.
4. The broadcasts referred to in paragraph 2 shall be in the form of text messages accompanying news programmes.
5. The broadcasters referred to in Article 4 paragraph 1 shall commence to transmit the broadcasts referred to in paragraphs 1 and 2 within 30 days of entry into force of the Act. The transmission of the broadcasts shall not end before 31 July 2013.
6. The National Broadcasting Council may define, by a regulation, a shorter duration of broadcast programmes, announcements or messages than set forth in paragraph 3, or may reduce the frequency of these broadcasts defined in paragraph 3, taking into account the progress in the launch

of digital terrestrial television on the territory of the RP, in particular as regards the time-limits referred to in Article 3 paragraph 2, as well as the necessity to ensure an efficient and effective information campaign.

Article 13.

1. Article 16 and Article 16a of the Broadcasting Act of 29 December 1992 shall not apply to the broadcasts referred to in Article 12.
2. The programmes referred to in Article 12 paragraph 3 shall not be interrupted for advertising or teleshopping.

Article 14.

Acting in agreement with the minister in charge of culture and national heritage as well as having sought opinion of the National Broadcasting Council, the minister in charge of communications may define by a regulation detailed requirements for the content of the broadcasts referred to in Article 12 paragraph 1, with due regard for the necessity to publicize information listed in this provision, in particular among persons with impaired vision or hearing, and to ensure an effective launch of digital television on the territory of the RP.

Article 15.

1. The broadcasters referred to in Article 4 paragraph 1 shall within 14 days of entry into force of this Act post the address of the web page referred to in Article 16 paragraph 1 subparagraph 3 on their respective web pages.
2. The obligation referred to in paragraph 1 shall expire on 31 July 2013.

Article 16.

1. The minister in charge of communications shall carry out an information campaign on digital terrestrial television, comprising in particular:
 - 1) the promotion of information related to the reception of television programme services by digital terrestrial diffusion, including publication of such information in the Public Information Bulletin [*Biuletyn Informacji Publicznej*], on the web page of the authority supporting this minister,
 - 2) the development and issue of publications that promote knowledge about the reception of television programme services by digital terrestrial diffusion, including publication of brochures and leaflets,
 - 3) the provision of a toll-free helpline and a web page to offer information on, in particular, the method of adapting television sets for the digital reception of television programme services, including the reception of television programme services by digital terrestrial diffusion
- with consideration given to users with special needs, especially persons with impaired vision or hearing.
2. The information campaign referred to in paragraph 1 shall commence on the date of entry into force of the Act and shall continue until 31 July 2013.
3. On the date of entry into force of this Act the minister in charge of communications shall announce the telephone number of the toll-free helpline and the address of the web site referred to in paragraph 1 subparagraph 3 in the Public Information Bulletin, on the web page of the authority supporting this minister.

Chapter 4

Financial Penalties

Article 17.

The entity:

- 1) referred to in Article 4 paragraph 1 that does not cease to utilize the frequency in the broadcasting service for the purposes of transmission of a television programme service by analogue terrestrial diffusion by the time-limit defined in Article 4 paragraph 1 or 2,
- 2) that fails to fulfil the obligation defined in Article 9 or fulfils it in breach of this provision,
- 3) that fails to fulfil the obligations defined in Article 10, Article 12 or Article 15 or fulfils them in breach of these provisions,
 - shall be liable to a financial penalty.

Article 18.

1. The financial penalty referred to in:
 - 1) Article 17 subparagraphs 1 and 2 shall be imposed by the President of the OEC by way of an administrative decision;
 - 2) Article 17 subparagraph 3 shall be imposed by the Chairman of the NBC by way of an administrative decision.
2. The financial penalty shall amount up to 3% of the revenue generated by the entity referred to in Article 17 in the preceding calendar year, and when imposing the financial penalty the authorities referred to in paragraph 1 shall take into account the scope and degree of harm caused by the breach, the entity's actions to date and its financial capabilities.
3. The entity referred to in Article 17 shall provide the authority referred to in paragraph 1, on each request of the authority, within 30 days of receipt of the request, data necessary to determine the assessment basis for the financial penalty. In case of failure to provide data or in case of provision of data that prevent determination of the assessment basis for the penalty, the authority referred to in paragraph 1 may determine the assessment basis by estimation, not lower however than PLN 500 thousand.
4. In case the entity referred to in Article 17 has operated for less than one calendar year, the assessment basis for the financial penalty shall be PLN 500 thousand.
5. The financial penalty shall constitute income of the State budget.

Article 19.

1. If a business entity whose business consists in the sale of digital receivers fails to fulfil the obligation referred to in Article 6 paragraphs 1, 2 or 5, it shall be liable to a financial penalty amounting from PLN 1 thousand to PLN 50 thousand.
2. The financial penalty shall be imposed with due regard for the degree of harm caused by the act, the scope of the breach as well as the business operator's actions to date.
3. The penalty shall be imposed by the voivodship inspector of the Trade Inspection, by way of an administrative decision.
4. The financial penalty shall constitute income of the State budget.

Chapter 5

Amendments to Applicable Regulations

Article 20.

The Broadcasting Act of 29 December 1992 (official journal „Dz.U.” of 2011 No. 43, item 226, No. 85, item 459 and No. 112, item 654) shall be amended as follows:

- 1) in Article 34:
 - a) paragraph 1 shall be replaced by the following:

"1. Having sought the opinion of the President of the Office of Electronic Communications to the extent defined in paragraph 1a subparagraph 3, the Chairman of the National Council shall publish in the official journal of the Republic of Poland "Monitor Polski" an announcement concerning availability of broadcasting licences to transmit radio and television programme services by terrestrial diffusion, and determine the time-limit, which shall not be less than 45 days from the date of the announcement, for filing licence applications."
 - b) in paragraph 1a subparagraph 3 shall be replaced by the following:

"3) frequencies or channels as well as the maximum radiated power and location of transmitters intended for transmission of the programme service or the area over which the frequencies may be used, unless the transmission of the programme service does not require reservation of frequency;"
- 2) in Article 37:
 - a) paragraph 1 shall be replaced by the following:

"1. The broadcasting licence shall specify in particular:

 - 1) the broadcaster, its seat or place of residence,
 - 2) the nature of activity covered by the broadcasting licence,
 - 3) the method of transmitting the programme service (by analogue terrestrial diffusion, digital terrestrial diffusion in multiplex, satellite, in other telecommunications networks than the networks used for transmission by terrestrial diffusion or by satellite) and:
 - for analogue terrestrial diffusion:
 - a) location of the station,
 - b) height on which the antenna is located,
 - c) maximum radiated power,
 - d) antenna radiation pattern,
 - e) frequency,
 - f) polarisation,
 - for transmission by digital terrestrial diffusion in multiplex:
 - g) multiplex,
 - h) area of transmission,
 - i) signal parameters – IDs,
 - for transmission by satellite:
 - j) name of the satellite used,
 - k) position of the satellite on the orbit,
 - l) frequency,
 - m) location of uplink station.
 - for transmission in other telecommunications networks than the networks used for transmission by terrestrial diffusion or by satellite:
 - n) location of the system head station,
 - o) area covered by the telecommunications network.
 - 4) the nature of programme service to be transmitted and the time of its transmission,
 - 5) the date of the initial transmission of the programme service,
 - 6) the date of expiry of the licence."
 - b) paragraphs 3 and 3a shall be replaced by the following:

"3. Within the scope stipulated in paragraph 1 subparagraph 3, the broadcasting licence shall be awarded in agreement with the President of the Office of Electronic Communications who takes position, having regard to the fulfilment of conditions defined in Article 114 paragraph 3 of the Act of 16 July 2004 – "Telecommunications Law..

- 3a. Where the transmission of a radio or television programme service requires reservation of a frequency, the President of the Office of Electronic Communications shall forthwith reserve a frequency for the broadcaster who has been awarded a licence, unless the programme service is to be transmitted by a multiplex operator by digital terrestrial diffusion. Any frequency reservations, modifications and withdrawals thereof shall be governed by Articles 114 and 115 of the Act of 16 July 2004 - "Telecommunications Law", and provisions of Article 116 thereof shall not apply.";
- 3) Article 39b paragraph 3 shall be replaced by the following:
"3. In case of breach by a social broadcaster of requirements specified in Article 4 paragraph 10, the licensing authority shall issue a decision revoking its status as a social broadcaster and shall impose in the said decision the obligation to pay the fees referred to in paragraph 2, along with legal interest charged as from the date of awarding or altering the broadcasting licence.";
- 4) Article 41 paragraph 2 shall be replaced by the following:
"2. The obligation set out in paragraph 1 subparagraph 1 shall not apply to the programme services referred to in Article 43 paragraph 1.";
- 5) Article 43 shall be replaced by the following:
"Article 43. 1. An operator that retransmits a programme service, with the exception of an entity that retransmits a programme service by digital terrestrial diffusion in multiplex, shall retransmit the programme services "Telewizja Polska I", "Telewizja Polska II" and one regional television programme service transmitted by Telewizja Polska S.A. as well as the programme services transmitted on the date of entry into force of the Act of 30 June 2011 on the Launch of Digital Terrestrial Television (official journal "Dz.U." No., item) on the basis of the license to transmit these programme services by analogue terrestrial diffusion by Telewizja Polsat S.A., TVN S.A., Polskie Media S.A., Telewizja Puls Sp. z o.o. In case of an operator that retransmits programme services in other telecommunications networks than the networks used for transmission by terrestrial diffusion or by satellite, the obligation to retransmit a regional television programme service shall apply to a regional television programme service relevant for a given area.
2. A broadcaster that transmits the programme service referred to in paragraph 1 may not refuse an operator that retransmits the programme service in the telecommunications network referred to in paragraph 1 the consent for the retransmission of this programme service, and may not make such consent conditional upon payment of any remuneration, including in particular any fee for the award of a licence for the use of the broadcast.
3. The Chairman of the National Council shall assess the fulfilment of the obligation referred to in paragraph 1 not less frequently than once every two years, being guided by social interest with regard to provision of information, ensuring access to culture and art, facilitating access to learning, sport and scientific achievements as well as dissemination of civil education.
4. The Chairman of the National Council shall submit the results of the assessment to the minister in charge of culture and national heritage who shall take actions necessary to ensure that the obligations referred to in paragraph 1 are proportionate and transparent as well as imposed solely when required for purposes of attainment of the objectives set out in paragraph 3.";
- 6) The following Article 43a shall be inserted after Article 43:
"Article 43a. 1. A broadcaster that transmits the programme service referred to in Article 43 paragraph 1 shall make this programme accessible free of charge on an application of the operator retransmitting the programme service, within 14 days from submission of the application.
2. If the broadcaster fails to fulfil the obligation to make the programme service accessible free of charge, the Chairman of the National Council, acting on an application of the operator retransmitting the programme service, shall request the broadcaster to make the programme service accessible to this operator, within 14 days from service of the request.

3. The operator retransmitting the programme service shall:
 - 1) retransmit and offer the programme service made accessible to it free of charge;
 - 2) inform in its offering that the programme service is intended for general and free of charge reception, also by digital terrestrial diffusion.";
- 7) in Article 44, paragraph 5 shall be repealed;
- 8) in Article 45 paragraph 3 subparagraph 2, semi-colon shall be replaced by a dot and subparagraph 3 shall be repealed;
- 9) in Article 53 paragraph 1 shall be replaced by the following:
 - "1. A broadcaster that fails to comply with the obligations laid down in Article 14a paragraphs 1 and 2, Article 15 paragraphs 1, 2 and 3, Article 15a paragraph 1, Article 16 paragraphs 1-6, Article 16a, Article 16b paragraphs 1-3, Article 16c, Article 17 paragraphs 1-7, Article 17a paragraphs 1-7, Article 18 paragraphs 1-5b, Article 18a paragraph 1, Article 20 paragraph 1, Article 20b paragraphs 1 and 6, Article 20c paragraphs 1-5, Article 43 paragraph 2, Article 43a paragraph 1, or under the provisions issued pursuant to Article 14a paragraph 3, Article 15 paragraph 4, Article 15a paragraphs 2 and 3, Article 16 paragraph 7, Article 16b paragraph 3b, Article 17 paragraph 8, Article 17a paragraph 9, Article 18 paragraph 6 and Article 18a paragraph 2, or fails to comply with the request referred to in Article 43a paragraph 2, shall be liable to a fine imposed by decision of the Chairman of the National Council in the amount of up to 50% of the annual fee for the use of frequency allocated for broadcasting the programme service, while a broadcaster that does not pay the frequency fee shall be liable to a fine of up to 10% of the revenues generated by the broadcaster in the preceding tax year, with consideration given to the scope and degree of harm caused by the breach, the broadcaster's acts to date and its financial capabilities.";
- 10) The following Article 53b shall be inserted after Article 53a:
 - "Article 53b. 1. If an operator that retransmits a programme service breaches the obligation referred to in Article 43 paragraph 1 or Article 43a paragraph 3, the Chairman of the National Council shall issue decision imposing a fine of up to 10% of the revenue generated by this operator in the preceding tax year, with consideration given to the scope and degree of harm caused by the breach, the operator's actions to date and its financial capabilities.
 2. In case the operator referred to in paragraph 1 has operated for less than one calendar year, the assessment basis for the fine shall be PLN 500 thousand.
 3. The Chairman of the National Council may request the operator referred to in paragraph 1 to provide explanations, submit documents, in particular the annual financial statements for the preceding tax year, with regard to the fulfilment of the obligation referred to in Article 43 paragraph 1 or Article 43a paragraph 3."

Article 21.

In the Trade Inspection Act of 15 December 2000 (official journal „Dz.U.” of 2009 No. 151, item 1219, of 2010 No. 182, item 1228; and of 2011 No. 63, item 322 and No. 106, item 622), in Article 3 paragraph 1, the following subparagraph 2c shall be inserted after subparagraph 2b:

"2c) check of compliance with Article 6 paragraphs 1, 2 and 5 of the Act of 30 June 2011 on the Launch of Digital Terrestrial Television (official journal „Dz.U.” No., item) by business operators whose business consists in the sale of digital receivers;"

Article 22.

The Act of 16 July 2004 - „Telecommunications Law” (official journal „Dz.U.” No. 171, item 1800, as subsequently amended⁶⁾) shall be amended as follows:

- 1) in Article 2:
 - a) the following subparagraph 20a shall be inserted after subparagraph 20:
 - "20a) „multiplex” shall mean a multiplexed digital data stream that consists of two or more streams made of data that form part of contents of radio or television programme services, and additional data comprising, in particular, data related to a conditional access system or additional services;"

- b) the following subparagraphs 23a-23c shall be inserted after subparagraph 23:
- "23a) „digital receiver” shall mean a consumer device for the reception of digital television broadcasts, composed of at least a tuner (consisting of at least a high frequency head and a demodulator), demultiplexer and decoders of received services as well as a display of image (and DTV), or without such a display of image;
 - 23b) “multiplex operator” shall mean an entity:
 - a) for whom a frequency was reserved in the broadcasting service for the transmission or retransmission of television or radio programme services by digital terrestrial diffusion in a multiplex, and
 - b) that pursues telecommunications activities and owns a telecommunications infrastructure or has entered into an agreement for the transmission of the multiplex signal with an operator of a broadcasting network;
 - 23c) „operator of a broadcasting network” shall mean a telecommunications business operator that provides services consisting in the transmission of broadcasting signals by terrestrial diffusion;"
- c) the following subparagraph 38a shall be inserted after subparagraph 38:
- "38a) „multiplex signal” shall mean a radio signal transmitted with the use of a channel or frequency block in the broadcasting service, carrying the contents of a multiplex;"
- 2) in Article 114:
- a) paragraph 2 shall be replaced by the following:
 - "2. Frequency reservations shall be made, changed or withdrawn by the President of the OEC. The President of the OEC shall make, change or withdraw frequency reservations for the purposes of retransmission or transmission of radio or television programme services in agreement with the Chairman of the NBC. If the Chairman of the NBC does not take position within 30 days of receipt of a draft frequency reservation decision, the draft shall be deemed agreed."
 - b) the following paragraph 2a shall be inserted after paragraph 2:
 - "2a. The agreement referred to in paragraph 2 shall not be required in case of making, changing or withdrawing a frequency reservation for the purposes of analogue transmission of radio or television programme services for which the Chairman of the NBC granted, changed or withdrew the licence, respectively.";
- 3) in Article 115:
- a) paragraph 3 shall be replaced by the following:
 - "3. The decision on reservation of frequency designated for the transmission or retransmission of programme services by digital terrestrial diffusion or by satellite, shall:
 - 1) specify the multiplexed radio or television programme services, hereinafter referred to as „audiovisual components";
 - 2) specify the arrangement of audiovisual components in the multiplex;
 - 3) define the proportionate share of audiovisual components in the multiplex;
 - 4) define the area on which audiovisual components of the multiplex may be transmitted or retransmitted;
 - 5) specify the use of transmission system capacities."
 - b) the following paragraph 4 shall be inserted:
 - "4. The decision on reservation of frequency designated for the transmission or retransmission of programme services by digital terrestrial diffusion shall also specify:
 - 1) the technical parameters and standards of digital television broadcasting;
 - 2) the conditions for bit rate management for system software updates of digital receivers used for the reception of digital terrestrial broadcasts;
 - 3) the use of the multiplex capacity."
- 4) the following Articles 115a and 115b shall be inserted after article 115:
- "Article 115a. 1. In case a portion of the multiplex capacity is released due to the resignation of a user of this portion of the capacity, the remaining users of the multiplex may, within 30 days of the resignation, notify the National Broadcasting Council and the President of the OEC of an agreed manner of use of the released portion of multiplex capacity, in particular, of placing a new programme service in the multiplex, on condition a licence for the transmission of this programme service by

digital terrestrial diffusion in the multiplex has been issued pursuant to the Broadcasting Act of 29 December 1992.

2. In case of failure to notify the manner of use of the released portion of multiplex capacity within the time-limit referred to in paragraph 1, provisions of the Act on the competition for reservation of frequency for the purposes of retransmission of radio or television programme services shall apply accordingly.
3. If the National Broadcasting Council and the President of the OEC do not object to the manner of use of the released portion of multiplex capacity, referred to in paragraph 1, within 14 days of being notified thereof, the manner of use of the released portion of multiplex capacity shall be deemed agreed.

Article 115b. In the transitory period, as defined by Article 2 subparagraph 4 of the Act of 30 June 2011 on the Launch of Digital Terrestrial Television (official journal „Dz.U.” No., item), the President of the OEC shall specify in the decision on reservation of frequency in the broadcasting service for the purposes of transmission or retransmission of television programme services by digital terrestrial diffusion in multiplex:

- 1) the conditions for the management of multiplex bit rate;
- 2) the conditions for the utilization of frequencies in the broadcasting service in the transitory period;
- 3) the time-limits for discontinuing the utilization of frequencies in the broadcasting service for the transmission of a television programme service by analogue terrestrial diffusion on the area on which frequencies are utilized in the broadcasting service;
- 4) time-limits for commencing the utilization of frequencies in the broadcasting service for the transmission of a television programme service by digital terrestrial diffusion on the area on which the frequencies are utilized in the broadcasting service.”;

5) in Article 118 paragraph 5 shall be replaced by the following:

“5. The conditions of participation in a competition related to additional obligations and tasks of a business operator with regard to the programming content, including “must carry” obligations, shall be defined by the National Broadcasting Council on an application of the President of the OEC, within 30 days of receipt of the application, taking into account non-economic national interests related to culture, language and media pluralism.”;

6) in Article 123:

a) the following paragraph 2a shall be inserted after paragraph 2:

“2a. Notwithstanding the conditions referred to in paragraphs 1 or 2, the President of the OEC may change the frequency reservation to the extent referred to in Article 115b, if the time-limits referred to in this provisions cannot be met for technical reasons.”,

b) paragraph 3 shall be replaced by the following:

“3. The President of the OEC shall change the conditions of utilization or withdrawal of reservation of frequencies earmarked for the transmission or retransmission of radio or television programme services in agreement with the Chairman of the NBC.”;

7) the following chapter IVa shall be inserted after chapter IV:

"Chapter IVa

Multiplex Operator and Access to the Multiplex

Article 131a. 1. A multiplex operator shall:

- 1) include as well as transmit or retransmit in the multiplex radio and television programme services of broadcasters who hold licences for the transmission of programme services in this multiplex;
- 2) ensure access to the multiplex to a broadcaster who has obtained a license for the transmission of a radio or television programme service by digital terrestrial diffusion in this multiplex, on equal and non-discriminatory conditions;
- 3) ensure an uninterrupted digital transmission of multiplex signal, unless the break

- is attributable to technical reasons or a broadcaster has ceased to provide a programme service.
2. The conditions shall be deemed discriminatory, if the multiplex operator offers the same access service to a broadcaster on other conditions than it formerly offered to a different broadcaster, and when there are no justifiable reasons for such a change in the offer on the part of the multiplex operator.
- Article 131b.
1. The multiplex operator shall hold negotiations to conclude an agreement on access to the multiplex, on an application of a broadcaster, in order to provide access to the multiplex to the broadcaster.
 2. Information obtained in connection with negotiations may be used exclusively in conformity with its intended purpose and shall be subject to confidentiality.
- Article 131c.
1. The multiplex operator and the broadcaster shall agree the conditions of access to the multiplex and terms of related cooperation in a written agreement on access to the multiplex.
 2. In the agreement on access to the multiplex, the multiplex operator shall agree to provide access to the multiplex to the broadcaster against consideration, and to incur expenses on account of transmission of multiplex signal, and the broadcaster shall agree to cooperate with the multiplex operator, in particular by providing its television programme service.
 3. The agreement on access to the multiplex shall contain provisions on at least:
 - 1) the technical conditions of access to the multiplex;
 - 2) the settlements on account of provision of access to the multiplex;
 - 3) a procedure in case of amendments to the agreement;
 - 4) the conditions of termination of the agreement;
 - 5) term of the agreement;
 - 6) the method of remunerating the multiplex operator and amount of such remuneration;
 - 7) a list of documents that the parties to the agreement are obligated to obtain or furnish in order to perform the agreement, including time-limits for these documents to be obtained or furnished.
- Article 131d.
1. The President of the OEC may by a decision specify, on a written application of each party to the negotiations on the conclusion of an agreement on access to the multiplex, the time-limit for such negotiations to end, not longer than 90 days counting from the date of filing the application for the conclusion of an agreement on access to the multiplex.
 2. In case of failure to enter into negotiations on the conclusion of an agreement on access to the multiplex, refusal to grant access to the multiplex or failure to conclude an agreement on access to the multiplex within the time-limit referred to in paragraph 1, or failure to conclude an agreement within 90 days counting from the date of filing the application for the conclusion of such agreement, each party may apply to the President of the OEC for the issue of decision resolving disputes or defining terms of cooperation.
 3. The application for the issue of decision resolving disputes or defining terms of cooperation should comprise a draft agreement on access to the multiplex, including positions of the parties on the issues set out in this chapter, and identify those clauses of the agreement with regard to which the parties have not reached agreement.
 4. The parties shall submit their respective positions on the discrepancies to the President of the OEC, on its request, within 14 days of the date of receipt of the request.
- Article 131e.
1. The President of the OEC shall take decision resolving the disputes or defining terms of cooperation within 90 days of the date of filing the application for the issue of decision resolving disputes or defining terms of cooperation, with consideration given to the following criteria:
 - 1) the nature of existing disputes and practical possibilities to implement solutions pertaining to technical and economic conditions of access to the multiplex;

- 2) the obligations of the multiplex operator;
 - 3) the necessity to ensure:
 - a) non-discriminatory and equal conditions of access to the multiplex,
 - b) the development of a competitive media services market.
 2. The decision referred to in paragraph 1 shall be issued, with regard to the obligations and tasks concerning the programming content, including "must carry" obligations, in agreement with the National Broadcasting Council, taking into account non-economic national interests related to culture, language and media pluralism.
 3. The decision referred to in paragraph 1 shall replace the agreement on access to the multiplex to the extent covered by the decision.
 4. In case the interested parties conclude an agreement on access to the multiplex, the decision referred to in paragraph 1 shall expire by operation of law with regard to the matters covered by the agreement.
- Article 131f. 1. On an application of a party, the President of the OEC may, by decision, change the wording of the agreement on access to the multiplex or obligate the parties to the agreement to amend it, where justified by the need to ensure access to the multiplex on equal and non-discriminatory conditions.
2. The decision referred to in paragraph 1 shall be issued, with regard to the obligations and tasks concerning the programming content, including "must carry" obligations, in agreement with the National Broadcasting Council, taking into account non-economic national interests related to culture, language and media pluralism.
- Article 131g. Provisions of this chapter shall not apply, if the multiplex is operated by broadcasters for whom frequencies were reserved pursuant to Article 114 paragraph 6.";
- 8) in Article 132:
- a) paragraph 1 shall be replaced by the following:
 - "1. Public telecommunications networks used for the digital radio and television broadcasting as well as digital receivers and other devices used for the reception of digital radio and television broadcasts should ensure interoperability of digital radio and television broadcasting services, in particular through the use of an open application programming interface."
 - b) the following paragraph 2a and paragraph 2b shall be inserted after paragraph 2:
 - "2a. Digital receivers and other devices used for the reception of digital television broadcasts should ensure:
 - 1) the reception of non-encrypted digital television broadcasts;
 - 2) the decryption by means of a uniform encryption algorithm for encrypted digital television broadcasts, defined in regulations issued pursuant to paragraph 3.
 - 2b. Paragraph 2a subparagraph 1 shall not apply to digital receivers that are leased or loaned for use, unless the parties to the agreement agree otherwise."
 - c) paragraph 3 shall be replaced by the following:
 - "3. The minister in charge of communications shall define, by a regulation, the technical and performance requirements for digital receivers, with a view to ensure their interoperability and facilitate access for the disabled."
 - d) the following paragraph 4 shall be inserted:
 - "4. The minister in charge of communications may define, by a regulation, the technical and performance requirements for consumer devices for the reception of digital radio broadcasts, with a view to ensure effective utilization of frequencies and conditions for the general reception of radio programme services on the territory of the Republic of Poland.";
- 9) the following Article 136a shall be inserted after Article 136:
- "Article 136a. 1. Disputes arising from the an agreement on the transmission of multiplex signal shall be resolved by the President of the OEC, by a decision, on an application of a multiplex operator or a broadcasting network operator.
2. On an application of one of the parties the President of the OEC may issue a decision defining terms of cooperation until a final resolution of the dispute.";
- 10) Article 143 paragraph 4 shall be replaced by the following:
- "4. An entity that holds a frequency reservation decision or an entity authorized by the former may request the issue of a radio licence for the use of frequency capacity covered by the frequency reservation decision during the term of validity of the decision.";

- 11) in Article 192 paragraph 1, the following subparagraph 6a shall be inserted after subparagraph 6:
"6a) resolution of disputes between a multiplex operator and a broadcaster, referred to in Article 131a-131f, and of the disputes referred to in Article 136a;"
- 12) in Article 209 paragraph 1, the following subparagraph 19a shall be inserted after subparagraph 19:
"19a) fails to fulfil the imposed obligations of a multiplex operator, referred to in Article 131a;"

Chapter 6

Transitory, Adapting and Final Provisions

Article 23.

Proceedings concerning reservation of frequencies for the purposes of transmission of television programme services by analogue terrestrial diffusion or changes of such reservations, initiated but not closed on the date of entry into force of the Act are hereby discontinued by a final decision.

Article 24.

An entity that retransmits a television programme service in the telecommunications network on the date of entry into force of the Act may apply for free-of-charge provision by Telewizja Polska S.A. of television programme services "Telewizja Polska I", "Telewizja Polska II" and the regional television programme service, and by the broadcasters Telewizja Polsat S.A., TVN S.A., Polskie Media S.A., Telewizja Puls Sp. z o.o., of television programme services transmitted on the date of entry into force of this Act on the basis of a license for the transmission of these programme services by analogue terrestrial diffusion, not earlier than after the lapse of 30 days of entry into force of the Act.

Article 25.

Secondary legislation issued to date pursuant to Article 132 paragraph 3 of the Act referred to in Article 22 shall remain in force until the entry into force of secondary legislation issued pursuant to Article 132 paragraph 3 of the Act, as amended by this Act, not longer however than for 36 months of entry into force of this Act, and may be amended pursuant to Article 132 paragraphs 3 and 4 of the Act referred to in Article 22, as amended by this Act.

Article 26.

In case the broadcasters referred to in Article 10 paragraph 1 conclude the agreements referred to in this provision before the entry into force of the Act, the agreements shall be deemed concluded pursuant to the Act.

Article 27.

The license for the transmission of programme services Polsat, TVN, TV4, TV Puls in multiplex II, granted to Telewizja Polsat S.A., TVN S.A., Polskie Media S.A. and Telewizja Puls Sp. z o.o., shall not be declared invalid, if the frequencies commenced to be utilized for the purposes of transmission of the television programme service by digital terrestrial diffusion before the entry into force of the Act. Article 158 § 2 of the Act of 14 June 1960 - "Code of Administrative Proceedings" (official journal „Dz.U.” of 2000 No. 98, item 1071, as subsequently amended⁷⁾) shall apply accordingly.

Article 28.

Within 30 days of entry into force of the Act the President of the OEC shall adjust *ex officio* frequency reservation decision for the broadcasters referred to in Article 4, to the extent referred to in Article 115 paragraph 4 and Article 115b of the Act amended in Article 22.

Article 29.

The Chairman of the NBC shall make the first evaluation of fulfilment of the obligation referred to in Article 43 paragraph 3 of the Act referred to in Article 20, as amended by this Act, by 31 December 2011 at the latest.

Article 30.

1. In the years 2011-2020 the maximum limit on State budget expenditure incurred as a financial consequence of the Act shall amount to PLN 8 125 thousand, save that:
 - 1) in 2011 – it shall amount to PLN 1 100 thousand;
 - 2) in 2012 – it shall amount to PLN 5 925 thousand;
 - 3) in 2013 – it shall amount to PLN 1 100 thousand;
 - 4) in the years 2014 - 2020 – it shall amount to PLN 0.
2. In case of a threat that the maximum expenditure limit referred to in paragraph 1 for a given budget year may be exceeded, an adjustment mechanism restricting the forms of information campaign on digital television shall be applied.
3. The authority competent for monitoring the utilization of limits on expenditure referred to in paragraph 1 and for the implementation of the adjustment mechanism referred to in paragraph 2 shall be the minister in charge of communications.

Article 31.

The Act shall enter into force after the lapse of 14 days of its promulgation, with the exception of Article 6 and Article 19 that shall enter into force after the lapse of 30 days of its promulgation.

- 1) This Act implements, within the scope of matters covered by it, Directive 2009/136/EC of the European Parliament and of the Council of 25 November 2009 amending Directive 2002/22/EC on universal service and users' rights relating to electronic communications networks and services, Directive 2002/58/EC concerning the processing of personal data and the protection of privacy in the electronic communications sector and Regulation (EC) No 2006/2004 on cooperation between national authorities responsible for the enforcement of consumer protection laws (OJ EU L 337, 18.12.2009, p. 11).
- 2) This Act amends the Broadcasting Act of 29 December 1992, the Trade Inspection Act of 15 December 2000 and the Act of 26 July 2004 "Telecommunications Law".
- 3) Amendments to the Act were promulgated in the official journal „Dz.U.” of 2004 No. 273, item 2703, of 2005 No. 163, item 1362 and No. 267, item 2258, of 2006 No. 12, item 66, No. 104, item 708 and 711, No. 170, item 1217, No. 220, item 1600, No. 235, item 1700 and No. 249, item 1834, of 2007 No. 23, item 137, No. 50, item 331 and No. 82, item 556, of 2008 No. 17, item 101 and No. 227, item 1505, of 2009 No. 11, item 59, No. 18, item 97 and No. 85, item 716, of 2010 No. 81, item 530, No. 86, item 554, No. 106, item 675, No. 182, item 1228, No. 219, item 1443, No. 229, item 1499 and No. 238, item 1578 and of 2011 No. 102, item 586 and 587.
- 4) Amendments to the consolidated text of the Act were promulgated in the official journal „Dz.U.” of 2006 No. 94, item 658 and No. 121, item 843, of 2007 No. 99, item 662 and No. 181, item 1293, of 2009 No. 157, item 1241 and of 2010 No. 152, item 1016.
- 5) Amendments to the Act were promulgated in the official journal „Dz.U.” of 2002 No. 144, item 1204, of 2003 No. 84, item 774 and No. 188, item 1837, of 2004 No. 96, item 959 and No. 116, item 1204, of 2005 No. 122, item 1021, of 2008 No. 171, item 1056, of 2009 No. 201, item 1540 and of 2011 No. 80, item 432.
- 6) Amendments to the Act were promulgated in the official journal „Dz.U.” of 2004 No. 273, item 2703, of 2005 No. 163, item 1362 and No. 267, item 2258, of 2006 No. 12, item 66, No. 104, item 708 and 711, No. 170, item 1217, No. 220, item 1600, No. 235, item 1700 and No. 249, item 1834, of 2007 No. 23, item 137, No. 50, item 331 and No. 82, item 556, of 2008 No. 17, item 101 and No. 227, item 1505, of 2009 No. 11, item 59, No. 18, item 97 and No. 85, item 716, of 2010 No. 81, item 530, No. 86, item 554, No. 106, item 675, No. 182, item 1228, No. 219, item 1443, No. 229, item 1499 and No.

- 238, item 1578 and of 2011 No. 102, item 586 and 587.
- 7) Amendments to the consolidated text of the Act were promulgated in the official journal „Dz.U.” of 2001 No. 49, item 509, of 2002 No. 113, item 984, No. 153, item 1271 and No. 169, item 1387, of 2003 No. 130, item 1188 and No. 170, item 1660, of 2004 No. 162, item 1692, of 2005 No. 64, item 565, No. 78, item 682 and No. 181, item 1524, of 2008 No. 229, item 1539, of 2009 No. 195, item 1501 and No. 216, item 1676, of 2010 No. 40, item 230, No. 167, item 1131, No. 182, item 1228 and No. 254, item 1700 and of 2011 No. 6, item 18 and No. 34, item 173.