

The Radio and Television Board's tender of countrywide multiplexes

The Danish Ministry of Culture has issued Ministerial Order no. 1287 of 8 November 2007 on The Radio and Television Board's tender of multiplexes, which was revised by Ministerial Order no. 1325 of 30 November 2007 (the Ministerial Order). In accordance with § 1 of the Ministerial Order, The Radio and Television Board is offering four countrywide multiplexes (MUX 3-6) collected under one gatekeeper. The Radio and Television Board will issue a licence for the distribution of sound and television programmes, etc. to the gatekeeper, who is found after a "beauty contest".

The collective tender materials can be downloaded from the Media Secretariat's website, www.mediesekretariatet.dk under the "DTT Udbud" (DDT Tender) point.

The Radio and Television Board hereby calls for applications for the competition with a deadline of **Monday 4 February 2008 at 12.00.**

The Radio and Television Board expects the licence to be issued to the gatekeeper no later than Friday 28 March 2008.

The Radio and Television Board reserves the right to annul the invitation to tender if necessary. The Board also reserves the right to make any changes to the terms stated in the tender materials for the licence that may be made at the request of the Ministry of Culture before the end of the deadline for submission of applications.

Your attention is drawn to the fact that the Danish Ministry of Culture is in a dialogue with the EU Commission concerning the invitation to tender, which may result in the invitation being amended or annulled.

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2. Résumé

2.1 *The tender materials*

Beauty contest tenders are invited for the multiplexes.

Participation in the invitation to tender will be on the basis of submitting an application that contains that which is required in this tender material.

Section 5.3 describes the way in which The Radio and Television Board will assess the applications received, including showing the way in which the individual evaluation criteria are weighted, with associated and part-criteria sub-criteria.

The current section briefly repeats the content of the following sections on the background/basis for the invitation to tender, the application procedure (including which information applications must contain), evaluation (i.e. The Radio and Television Board's handling of the applications), plus licence terms.

2.2 *Background*

The Radio and Television Board is inviting beauty contest tenders for a gatekeeper for four countrywide multiplexes for the distribution of sound and television programmes, etc. The invitation to tender is being undertaken pursuant to Ministerial Order no. 1287 of 8 November 2007 on The Radio and Television Board's offer of multiplexes, which was revised by Ministerial Order no. 1325 of 30 November 2007.

A licence cannot be granted to DR as an applicant or consortia or similar in which DR is participating.

Gatekeeper shall establish, build up, drive and finance the broadcasting network from which the digital distribution shall take place.

It will be possible to commission three of the multiplexes from the time when the broadcasting of analogue TV ceases in Denmark, i.e. from 1 November 2009, while it will be possible to commission the last multiplex on 1 November 2010. In this connection, it shall be noted that the gatekeeper himself, as described in section 13, is responsible for planning and building up a broadcasting network. Commissioning of the multiplexes also requires the gatekeeper to have a licence for this from the IT and Telecom Agency.

The gatekeeper is not precluded, should a frequency opportunity for this be shown to exist, from commissioning individual multiplexes before 1 November 2009.

2.3 Application procedure

On Thursday 18 December 2007, there will be an information meeting where potential applicants can likewise ask questions. In the period up until Monday 7 January 2008 at 12.00, there will also be an opportunity to ask questions about the tender materials. The questions and answers about these will be published on the Media Secretariat's website www.mediesekretariatet.dk under the "DTT Udbud" (DTT Tender) point. The questions will be published in anonymised form so that the identity of the asker will not be explicitly shown.

The Radio and Television Board will continuously respond to questions asked and aim to do this, as far as possible, within one week. However, a longer response period must be expected for questions that are asked during the period of 24 December 2007 up to and including 1 January 2008. The answers will continuously be published together with the questions on the Media Secretariat's website, but no later than Monday 21 January 2008.

It is emphasised that all questions shall be put to The Radio and Television Board through the Media Secretariat, Vognmagergade 10, 1120 København K, Denmark or rad.rad@mediesekretariatet.dk. Questions cannot be put directly to the Danish Ministry of Culture, The Competition Authority and/or the IT and Telecom Agency.

Applications shall have been received by The Radio and Television Board no later than Monday 4 February 2008 at 12.00.

The applicants shall, no later than simultaneously with their application

- pledge a bank guarantee of DKK 25 million
- submit a signed preliminary fine agreement
- submit a declaration stating willingness to comply with the terms for the licence set by The Radio and Television Board.

In their applications, applicants shall:

- give an account of their financial circumstances (financial strength)
- give an account of their experience of distribution of digital TV as a gatekeeper and experience of establishing and technically running a terrestrial TV broadcasting network (technical and business-related competence)
- produce a business plan covering the licence period
- give an account of the way in which, in their execution of the assignment as gatekeeper, they will promote effective competition on the Danish market

- put forward a proposal for a conflict solving model to solve inconsistencies between the gatekeeper and I/S DIGI TV.

All information from The Radio and Television Board, including the publication of questions from potential applicants and the Board's response to these, plus information on changes to the tender materials, will appear on the Media Secretariat's website, www.mediesekretariatet.dk under the "DTT Udbud" (DTT Tender) point. Following the expiry of the application deadline, any change of date for the Board's decision or similar will likewise be communicated to the applicants' contact persons directly.

The invitation to tender process, including questions and answers, applications and other documents and communication, will be in Danish. Out of consideration for any foreign interested parties, the tender materials have been translated into English.

2.4 Evaluation

After receipt of the applications, The Radio and Television Board will undertake an introductory evaluation of whether the received applications give a satisfactory account of the fact that the applicants and any cooperation partners possess the requisite financial strength as well as technical and business-related competence to be able to undertake the assignment of gatekeeper, as well as the fact that the applications otherwise contain the information demanded in the tender materials.

Applications that do not contain the information demanded in the tender materials, etc., may be rejected by the Board. Applications that do not give a satisfactory account of the fact that the applicants and any cooperation partners possess the requisite financial strength as well as technical and business-related competence, or applicants who have not pledged a bank guarantee of DKK 25 million no later than Monday 4 February 2008 at 12.00, may also be rejected by the Board.

When the Board is assessing the approved applications, the applicant's account of the way in which the applicant will promote effective competition on the Danish TV market by executing the assignment as gatekeeper will be given a 50 per cent weighting. Applicants' plans for the programme invitation to tender will be given a 25 per cent weighting, and applicants' preconditions for and competence to carry out their plans, including business-related realism of the plans, will be given a 25 per cent weighting.

2.5 Licence terms

The licence terms will be established on the basis of the general terms of the Ministerial Order, which are also reproduced here in the tender materials, and on the basis of the content of the application.

As a part of this, a number of minimum requirements for the gatekeeper's distribution operations, etc. are linked to the licence.

2.6 The licence

The licence will be issued and will become valid on the issue date. The licence will apply for a period of 12 years. The IT and Telecom Agency will issue frequency licences at the gatekeeper's request. An annual frequency charge for the frequency licence shall be paid to the IT and Telecom Agency.

The Radio and Television Board will inspect compliance with the terms of the licence and the rules in the Radio and TV Broadcasting Act, as well as rules issued pursuant to the Radio and TV Broadcasting Act. The IT and Telecom Agency will inspect compliance with the terms of the frequency licence and the rules in the frequency legislation.

3. Schedule and language

3.1 *Schedule for the invitation to tender*

The process for the invitation to tender is expected to follow the schedule shown below:

Information meeting	18 December 2007 at 9-12
Deadline for asking questions about the invitation to tender	7 January 2008 at 12.00
Deadline for responding to questions	21 January 2008
Deadline for annulment of the invitation to tender or amendment of the invitation to tender terms, including any changes as a result of the dialogue with the EU Commission	4 February 2008 at 12.00
Deadline for submission of applications	4 February 2008 at 12.00
Deadline for submission of bank guarantee	4 February 2008 at 12.00
Publication of applicants	4 February 2008
Approval of applications	11 February 2008
Publication of approved applications	12 February 2008
The Board's decision	26 March 2008
Issue of distribution licence	28 March 2008

3.2 *Language*

All communication and correspondence will throughout the invitation to tender process take place in Danish, i.e. things such as applications, bank guarantee and other documents, as well as questions, shall be worded in Danish. It will, however, be possible for the applicants, in addition the obligatory information in Danish, to submit supplementary information on technical details and similar in other Scandinavian languages (Norwegian, Swedish) and/or English. Answers to questions and all communication from the Board will likewise be in Danish. Out of consideration for any foreign interested parties, a non-binding English translation of the tender materials will be drawn up, which will be published as soon as the translation is complete.

4. Application

4.1 Application procedure

Participation in the invitation to tender will take place on the basis of submitting an application.

At the time of the application, the "Application" form (cf. [Appendix 1](#)) shall be used. The form can be downloaded from the website www.mediesekretariatet.dk under the "DTT Udbud" (DTT Tender) point. No changes may be made to the printed text.

By submitting an application, an applicant accepts the terms of the invitation to tender (cf. § 8, item 1, of the Ministerial Order).

4.2 Content of application

The application form includes 4 forms that are to be filled in:

- 1.1 Business plan
- 1.2 Financial summary
- 1.3 Characteristics of broadcasting stations
- 1.4 Information for use at the time of The Competition Authority's evaluation.

Some of the information can be submitted in the form of Appendices to responses in the forms.

The application shall include information on:

4.2.1.1 Applicant's name, address and domicile

Applicant's name, address and domicile as well as any business registration number shall be stated. Information on the name under which the applicant intends to market himself as gate-keeper shall also be given.

4.2.1.2 Contact person

Information on the applicant's contact person showing name, address, telephone and fax numbers and email address. The Radio and Television Board will direct all correspondence to the applicant to the contact person.

4.2.1.3 Company structure and ownership

The applicant's company structure shall be shown. The ownership account will list all co-owners - indicating name and domicile - of the applicant and the respective ownership shares in the applicant. When stating ownership, the statement of owners shall go back as many steps in the ownership chain as are relevant to establish who in any case can control or has the deciding influence over the applicant. The ownership shares in the different stages shall be given in %.

Any shareholders' agreements for all of the stages shall be enclosed with the application.

The applicant's articles of association and printout in the form of a full report from The Danish Commerce and Companies Agency (or the equivalent foreign authority) shall be enclosed if the applicant is registered with the Agency (or the equivalent foreign authority).

If the applicant comprises a merger of participants (e.g. a consortium), the above information shall be given for each individual participant.

4.2.1.4 Management

Regarding the management, the applicant's management should be given in the form of the board's and/or the composition of the responsible management (stating the names and addresses of the people who constitute the applicant's management).

4.2.2 Information on the applicant's financial circumstances

For use in the evaluation of the applicant's financial strength, the applicant shall give an account of its financial circumstances, shown by forwarding the following key figures and key ratios for the last 5 financial years:

- Net turnover
- Profit/loss for the year
- Total assets
- Equity
- Liquid assets at the end of the year
- EBIT margin
- Return on capital invested (ROIC)
- Equity ratio
- Return on equity.

If the applicant is a merger of participants (e.g. a consortium) each individual participant's financial circumstances shall be accounted for by the key figures and key ratios given for the past 5 financial years.

4.2.3 Information on the applicant's experience of distribution of digital TV as gatekeeper and experience of establishing and technically running a terrestrial TV broadcasting network

For the purpose of evaluating the applicant's technical and business-related competence, the applicant shall give an account of:

- Any experience of distribution of digital TV as gatekeeper, including pay TV. In addition, the applicant shall give an account of any experience of running or handling a customer centre
- Experience of establishing and technically operating a terrestrial TV broadcasting network. For technical operation, the applicant shall be able to document at least 2 years' experience (cf. § 10, item 2, of the Ministerial Order).

The applicant can alternatively produce documentation of entry into a contract with a business (cooperation partner, subcontractor or similar) who has the required experience.

The account of technical and business-related competence shall in any case include the business with which the applicant has entered into a contract.

4.2.4 Business plan

As a part of the application, the applicant shall produce a business plan, covering the whole of the licence period (28 March 2008 – 27 March 2020). The information will be part of the assessment of the application (cf. item 5.3). The business plan shall at least include information on:

- plan to build up the broadcasting network, including a deadline for achieving a coverage of 97 per cent, calculated according to the calculation method given in Appendix 2 to the Ministerial Order
- planned programme content, packaging, pricing, etc., including information on plans for the distribution of a channel with locale/regional news broadcasts, neighbouring countries' channel(s), and the programme categories of entertainment programmes, news programmes, music programmes, popular science programmes as well as sports programmes, composition of the range of programmes overall, as well as types and number of channels, including the possibility of choosing individual channels as well as the pricing thereof, etc.
- financial overview of the business as gatekeeper throughout the licence period
- overview of the necessary investments for the business in broadcasting networks, etc. and documentation of the financing thereof in the form of a declaration from a bank, for example.

In addition to this:

- any plans for the broadcasting of mobile TV according to the DVB-H standard and a deadline for building up the broadcasting network, including plans for the level of coverage. Prerequisites for the coverage calculation should be shown
- any plans for the broadcasting of programmes in HDTV
- any plans for new digital services
- any other relevant information

Plus:

Description of the build-up of the distribution network, as well as the technical solutions chosen:

- Account of the technical solutions to be used in the individual parts of the distribution network, e.g. distribution/transmission to main broadcasting stations, multiplexing, conditional access, build-up for main broadcasting stations and gap fillers, as well as the technical solution that facilitates local/regional channels.
- Account of any use of external businesses for establishing, running and servicing/troubleshooting/maintaining the distribution network and the other technical systems.
- Characteristics of main broadcasting stations and gap fillers to be used to achieve planned demographic coverage. Data for main broadcasting stations and gap fillers shall be documented in the format indicated in [Appendix 10](#).
- Account of total demographic coverage per multiplex for each year as at 31 December up to the final coverage has been achieved (cf. the table in [Appendix 1.3](#)).
- Account of the planned end-to-end availability for the individual services as well as the planned operational supervision, operating procedures, operating organisation, system redundancy and transmission redundancy, etc. that are necessary to support the planned availability.

4.2.5 Account of competition

According to § 13 of the Ministerial Order, the applicant shall, as a part of the application

"... give an account of the way in which the applicant when executing his assignment as gate-keeper will promote effective competition on the Danish TV market. The applicant shall also give an account of the way in which the applicant will ensure that the assignment is implemented on objective business-related terms with regard to any ownership link to or interests in businesses that are active on the Danish TV market. To the extent that, through ownership structures or other forms of influence, e.g. through contracts, board entries, financial interests, etc., an applicant has a link to players on the Danish TV market, the report shall describe the specific precautions that the applicant will take to counteract the fact that the competition is inappropriately affected as a result of the link".

The Radio and Television Board will give a 50 per cent weighting to the account for the way in which the gatekeeper will promote effective competition.

The applicant shall help to promote the competition on the Danish TV market. This means that the applicant in competition terms shall be able to act independently of businesses, etc. that, through ownership structures or other forms of influence, have interests in the Danish TV market. Appendix 6 (box 1) indicates examples of a market-related link between the gatekeeper and different categories of player on the Danish TV market, e.g. a link between the gatekeeper and someone who offers satellite TV.

Applicants who can document that they have no link to the Danish TV market will be initially judged to be non-problematic in competition terms and thereby suitable to promote effective competition.

On the opposite side are applicants with a link to the Danish TV market. Such applicants shall give an account of the link, including whether this consists of a financial, an operational, a technological or another link. Examples of the form of the link are indicated in Appendix 6 (box 2). Applicants with a link have the opportunity to take a number of measures to ensure that the link is not given a negative weighting during the competition-related assessment of the individual applicants. This requires the applicant to have put forward a binding proposal for relevant measures that are appropriate to counteract the risk of the competition being limited or distorted through an influence on the gatekeeper's business having been facilitated through the link.

The measures shall ensure that other businesses on the Danish TV market do not have an influence on the development of the gatekeeper's business, business plan, business strategy, pricing, customer choice, etc. in a way that involves a risk of the competition being damaged. If the gatekeeper consists of a consortium with the participation of a distributor or a contents supplier, for example, this consortium shall give an account of the way in which it ensures independence between the gatekeeper's business and such consortia participants' businesses.

Appendix 6 (box 3) gives a number of examples of measures that in full or in part can counteract the risk of the competition being limited or distorted through the exercising of influence and/or exchange of information.

If all relevant competition-related conditions have not been clarified at the time of the application, e.g. the structure of the board and the executive board, the applicant must instead give an account of the measures that the applicant will take to ensure the independence of the future board and executive board. The applicant shall in the form of an assurance (cf. below) guarantee that the measures will be implemented if this proves to be necessary. The same applies to other non-clarified conditions of significance to competition.

Since this is a matter of a beauty contest, applicants may consider whether it is possible to implement any additional measures to affect the promotion of the competition on the TV market here in Denmark. Such measures that are evaluated separately will be able to result in a further positive assessment. Examples of additional promotional competition elements are given in section 5.3.

The competition can be inappropriately influenced in several ways and with varying intensity. The aim is to effectively remedy or neutralise any risk of the competition being inappropriately affected by special interests. The expected effect of a measure shall therefore be compared with the concrete circumstances. If the gatekeeper has a link to players on the TV market here in Denmark that have considerable market strength, the risk is that this will have a negative effect on the competition, as a starting point more than if the gatekeeper is linked to a market player that has a minimum market strength. A measure that can remedy a competition problem in relation to a small market player will therefore not always be sufficient in relation to a player that has substantial market strength. In general, the stronger the link and dependency of the gatekeeper in relation to the Danish TV market, the more comprehensive the precautions are that will be needed to achieve the same weighting as applicants without a link.

The account of the way in which the applicant promotes effective competition will be submitted in Appendix 1.4, item 10 to the tender materials.

In all, the applicant is responsible for giving a covering description in Appendix 1.4 of

- all relevant sub-markets on the Danish TV market to which the applicant is linked,
- the market share of these sub-markets of the applicant and the businesses to which the applicant is linked,
- other factors that are of significance to the evaluation of the market strength of these markets for the applicant and the businesses to which the applicant is linked,
- the form of the link,
- the risk of competition-related problems to which the link leads on every single market in relation to influence and information exchange,
- the measures that the applicant will introduce to counteract the risk of the competition being limited or distorted as a result of the influence,
- the total "net balance" for the competition, incl. compensatory measures, plus
- if appropriate, any additional measures that the applicant will take to promote the competition on the Danish TV market.

Measures that shall counteract the risk of the competition being limited or distorted as well as any further measures to promote the competition on the Danish TV market shall, as well as the description under Appendix 1.4, item 10, be indicated in the form of a binding assurance (cf. Appendix 1.4, item 10). The assurances shall apply to the full duration of the licence period. Applicants

must count on the content of the assurances not being the object of discussion in connection with the implementation of the invitation to tender deal.

If an assurance that corresponds to a proposed measure to remedy a competition problem is not submitted, it must be counted on that the measure will not be involved in the overall evaluation of the applicant.

The measures that the applicant states that he is willing to introduce will be involved in the final terms of the licence that regulates the gatekeeper's business (cf. § 22 and 23 of the Ministerial Order). If the gatekeeper subsequently does not live up to the measures, this may result in a fine or the licence being withdrawn (cf. § 26 of the Ministerial Order). The applicant shall also be aware that one term of the licence shall be that subsequent changes to the gatekeeper's options to function independently of players that have interests on the Danish TV market shall be presented to for The Radio and Television Board before the implementation. The gatekeeper must therefore expect, if after the licence as a gatekeeper has been granted a link to other players on the Danish TV market arises, to neutralise the subsequently arisen risk of inappropriate effects on the competition by using suitable measures.

The competition criteria that will be weighted during the evaluation of the applications received is shown in more detail under item 5.3.

4.3 Declaration on compliance with the terms of the licence

The applicant shall send in the "declaration on compliance with the terms of the licence" form with the signed application (cf. [Appendix 4](#)). The form can be downloaded from the website www.mediesekretariatet.dk under the "DTT Udbud" (DTT Tender) point. No changes may be made to the printed text. The form shall be signed by the applicant's authorised signatory in accordance with the provisions regulating the power to bind the company. By writing his signature, the applicant declares himself willing to comply with the terms established for the licence by The Radio and Television Board (cf. on licence terms in item 8).

4.4 Fine agreement

Applicants shall submit a signed preliminary fine agreement (cf. [Appendix 3](#)). A form can be downloaded from the website, www.mediesekretariatet.dk under the "DTT Udbud" (DTT Tender) point.

The content of the fine agreement will be finally agreed between The Radio and Television Board and the selected gatekeeper by the Board signing the fine agreement.

The fine agreement imposes a fine on the gatekeeper for non-compliance with terms for the licence, particularly including the timeframes for building up the broadcasting network, and as regards programme content (cf. further details hereon in item 14.1).

4.5 Bank guarantee

At the same time as delivering the application the applicant shall pledge to The Danish State through The Radio and Television Board, the Media Secretariat, Vognmagergade 10, 1. sal, 1120 København K, Denmark, an unconditional and irrevocable on-demand guarantee of DKK 25 million. The amount shall be paid on demand without any trial or other documentation to settle the claim. The payment request will be put forward by The Radio and Television Board re. the Media Secretariat. The guarantee shall be worded in Danish and be in accordance with the wording in [Appendix 2](#).

The guarantee shall be issued by a financial institute or an insurance company. The financial institute's/insurance company's long-term debt shall have a rating of at least A from Standard & Poors or of at least A2 from Moody's Investors Service Limited.

The guarantee shall apply up to and including Friday 28 March 2008. The guarantee will be released after The Radio and Television Board issues a licence to a gatekeeper, but no later than Friday 28 March 2008. If The Radio and Television Board rejects an application, the guarantee will be released at the same time as the rejection.

If The Radio and Television Board should defer its decision, the Board will contact the applicants' contact persons with a view to extending the guarantee.

4.6 Application deadline

An application will be sent as 20 copies with Appendices to The Radio and Television Board, the Media Secretariat, Vognmagergade 10, 1. sal, 1120 København K, Denmark. Applications and any Appendices shall be worded in Danish and be received by the Media Secretariat no later than **Monday 4 February 2008 at 12.00.**

An application should also be sent on CDROM, that can be copied.

If the application contains information that the applicant considers to be confidential (cf. below under section 6), the applicant shall send in a version of the application from which the confidential information has been omitted. One copy of this version with Appendices should be sent in as well as on CDROM.

A receipt will be issued for applications that are delivered to the Secretariat. A receipt will be sent to the contact person for applications that are received by post. Applications that arrive after the given application deadline will not be looked at. Materials sent in will not be returned.

It is incumbent on applicants who do not receive an acknowledgement of receipt of their application without undue delay to make The Radio and Television Board aware of this (for the purpose of clarifying any moot points concerning time of delivery, etc.). Applicants sending in applications by post are recommended to send them by registered letter.

5. Handling of the applications

5.1 *Introductory evaluation*

Following receipt of the applications, The Radio and Television Board will undertake an introductory evaluation of:

- whether or not the applications include the information required in the tender materials. etc. and
- whether the applications received give a satisfactory account of the fact that the applicant and any cooperation partners possess the requisite financial strength as well as technical and business-related competence to be able to undertake the assignment of gatekeeper.

Applications that do not include the information required in the current tender materials may be rejected by The Radio and Television Board.

Applications that do not contain a satisfactory account of the fact that the applicant and any cooperation partners possess the requisite financial strength as well as technical and business-related competence to be able to undertake the assignment of gatekeeper, or that have not pledged a bank guarantee, may likewise be rejected by the Board.

The evaluation of whether or not the applicant has given a satisfactory account of the fact that the applicant and any cooperation partners possess the requisite financial strength as well as technical and business-related competence to be able to undertake the assignment of gatekeeper will take place in that the Board will evaluate the applicant's accounts in relation to the applicant's business plan. The accounts shall include the information that is necessary for the Board, in its subsequent evaluation, to be able to evaluate the applicant's conditions for and competence to carry out his plans with a basis in the applicant's accounts of his competences and the business plan sent in.

5.2 *Supplementary information*

The Board will obtain any supplementary information from applicants as quickly as possible for the purpose of clarifying any moot points in connection with the applications. Requests for supplementary information shall be answered by the response deadline given by the Board. The Radio and Television Board can reject an applicant who does not produce the desired information within the deadline. The Radio and Television Board can ask supplementary questions throughout the handling of applications that shall be answered by the response deadline given by the Board, while the Board can reject an applicant who does not produce the desired information within the deadline.

5.3 Evaluation

5.3.1 Assessment of the applications

Against the background of an evaluation of the applications, it will be decided which applicant the Board will issue a licence to.

The licence will be issued to the applicant who has submitted the application that is considered to be the best on the basis of an overall assessment of the applications in relation to the following three evaluation criteria:

1. Applicant's account of the way in which the applicant promotes effective competition on the Danish TV market by carrying out the assignment as gatekeeper (given a 50 per cent weighting) (cf. item 5.3.2.1)
2. Applicant's plans for the programmes offered (given a 25 per cent weighting) (cf. item 5.3.2.2)
3. Applicant's condition for and competence to carry out his plans, including the business-related realism of the plans (given a 25 per cent weighting) (cf. item 5.3.2.4).

The three evaluation criteria will be assessed by allocating points from 0 to 20. For the evaluation criteria that are based on sub-criteria or part-criteria, points will be given for each individual part-criterion or sub-criterion.

A mark of 20 will be given to the application or the applications that are considered to fulfil the relevant criterion in an excellent way. A mark of 0 will be given to the application or the applications that are considered to only fulfil the statutory requirements which mean that an application can be considered, but that do not include elements that can add positive significance in accordance with the relevant criterion. Applications that are not given 20 points or 0 points will be given a total number of points between 20 and 0, depending on the way in which the application in relation to the relevant criterion is considered to be positioned between either end of the scale, i.e. "is considered to fulfil the relevant criterion in an excellent way" and "does not include elements that can add positive significance in accordance with the relevant criterion".

If, where assessments of sub-criteria or part-criteria result in points scores with decimal points, there will be no rounding off to full points, since rounding off will take place only after adding up the weighted points of the part-criteria.

5.3.2 Evaluation criteria

5.3.2.1 Promotion of effective competition

The Radio and Television Board will undertake the following assessment of the applications received in relation to the evaluation criterion, the applicant's account of the way in which the applicant promotes effective competition on the Danish TV market by carrying out the assignment as gatekeeper (given a 50 per cent weighting):

When evaluating the account, the Board emphasises whether the applicant in the account has shown that the applicant, when attending to the assignment as gatekeeper, will be able to function independently of players who through ownership structures or other forms of influence have a link to the Danish TV market. The Board's evaluation of the competition effects in the TV market will take place on the basis of a statement from The Competition Authority on all applications received and approved.

The Competition Authority's evaluation of the competition will include the following conditions:

- Influence: It will be assessed whether - and to what extent - other players on the Danish TV market through the gatekeeper structure, cooperation agreements or another form of derived link, will be able to achieve direct or indirect influence on the gatekeeper's operations, as well as whether conversely the gatekeeper will be able to achieve direct or indirect influence on other market players' operations in a way that does not promote the competition.
- Information exchange: It will be assessed whether or not other players, as a result of the gatekeeper structure, cooperation agreements or something else, will be able to gain access to confidential information on/from the gatekeeper, as well as whether the gatekeeper conversely will be able to gain access to confidential information on/from others that does not promote the competition.
- Compensating measures: To the extent that it is considered that the existence of one or more possibilities to exercise influence on or gain access to information from one or more quarters may involve a risk of the gatekeeper not acting independently of particular interests (through influence from others and/or through influence on others), it will also be assessed whether or not the applicant has put forward a proposal for relevant measures intended to counteract the risk of the competition being limited or distorted.
- Further competition promoting measures: It will be assessed whether or not the applicant has put forward a proposal for further measures to promote the competition on the TV market here in Denmark. Such further measures will be able to result in a further positive assessment.

Since this is a matter of a beauty contest, The Competition Authority will emphasise in its statement to The Radio and Television Board which applicant that may be considered overall to be the best to be able to promote effective competition on the Danish TV market. As a part of this, the Board will undertake an assessment of

- whether the applicant has a link to the Danish TV market, and in which form and to what extent,
- whether the applicant has proposed relevant measures to counteract the risk of competition problems arising as a result of the link, and
- whether the applicant has proposed any further measures to affect the promotion of the competition on the Danish TV market.

The applicant or applicants who are best qualified in terms of competition will thereafter be the one(s) who, all aspects considered, can be said to promote effective competition in the best possible way.

The assessment will take place on the basis of The Competition Authority's knowledge of the Danish TV market and the information that the applicant has produced in [Appendix 1.4](#), incl. the account of the way in which the applicant will use concrete measures to promote effective competition (cf. more information hereon under item 4.2.5 above, as well as [Appendix 6](#)). If the requested information in [Appendix 1.4](#) is not produced, or the applicant fails to state measures to counteract the risk of competition problems that The Competition Authority identifies as a result of the applicant's link to the Danish TV market, the applicant must expect that the point that the inadequate information concerns will, according to the circumstances, be classed as a fully or partly unsolved problem and thereby lend a negative weighting in The Competition Authority's overall assessment of the relevant applicant.

The evaluation of whether or not the link between the applicant and other players on the TV market may create problems for the competition does not concern the applicant's subjective estimate. The applicant will therefore not be seen as less problematic by failing to point out possible competition problems. The Competition Authority will point out all relevant problems that may arise as a result of the link on the basis of the information provided by the applicant, combined with the Authority's knowledge of the market conditions on the Danish TV market.

If no assurance is submitted that corresponds to one or more proposed measures to remedy a competition problem, it must be expected that the measure(s) will not be included in the overall evaluation of the applicant.

The Competition Authority's assessment will be undertaken on the basis of the following criteria:

- Does the applicant have a link to the Danish TV market and in which form and to what extent

The concept of "link to the Danish TV market" shall be understood in accordance with the formulation in § 13 of the Ministerial Order. This will show whether or not the applicant, through ownership structures or other forms of influence such as through agreements, board entries, financial interests, etc., has a direct or an indirect link to businesses that are active on the Danish TV market. [Appendix 6](#) shows a number of examples of links to categories of players on the Danish TV market (market-related link - box 1), as well as examples of the form of the link (box 2).

Applicants who can document that they have no link to the Danish TV market will be judged as a starting point to be non-problematic in competition terms and thereby suitable to promote effective competition. Any further competition-promoting measures from applicants in this category will result in a further positive assessment.

Applicants who are linked to the Danish TV market may conversely involve a risk of the competition being affected inappropriately as a result of the link. These applicants will be judged on whether or not they have proposed relevant and suitable measures to counteract the risk of the competition being limited or distorted as a result of the link (cf. immediately below).

- Has the applicant proposed relevant measures to counteract competition risks

Applicants with a link to the Danish TV market have the option of the link not being negatively weighted overall at the time of the competition assessment of the individual applicants. This requires the applicant to have given covering information about themselves, incl. their plans to implement the assignment as gatekeeper and the businesses, etc., with whom the link exists, as well as relevant proposed measures that are intended to counteract the risk of the competition being limited or distorted by affecting the gatekeeper's business. The applicants will be judged in relation to "influence" (will other players on the Danish TV market with a link to the Danish TV market be able to achieve influence on the gatekeeper and vice versa) and "information exchange" (do other players on the Danish TV market have access to confidential information on/from the gatekeeper and vice versa which involves a risk of the competition being affected inappropriately).

Emphasis will be placed on whether the proposed measures are appropriate to remedy or neutralise the competition problems. The expected effect of a measure will be evaluated in relation to the concrete link that the applicant has with other players on the Danish TV market, as well as the market strength of these players. Applicants in this connection ought to be aware that a link to and dependency on players with a greater market share will as a starting point be judged as constituting a greater risk of the competition being negatively affected than if the same form of link applies in relation to a small market player. The aim is for the gatekeeper in his business to be

able to act independently from other media players' interests. In general, it is therefore the case that the stronger the link and dependency of the gatekeeper in relation to the Danish TV market, the more comprehensive the precautions are that will be needed to achieve the same weighting as applicants without a link.

Applicants ought at the same time to be aware that it is a matter of a beauty contest. More effective measures to counteract competition risk will therefore achieve a better assessment than less effective.

- Has the applicant proposed any further competition-promoting measures

Both applicants who have and who do not have a link to the Danish TV market have the option of proposing any *further* measures that may help to promote things such as the financial or technical development on the Danish TV market. Such measures will – if they are considered suitable to achieve the stated goals – according to the circumstances be able to result in a further positive assessment of the applicant.

Further competition-promoting measures can in concrete cases be a tender for sub-assignments in connection with the gatekeeper business, including things such as the provision of a number of places in the gatekeeper's network on objective and equal terms. The list is not exhaustive. Measures that are part of the invitation to tender's other assessment bases, e.g. measures to remedy concrete risks of the competition being negatively affected or special technical measures, e.g. particular use of the multiplexes or the provision of channels in HDTV, cannot achieve further weighting within this category.

5.3.2.2 The applicants' plans for the programmes offered

The Radio and Television Board will undertake the following assessment of the applications received in relation to the evaluation criterion, applicants' plans for the programmes offered (given a 25 per cent weighting):

The Board's assessment will take place on the basis of an overall evaluation of the applicant's business plan as regards the planned offer of programmes, etc. (cf. also section 4.2.4 on information that must be submitted). The assessment will include the three MUXs that are available to the gatekeeper from 1 November 2009. If one of these MUXs is not used for traditional TV (but for mobile TV), the MUX that is available to the gatekeeper from 1 November 2010 will be included in the assessment. Important elements that are part thereof:

- number of channels offered,
- if the viewers are given the option of individually choosing the channels and, where there is any packaging, a broad and varied selection of packages is offered, as well as the planned pricing for this,

- whether programmes are offered in particularly high picture quality (HDTV),
- whether a diverse range of programmes is offered in addition to the minimum requirements set (cf. item 9.2),
- the plans for development and broadcasting of new digital services, etc.

In addition, emphasis is on the plans for the use of all the four tendered MUXs, including

- whether one or more MUX may be used for mobile TV, and
- the deadline for when the planned programme content will be available to the viewers.

The scope of the elements: number of channels, individual choice of channels and diverse range of programmes are not decisive in this connection.

The following describes the way in which the individual elements are expected to be judged in practice. The mutual weighting of the elements will be shown to the extent that the elements that are given an advance specific weighting in relation to the 25 per cent plans for the programmes offered shall have a weighting in the overall assessment of the applications.

Part-criteria for which no specific weighting has been given will solely form part of the overall evaluation of the part-criterion "Overall evaluation of the plans for the programmes offered" (cf. schedule under item 5.3.2.3).

Part-criterion, number of channels offered

When assessing the number of channels offered, the number of channels (it is assumed that the number of channels are listed as the possible number of simultaneous 24-hour SDTV channels¹ with the chosen technical solution) that are offered on the three first MUXs will be given a weighting of 5 per cent in the assessment of the applicants' plans for the channel tender. The application that has the highest number of tendered channels converted to 24-hour channels in SDTV will be assessed as the best.

Part-criterion, If the viewers are given the opportunity to individually choose channels, and where there is any packaging, a broad and varied selection of packages is offered, as well as the planned pricing for this

Three sub-criteria will form part of the assessment of this point:

1. If there is an opportunity to individually choose channels without needing a link to programme packages
2. If, where there is any packaging, a broad and varied selection of packages is offered, and
3. The planned pricing.

¹ SDTV = standard definition TV.

These three elements with each of their weightings will form part of the assessment of the part-criterion.

When assessing sub-criterion 1, which will be included as 20 per cent in the assessment of the part-criterion, there will be emphasis on, whether individual choice of channels is offered, since there shall be an option to choose at least three individual channels for this element to be given a weighting.

When assessing sub-criterion 2, which will be included as 40 per cent in the assessment of the part-criterion, there will be emphasis on:

- The number of tendered programme packages. Individual channels tendered count as programme packages. Any package with all channels will be included in this parameter. The application that has the highest number of tendered programme packages will be assessed to be the best.
- The average number channels per package. A possible package that includes all channels is not included in this parameter. The application that has the lowest average number of channels per package will be assessed to be the best.

When assessing sub-criterion 3, which will be included as 40 per cent in the assessment of this part-criterion, there will be emphasis on:

- The average channel price for all channels in all tendered packages, incl. individual channels. Any package with all channels will be included in this parameter. The application that has the lowest average price per channel will be assessed to be the best.

Part-criterion. If particularly high picture quality (HDTV) programmes are offered

When assessing this point, emphasis will be on whether the applicant will offer channels in HDTV. It will likewise include how large a share of the total capacity is used for HDTV as well as the variation in the channels and programmes offered in HDTV. The number of hours for which programmes or channels broadcast in HDTV per week, month and year will also form part of the assessment. The assessment of this point includes all four MUXs if mobile TV is not offered in any MUX. If mobile TV is offered in one or more MUX, only the MUX in which mobile TV is not offered will form part of the assessment of this point.

The assessment of this part-criterion will be included as part of the overall evaluation of the part-criterion, overall evaluation of the plans for the programmes offered (cf. schedule under item 5.3.2.3).

Part-criterion. If a diverse range of programmes is offered over and above the set minimum requirements

When assessing this point, there will be emphasis on whether different programme categories² are offered from the five under item 9.2 on minimum requirements set (and over and above a neighbouring country's channel and any channel with local/regional news broadcasts (cf. item 9.2)). The assessment of this part-criterion covers all MUXs in which mobile TV is not offered. The Board's non-binding guideline (cf. [Appendix 7](#)) shows that the starting point is that programme categories that constitute at least 5 per cent of the overall range of programmes will be given a weighting in the Board's assessment. In the assessment, emphasis will be placed on the number of programme categories offered.

Furthermore, there will be emphasis on whether or not completely new TV channels are offered, i.e. channels that either do not exist at the time of the invitation to tender, or channels that are not offered on the Danish TV market. In this connection, there will be emphasis on whether, and in any case when, there are plans to offer the channel on other platforms.

This part-criterion will be given a weighting of 20 per cent of the overall assessment of the evaluation criterion, applicants' plans for channel the invitation to tender.

Part-criterion. The plans for development and broadcasting of new digital services

When assessing this point, there will be emphasis on whether new digital services are offered, the extent to which these services are offered as well as the extent to which they are considered to be innovative on the market.

The assessment of this part-criterion will form a part of the overall evaluation of the part-criterion, the overall evaluation of the plans for the programmes offered (cf. schedule under item 5.3.2.3).

Part-criterion. Whether any mobile TV is offered in accordance with the DVB-H standard

When assessing this point, there will be emphasis on whether or not the applicant offers the broadcasting of mobile TV in accordance with the DVB-H standard. In this connection, there will be emphasis on the planned theoretically calculated population coverage (cf. [Appendix 9](#)) and the deadline for the build-up of the broadcasting network. Furthermore, there will be emphasis on the content of the services/programmes/channels tendered.

As part of the creation of a European consensus concerning a common standard for mobile TV, and to counteract a split in the European market, the EU Commission has called upon the Member States (IP/07/1815 and IP/07/1118) to promote the use of the DVB-H standard, which is approved by the recognised European Standardisation Organisation, ETSI (ETSI Standard EN 302 304).

² See Appendix 7 on programme categories, etc.

In accordance with § 1, no. 1, of the Ministerial Order on the amendment of the Ministerial Order on The Radio and Television Board's offer of multiplexes, The Radio and Television Board is giving a weighting on applications that offer mobile TV with the DVB-H standard. When assessing the part-criterion, weighting will thus only be given to applications offering mobile TV in accordance with the DVB-H standard.

Furthermore, it should be noted that the EU Commission has stated (IP/07/1118) that the Commission, if it finds it necessary and appropriate, will put forward a proposal in 2008 to make use of the DVB-H standard obligatory.

The assessment of this part-criterion will collectively be included with a weighting of 15 per cent of the overall evaluation of the evaluation criterion, the applicants' plans for the channels offered.

Part-criterion. The deadline for when the planned programme content will be available to the viewers

When assessing this part-criterion, there will be emphasis on the speed with which the applicants will expand the network to the required theoretically calculated population coverage of at least 97 per cent. The assessment of the expansion plans will include the expansion of the three MUXs that are available to the gatekeeper from 1 November 2009. If one of these MUXs is not used for traditional TV (but for mobile TV), the MUX that is available to the gatekeeper from 1 November 2010 will form part of the assessment. When assessing the speed with which the applicant fulfils the requirement of at least 97 per cent population coverage, all MUXs that are used for traditional TV will be included.

Any plans for the commissioning of multiplexes before 1 November 2009 will not be given any weighting in the assessment.

During the evaluation, the conditions indicated in Appendices 8 and 9 will be used when calculating the population coverage (for traditional TV and mobile TV respectively).

The frequency coordination between Denmark and her neighbouring countries has not yet been concluded. The final coordination may lead to changes to the broadcasting characteristic that is a condition of the application, e.g. in the form of reduced power and changes to radiation diagrams, especially including the period until analogue has been turned off in all neighbouring countries.

Since it is not possible at this moment in time to give information on the extent to which there may be a reduction, etc., applicants can use the basis in their planning that there will not be a reduction in the broadcasters' radiation diagrams, etc. To the extent that any reductions, etc. may temporarily or permanently influence the population coverage, The Radio and Television Board will take this into account when assessing whether or not the gatekeeper, with his build-up of the broadcasting network, achieves the population coverage required in the business plan. Applicants

ought to take into account in their business plan the fact that there is no clarification of the extent to which there may be a need to establish gap fillers with subsequent extra expenses.

The evaluation will be based on the planned development in the calculated theoretical population coverage. In contrast to the assessment of the fulfilment of the minimum requirement of 97 per cent theoretically calculated population coverage, which shall be fulfilled per MUX (cf. section 9.1), the plans for extending the broadcasting network and the development in theoretical population coverage will be evaluated on the basis of an average of theoretically calculated population coverage estimated every 31 December³.

There will be emphasis on the average coverage accumulated over time estimated every 31 December for the three MUX that are part of the assessment (cf. above). The best assessment (= 20) will be achieved if the applicant plans an average 97 per cent coverage as at 31/12/2009. The poorest assessment (= 0) will be achieved if the applicant plans 0 per cent coverage as at 31/12/2019. Assessments between the two ends of the scale will be calculated proportionally and to two decimal points on the basis of the planned accumulated coverage.

The assessment of this part-criterion will collectively be given a weighting of 20 per cent of the overall evaluation of the evaluation criterion "The applicants' plans for the programmes offered".

5.3.2.3 Schedule of weighting of plans for the programmes offered, etc.

Within the 25 per cent weighting in the overall assessment, the following shows the weighting of the part-criteria and any sub-criteria to the part-criteria for the plans for the programmes offered:

Part-criterion	Sub-criterion	Weighting part-criteria in per cent of weighting for the plans for the programmes offered	Weighting sub-criteria in per cent of the part-criterion	Weighting in relation to the overall assessment, i.e. both competition and programme-related and business-related, total 100 per cent
Number of channels offered		5 per cent		1.25 per cent
If the viewers are offered the opportunity of individually choosing the channels and, where there is any packaging, a broad and varied selection of packages is offered, as well as the planned	If the option of individually choosing channel is offered	25 per cent	20 per cent	1.25 per cent
	If where there is any packaging, a broad and varied selection of packages is offered		40 per cent	2.5 per cent
	The planned pricing		40 per cent	2.5 per cent

³ In 2009, 2010 and 2011, quarterly information on the achievement of theoretical population coverage will be included, i.e. as at 31 March, 30 June, 30 September and 31 December.

pricing for this				
Whether programmes are offered in particularly high picture quality (HDTV)		Not given an advance weighting		
Whether a diverse range of programmes is offered in addition to the minimum requirements set		20 per cent		5.0 per cent
The plans for the development and broadcasting of new digital services		Not given an advance weighting		
If any mobile TV is offered		15 per cent		3.75 per cent
The deadline for when the planned programme content will be available to the viewers		20 per cent		5,0 per cent
Overall evaluation of the plans for the programmes offered. This will include the assessment of the two sub-criteria that are not given a weighting that has been established in advance.		15 per cent		3.75 per cent
Total		100 per cent		25 per cent

5.3.2.4 Conditions for and competence to carry out plans, including the business-related realism of the plans (business plan)

The Radio and Television Board will undertake the following assessment of the applications received in relation to the evaluation criterion, the applicant's conditions for and competence to carry out his plans, including the business-related realism of the plans (given a 25 per cent weighting):

During the assessment, a starting point will be the applicant's accounts of his own financial as well as technical and business-related competences.

All information in the business plan, including information on plans for the programmes offered, etc., form part of the assessment of the applicants' conditions for and competence to carry out their plans, including the business-related realism of the plans, compared with the applicant's own financial as well as technical and business-related competences.

The evaluation will take as a basis the financial overview, specifications and grounds that the applicant sends in [Appendix 1.1](#), business plan, [Appendix 1.2](#), financial summary and [Appendix 1.3](#), characteristics of broadcasting stations.

Part-criterion. Whether the application includes a realistic expectation of the investments, operating expenses and other operations that are necessary to live up to the terms of the licence and including the established minimum requirements for the gatekeeper's distribution business, etc.

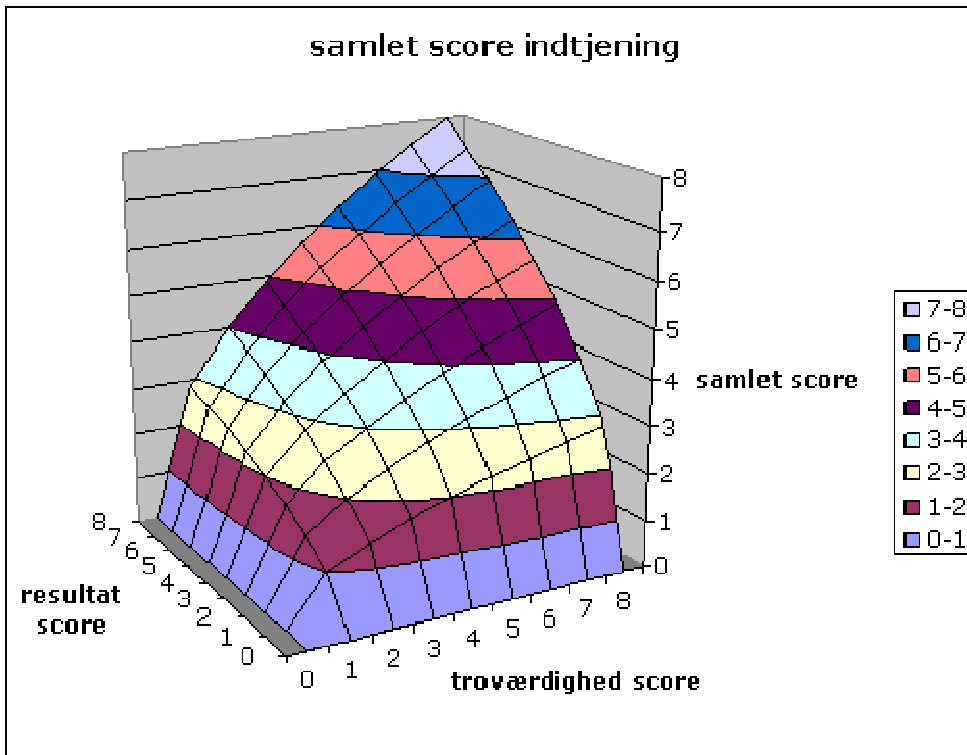
When assessing this part-criterion, it will be considered whether or not the application includes a realistic expectation of the investments, operating expenses and other operations that are necessary to live up to the terms of the licence and including the established minimum requirements for the gatekeeper's distribution business, etc.

The assessment of this part-criterion will collectively be included with a weighting of 60 per cent of the overall evaluation of the evaluation criterion, the applicant's conditions for and competence to carry out his plans, including the business-related realism of the plans.

When assessing the part-criterion, documentation on investments, operating expenses and other operations related to the establishment of the necessary coverage, and service level will be given a weighting of 60 per cent. Investments, operating expenses and other operations related to establishing services in the form of content, support systems, billing, encryption will be given a weighting of 20 per cent and investment, operating expenses and other operations related to establishing of marketing, customer service, sales and administration will be given a weighting of 20 per cent (cf. schedule in item 5.3.2.5).

Part-criterion. Whether the application makes probable adequate earnings to cover investments and operating expenses, including the level of positive finance in the business plan.

When assessing this part-criterion, consideration will be given to whether or not the application makes probable adequate earnings to cover investments and operating expenses. This can, among other things, consist in the application including identified market segments and services where DTT is a competitive distribution technology and where an adequate market volume and an adequate willingness to pay can be made probable. The level of positive finance in the business plan will be given a weighting of the evaluation. This point will be given a weighting of 40 per cent of the assessment of this point. Two parameters will be considered. The one parameter is how well most important elements of the business plan are supported in the form of complete budgets and Appendices. The second parameter is the level of positive financial results in the form of PBT (profit before tax), as well as ROIC (return on invested capital) under expected and worst case terms for customer numbers, ARPU and the market volume per product. The two parameters will be combined to the overall score using the following function: $[f(a,b)=(a*b)^{0.5}]$, where a and b are the two parameters that are included in the overall score.



[from top to bottom] Overall earnings score, overall score, profit score, credibility score
Figure 1 Illustration of earnings calculation score

The information shown in the business plan shall be proven/made probable with reference to publicly available information, experiences of corresponding business or information from suppliers/partners. These grounds can be enclosed in a separate Appendix marked confidential if the applicant considers that this information should not be published (cf. section 6 on publicity, however). It is specified that only information in [Appendix 1.1](#), [Appendix 1.2](#) and [Appendix 1.3](#) will form the basis for the evaluation.

5.3.2.5 Schedule of weighting of conditions for and competence to carry out plans, including the business-related realism of the plans

Conditions for and competence to carry out plans, including the business-related realism of the plans: 25 per cent weighting in the overall assessment. The following shows the weighting of the part-criteria and any sub-criteria to the part-criteria for the business plan:

Part-criterion	Sub-criterion	Weighting part-criteria in per cent of weighting of conditions for and competence to carry out	Weighting sub-criteria in per cent of the part-criterion	Weighting in relation to the overall assessment

		plans, including the business-related realism of the plans		
Whether the application includes a realistic expectation of the investments, operating expenses and other operations that are necessary to live up to the terms of the licence and including the established minimum requirements for the gatekeeper's distribution business, etc.	Investments, operating expenses and other operations related to establishing the coverage and service level	60 per cent	60 per cent	9 per cent
	Investments, operating expenses and other operations related to establishing of services in form of content support systems, billing, encryption		20 per cent	3 per cent
	Investments, operating expenses and other operations related to establishing marketing, customer service, sales and administration		20 per cent	3 per cent
Whether the application makes probable adequate earnings to cover investments and operating expenses, including the level of positive finance in the business plan	How well the most important elements of the business plan are supported on the part of income.	40 per cent	100 per cent [f(a,b)=(a*b)^0.5]	10 per cent [f(a,b)=(a*b)^0.5]
	The level of positive financial results in the form of PBT (profit before tax) as well as ROIC (return on invested capital)			
Total		100 per cent		25. per cent

6. Publicity

Your attention is drawn to the fact that the applications will be available to the public pursuant to the Access to Public Administration Files Act. This does not apply to the extent that information in the applications is covered by one of the exemptions in the Act, however, such as information on operating conditions and business conditions or similar, in so far as it is of substantial financial significance to the business that the information concerns. As a starting point, all applications with Appendices are therefore available to the public unless the information submitted is covered by one of the exemptions in the Public Administration Files Act.

The application shall state whether there is information in the application that the applicant considers to be covered by the abovementioned exemptions. The relevant information shall be clearly marked and kept separate from the other application so that the applicant, over and above the original application containing all information, also submits an application where information that the applicant considers to be confidential is omitted.

It is emphasised that The Radio and Television Board will make a decision on which information may be covered by the Public Administration Files Act's exemption rules.

The Radio and Television Board will publish a list of the applicants immediately after the end of the application deadline. Following the introductory evaluation (cf. item 5.1), the Board will also publish a list of applicants whose applications are being assessed.

Questions put regarding the tender materials will be published in anonymised form.

7. Issuing of licence and licence period

The licence is expected to be issued **no later than Friday 28 March 2008**, becoming valid on the issue date and with a licence period of 12 years.

A licence cannot be granted to DR or consortia or similar in which DR participates (cf. § 22, item 5, of the Ministerial Order).

The licence terms will be established on the basis of the Ministerial Order's general terms that are also shown by this material, and on the basis of the content of the application.

No later than two years before the licence expires, a decision will be made on whether there shall be a new invitation to tender for the multiplexes, since such an invitation to tender shall in any case be complete and a new licence issued no later than one year before the end of the licence period (cf. § 22, item 3 of the Ministerial Order).

8. Licence terms

The licence terms will be established on the basis of the Ministerial Order's general terms that are also reproduced here in the tender materials, and on the basis of the content of the application (cf. § 23, item 1, of the Ministerial Order).

9. Minimum requirements for the gatekeeper's distribution business, etc.

In accordance with § 3 up to and including § 7 of the Ministerial Order, the minimum requirements for the gatekeeper's distribution business, etc. stated in this item apply.

9.1 The building up of the broadcasting network

The gatekeeper shall establish and run the broadcasting network that is used for the distribution of sound and television programmes, etc. This can take place on the basis of an agreement with another enterprise hereon. The broadcasting network shall be built up so that when the broadcasting network has been fully extended, there will be a theoretical population coverage of at least 97 per cent for all multiplexes, calculated in accordance with the calculation method shown in Appendix 2 to the Ministerial Order.

The Radio and Television Board can inform that The Danish Ministry of Culture has indicated that it will be possible for the Board in special situations to subsequently make exemptions from the coverage requirement and thereby from the regulations of the Ministerial Order that link legal consequences to the requirement of 97 per cent coverage. The background for this is primarily that it cannot be fully precluded that the IT and Telecom Agency's negotiations with the neighbouring countries on the commissioning of the multiplexes will lead to such requirements regarding reductions in radiation diagrams, etc. that it will not be possible to achieve the coverage requirement, even by establishing gap fillers to an extent that is not financially prohibitive for the gatekeeper.

The Danish Ministry of Culture has indicated that the Ministry will provide the mentioned dispensation option as soon as possible.

The requirement of at least 97 per cent coverage applies to each individual multiplex, but it is not necessarily a matter of coverage of the same 97 per cent of the population for each individual multiplex.

The coverage (cf. [Appendix 8](#)) is, among other things, based on conditions for stationary reception by using a 10-metres-high directional aerial positioned outside, a 95 per cent location probability and freedom from interference for 99 per cent of the time.

The coverage requirement does not apply to broadcasting networks that may be established for the distribution of any mobile TV. If the gatekeeper broadcasts mobile TV in accordance with his application, the licence will set requirements on the building up of the broadcasting network and coverage corresponding to that which is stated in the application. If the plan is to broadcast mobile TV in the DVB-H standard, the coverage will be calculated as described in [Appendix 9](#). If the plan is to broadcast mobile TV in standards other than DVB-H, the applicant shall state the important system parameters in the application, as well as the standard.

9.2 Channels/Programmes

Gatekeeper's distribution business shall include:

- broadcasting of a channel, divided into at least seven regional areas, each with its local/regional news broadcasts, if such a channel exists, and if the enterprise behind such a channel wishes to distribute against payment of a proportional share of the gatekeeper's distribution expenses as well as a reasonable coverage contribution⁴
- at least one neighbouring country's channel that can vary from province to province. If the distribution business takes place in programme packages, the neighbouring country's channel shall be located in the cheapest package for the viewers
- a range of programmes that in addition to this, to an extent that covers a significant part of the overall channels offered, includes a broad range of programmes within the following programme categories: entertainment programmes, news programmes, music programmes, popular science programmes and sports programmes.

For The Radio and Television Board's assessment of whether or not a range of programmes covers "a significant part of the overall channels offered" and includes a "broad range of programmes", The Radio and Television Board will take as a starting point the following non-binding guideline (cf. [Appendix 7](#)):

"A significant share of the overall channels offered" will initially be at least half of the overall broadcasting time on the MUXs that broadcast traditional TV. When calculating the overall broadcasting time on these MUXs, it is assumed the overall capacity is used for broadcasting SDTV channels.

⁴ If there is any user payment for the channel, an agreement will be entered into hereon by the parties on business-related terms, including on the coverage of the gatekeeper's expenses linked with customer handling, etc.

“A broad range of programmes” within the programme categories mentioned will include programmes in each category, constituting at least 5 per cent of the overall broadcasting time on the MUX where traditional TV is broadcast.

Of the other share of the overall broadcasting time on these MUXs, the requirements of at least one neighbouring country’s channel and a channel with local programmes/news shall be fulfilled. The programme business on the remaining broadcasting time will not be judged in connection with the minimum requirements, but in connection with the assessment of the programmes offered (cf. section 5.3.2.2).

A neighbouring country’s channel means a public service channel or a broad advertising-financed channel from either Sweden, Norway or Germany (cf. § 2, item 5 of the Ministerial Order).

9.3 High-pay channels

If a high-pay channel is included in a package, there must only be other high-pay channels in the package.

High-pay channels offered in packages or individually may constitute no more than 25 per cent of the gatekeeper’s overall bandwidth capacity.

A “high-pay channel” means a TV channel that costs the viewers more than DKK 30 per month (i.e. including VAT and rights charges) if it is offered to the viewers individually or is included in the price of a package with more than DKK 30 per month. The DKK 30 is listed in the price level at the end of 2007, and will be regulated on the basis of the development in the consumer price index.

9.4 Distribution to handheld units – mobile TV

If the gatekeeper in accordance with his application uses one (or more) multiplex(es) for distribution to mobile TVs, the gatekeeper shall on transparent and non-discriminatory terms:

- make available at least 15 per cent of the capacity, measured in bandwidth, in the relevant multiplex for the broadcasting of public service content from DR
- make available at least 35 per cent of the capacity, measured in bandwidth, in the relevant multiplex to other operators on a wholesale basis.

9.5 Picture quality

The gatekeeper shall comply with the requirements stated in Appendix 3 to the Ministerial Order concerning technical picture quality in the distributed picture programmes and endeavour to comply with the targets mentioned in the Appendix. This does not apply to picture programmes that are distributed as mobile TV, however.

9.6 Compression standard

The gatekeeper shall use MPEG-4 Part 10/AVC for picture coding. This requirement does not apply to picture programmes that are distributed as mobile TV, however.

With the occurrence of new and more efficient coding technologies, the gatekeeper can change the coding with The Radio and Television Board's approval.

9.7 Open standards, etc.

The gatekeeper shall, to the extent that the TV signals are encrypted, during the encryption use a common European encryption algorithm that has been worked out by and is administered by a recognised European standardisation organisation.

If the gatekeeper's distribution business includes interactive applications, the gatekeeper shall use a programming interface for applications (API) that has been worked out by and is administered by a recognised European standardisation organisation. An overview of such standards can be found in the EU Commission's list of standards and specifications for electronic communication networks and services, as well as associated facilities and services. The list is published in The European Union's Journal and can be seen on the Commission's website.

The gatekeeper shall use the same API for all the relevant multiplexes, and the same API that is used by I/S DIGI TV.

In addition to the abovementioned cases, the gatekeeper shall use open standards that have been worked out and are administered by a recognised European standardisation organisation.

9.8 Cooperation

The gatekeeper shall cooperate with DR and TV 2/DANMARK (I/S DIGI TV) regarding the specification for the received signal and recipients, on the establishment of a common simple electronic programme guide (EPG), as well as on customer service, e.g. in the form of establishing a common customer centre.

The gatekeeper shall furthermore cooperate with relevant parties regarding the coordination of the information campaign in connection with building up terrestrial digital TV and the shut-down of analogue TV in 2009, to ensure

- a) that producers and dealers as far as possible can satisfy the demand for equipment for the receipt of terrestrial digital TV

- b) that the consumers receive relevant information on the switchover to digital TV
- c) that the consumers receive information on limitations concerning different types of equipment in relation to any future encryption of the digital signals, change of picture and sound coding used, etc.
- d) that the consumers receive the best possible advice in the event of problems with the digital reception.

10. Start of the distribution business

It will be possible to start using three of the multiplexes on 1 November 2009, when the broadcasting of analogue TV has ceased in Denmark. It will be possible to start using the fourth multiplex on 1 November 2010. It should be noted in this connection that the gatekeeper himself, as described in section 13, is responsible for planning and building up a broadcasting network. Commissioning of the multiplexes also requires the gatekeeper to have obtained a licence for this from the IT and Telecom Agency.

Gatekeeper shall start and build up (extend) the distribution business on the allocated multiplexes in accordance with the licence (cf. the plans for this stated in the application). This also applies to any broadcasting of mobile TV.

If there is a frequency opportunity for this, the gatekeeper will be able to start using individual allocated multiplexes (cf. section 13.1) before 1 November 2009. Commissioning of multiplexes requires frequency licences from the IT and Telecom Agency, who shall coordinate the relevant multiplexes in advance. Multiplexes that are commissioned before 1 November 2009 can be used to distribute programme business in accordance with the licence and/or test business.

11. Transfer/Sale of the licence

Before any sale of the licence or full or partial sale of the company or similar to whom the licence was issued (gatekeeper), the gatekeeper shall submit information thereon to The Radio and Television Board. The Board will evaluate whether or not the terms and conditions of the licence, including the content of the application for a licence, will continue to be satisfied following any sale, and thereafter, after obtaining a statement from The Competition Authority, make a decision on whether or not the sale can be approved.

12. Supervision and sanctions

12.1 Supervision

The Radio and Television Board supervises the gatekeeper's distribution of sound and television programmes, etc. pursuant to the licence. The Board will bring a charge against infringements of the Radio and Television Act that is applicable at any one time, the regulations established in accordance with the Act and that are applicable at any one time, as well as terms established in connection with the issuing of the licence.

The IT and Telecom Agency will, among other things, supervise compliance with the terms in the frequency licence, the rules of the Frequency Act, as well as regulations established in accordance with the Frequency Act. Note that the Frequency Act is expected to be superseded by a new Act on 1 January 2009. This is discussed in more detail in section 14.1.3 of the Frequency Act.

12.1.1 Gatekeeper's annual reports and annual accounts

For the purpose of ascertaining whether or not the gatekeeper is living up to the licence terms and including the established minimum requirements, the gatekeeper shall send to The Radio and Television Board every year no later than 1 May an account of the previous calendar year, including information on fulfilment as well as whether or not the requirements in the licence are otherwise being maintained. The account shall be sent for the first time on 1 May 2009.

The account shall include:

- Information on the building up of the broadcasting network, including on the achieved coverage for the individual multiplexes (cf. the calculation method shown in [Appendix 8](#)). Information hereon shall be sent to the Board each year until the coverage of all multiplexes is at least 97 per cent or possibly the higher coverage shown by the application
- Information on the programme content (cf. the terms in the licence), since the applicant's plans for the programme content along with the minimum requirements will be included in the terms for the licence.
- Information on the overall number of tendered TV channels, packages and pricing, including any possibilities to select individual channels and pricing thereof.
- Information on the number of channels broadcast fully or partially in high picture quality (HDTV).
- Any information on development and broadcasting of new digital services
- Any information on mobile TV, including on the building up of the broadcasting network in accordance with the application.

No later than 1 May each year, the gatekeeper shall send The Radio and Television Board annual accounts for the previous calendar year. Annual accounts shall be sent in for the first time on 1 May 2009 for the period of 28 March to 31 December 2008.

12.1.2 Changes

After the licence has been issued, the Gatekeeper shall provide preliminary information for The Radio and Television Board on all changes to the programmes offered, including changes to the packaging, in relation to that which is anticipated in the licence, since substantial changes may take place only following prior approval by the Board.

Substantial changes to the programmes offered means replacement – also in packages – of a channel with a new channel in another main category/genre, or the cessation of the distribution of such types of channel or programme that, according to the application and licence, are required to be included in the overall programmes offered. The Board's competence to approve substantial changes to the programmes offered applies also in cases where the enterprise behind the channel that includes local/regional news broadcasts no longer wishes to distribute through the gatekeeper on the given terms.

Changes following the issue of the licence to the gatekeeper's possibilities to function independently of players who have interests in the Danish TV market shall be put before The Radio and Television Board before implementation. The Radio and Television Board will make a decision on this basis as to whether or not the change will lead to infringement of the licence terms. The Board will obtain a statement from The Competition Authority as a basis for its decision.

Changes means changes to existing ownership structures, acquisition of shareholdings of more than 5 per cent and other forms of influential acquisition, e.g. through agreements, board entries, financial interests, etc., that increase the gatekeeper's link to other players on a Danish TV market.

Other changes that may lead to infringement of the licence terms shall be communicated to The Radio and Television Board before implementation for the purpose of allowing the Board to ascertain in the most efficient way possible whether or not the gatekeeper is living up to the licence terms.

12.1.3 Duty to submit information

The gatekeeper shall otherwise, by a deadline established by The Radio and Television Board, submit all necessary information to the Board for the Board's supervision.

13. Channel plan and other technical conditions

The frequency rights held by Denmark in the UHF band (470-862 MHz), and for which the gatekeeper will be able to have licences issued within the frameworks of, are derived from a number of international agreements.

During the regional radio conference in 2006 in Geneva (Geneva06), Denmark was allocated frequency rights in the VHF and the UHF band (174-230 MHz and 470-862 MHz) for digital terrestrial broadcast services, etc., including DVB-T and DVB-H. The concrete channels that are available to the gatekeeper are described below in *section 13.1*, while the Geneva06 agreement is described in *section 13.2*.

In connection with the Geneva06 negotiations, Denmark has entered into a number of bilateral agreements with some of its neighbouring countries. These bilateral agreements extend and restrict the frequency rights otherwise held by Denmark in some specific areas in relation to the Geneva06 agreement. It will continuously be possible to enter more bilateral agreements. The bilateral agreements already entered into are described in *section 13.3*.

A part of the UHF band (790-862 MHz) is also used for military radio services that are harmonised under the auspices of NATO. The Danish Defence no longer uses the frequency band concerned, but the military utilisation in Germany restricts the frequency rights that Denmark has in the 790-862 MHz frequency band (cf. *section 13.4*).

The IT and Telecom Agency continuously undertakes a more detailed coordination of Danish broadcasting rights with her neighbouring countries (cf. the description in *section 13.5*). The coordination in neighbouring countries is carried out to ensure that the individual countries' frequency rights can be used without disturbances as far as possible. The purpose of the coordination in neighbouring countries is also to ensure that the neighbouring countries agree with the concrete realisation of the broadcasting rights included in the Geneva06 agreement.

Other technical conditions also apply that the gatekeeper should respect. These conditions are described in *section 13.6*.

13.1 Channel plan

The gatekeeper will have control over four countrywide broadcasting networks or multiplexes (MUX), although one of the four MUXs will not be available until 1 November 2010.

On the basis of the frequency rights negotiated at the Geneva06 Conference, The IT and Telecom Agency has drawn up an interim channel plan, including an overview of the channels (frequencies) that are included in the different broadcasting networks (MUX) and the channels' broadcasting areas. [Appendix 11](#) includes an overview of the broadcasting network, including channels over which the gatekeeper will have control. The broadcasting areas are shown by [Appendix 14](#).

On the basis of the gatekeeper's business plan (cf. § 12 of the Ministerial Order), the gatekeeper can call upon the IT and Telecom Agency for concrete changes to the channel plan where channels can be changed between the individual broadcasting networks, provided that:

- the channels are used within the same broadcasting areas,
- the channels in MUX 3 respect the regional area that corresponds to TV2's current regional allotment, and provided that
- channels that are included in the SFN (Single Frequency Network) are kept as SFN.

The allocated channels in MUX 6 will not be available to the gatekeeper until 1 November 2010, and this cannot be part of an alternative allotment until after this date.

Within the individual allotments, the gatekeeper will only be able to use the associated channels as indicated in the channel plan to establish main broadcasters and any gap fillers. The gatekeeper will therefore not be able to use channels other than those that are linked to the individual allotments, and that are included in the channel plan.

The gatekeeper will, however, be able to request to be granted a licence to establish broadcasters covering geographical areas of Denmark outside of the delimited allotments, e.g. on Læsø and Anholt. In this connection, the gatekeeper will be able to request to be granted multiplexes on channels other than those included in the channel plan. It will only be possible to grant a licence for multiplexes outside those allotments allocated in the invitation to tender if it is shown to be possible following neighbouring countries coordination.

The channel plan can be changed during both the invitation to tender period and the licence period as a result of new international obligations. This means that the gatekeeper may need to change broadcasting channels. Any of the expenses for this should be borne by the gatekeeper.

The frameworks for utilisation of the channel plan are shown by The Geneva06 agreement, the bilateral agreements and the coordination with neighbouring countries of concrete broadcasting positions.

13.2 The Geneva06 agreement and other international obligations

The Geneva06 agreement is the result of the negotiation of frequency rights to digital radio and TV (DAB and DVB) entered into by the countries in region 1 (Europe, Africa and some of the Mid-

dle East) in the ITU, International Telecommunications Union. The agreement forms the basis for the Geneva06 plan that includes information on the countries' frequency rights in the form of concrete broadcasters (assignments) or broadcasting areas (allotments).

The regulations and technical requirements that are included in the agreement thus constitute the overall framework for the gatekeeper's utilisation of the allocated multiplexes.

As well as rights to digital radio and TV, the Geneva06 agreement includes rights to analogue TV. The agreement prescribes that protection can be demanded for analogue TV up until 17 June 2015. The Geneva06 agreement operates with a transition period that lasts from 17 June 2006 up to and including 16 June 2015, where existing analogue TV broadcasting rights can be maintained. In Denmark, a decision has been made to shut down analogue TV on 31 October 2009.

The Geneva06 agreement, whose full title is "*Final Acts of the Regional Radio communication Conference for planning of the digital terrestrial broadcasting service in parts of Regions 1 and 3, in the frequency bands 174-230 MHz and 470-862 MHz (RRC-06)*", can be ordered from the ITU's website, www.itu.int.

You can also order the Geneva06 plan from the ITU, which includes an overview of the individual countries' digital and analogue broadcasting rights. It will be possible to the plan in connection with any of the applicants' calculations in connection with planning broadcasting networks.

As well as the obligations that are included in the Geneva06 agreement, the gatekeeper, as a result of new international obligations and agreements, may have the option of or be obliged to make changes to the use of the frequencies of which the gatekeeper has control. For example, it may be the case that Denmark can achieve better rights overall by "changing" already allocated frequency resources, whereby the gatekeeper may be obliged to change channel in an allotment.

13.3 Bilateral agreements

In connection with the negotiations at the conference in Geneva, Denmark entered into a number of bilateral agreements with the majority of the neighbouring countries concerned (cf. [Appendix 12](#)). The bilateral agreements extend and restrict the frequency rights otherwise held in some specific areas by Denmark in relation to the Geneva06 agreement. It will be possible to make continuous adjustments to the bilateral agreements or new agreements entered into, including with effect for the gatekeeper. If this is the case, such agreements will continuously be published on the IT and Telecom Agency's website.

The regulations that are included in the bilateral agreements, is included in the overall framework for the gatekeeper's utilisation of the allocated multiplexes.

13.4 Military use in 790-862 MHz

As a result of the NATO Joint Civil and Military Frequency Agreement (NCFA), 2002, parts of the 790-862 MHz frequency band have been allotted for military use.

The Danish Defence no longer uses the frequency band concerned. Parts of the frequency band are, however, used for military purposes in Germany. Concretely, it is the offered channel 69 (854-862 MHz) in the HADSTEN-AARHUS broadcasting area that is affected by the German use of channel 69 for military services (cf. also the bilateral agreement entered into by Denmark and Germany (see [Appendix 12](#))).

The military use is not covered by the same time limitation for protection that the Geneva06 agreement has established to protect analogue TV. The limitations that follow from the military use in Germany may therefore also apply after 2015.

13.5 Neighbouring countries coordination

The Danish frequency rights are the result of international agreements described in the Geneva06 agreement.

The coordination in neighbouring countries is carried out to ensure that the individual countries' frequency rights can be used without disturbances as far as possible. The purpose of the coordination in neighbouring countries is also to ensure that the neighbouring countries agree with the concrete realisation of the broadcasting rights included in the. Coordination in neighbouring countries may take a long time to carry out, but it can probably be carried out over a period of 6-12 months in cases where there are no substantial problems.

The gatekeeper is therefore called upon to send an application to the IT and Telecom Agency as soon as possible containing information on the concrete position and other technical data on the desired broadcasters. The IT and Telecom Agency will thereafter undertake an evaluation of the possibility of commissioning the desired broadcasters on 1 November 2009, and the necessity of coordination with the neighbouring countries before the IT and Telecom Agency can issue a frequency licence as mentioned in section 14.6.

The IT and Telecom Agency has initiated a preliminary coordination of broadcasting rights. The Agency has initiated the coordination of broadcasting rights based on the existing main broadcaster used today for the analogue TV broadcasting network. [Appendix 13](#) describes the broadcasting positions that constitute the basis for the preliminary coordination of broadcasting rights initiated by the IT and Telecom Agency.

The IT and Telecom Agency has initiated coordination for all channels in each broadcasting area in neighbouring countries based on the location of 16 existing main broadcasting masts and an auxil-

iary broadcaster (Århus) (cf. [Appendix 13](#)). The IT and Telecom Agency has not examined the concrete possibilities for the construction of an feasible aerial on the basis of the existing specific technical characteristics or the possibility of an available mast point on the relevant broadcasting position at a given aerial height for which the gatekeeper himself is responsible for investigating.

The gatekeeper is not obliged to use the broadcasting rights that have been coordinated on a preliminary basis by the IT and Telecom Agency. If the gatekeeper wishes to commission other broadcasting positions or changes to technical data for the coordinated positions, the gatekeeper should give information to the IT and Telecom Agency on concrete positions and other technical data in this context. The IT and Telecom Agency will then undertake an evaluation of the possibility of issuing a frequency licence to the desired broadcaster and the necessity of coordination with the neighbouring countries.

With regard to the coordination of desires for changed or additional broadcasting positions, the gatekeeper is requested to contact the IT and Telecom Agency as soon as possible after the conclusion of the invitation to tender.

It is not possible in the current tender materials to describe the concrete broadcasting rights in full. This is because the more detailed broadcasting rights partly depend on any coordination of concrete broadcasting positions in neighbouring countries. It will therefore be up to the gatekeeper to compile a final channel plan and plan a concrete broadcasting network and, in this connection, investigate the possibilities of establishing broadcasters, etc. For the purpose of the invitation to tender, however, the MUX, including channels (frequencies) that the gatekeeper will be able to control, are described (cf. the channel plan in [Appendix 11](#)).

For the purpose of the invitation to tender, a more detailed description is also given in [Appendix 14](#) of the geographical area within which the individual channels (frequencies) can be used.

The status of the IT and Telecom Agency's preliminary coordination of broadcasting rights can be followed on the IT and Telecom Agency's website: www.itst.dk.

13.6 Technical conditions overall

In the frequency band below 470 MHz, a licence is issued to CDMA-450 radio systems in Denmark. In this connection, it should be noted that, under quite particular circumstances, e.g. if a viewer's reception area is within 200 metres of a CDMA base station that uses the uppermost part of the CDMA-450 band, there is a potential disturbance risk in relation to channel 21 (470-478 MHz) that is offered for use for MUX 3 in the THISTED broadcasting area. On this basis, a term will be established in the frequency licence to coordinate the frequency use with other Danish licence holders using frequencies in the neighbouring countries.

It should otherwise be noted that the chosen location of broadcasters and polarisation of the signal in each broadcasting area is of major importance to how complicated the switchover to digital TV will be for the viewers, and how easily the gatekeeper will be able to reach the viewers. The current main broadcaster in TV2's analogue network uses all, with the exception of the Thisted broadcaster, horizontal polarisation. The Thisted broadcaster uses vertical polarisation. The viewers in these areas have therefore used their UHF reception aerials to receive TV2 to horizontal or vertical polarisation. Furthermore, the aerials are directed towards the current TV2 main broadcaster.

For the smaller share of the viewers who live in areas with gap fillers, their reception aerials are generally directed towards the gap fillers. The auxiliary broadcasters nearby all use one (Århus) vertical polarisation.

With a view to reducing disturbances for the viewers when switching over to digital TV, it will therefore be preferable for the same polarisation and positioning of main broadcasters to be used overall as in TV2's current analogue TV broadcasting network (see [Appendix 13](#)). Any changes in polarisation or broadcaster location for a given broadcasting area can be coordinated, beneficially for the viewers, with I/S DIGI TV, since the viewers might otherwise need to invest in an extra reception aerial to have both a reception aerial with vertical polarisation and one with horizontal polarisation.

14. Regulatory conditions

14.1 Supervision and sanctions

14.1.1 The Radio and TV Broadcasting Act

The Radio and Television Board supervises the gatekeeper's compliance with the licence terms as well as with the Radio and TV Broadcasting Act and regulations established in accordance with the Act. The Board also ensures that a fine is paid if the terms that incur fines are not complied with. The Board can also revoke the licence if the gatekeeper infringes the Act or regulations established in accordance with the Act if an infringement is gross or the infringements are repeated regularly. The Board can also revoke a licence if the gatekeeper disregards the licence terms, or if the gatekeeper, in connection with submission of the application and the issuing of the licence, has submitted erroneous information.

14.1.2 The fine agreement

A model for the wording of the preliminary fine agreement (cf. [Appendix 3](#)), can be downloaded from the Media Secretariat's website under the "DTT Udbud" (DTT Tender) point.

The fine agreement imposes on the gatekeeper a fine for failure to comply with the licence terms, particularly including the timeframes for the building up of the broadcasting network, and for the programme content.

The fine agreement therefore includes a regulation stating that failure to comply with the licence terms as regards the building up of the broadcasting network will result in the imposition of an annually settled fine of DKK 500 000 for each 0.1 per cent that the broadcasting network's population coverage listed at the end of the year lies below the required coverage in the plan for the building up of the broadcasting network (cf. the table in [Appendix 1.3](#)).

The fine agreement also includes a regulation stating that infringement of the licence terms as regards programme content requirements will result in the imposition of an annually settled fine of no more than 10 per cent of the gatekeeper's turnover in the previous financial year.

Finally, the fine agreement includes a regulation concerning a fine for the infringement of the other licence terms. Infringement of the other terms licence will trigger a fine whose size depends on the type and scope of the infringement and on whether or not there is a matter of repeated infringements. The overall fine per year for infringements of other terms for the licence can constitute no more than 10 per cent of the gatekeeper's turnover in the previous financial year.

The preliminary fine agreement also includes a regulation stating that infringement of the terms stated in the fine agreement may also lead to revocation of the licence.

The content of the fine agreement will be finally agreed between The Radio and Television Board and the selected gatekeeper by means of the Board's signature of the fine agreement before the Board issues a licence.

14.1.3 The Frequency Act

The gatekeeper is subject to the at any one time applicable frequency legislation.

The valid Frequency Act

The IT and Telecom Agency supervises compliance with the terms in the frequency licence, the rules of the Frequency Act as well as with regulations established pursuant to the Frequency Act. If the IT and Telecom Agency ascertains infringements of the frequency legislation, terms in frequency licences, or if the frequency use leads to disturbances, the Agency can give an order for remedial action to be taken on own account to bring the use in compliance with the rules or give an order to cease the operation of devices. The IT and Telecom Agency has the opportunity to monitor frequency bands and to gain access to public and private property without a prior warrant to the extent that this is necessary to stop disturbances as well as to examine and interrupt devices. The IT and Telecom Agency can revoke a licence if the licence holders commit gross and repeated infringements of the Act or the rules and the licence terms established in pursuance thereof.

The IT and Telecom Agency can use frequency administrative methods after negotiation with the Ministry the Minister for Culture. The frequency administrative methods involve requirements regarding switchover to more frequency-efficient utilisation methods or technologies, limitations to the use of frequencies, the redistribution of already issued frequency licences and the withdrawal of already issued frequency licences.

Amendment to the Frequency Act

An amendment to the Frequency Act is currently being worked on. A bill is expected to be put forward in 2008 to become valid on 1 January 2009. There will be comprehensive changes in relation to the applicable Frequency Act. Information on new frequency regulation is shown on the IT and Telecom Agency's website, www.itst.dk. The changes are based on the supplementary telecommunications agreement concerning new overall principles for the frequency administration in Denmark that were entered into on 20 June 2007. The agreement can also be found on the IT and Telecom Agency's website, www.itst.dk.

The purpose of new frequency regulation is to promote innovation and growth in Denmark through easy and rapid access to radio frequencies and flexibility in the use of radio frequencies.

The following considerations exist in connection with the project:

- Further option of trade in radio frequencies.
- Liberalisation of the use of radio frequencies.
- A system that advertises available radio frequencies.
- The introduction of rapid and simple auctions as a general allocation method.

The introduction of new rules may be of significance to existing and future holders of frequency licences. The scope of any changes is not known at this moment in time.

Please note that radio frequencies in the frequency plan that are allocated for radio and TV purposes are principally not covered by the new principles. For example, for media policy reasons (desires for scope and types of content of radio/TV offered in Denmark, with particular reference to public services as well as local radio and TV, etc.), it will be necessary to exclude multiplexes to these from the access to free trade in radio frequencies, etc. The question of the opportunity to transfer licences, etc. is thus already adequately provided for in the applicable rules concerning the radio and TV area.

Any full or partial use of the new principles for the frequency administration for radio frequencies allocated for radio and TV purposes in the frequency plan or for radio frequencies in other frequency bands that are desired for use for radio- and TV purposes will in any case not take place until after more detailed discussions with – and consent from – the Minister for Culture and the parties behind the media policy agreement for 2007-2010.

14.2 *Applicable legislation*

The most important applicable legislation in the area is:

- The Radio and Television Broadcasting Act (cf. Consolidated Act no. 338 of 11 April 2007 ([Appendix 15](#)))
- Ministerial Order no. 1287 of 8 November 2007 on The Radio and Television Board's invitation to tender for multiplexes, amended by Ministerial Order no. 1325 of 30 November 2007 ([Appendix 16](#))
- Radio Frequencies Act (cf. Consolidated Act no. 680 of 23 June 2004 ([Appendix 17](#)))
- Act no. 545 of 8 June 2006 on the amendment of the Competitive Conditions and Consumer Interests in the Telecommunications Market, the Radio Frequencies Act and § 2 of the Radio and Telecommunications Terminal Equipment and Electromagnetic Conditions Act, ([Appendix 18](#))
- Law on the establishment and Joint Utilisation of Masts for Radiocommunication Purposes, etc. (cf. Consolidated Act no. 681 of 23. June 2004 ([Appendix 19](#))).

14.3 Information on conditions and measures that may be of significance to the gatekeeper

A decision has been made to use the L band for mobile TV and similar purposes.

I/S DIGI TV has stated that migration to MPEG 4 in MUX 1 is expected to take place no later than in 2012.

No decision has yet been made on the use of the remaining Danish MUXs that are temporarily designated as innovation reserves. Reservations are made for these MUX to be offered to a (another) gatekeeper.

Reservations are also made regarding future decisions on other tenders, possibly including tenders for mobile TV with DVB-H or other standards.

On 13 November 2007, the EU Commission published an announcement on the digital dividend, i.e. the frequency resource that can be released when switching over from analogue to digital broadcasting technology when broadcasting TV programmes: *Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: Reaping the full benefits of the digital dividend in Europe: A common approach to the use of the spectrum released by the digital switchover*, COM(2007) 700.

In the announcement, the Commission invites the Member States to support the introduction of new services through a cooperation with the Commission and through the identification of frequency bands for this purpose. The Commission also states that it intends to prepare a harmonised reservation of frequency bands, and the Commission announces that in this connection it intends to use "a binding Community law instrument to adopt a clustering decision".

The content of this section is not exhaustive. The Radio and Television Board makes reservations that decisions can be made that may affect the gatekeeper's distribution business and business plan.

14.4 Frequency charge

It should be noted to begin with that work is currently ongoing on an amendment to the Frequency Act which is expected to become valid on 1 January 2009. The amendment to the Frequency Act will lead to an amendment to the model for calculating of frequency charges. Information on new frequency regulation is shown on the IT and Telecom Agency's website, www.itst.dk.

According to the applicable legislation, an annual frequency charge shall be payable to the IT and Telecom Agency. This will also be the case in the future. At this moment in time, however, it is not possible to predict the size of the future frequency charge.

The following is a reproduction of the conditions following the applicable rules. The frequency charge for 2008 will be DKK 208 828 per channel per position that is used with a broadcast effect of more than 5 kW and DKK 32 127 per channel per position that is used with a broadcast effect of up to 5 kW corresponding to DKK 3 373 375 per MUX with 16 broadcasters at over 5 kW and one broadcaster at under 5 kW. There will also be a charge for any gap fillers. The frequency charge for these in 2008 will be DKK 32 127 per channel per position that is used with a broadcast effect of up to 5 kW. According to the applicable rules, the frequency charge shall be paid from the issue date of the frequency licence, and payment for the first year would be proportional to the rest of the year. Thereafter, according to the applicable rules, the frequency charge shall be paid every year in advance the in month of January for the relevant calendar year.

14.5 Frequency licence

The gatekeeper shall as soon as possible send in an application to the IT and Telecom Agency with information on the desired broadcasters' concrete position and other technical characteristics. The IT and Telecom Agency will then undertake an evaluation of the possibility of commissioning the desired broadcaster and the necessity of coordination with the neighbouring countries before the IT and Telecom Agency can issue a frequency licence.

With regard to the coordination of desires for broadcasting positions, the gatekeeper is requested to contact the IT and Telecom Agency as soon as possible after the conclusion of the invitation to tender. This is because coordination in neighbouring countries may take a long time to carry out (cf. section 13.5 on coordination in neighbouring countries).

As shown in section 14.1.3, a new Frequency Act is being drawn up. The Act is expected to be produced in 2008 and to become valid on 1 January 2009. Since the Act is expected to include substantial changes in relation to the applicable Act, it is not currently possible to draw up a draft of a frequency licence such that would appear in 2009.

Since radio frequencies in the frequency plan that are allocated for radio and TV purposes are principally not covered by the new principles (cf. section 14.1.3), the terms in the frequency licence are immediately expected to be of same type as those according to the applicable legislation, however.

A forthcoming frequency licence is expected to include terms on the following subjects:

- Geographical extent of the area of application, including broadcasting positions.
- Technical radio requirements, including aerial height and aerial characteristics.
- Conditions based on disturbance-related conditions, e.g. terms on field strength and the damping of undesirable radiation.
- Compliance with international agreements, e.g. RRC-06 agreements entered into.

- Requirement regarding use in accordance with a licence pursuant to the Radio and TV Broadcasting Act.

It should be noted that, due to the ongoing legal work, it is not currently possible to set up an exhaustive list of possible future terms in the frequency licence.

14.6 Payment to rights holders

In accordance with the Copyright Act, TV stations shall clear rights when broadcasting copyrighted material on TV (primary broadcasting). Rights shall also be cleared when TV broadcasts are retransmitted through cable installations, for example. It is a matter of two independent public performances. The agreement licence in § 35 of the Copyright Act includes both retransmission of TV broadcasts through cable and wireless retransmission. Regarding the distribution of TV broadcasts, the DTT network is principally ranked alongside the cable network, and the same rules apply to distribution in the DTT network as in the cable network.

If a TV broadcast is the object of retransmission, the rights shall be further cleared, which involves the payment of a supplementary charge to the rights holders unless the retransmission rights have already been cleared in connection with the TV station's acquisition of the broadcasting rights.

However, it depends on the exact type of distribution as to whether in copyright terms it can be said that there is a case of retransmission where rights need to be cleared in accordance with the Copyright Act, or whether there is a case of primary distribution.

The gatekeeper is responsible for ensuring that retransmission rights are or will be cleared when TV broadcasts are retransmitted.

15. Questions concerning the invitation to tender and supplementary information

15.1 Questions on the tender materials

From the publication of the tender materials up to and including **Monday 7 January 2008 at 12.00**, potential applicants can ask more detailed questions concerning the invitation to tender. Questions can be sent to The Radio and Television Board by email, radrad@mediesekretariatet.dk or by general post to the Media Secretariat, Vognmagergade 10, 1. sal, 1120 København K, Denmark. It shall be clearly indicated that the enquiry concerns the invitation to tender for digital multiplexes. The questions and answers will *only* be published on the Media Secretariat's website, www.mediesekretariatet.dk under the subject of "DTT Udbud" (DTT Tender) point. The questions will be published in anonymised form. The questions will be answered continuously and within one

week as far as possible so that the final answer will be published no later than Monday 21 January 2008.

Questions cannot be put to The Danish Ministry of Culture, The Competition Authority and the IT and Telecom Agency about the invitation to tender.

Questions and answers will be considered to be a part of the tender materials that are accepted by applicants when submitting their application.

We would draw your attention to the fact that the Media Secretariat is closed from 24 December 2007 up to and including 1 January 2008. Questions received will therefore not be dealt with during this period.

15.2 *Supplementary information*

All communication from The Radio and Television Board on the invitation to tender, including any supplementary information, will first of all be published exclusively on www.mediasekretariatet.dk under the subject of "DTT Udbud" (DTT Tender) point. The website will thus be the place where all interested parties can follow the invitation to tender process.

More detailed questions to applicants for the purpose of clarifying any doubts in connection with the applications will be directed to the relevant applicant's contact person, however.

Any changes to the licence terms stated in the invitation to tender terms that may be notified at the request of The Minister for Culture before the end of the deadline for submission of the application will be published on www.mediasekretariatet.dk under the subject of "DTT Udbud" (DTT Tender) point no later than Monday 4 February 2008. Such changes will be considered to be a part of the tender materials that are accepted by applicants when submitting their application.

16. Miscellaneous

The Radio and Television Board can postpone the time of its decision at any given time. Information hereon will be published as soon as possible on www.mediasekretariatet.dk along with information on the new expected time. The information will also be sent to the applicants' contact persons if the postponement takes place after the end of the application deadline.

17. Appendices

Appendix 1: Application form, incl. various schedules:

- 1.1 Business plans
- 1.2 Financial summary
- 1.3 Characteristics of broadcasting stations
- 1.4 Competition conditions

Appendix 2: Wording of bank guarantee

Appendix 3: Wording of preliminary fine agreement

Appendix 4: Declaration on compliance with the licence terms

Appendix 5: Definitions

Appendix 6: Market-related link and compensating measures

Appendix 7: Guideline on programme categories

Appendix 8: Calculation of theoretical population coverage for DVB-T

Appendix 9: Calculation of theoretical population coverage for DVB-H

Appendix 10: Data format for broadcaster data for DVB-T and any mobile TV broadcasters

Appendix 11: Allocation of channels to the gatekeeper

Appendix 12: Bilateral agreements

Appendix 13: TV 2's analogue broadcasting network – Broadcaster location and polarisation

Appendix 14: Broadcasting areas

Appendix 15: Consolidated Act no. 338 of 11 April 2007 on Radio and Television Broadcasting

Appendix 16: Ministerial Order no. 1287 of 8 November 2007 on The Radio and Television Board's invitation to tender for multiplexes, amended by Ministerial Order no. 1325 of 30 November 2007

- 1: Channel plan from the IT and Telecom Agency
- 2: Calculation preconditions for the required coverage of at least 97 per cent of the population in accordance with § 3
- 3: Requirements concerning technical picture quality (cf. § 4, item 7)
- 4: Main figures and key ratios for the clarification of tenderers' financial circumstances

Appendix 17: Consolidated Act no. 680 of 23. June 2004 on Radio Frequencies

Appendix 18: Act no. 545 of 8 June 2006 on the amendment of the Competitive Conditions and Consumer Interests in the Telecommunications Market, the Radio Frequencies Act and § 2 of the Radio and Telecommunications Terminal Equipment and Electromagnetic Conditions Act

Appendix 19: Law on the establishment and Joint Utilisation of Masts for Radiocommunication Purposes, etc. (cf. Consolidated Act no. 681 of 23. June 2004