The principle of non-discrimination in the ADSL market

LLU Hearing, European Commission, 8 July 2002

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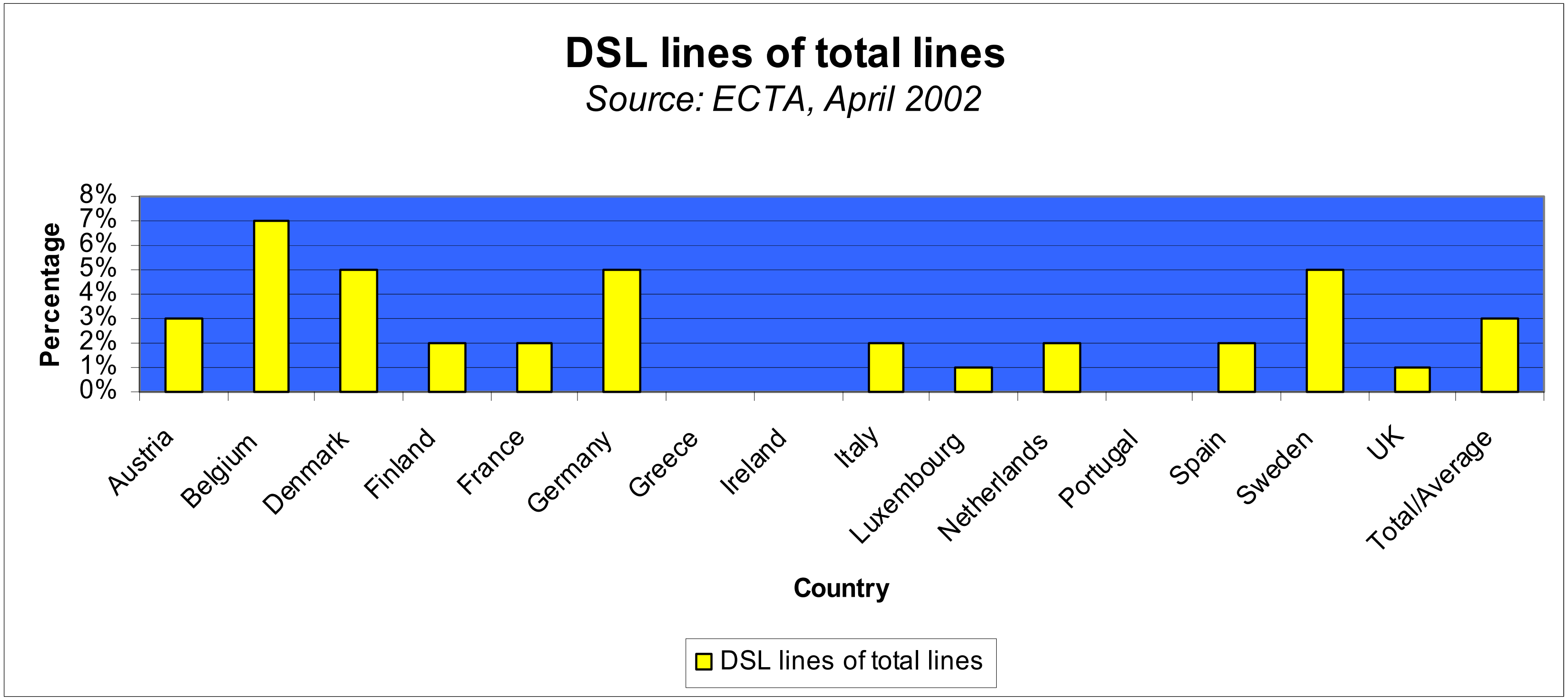
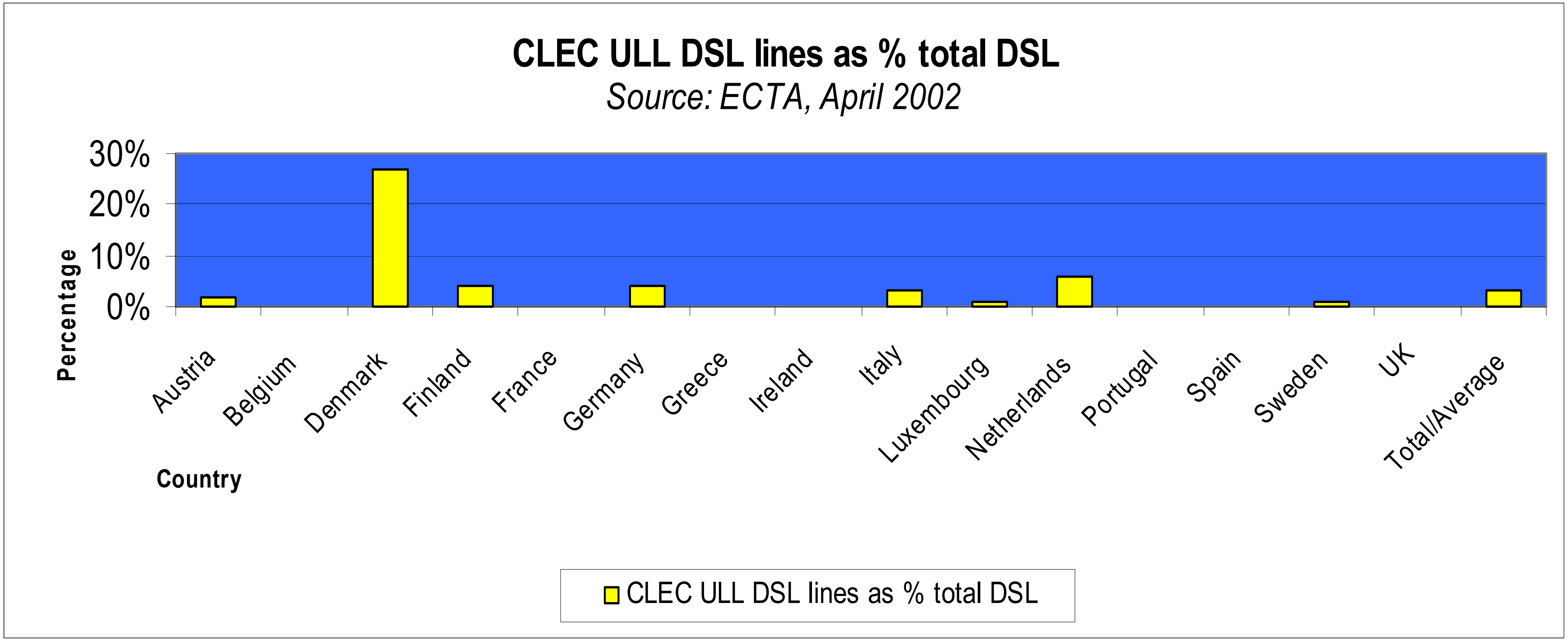
The ADSL Market

ADSL Penetration in the EU



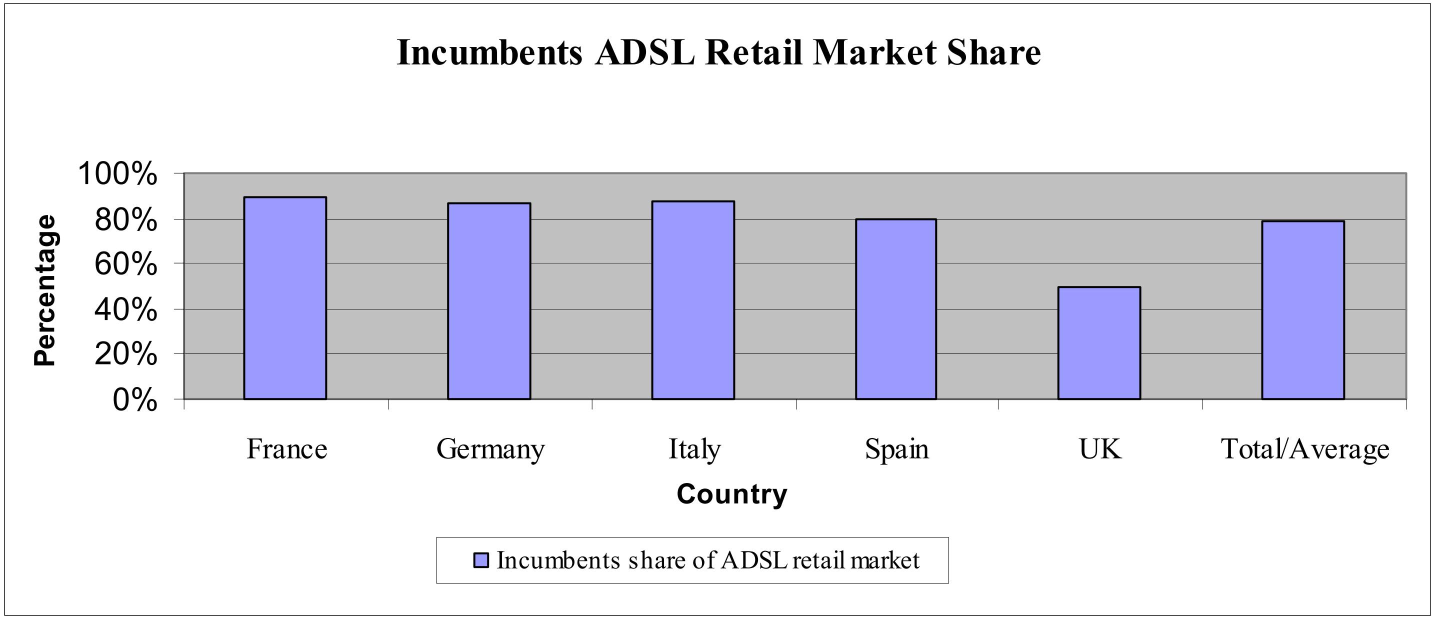
The ADSL Market

Distribution of the ADSL wholesale market



The ADSL Market

Distribution of the ADSL retail market



Source: EuroISPA, OFTEL (April 2002)

Current Discriminatory Practices

Control of the Local Loop

Lack of access to the local loop: very limited number of MDFs offering LLU

Unjustifiable delays on LLU negotiations with incumbents: RUOs insufficiently detailed about network information and collocation details

High price and delays for local loop unbundling and collocation

"Price squeeze" for new entrants: high pricing of the xDSL wholesale product and/or low retail prices of the fixed incumbent for the same service *(Belgium, France, Italy, Portugal, Spain and UK)*

Current Discriminatory Practices

Control of the essential facilities:

Discriminatory terms of provision: delays on installation, resolution of technical problems and lines closure (Belgium, Portugal, i.e. Spain: incumbents average waiting days for ADSL installation: 10-15 days; Competitors: 30-45 days)

Access denial: based on technical reasons not applying when access is requested through the incumbent´s ISP (Germany, Spain…)

Services of inferior quality: reliability and repair concerns

Difficulties for massive migrations: from the incumbent to another operator

Current Discriminatory Practices

Other discriminatory practices:

Provision of ADSL to the retail market by incumbents was authorised in Spain and UK: Competition Authorities did not authorise this in other EU countries (i.e. France)

Better contractual provisions for Incumbent´s ISPs: lack of transparency in wholesale contracts for indirect ADSL

Crossed subsidies amongst companies of the incumbent

Incumbents´ use of competitors´clients contact details with commercial purposes in the retail market

Use of fixed telephony clients´ data for the promotion of ADSL services (I.e.: ADSL publicity with phone bills)

Configuration of modems: incumbents´ control

Market effects of discrimination

Effects on current competition

Serious implications on new entrants´ business strategies and financial performances: postponement of operators entrance to the broadband access services market *(Belgium, Germany, Italy, Netherlands, Spain)*

Set up of ADSL market monopolies or oligopolies in many EU countries (*Germany, Italy, Spain)*

Non compliance of Service Level Agreements: lack of control over incumbents´ SLAs by ADSL providers.

ADSL service quality in danger: no incentives to improve the performance of a monopolist service

Creation of a climate of legal and business uncertainty

Market effects of discrimination

Long term effects

Reduced investment on infrastructures: short term ROI

Delays of investment on other broadband technologies (HDSL, Wireless……)

ADSL is becoming the key to the future control of broadband development

New technologies (xDSL,Wi-fi) under incumbents´ control

Captive clients: multimedia contents´ supply only provided to own ADSL access clients

Lack of choice for end users: lack of different offers

Possible remedies

Regulatory measures

Very close <u>follow-up of the European Commission and National Regulators in the process of the LLU: </u>EU and NRAs implementation of <u>effective measures to stop abuses of dominant position</u> by incumbents

National Regulators and Competition Authorities <u>effective surveillance of ADSL access conditions</u>: installation delays, capacity to inspect incumbents´ offices, access denial

<u>Proportionate sanctions</u> by NRAs to stop anti-competitive practices of incumbents

Possible remedies

Regulatory measures

Major changes and harmonization across Europe in the interconnection models on ADSL: each country offers at the moment different business models on WholeSales and Interconnection scenarios.

Transparent wholesale contracting: to avoid unfair competition and better conditions to incumbents´ group of companies

Standardisation on configuration of modems: clear public guidelines on the specification of modems and their compatibility with incumbents´ equipment

Possible remedies

Structural measures

Not allowance or suspension of incumbents´ direct supply to the ADSL retail market - unfair competition: at least until the opening of the Local Loop is finalised (*Spain and UK*)

Structural separation of incumbents´ ISPs from the incumbents group: in order to allow real competition and control crossed subsidies, lack of transparency in contracts and predatory prices through anti-competitive promotions

When necessary, legal limitation on the total ADSL market share of the incumbent: in most EU countries they control over 80% of the current ADSL market *(Germany, Spain, UK)*