

Explanatory Memorandum

Leased lines: Commission closes the leased line sector inquiry and two *ex-officio* cases in Belgium and Italy

Brussels, 10 December 2002

1. The sector inquiry

One of the principal outcomes of the sector inquiry is a considerable decrease in leased lines prices across the EU. A second important outcome is a pro-active stance of the National Regulatory Authorities (NRAs) regarding both pricing and provisioning of leased lines.

Price reduction

The main reasons for launching the leased line sector inquiry was evidence that tariffs for leased lines remained high and unrelated to cost despite the establishment of competing infrastructures by new entrants. Our market analysis has now demonstrated that prices have gone down in Europe since 1999.

For example, since the launch of the sector inquiry on 27 July 1999 average international leased line prices have gone down significantly in Europe (see table 1).

Table 1. Average price variations, 2 Mb/s. Percentage change 1998-2001

To near EU	-40%
To far EU	-30%
To USA	-33%

Source : 7th Report on the implementation of the Telecommunications Regulatory Package

However, the prices applied by incumbent operators still vary considerably from one country to another.

Regulatory intervention

The sector inquiry has achieved its role by highlighting the main persisting regulatory failures and by having encouraged the respective national regulators to take measures towards full implementation of the required Community level of regulation and harmonisation.

In the course of the sector inquiry it was established that issues other than pricing of international leased lines are crucial for competition, such as availability of the last leased segment needed to reach customers' premises, and delivery and repair times.

Most of the problems faced by new entrants could be solved by an effective application of the existing telecom sector specific regulation. This was re-confirmed during meetings held between DG Competition and new entrants in the market in 2001.

A distinction has to be made between the tools of the telecom sector-specific regulation and the enforcement of competition rules, and the results that could be achieved by those two sets of instruments. The solutions sought by the alternative operators and

competitors often boil down to monitoring cost accounting obligations and imposing enhanced reporting obligations on the incumbents. This could only be achieved within the framework of the sectoral regulation. Among the powers of the NRAs is the power to regularly collect information for the purposes of sectoral regulation. Moreover it became evident that national regulators in the concerned countries had started addressing the problems.

Following meetings and discussions in the course of the sector inquiry, there is now a clear commitment by the NRAs to achieve that goal together with the Commission's DG Information Society, in charge of sectoral regulation implementation at EU level. The increased intervention of NRAs is confirmed by the fact that no formal complaint regarding leased lines was recently lodged with DG Competition on competition grounds.

However, DG Competition will act on any substantiated complaints regarding leased lines pricing and provisioning when the incumbent practices amount to discrimination or otherwise unfair competitive behaviour to the detriment of the EU consumers.

For those reasons, DG Competition has decided to close the leased lines sector inquiry.

2. Ex-officio cases

Price evolution varies considerably from one country to another. Price concerns have been followed on a case by case basis.

In the wake of the sector inquiry, DG Competition opened five own initiative cases in November 2000 to investigate possible excessive international leased line prices of the incumbent operators in Belgium, Italy, Spain, Greece and Portugal.

DG Competition did not limit itself to examining international leased line prices of the incumbent operator only, but extended the scope of the investigation to short-distance leased line prices and issues of delivery times and conditions, in order to address concerns voiced by the industry.

Following the opening of the investigations, the incumbent operators in the five concerned Member States reduced significantly their leased lines tariffs, although, as shown in tables 2 and 3, the pattern of international leased line prices decrease varies between these countries.

Table 2 - 2 Mb/s half-circuit prices to near EU country

	1998	1999	2000	2001	2002
B	76	76	76	76	58
EL	111	111	111	111	na
E	135	135	95	95	95
I	206	170	137	68	62
P	127	104	104	79	67
EU-Avg	100	88	71	60	na

Index EU-average 1998 = 100

Source : 7th report, NRAs and Incumbent operators

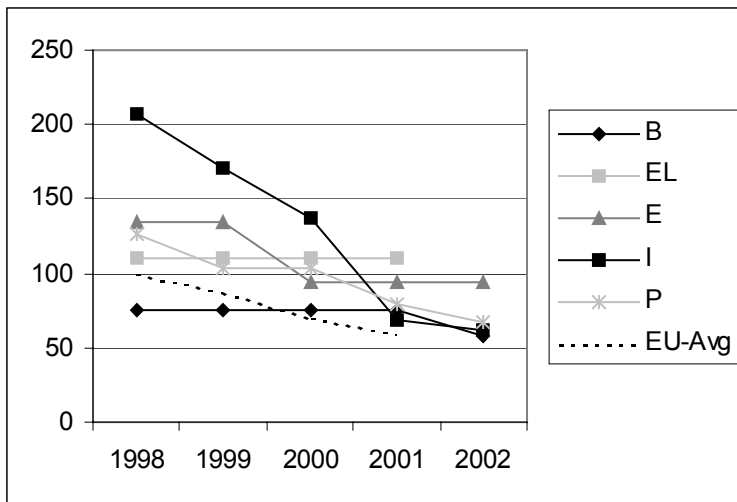
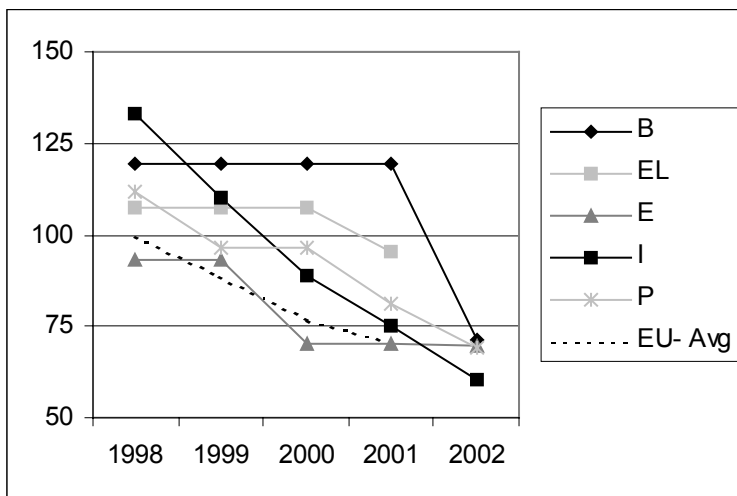


Table 3- 2 Mb/s half-circuit prices to distant EU country

	1998	1999	2000	2001	2002
B	119	119	119	119	72
EL	107	107	107	95	
E	93	93	70	70	70
I	133	110	89	75	60
P	112	97	97	81	69
EU- Avg	100	89	77	70	

Index EU-average 1998 = 100

Source : 7th report, NRAs and Incumbent operators



In addition, the national regulators in the Member States concerned have taken steps to address the provision of leased lines by the incumbent operators. Measures that have contributed to remedying existing problems are :

- More control over the service level agreement (SLA) and its enforcement;
- Requiring the incumbent to make a wholesale leased lines offer in Italy and Spain;
- Improved monitoring of cost orientation through imposition of more detailed cost-orientation models and accounting systems in Portugal and Spain. In Greece the NRA launched a cost-orientation study and reviewed the incumbent's cost accounting system;

- Inclusion of an interconnect leased circuit offer in the reference interconnection offer (RIO) and review of the conditions applied;
- Increased powers given to some NRAs, notably in Portugal where ICP-ANACOM, the Portuguese regulator, has been given competition competencies.
- In-dept sector investigations launched by CMT, the Spanish regulator, by AGCOM, the Italian regulator and in Portugal by ICP-ANACOM.

In order to decide whether to pursue the relevant individual cases the Commission used the following four criteria:

- Price reductions since the results of the sector inquiry of September 2000;
- Competitiveness of the markets: new entries and market dynamics;
- Introduction/application of service level agreements (SLA) and other conditions fostering competition;
- NRA/NCA (National Competition Authority) stance and likelihood of problems to be solved at national level.

On the basis of a complex analysis of these criteria per Member State, the Commission reached the conclusion that the Belgian and the Italian investigations could be closed, given the decrease in prices, improved competitiveness in the leased line markets, and the active position of the national regulators.

As regards Spain, it appears that competition is increasing and that international half-circuit prices are falling, and obstacles to competition are being addressed by the national regulator CMT. CMT have launched a thorough review of the Spanish leased line markets and have adopted a number of regulatory measures. However, due to high leased line prices (especially to near EU) which remain above the EU average in 2002, further monitoring is needed. The Commission will close the case in Spain if the incumbent reduces its prices or justifies their current level.

Liberalisation took place later in Portugal and Greece than in other Member States. As a consequence, competition has not really emerged so far in the leased lines sector. As regards Greece and Portugal DG Competition will reassess the merits of these cases if new market evolution is reported. In any case, a review of the market situation in Greece and Portugal will take place in 2003.

3. Background

A formal investigation into the EU telecommunications sector by means of a sector inquiry was opened on 27 July 1999 by the Commission pursuant to Article 12 of Regulation 17. Among others, it examined leased line prices. This was following big users' organisations complaints about very high leased line prices, and in particular for international broadband capacity. In September 2000, the Competition DG held a public hearing to discuss the preliminary findings of the inquiry and the ways to take the inquiry forward.

National competition and regulatory authorities attended the hearing and were invited to communicate their comments and intended measures regarding national (short-distance) leased lines, while Competition DG decided to focus its investigation on international half circuits prices in five Member States where the situation was found to be the most unsatisfactory.

Until recently, NRAs in certain countries have been giving priority to other issues (interconnection and local loop unbundling being the overriding priorities for most of them), and started probing their leased line markets only after the Commission's public hearing of September 2000.