

European Commission
Sector Inquiry
On the Competitive Provision of Leased Lines in EU Telecoms Markets

Public Hearing
Brussels, 22 september 2000

“Strategic Discounting and Non Pricing Abuses”

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The Italian Competition Authority (Autorità Garante della Concorrenza e del Mercato) has been charged since 1990, when it was instituted by Law n° 287/90, with a number of cases involving the leased lines sector.

Notwithstanding the liberalisation of the market as of January 1st, 1998, when the President of the Republic's Decree ("D.P.R.") n. 318/97 entered into force, implementing Directive n. 96/19/CE, Telecom Italia (TI) is *de facto* still in a monopoly position for the supply of leased-lines. In fact, there are very few alternative infrastructures available in this market, particularly at the local level, that can be provided in competition with TI's wide ranging offer.

In this context, the Authority has often used its reporting and advocacy powers (Art. 22 of Law n° 287/90), with respect to draft legislation in the telecommunications sector, which would have impinged competition on the leased-lines market. In particular, in 1998, on the occasion of the adoption of a new "*Reference Interconnection Offer by Telecom Italia*" (Report AS/122, in Bollettino n°. 5/1998) and on the occasion of the "*New financial conditions for the provision of direct circuits and tariff packages for voice traffic*" (Report AS/155, in Bollettino n°. 44/1998), two reports were submitted to the Government.

Moreover, the Authority has adopted many antitrust decisions relating to the leased lines sector, which were all brought under Art. 3 of Law n°. 287/90 for alleged abuses of dominant position by TI, the incumbent operator.

What follows is a list of the main decisions:

1. Case A71, *Telsystem/SIP* (refusal to deal)¹;
2. Case A178, *Albacom/Telecom Italia-Circuiti Dedicati* (discrimination)²;
3. Case C2833, *Telecom Italia/Intesa* (merger not cleared)³;
4. Case A255, *Associazione Italiana Internet Service Providers/Telecom Italia* (strategic discounting, cross subsidization)⁴
5. Case A285, *Infostrada/Telecom Italia -Tecnologia ADSL*, to be decided by 15 february 2001.

¹ Opened by Decision n. 2100 of 23 June 1994, in Bollettino n. 25-26/1994, and concluded by Decision n. 2662 of 10 January 1995, in Bollettino n. 1-2/1995

² Opened by Decision n. 4545 of 19 December 1996, in Bollettino n. 51/1996, and concluded by Decision n. 5428 of 30 October 1997, in Bollettino n. 44/1997

³ Concluded by Decision n. 5489, in Bollettino n. 46/1997

⁴ Opened by Decision n. 6192 of 10 July 1998, in Bollettino n. 28/98; the facts of this case clearly indicate that leased lines (“CDN”) are an essential factor in entering the market for Internet access services and that their prices are still high.

Although in most cases the Authority has dealt with leased lines prices that were consistently over the average international price levels, in some cases the incumbent anticompetitive practices concerned specifically strategic discounting as well as non pricing behaviour, like discrimination.

Case A178/1

Case A178, *Albacom/Telecom Italia Circuiti Dedicati*

Based on a complaint filed by Albacom SpA, alleging that TI had infringed Article 3 of Law n° 287/90 (Abuse of a dominant position), in respect of the following conducts:

1. by refusing to provide leased lines with a capacity between 64 Kbps and 2 Mbps in local areas, thereby increasing the costs of the services supplied by its competitors to their customers and limiting the technological development of the sector;
2. by supplying leased lines with a capacity above 2 Mbps only to its own customers;

3. by charging unjustifiably burdensome prices for leased lines;
4. by undercutting prices for the liberalised services, i.e. advanced telephony and data transmission, thereby making access to the market extremely difficult for the other telecoms operators.

Case A178/2

As a result of the proceeding, TI was condemned and fined by the Authority for having abused of its dominant position in the leased-lines market and accepted *inter alia* the following commitments:

1. reductions of the prices for long-distance leased-lines with a capacity equivalent to 2 Mbps, with a rebate from -35% to -60%, depending on the annual quantity demanded by the operator;
2. 10% reduction of the prices for long-distance circuits (backbone) with a speed below 2 Mbps (64 Kbps and nx64 Kbps);
3. introduction of the supply of local leased-lines with a capacity between 64 Kbps and 2 Mbps (nx64 Kbps);

4. public advertisement of the new products offered in the direct lines market.

Case C2833, Telecom Italia/Intesa

A merger between TI and INTESA SpA was prohibited, under Art. 6 and Art. 18 of Law n° 287/90, on November 13, 1997, on grounds that TI, notwithstanding the commitments proposed by the parties, would strengthen its dominant position, *inter alia*, in the leased-lines market, by acquiring the INTESA data network, that could be otherwise acquired by a competitor of TI.

Recently, INTESA has been entirely acquired by IBM.

***Case A255, Associazione Italiana Internet Service Providers/Telecom Italia
 (“Internet Case”)***

In 1998, the Authority received a number of complaints from Internet service providers, represented by the Associazione Italiana Internet Service Providers (“AIIP”), which alleged an abuse of dominant position by TI on the Internet access market.

The following conducts of the incumbent were *inter alia* subject to investigation by the Authority:

1. sales below costs of the TI’s Internet access services, TIN (residential) and Interbusiness (business);
2. cross-subsidisation of the relevant loss attributable to the ISP activities with the gains resulting from:

- a) the provision of PSTN and ISDN services to customers with dial-up access to Internet, and
 - b) the leased-lines business;
3. discriminatory practices in the supply of the Interbusiness services to customers.

Case A255/2

In the final decision, delivered on January 28, 2000, the Authority found that TI had seriously breached Art. 3 of Law n. 287/90 also in relation to the leased-lines market.

As far as leased-line prices are specifically concerned, it was confirmed in the Internet proceedings that:

a) In Italy leased lines prices are very high and, particularly, prices for 64 Kbps CDN in local areas seem to be still higher than in other European Member States (as revealed by a market study made by the complainant for the period 1990-1999 as well as from data provided by TI);

b) The economic operators (ISP and TOs) heard during the proceeding confirmed that leased lines (“CDN”) are an essential factor in entering the market for Internet access services and that they are extremely expensive. In fact, according to some TOs, the high cost of CDN represents the main barrier to market entry, as they amount, together with the fixed fee (*canone di abbonamento*) for the access to the PSTN, up to around 70% of the total costs paid by an ISP.

Budget data gathered during the investigations show that TI's revenues from sales of CDN were in the FY 1997 and 1998 the most important revenue

Case A255/3

element of the *Direzione Clienti Business*' net sales, whereas Internet access services had only a very limited impact on its turnover.

c) signs of a discriminatory pricing practice by TI were found in the proceedings in relation to the sale of leased lines. In particular, when selling CDNs to its own business units, TI applied flat prices, in the form of fixed annual fees (*canone annuo*), which do not take into account the distance of the circuits. On the contrary, circuits sold to other customers, such as ISP, were priced on the basis of tariffs, which vary according to the distance of the connection requested.

It should be remarked that earnings from CDNs (as well as from dial-up connections), i.e. from a *de facto* monopoly market, represented for TI an important source to subsidise the supply of Internet access services, on a competitive market, at prices which were significantly lower than those of competitors

In September 1999, TI reached an agreement with the AIP, in order to eliminate the anticompetitive effects of its conducts. With regards to CDNs, TI agreed on a reduction of their prices as of October 1st, 1999. According to TI, the reductions granted to ISP, ranging from 20%, on 2 Mbs local lines, to 10%, on 64 Mbs long distance lines, only anticipate more comprehensive tariff reductions, which were to be applied by the company in the first semester of the year 2000.

A285/1

Case A285, Infostrada/Telecom Italia Tecnologia ADSL

The case, opened on november, 1999 has to be decided by february 15th, 2001.

It concerns TI's anticompetitive behaviour in offering *retail* data services (Internet Access Services, data services and VANS) using x-DSL access technologies, that can be considered a substitute of leased lines

connections, without offering to competitors a *wholesale* service in order to guarantee a competitive final services market.

Given the monopoly position of TI in the local access market, this behaviour could well be considered an abuse by discrimination.