



EUROPEAN COMMISSION

Erkki Liikanen, Mario Monti
Members of the Commission

Brussels, **17.12.01 D/001234**

FOR THE ATTENTION OF:

Mr. Harald A. Summa, Geschäftsführer,
eco - Electronic Commerce Forum e.V.

Mr. Bernard J. Ebbers, CEO **WorldCom**

Mr. Phil Evins, Managing Director **ECTA**

Mr. Duncan Lewis, President and CEO **Ebone**

Mr. John A. McMaster, President and CEO,
KPNQwest N.V.

Mr. Joe McNamee, Director Regulatory Affairs
EuroISPA

Mr. David Wickham, Chief Executive **Energis Plc**

Mr. Ewan Sutherland, Executive Director
INTUG

John Legere, Chief Executive Officer
Global Crossing & Asia Global Crossing

Mr. Jürgen Grützner, Geschäftsführer **VATM**

Mr. Marc Keilwerth, CTO, **KKFnet AG**
Mr. Martin van Os, CFO, **KKFnet AG**

Dr. Dieter Finke, CEO
LambdaNet Germany and Europe

Mr. Ray Atkinson
President International Division, **VarTec Telecom**

Dear Sirs,

Thank you for your letter of 20 November 2001 in which you draw the Commission's attention to the difficulties of your associations' members/your companies concerning the conditions for delivery of leased circuits by incumbent operators in the EU.

First, we are grateful both for your support on the issue of harmonisation under the new framework, and for the detailed information on the specific question of the pricing and provisioning of leased lines that has been provided in recent months. As you know, the

Commission shares many of the concerns you have expressed, and you will have noted the strong messages to regulators in the 7th Implementation Report on precisely the issues of pricing and provisioning. You will also have noted, however, that progress has been made, and we believe that fact also needs to be acknowledged.

Further, we think it is worth recalling other action taken by the Commission in relation to leased lines. As you are aware, our respective services have placed the issue on the agenda of the ONP Committee on several occasions, and indeed some of the organisations which are signatory to your letter have been given the opportunity of addressing regulators and ministries from the fifteen Member States in that forum.

Following similar allegations to those raised in your letter, on 27 July 1999 the Commission opened a formal investigation by means of a sector inquiry into, inter alia, prices of leased lines across Europe. In September 2000, DG Competition held a public hearing to discuss the preliminary findings of the sector inquiry and ways to take the inquiry forward. It became clear that many of the concerns identified related to lack of cost orientation of leased lines in some Member States.

In November 1999, the Commission issued a Recommendation on the pricing of interconnection leased lines to help national regulators to address the problem of potentially excessive prices for such circuits. The Commission took action not least because of the importance of these lines for e-commerce and internet applications. The 6th and 7th Reports contain data on deviations from the ceiling prices set in the Recommendation, and show that for 2001 eight Member States are at or below the ceiling for 2Mbit/s 2km and 5km lines and six are above (one Member State is above for 5km lines and below for 2km lines).

Subsequent to the launch of the sector inquiry, a number of operators decreased their tariffs sharply, while the regulators of the five Member States concerned by further investigations of the Commission reviewed their markets and took or are considering taking measures. The 7th Report also contains detailed data on national and international leased lines at a range of speeds, and indicates that there is a downward trend in the pricing in particular of 64Kbit/s, 2Mbit/s and 34Mbit/s lines. However, the Report concludes that for all types of leased line there is a range of prices and provisioning times across the Community that cannot be justified in terms of differing costs or supply conditions.

The 7th Report also notes concerns that incumbents' cost accounting methodologies are not suitable for the economic pricing of leased lines, and that disparities in pricing indicate a lack of adequate supervision by the NRAs. The Commission has already taken action in the past in the form of infringement proceedings to ensure that cost accounting systems were put in place for the costing of leased line services. Infringement action was also taken following the 6th Report in respect of cost accounting principles for other services supplied by incumbents, in particular the obligation on NRAs to issue a statement of compliance. Unfortunately the latter obligation does not exist under the current framework in the case of the leased lines service.

Finally, the ONP Committee has received successive Leased Lines Reports pursuant to the Directive, focussing on the question of provisioning times.

We believe the action taken so far, as well as the conclusions directed to regulators, has been very robust, and has in many cases produced beneficial results for the market.

Turning to the specific complaints in your letter, we note your remark that incumbents across Europe are discriminating between customers and thereby abusing their dominant positions over the local access bottleneck. This is of course a serious allegation, which could open recourse under the ONP directives as well as the competition rules. You also make allegations in respect of specific Member States in regard to pricing, provisioning and other delivery conditions. However, in the light of both the sector inquiry and the 7th Report, it appears that the situation regarding pricing and provisioning differs greatly from country to country. We therefore consider that solutions should in the first instance be sought at national level on a case-by-case basis, in line with the requirements of Community law. In cases where national recourse has failed as a result of the incorrect application of Community principles we would of course welcome further information. As regards discrimination and abuses of a dominant position, we would require more detailed data providing evidence of breaches at Community level.

We will continue to publicise the issues you have raised for as long as they remain problematic, both in successive implementation reports and in the committee. We are in any case available to meet industry representatives, given the importance of the problem to the Community telecommunications market and the roll-out of the Information Society.

Erkki Liikanen

Mario Monti