

## **Commission response to concerns expressed by pan-European operators and users' groups on the provision of leased lines**

Brussels, 18 December 2001

On 20 November 2001, a number of pan-European telecommunication operators and users' groups addressed an open letter to Commissioners Mario Monti and Erkki Liikanen. This letter appealed for effective implementation of the existing regulatory framework regarding prices and provisioning of local access leased lines in certain Member States. On 14 December 2001 a delegation of the authors of the open letter met officials of the cabinet of Mario Monti, the competition Commissioner, and of the Directorate-General for Competition (Competition DG). The goal of the meeting was to explore in detail the difficulties faced by new entrants and alternative operators in obtaining local access leased lines in a number of Member States. France, Germany, the United Kingdom, the Netherlands, Spain, and Italy were listed as countries where the supply of local access leased lines (including interconnection leased circuits) by the incumbents raised issues of unfair competition.

Regarding each of these countries, the operators specified the nature of their problems as well as the action undertaken by the national regulatory authority (NRA) concerned:

**France:** Local access leased line prices were claimed as being very high and the French incumbent had allegedly unilaterally degraded the level of services available to its competitors. The French regulator ART has been dealing with those issues and a decision is expected in January 2002.

**Germany:** Serious deterioration in the provisioning times of DT AG has been the trend over the last year. WorldCom and BT Ignite filed a complaint with the national regulator RegTP in October 2001. While the operators do not require the Competition DG to open parallel procedures, they expect the Commission to follow the progress in those cases with RegTP and to consider intervention if no timely remedy can be obtained at national level.

**UK:** The telecom regulator OFTEL was reported to have adopted a draft direction in December 2001 to resolve a dispute with regard to the provision of partial private circuits. The document is now subject to public consultation<sup>1</sup>.

**The Netherlands:** The regulator OPTA is expected to decide on prices of local access leased circuits in January 2002.

**Spain:** The operators said that one of the best service level agreements (SLAs) in the EU was that of Telefonica, following the intervention of the regulator CMT. Definitive prices of interconnection leased lines to be decided upon by end of January 2002.

**Italy:** The wholesale offer for leased lines imposed by the NRA is now being appealed by the incumbent Telecom Italia and the commercial offer for interconnection leased lines perceived as very unfavourable by the competing operators. The regulator has been very active over the last six months.

The Competition DG recalled its work in five own initiative cases opened one year ago to investigate the high international leased circuit prices of the Belgian, Greek, Italian, Spanish and

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<sup>1</sup> [http://www.oftel.gov.uk/publications/broadband/leased\\_lines/ppcs1201.htm](http://www.oftel.gov.uk/publications/broadband/leased_lines/ppcs1201.htm)

Portuguese incumbents. In response to these procedures most of the incumbents concerned have already decided or are considering substantial decreases of their international leased line prices. The Competition DG nevertheless did not limit itself to examining international leased line prices only, but also looked at short-distance leased line prices and issues of delivery times and conditions, in order to address concerns voiced by the industry. In those five open cases, the co-operation with the national competition authorities and the NRAs is ongoing and involves close examination of the national incumbents' competitive behaviour regarding leased line provision.

In conclusion, the Competition DG stressed that a distinction has to be made between the tools of the telecommunications sectoral 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 in their letter boil down to a reduction of the effective delivery periods, cost-orientation of interconnection circuits, non-discrimination and enhanced reporting obligations on the part of the incumbents. Most of these measures can be imposed in the framework of sectoral regulation. For example, among the powers of the national telecom regulators is the power to regularly collect information. In this regard, the operators participating in the meeting acknowledged that national regulators in the concerned countries have started addressing the problems and time is needed to assess the effectiveness of their intervention.

The action of the national regulatory authorities in this area has also been confirmed in the 7<sup>th</sup> report on the implementation of the telecommunications regulatory package, which was adopted by the Commission in November 2001<sup>2</sup>.

Accordingly, the Competition DG will, together with the Information Society DG, continue to follow up the progress achieved by national regulators in the implementation of the regulatory framework regarding the incumbents' leased line prices and provisioning. Moreover, action under the EU competition rules can also be taken in case of substantiated complaints regarding leased lines pricing and provisioning when the incumbent practices amounted to discrimination.

## **Background**

On 27 July 1999 the Commission decided to open a formal investigation by means of a sector inquiry into, among others, prices of leased lines across the EU<sup>3</sup>. Big users' organisations had complained 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<sup>4</sup>. It became clear that most of the concerns identified related to partial and/or non-implementation of the sector-specific regulation in place and many market parties called for application of the existing regulation to open up effectively the markets for competition and even for more regulation.

National competition authorities and NRAs attended the hearing and were invited to communicate their comments and intended measures regarding national (short-distance) leased lines, while the Competition DG decided to focus its investigation on international half circuit prices. In November 2000 five *ex officio* cases were opened to further examine the competitive provision of international leased circuits in five Member States: Belgium, Greece, Italy, Portugal and Spain.

The information gathered in those five *ex officio* cases, via bilateral negotiations with the respective national telecom regulators and competition authorities, and industry data provided led to the following conclusions:

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<sup>2</sup> [http://europa.eu.int/information\\_society/topics/telecoms/implementation/annual\\_report/7report/index\\_en.htm](http://europa.eu.int/information_society/topics/telecoms/implementation/annual_report/7report/index_en.htm)

<sup>3</sup> [http://europa.eu.int/rapid/start/cgi/guesten.ksh?p\\_action.gettxt=gt&doc=IP/99/786|0|RAPID&lg=EN](http://europa.eu.int/rapid/start/cgi/guesten.ksh?p_action.gettxt=gt&doc=IP/99/786|0|RAPID&lg=EN)

<sup>4</sup> [http://europa.eu.int/comm/competition/antitrust/others/sector\\_inquiries/leased\\_lines/hearing\\_2000\\_09\\_22/](http://europa.eu.int/comm/competition/antitrust/others/sector_inquiries/leased_lines/hearing_2000_09_22/)

- High prices of international leased circuits were reported as falling quickly, with the deployment of alternative infrastructure, while national leased lines, and in particular short-distance lines prices (local access markets), remained of serious concern according to both the industry and the NRAs<sup>5</sup>.
- Next, short-distance interconnection leased line prices are price-regulated in several Member States in the framework of the reference interconnection offer (RIO) of the incumbent. In addition, where the relevant leased circuits fall within the scope of the leased lines Directive the NRAs are responsible for ensuring the cost-orientation of those tariffs. Most of the tariffs, however, were felt as lacking cost-orientation, mainly due to incorrect and inconsistent cost data possessed by the regulators.
- Although certain issues are observed in many of these five Member States (especially relating to the lack of cost-orientation and provisioning issues), situation greatly differs from country to country, therefore measures have to be taken on a case-by-case basis;
- NRAs in certain countries have been dealing with other issues (interconnection and local loop unbundling being the overriding priorities for most of them), and started looking at leased lines only after the Commission's public hearing in September 2000. In addition, the obligation to include interconnection half circuits in the RIO has only been imposed recently by some national regulators.
- Although the industry has informally addressed its concerns to the Commission, no formal complaint has been lodged with the Competition DG yet, awaiting the outcome of pending procedures with national regulators.

**See also:**

Joint reply of Commissioners Mario Monti and Erkki Liikanen to the open letter of 20 November 2001<sup>6</sup>.

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<sup>5</sup> See also "Leased Lines in Europe: Too Little, Too Late", Yankee Group Report August 2001. Among others, it studies the price reductions of 2Mbps circuits between 1992 – 2000. For international leased line the reduction amounts to 96%, while local leased line prices have fallen by 44% only (Exhibit 7 in the Report).

<sup>6</sup> [http://europa.eu.int/comm/competition/antitrust/others/sector\\_inquiries/leased\\_lines/](http://europa.eu.int/comm/competition/antitrust/others/sector_inquiries/leased_lines/)