INTERNET ACCESS: COMMISSION RECOMMENDATION

Subject: Liberalisation

Industry: Telecommunications

Source: Commission Statement IP/00/408, dated 26 April 2000, referring to its Recommendation and Communication

(Note. It is the second of these two documents which explains the competition aspects of proposals whose general purpose is the liberalisation of local access to the Internet. At present, in the Commission's view, this is one of the least competitive parts of the telecommunications sector.)

The Commission has adopted a Recommendation calling on all Member States to enact appropriate legal and regulatory measures for incumbent telecommunications operators to provide full unbundled access to the copper local loops by 31 December 2000, under transparent, fair and non-discriminatory conditions. In addition, the Commission has adopted a complementary Communication which explains the relationship of the Recommendation to Community competition rules. According to these rules incumbent operators have an obligation to provide unbundled access to the local loop in certain circumstances. The simultaneous adoption of this Communication strengthens the Recommendation's objective to provide access to local loops for all new entrants which will increase the level of competition and technological innovation, so stimulating the provision of a full range of telecommunication services, including broadband multimedia and high-speed Internet. The present actions follow on from the Commission's e-Europe initiative and are the first step in response to the conclusions of the Lisbon European Council to bring about a substantial reduction in the costs of using the Internet and to promote access to the Information Society for all.

Commissioners Liikanen and Monti said that the local access network remained one of the least competitive segments of the liberalized telecommunications sector. The measures addressed by the Commission to Member States on unbundled access to the local loop will help stimulate competition in the local access network, giving businesses and consumers access to an affordable advanced communications infrastructure and a wide range of services. This will enable Europe to seize the full potential of the digital, knowledge-based economy in growth and jobs. The Commission is confident that the recommended unbundling of the local loop will be a major new step towards more competitive and efficient telecommunications markets, and will facilitate the accelerated development of internet services.

In December 1999, the Commission published its e-Europe initiative, a Communication to the special European Council of Lisbon, which identifies a series of possible initiatives that could be taken by Member States to encourage the take up of e-commerce and similar information society services. The Lisbon European Council of 23 and 24 March 2000 agreed with this initiative, calling

upon Member States, together with the Commission, to work towards introducing greater competition in local access networks by the end of 2000 and unbundling of the local loop in order to help bring about substantial reduction in the costs of using the Internet and promote an Information Society for all. The local loop refers to the physical circuit between the customer's premises and the telecommunications operator's local switch or equivalent facility. Permitting 'unbundled access to the local loop' means allowing other operators to use, partially or fully, the local loops installed by incumbent telephone operators, enabling them to install new cost-effective technologies such as DSL (Digital Subscriber Loop). Under full unbundled access to the local loop new entrants would have full control of the commercial relationship with their customers, and in this way, new market entrants would be able to deploy all type of new technologies and to provide competitive services to consumers, including new broadband services. This will facilitate the deployment of high speed Internet services.

The Commission Recommendation and the Communication entitled *Unbundled Access to the Local Loop: enabling the competitive provision of a full range of telecommunication services including broadband multimedia and high-speed internet* are complementary. The Communication outlines the relationship of the Recommendation to the relevant sector specific Directives, and clarifies how Competition rules apply regarding access to the incumbents' local loops. In summary, the impact of the two measures is that:

- Member States should adopt legal measures to mandate full unbundling of the incumbents' copper local loop by 31 December 2000 under cost-oriented and non-discriminatory conditions.
- Shared access to the local loop (by which the incumbent operator continues to provide the basic telephone service and the new entrant simultaneously provides high-speed services) should be granted by the above-mentioned operators on request, since it is already covered under the current Open Network Provision (ONP) rules for special network access.
- Incumbent operators providing high speed bit stream services must follow the principle of non-discrimination and make available to competitors the facilities they use for their own services.

These three identified means of access to the local loop complement each other and should all be available as market offerings. In all cases, competition rules apply, and refusals by dominant operators to open the local loop to competitors requesting access may imply various forms of abuses of dominant position under Article 82 of the Treaty, such as refusals to deal, discrimination and limitation of production, markets or technical development to the prejudice of consumers. Where access is granted, fair and non-discriminatory conditions of access are crucial for successfully opening the local loop and for the development of a competitive market telecommunications services, in particular high speed services. This requires close monitoring by National Regulatory Authorities of delays, prices and contractual arrangements between incumbents and new entrants. Several Member States have already imposed or formally fixed dates for unbundling (Austria, Denmark, Finland, Germany, Italy, Netherlands, UK). ■