PRICING POLICY (LEASED LINES): COMMISSION INQUIRY

Subject: Pricing policy

Industry: Telecommunications
Leased lines; internet access

Source: Commission Statement IP/00/1043, dated 22 September 2000
Commission Working Document, dated 8 September, 2000, on the Initial Results of the Leased Lines Sector Inquiry

(Note. One of the Commission's preliminary findings is that prices for leased lines may be excessive. The statement reproduced below gives the Commission's reasons. In the light of the public hearing, the Commission may modify its views. At the end of the statement below, there are one or two excerpts from the Commission's working document, amplifying points made in the statement.)

On 22 September, 2000, Competition Commissioner Mario Monti opened a public hearing in Brussels to discuss the preliminary findings of the Commission's leased lines investigation, the first leg of the telecommunications sector inquiry launched last year. Among the results of the inquiry, the Commission has found that incumbents' prices for leased lines may be excessive for low bandwidths in Luxembourg and Spain and also possibly in Belgium and Sweden. For medium bandwidth incumbents' prices are above average in Italy and Ireland, and possibly in Portugal, Belgium, France and Spain as well. For high bandwidth the prices of the incumbents in Italy and Portugal appear to be above the average, with the UK possibly falling into this category though comparisons are not certain in this area.

"Leased lines are a vital element in the creation of e-Europe," Commissioner Monti said in opening the hearing. "They provide the underlying transmission capacity for the Internet, data services, and voice telephony, which are now offered in liberalised markets for most Member States. If prices do not fall further, innovation and investment will be stifled and consumers will suffer, as access to the Internet will remain too expensive. The Commission will ensure that the results of its inquiry are followed up by national authorities, and if necessary, directly through Commission action."

Attending the hearing is a wide representation of relevant stakeholders in the EU telecommunications sector: incumbent telecom operators, new entrants, big business users and national authorities. The hearing gives the opportunity for all participants to comment on the outcome of the Commission's study and propose ideas for further action. The event is divided into four sessions covering all the key issues: market developments; competition concerns and enforcement; the impact of sector-specific regulation of leased lines provision and pricing; the views of the different stakeholders - market players, users but also the national regulators and competition authorities.

The Commission regards leased line prices as being extremely important for the development of e-Europe, and in particular to reduce prices for consumers and businesses on the Internet. Following the hearing, the Commission initially expects national regulatory authorities to take action where problems have been identified concerning leased line prices. This is in line with the general principles of the Commission's access notice. However, if the case raises a particular Community wide interest or the Commission believes that action by the national authorities is not having the desired effect, the Commission will not hesitate to act under the competition rules of the Treaty.

The sector inquiry

The Commission decided on 27 July 1999 to open an inquiry into the telecommunications sector relating to:

the provision and pricing of leased lines;
mobile roaming services; and
the provision of access to and use of the residential local loop.

All of these areas are vital for the creation of e-Europe as they involve the pricing of important elements which enable Europe's citizens to access the Internet and all the services which operate over it.

The aim of the Commission's inquiry is to establish whether current commercial practices and prices in the telecommunications sector infringe the EC competition rules, in particular the prohibition of restrictive practices and abuses of a dominant position (Articles 81, 82, and/or 86 of the EC Treaty). This is only the third sector inquiry ever launched by the Commission. For the purpose of this inquiry, acting in close co-operation with the Directorate General for Information Society, the Commission's Directorate-General for Competition had prepared extensive formal requests for information. EC competition rules enable the Commission to conduct sector-wide investigations into suspicious pricing structures and practices that may restrict or distort competition. They allow the Commission to send formal requests for information, and provide for sanctions for parties who fail to reply or reply late or incompletely.

Concerning leased lines, the Commission sent more than 100 questionnaires to national competition authorities, telecommunications regulators and incumbent telecommunications operators across the EU, to new entrants supplying and/or purchasing leased lines, as well as to a number of big business users. The preliminary results of the inquiry have been summarised in the above-mentioned working document. As for roaming, the Commission is currently analysing the replies to the relevant questionnaires. Finally, as regards access to and use of the local loop, the Commission has received replies to its questionnaires from the dominant operators and from regulators; it prolonged until 31 October 2000 the deadline for replies by new entrants.

Results of the Commission's inquiry regarding leased lines

The Commission has produced a working document for the public hearing. This document explains the preliminary findings of the Commission's investigation. It

outlines the market trends that the sector inquiry has revealed and identifies a number of apparent market failures. The main findings of the inquiry, although provisional, can be summarised as follows.

Demand for leased lines is dramatically increasing, with the biggest driver being the Internet. The two major categories of users are telecom companies (alternative carriers, new fixed network entrants and mobile networks), Internet Service Providers (ISPs) and big business users. All those categories of users are considered "sophisticated users".

Supply is growing and will further increase once wireless local loop is commercially provided and alternative infrastructure (carrier's carriers) is further deployed. New players have entered the markets well-established operators (MCI WorldCom, Hermes (now GTS), Colt, KPNQWest) as well as new operators (Versatel, Viatel, Global Crossing). Investment is also made by operators of Internet Protocol based transnational networks, which further increases capacity. However, investment is asymmetric, with most of it concentrated in high-capacity, Pan-European fibre networks, and on certain preferred routes within Europe.

The relative weight of the leased lines revenue in the total turnover of the incumbent telecom operators differs largely. Domestic leased lines revenue accounts for from below 1% to above 17% of the total revenue for selected EU incumbents. For international leased lines, the proportion of revenue in the total turnover ranges between 3% and 27%. In the Member States where the liberalisation has been early and decisive, large volumes of sales and higher revenue from leased lines could be due to the maturity of those markets and the expansion of the ISPs, a major demand-driver.

The market definitions that have been used so far must be narrowed due to recent dynamic market developments. Domestic leased lines markets could be thought of as consisting of separate economic markets for short distance leased lines and long distance leased lines additionally segmented according to the bandwidth. The geographic markets for national leased lines can probably be defined as consisting of big metropolitan/rest of the country segments, while the question whether the international leased lines markets are global, EU-wide or narrower, requires a more detailed examination of relevant conditions of competition.

Competition is growing in certain markets (in particular, long-distance and international leased lines). There appears to be a powerful competitive pressure at the retail level, demonstrated by substantial discounts offered by incumbent operators. However, the fairness of certain discount schemes is questionable, and leaves scope for enforcement of competition rules, where the aim is to pre-empt competition.

Using a benchmark for international leased lines confirms that prices among different Member States diverge widely, and this divergence cannot be explained by variation in distance only. Regarding the pricing of leased lines, it appears that distance is relatively unimportant in comparison to density.

The comparison of prices of national leased lines confirmed very divergent ways of pricing leased lines by the incumbents in different Member States. Possibly excessive prices have been identified in the bandwidths of 2 Megabytes per second - Mbps - (incumbents' prices in Luxembourg and Spain are above the average, with Belgium and Sweden possibly in this group as well), 34 Mbps (price above the average for the incumbents in Italy and Ireland, but possibly also those in Portugal, Belgium, France and Spain) and 155 Mbps (not all the offers are in volumes that allow consistent comparisons, however, the prices of the incumbents in Italy and Portugal appear to be above the average, with the UK possibly falling into this category).

Non-price related problems in the competitive provision of leased lines have been also highlighted in the replies. The two most important seem to be potentially abusive strategic discounting (this may be the case in Spain, the Netherlands and Finland, but the issue has been raised with respect to other incumbents as well), and discriminative delays in the provision of leased lines, in particular in France, Ireland and Italy.

The above findings of the Commission are based on the replies to the Questionnaire sent to the EU incumbents, as well as to a sample of users and new entrants. The market trends described by those findings may continue to be present in the year of 2000, but it is also possible that other trends have emerged in the meantime.

[Note: All the Questionnaires can be found on the following web-site: http://europa.eu.int/comm/competition/antitrust/others/, under "Sector Inquiries" – "Leased Lines".]

Extracts from the Working Document

3.4 The replies to the questionnaire indicate that during the 1997-1999 period, leased lines tariffs still varied widely between Member States, to an extent which probably cannot be explained by underlying cost differences. It appears that many Member States have implemented the requirement in the Community law to ensure cost orientation of tariffs by imposing price caps. Given the retained very strong market position of the incumbent operators, action based on competition rules could be justified in cases of excessive pricing or discriminatory or predatory discounting, as well as in cases of discriminatory
delays in delivering leased lines.

3.5 Factors other than prices, such as long delays in provision and poor quality of service, as well as some institutional regulatory factors have been mentioned among the main factors slowing down the roll out of new infrastructure. Particular issues that have been mentioned in the replies include: onerous licensing procedures or unreasonably long delays in obtaining licenses, lengthy and cumbersome procedures to obtain permission to perform civil-works. Further investigation of these issues appears warranted, at least in order to substantiate claims that have been made by respondents. ■