



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 12.7.2000
COM(2000) 394 final

2000/0185 (COD)

Proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

on unbundled access to the local loop

(presented by the Commission)

EXPLANATORY MEMORANDUM

In response to the conclusions of the special European Council of Lisbon of 23-24 March 2000, the following up commitments made in its Communication reporting on the results of the public consultation on the 1999 Review and the orientations for the new Regulatory Framework, the Commission proposes this Regulation on unbundled access to the local loop to enforce the provision of full unbundling and shared access of the copper local loop of operators having significant market power, by 31 December 2000.

The copper local loop refers to the physical circuit between the customers' premises and the telecommunications operator's local switch or equivalent facility in the local access network. The local access network remains one of the least competitive segments of the liberalised telecommunications market, and is one of the areas which has been examined in the Commission's inquiry into the telecommunications sector, launched in October 1999¹. Providing unbundled local loops to all new entrants will increase the level of competition and technological innovation in the local access network, which in turn stimulate the competitive provision of a full range of telecommunication services from voice telephony to broadband multimedia and high-speed internet services. This will facilitate the growth of e-commerce and e-business in Europe.

The Commission already adopted a non-binding Recommendation² on unbundled access to the local loop, complemented by an associated Communication³, and the national regulatory authorities in Member States have indicated that without a strong legal base upon which to mandate unbundled access to the local loop, they could have difficulty achieving the goal set by the European Council.

The purpose of the proposed Regulation is to provide a legal base to enforce unbundled access to local loops of operators having significant market power by 31 December 2000.

¹ This sector enquiry has been launched under Article 12 of Council Regulation (EEC) No 17/62, and concerns three areas: the provision and pricing of leased lines; mobile roaming services; and the provision of access to and use of the residential local loop.

² Commission Recommendation 2000/417/EC of 25 May 2000 on unbundled access to the local loop.

³ Communication from the Commission on unbundled access to the local loops (COM(2000) 237, 26.4.2000).

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on unbundled access to the local loop

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 95 thereof,

Having regard to the proposal from the Commission¹,

Having regard to the opinion of the Economic and Social Committee²,

Having regard to the opinion of the Committee of the Regions³,

Acting in accordance with the procedure laid down in Article 251 of the Treaty⁴,

Whereas:

- (1) The conclusions of the special European Council of Lisbon of 23 and 24 March 2000 note that, for Europe to fully seize the growth and job potential of the digital, knowledge-based economy, businesses and citizens must have access to an inexpensive, world-class communications infrastructure and a wide range of services. The Member States, together with the Commission, are called upon "to work towards introducing greater competition in local access networks before the end of 2000 and unbundling the local loop, in order to help bring about a substantial reduction in the costs of using the Internet". The Feira European Council of 20 June 2000 endorsed the proposed *eEurope* Action Plan⁵ which identifies unbundled access to the local loop as a short-term priority.
- (2) The "local loop" is the physical copper line circuit in the local access network connecting the customer's premises to the operator's local switch, concentrator or equivalent facility. As noted in the Commission's Fifth Report on the implementation of the telecommunications regulatory package⁶, the local access network remains one of the least competitive segments of the liberalised telecommunications market. New entrants do not have wide-spread alternative network infrastructures and are unable,

¹ OJ C

² OJ C

³ OJ C

⁴ OJ C

⁵ COM(2000) 330 final.

⁶ COM(1999) 537.

with traditional technologies to match the economies of scale and scope of operators notified as having significant market power in the fixed public telephone network market ("notified operators"). This results from the fact that operators rolled out their old copper local access networks over significant periods of time protected by exclusive rights and were able to fund investment costs through monopoly rents.

- (3) The European Parliament Resolution of 13 June 2000 on the Commission communication on the 1999 Communications review⁷ stresses the importance of enabling the sector to develop infrastructures which promote the growth of electronic communications and e-commerce and the importance of regulating in a way that supports this growth. It notes that the unbundling of the local loop is currently mainly relevant to the copper infrastructure of a dominant entity and that investment in alternative infrastructures must have the possibility of ensuring a reasonable rate of return, since that might facilitate the expansion of these infrastructures in areas where their penetration is still low.
- (4) The provision of new loops with high capacity optical fibre directly to major users is a specific market that is developing under competitive conditions with new investments. This Regulation therefore does not address unbundled access to fibre local loops.
- (5) It would not be economically viable for new entrants to duplicate the incumbent's copper local loop access infrastructure in its entirety and within a reasonable time. Alternative infrastructures such as cable television, satellite, wireless local loops do not generally offer the same functionality or ubiquity.
- (6) It is appropriate to mandate unbundled access to the copper local loops only of notified operators. The Commission has already published an initial list of operators of fixed public telephone networks notified by the national regulatory authorities as having significant market power⁸.
- (7) Although commercial negotiation is the preferred method for reaching agreement on technical and pricing issues for local loop access, experience shows that in most cases regulatory intervention is necessary due to imbalance in negotiating power between the new entrant and the notified operator, and lack of other alternatives. Notified operators should provide information and unbundled access to third parties under the same conditions and of the same quality as they provide for their own services or those of their subsidiaries or partners. To this end, the publication by the notified operator of an adequate reference offer for unbundled access to the local loop, within a short time-frame and ideally on Internet, and under the supervisory control of the national regulatory authority, would contribute to creating transparent and non-discriminatory market conditions. In certain circumstances the national regulatory authority may, in accordance with Community law, intervene at its own initiative to impose terms, including pricing rules, designed to ensure interoperability of services, maximise economic efficiency and benefit end-users.

⁷ AS-0145/2000.

⁸ OJ C 112, 23.4.1999, p. 2.

- (8) Costing and pricing rules for local loops and associated facilities (such as collocation and leased transmission capacity) should be transparent, non-discriminatory and be objective to ensure fairness. Pricing rules should ensure that the local loop provider is able to cover its appropriate costs in this regard plus a reasonable return. Pricing rules for local loops should foster fair and sustainable competition and ensure that there is no distortion of competition, in particular no margin squeeze between prices of wholesale and retail services of the notified operator. In this regard, it is considered important that competition authorities be consulted.

~~(10)~~(9) In Recommendation 2000/417/EC of 25 May 2000 on unbundled access to the local loop: enabling the competitive provision of a full range of electronic communications services including broadband multimedia and high-speed Internet⁹ and the Communication of 26 April 2000¹⁰, the Commission set out detailed guidance to assist national regulatory authorities on the fair regulation of different forms of unbundled access to the local loop and on the application of existing Community law.

~~(11)~~(10) In accordance with the principles of subsidiarity and proportionality as set out in Article 5 of the Treaty, the objective of achieving a harmonised framework for unbundled access to the local loop in order to enable the competitive provision of an inexpensive, world-class communications infrastructure and a wide range of services for all businesses and citizens in the Community cannot be achieved by the Member States in a secure, harmonised and timely manner and can therefore be better achieved by the Community. This Regulation confines itself to the minimum required in order to achieve those objectives and does not go beyond what is necessary for that purpose,

HAVE ADOPTED THIS REGULATION:

Article 1

Scope

1. This Regulation shall apply to unbundled access to the local loops of network operators that have been notified to the Commission by the national regulatory authority as having significant market power in the provision of fixed public telephone networks and services in accordance with the relevant Community provisions (hereinafter referred to as "notified operators").
2. This Regulation shall apply without prejudice to the obligation under the relevant Community provisions for notified operators to comply with the principle of non-discrimination when using the fixed public telephone network to provide high speed access and transmission services to third parties under the same conditions as to its own services.

⁹ OJ L 156, 29.6.2000, p. 44.

¹⁰ COM(2000) 237.

Article 2

Definitions

For the purposes of this Regulation:

- (a) "local loop" means the physical copper line circuit in the local access network connecting the customer's premises to the fixed public telephone network operator's local switch, concentrator or equivalent facility;
- (b) "unbundled access to the local loop" means full unbundled access to the local loop and shared access to the local loop; it does not entail a change in ownership of the copper local loop;
- (c) "full unbundled access to the local loop" means the provision of access to the copper local loop of the incumbent operator, in such a way that the new entrant has exclusive use of the full frequency spectrum of the copper line and can offer a full range of voice and data services to end-users;
- (d) "shared access to the local loop" means the provision of access to the non-voice frequency spectrum of a copper line over which the basic telephone service is being provided to the end-user by the incumbent operator allowing a new entrant to deploy technologies - such as asymmetrical digital subscriber line (ADSL) systems - to provide the end-user with additional services such as high-speed Internet access;
- (e) "collocation" means the provision of physical space and technical conditioning necessary to reasonably accommodate and connect the equipment of a new entrant to access the local loop.

Article 3

Provision of unbundled access

1. Notified operators shall make available to third parties, by 31 December 2000 at the latest, unbundled access to the local loop, under transparent, fair and non-discriminatory conditions. Notified operators shall provide competitors with the same facilities as they provide to themselves or to their associated companies, and with the same conditions and time-scales.
2. Notified operators shall provide physical access for third parties to any technically feasible point of the copper local loop or sub-loop where the new entrant can collocate and connect its own network equipment and facilities in order to deliver services to its customer, either in the local switch, concentrator or equivalent facility.
3. Notified operators shall publish, by 31 December 2000 at the latest, a reference offer for the unbundled access to the local loops and associated facilities including collocation, sufficiently unbundled, and containing a description of the component offerings and the associated terms and conditions, including prices, taking account of the list in the Annex to Recommendation 2000/417/EC.

Article 4

Regulatory supervision

1. For as long as the level of competition in the local access network is insufficient to prevent excessive pricing, national regulatory authorities shall ensure that the prices for unbundled access to the local loop charged by notified operators follow the principle of cost orientation. National regulatory authorities shall be competent where justified to impose changes in the reference offer for the unbundled access to the local loop, including prices.

In adopting pricing rules and price decisions on unbundled access to the local loop, national regulatory authorities shall ensure that they foster fair and sustainable competition.

2. National regulatory authorities shall be competent to resolve disputes between undertakings concerning issues included in this Regulation, in a prompt, fair and transparent manner.

Article 5

Entry into force

This Regulation shall enter into force on the third day following that of its publication in the *Official Journal of the European Communities*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels,

For the European Parliament
The President

For the Council
The President

FINANCIAL STATEMENT

There are no financial implications of this Regulation

IMPACT ASSESSMENT FORM

THE IMPACT OF THE PROPOSAL ON BUSINESS WITH SPECIAL REFERENCE TO SMALL AND MEDIUM-SIZED ENTERPRISES(SMEs)

TITLE OF PROPOSAL

Proposal for a Regulation of the European Parliament and of the Council on unbundled access to the local loop

DOCUMENT REFERENCE NUMBER

THE PROPOSAL

1. *Taking account of the principle of subsidiarity, why is Community legislation necessary in this area and what are its main aims?*

This Regulation is one element in a new regulatory framework which seeks to ensure that the electronic communications sector continues to develop as a competitive market delivering benefits to all companies and individuals in the Community that use electronic communications services. This Regulation focus on the provision of unbundled access to the copper local loops of incumbent operators, an issue that received a strong support during the consultation process. By putting this obligation into a specific Regulation, it would be feasible to implement the proposed measure in all Member States by 31 December 2000.

The importance of consolidating the single market in this area is widely supported, and adaptation of existing Community measures is recognised as the most effective way of achieving this.

THE IMPACT ON BUSINESS

2. *Who will be affected by the proposal?*

Business users of all sizes will benefit from the greater competition, innovative market offerings and better value for money that unbundled access will provide.

Providing unbundled local loops for new entrants will increase the level of competition and technological innovation in the local access network of incumbent operators, which in turn stimulate the competitive provision of a full range of telecommunication services from voice telephony to broadband multimedia and high-speed internet services. This will facilitate the growth of e-commerce and e-business in Europe.

3. *What will business have to do to comply with the proposal?*

The proposal will require operators notified by national regulatory authorities as having significant market power in the fixed public telephone network to provide unbundled access to the copper local loops that they control under transparent, fair and non-discriminatory conditions.

4. *What economic effects is the proposal likely to have?*

The proposal is designed to stimulate growth of the sector and thus to generate on employment both within the sector and in associated markets.

The proposal will ensure that European market for electronic communications networks and services continues to offer attractive investment opportunities at a global level.

The proposal will increase competitiveness of businesses within the sector in particular concerning high-speed internet access, and by making them more efficient will benefit the economy as a whole, since all firms need efficient communications infrastructures.

5. *Does the proposal contain measures to take account of the specific situation of small and medium-sized firms (reduced or different requirements, etc.)?*

The proposal does not include any particular provision for SMEs.

CONSULTATION

6. *List the undertakings which have been consulted about the proposal and outline their main views.*

The Commission consulted on many aspects of these proposals in the 1999 Communications Review Communication (COM(1999)539) in November 1999. 229 organisations or individuals responded. A list may be found at the following web address: <http://www.ispo.cec.be/infosoc/telecompolicy/review99/comments/comments.html>.

Their main views are summarised in the Communication reporting on the results of the public consultation (COM(2000)239). The list of contributions on unbundled access may be found at the following web address:

<http://www.ispo.cec.be/infosoc/telecompolicy/unbundall/commentlst.html>.