

ORDER OF THE PRESIDENT OF THE FIFTH CHAMBER
OF THE COURT OF FIRST INSTANCE

15 June 2006 *

In Case T-271/03,

Deutsche Telekom AG, established in Bonn (Germany), represented by K. Quack,
U. Quack and S. Ohlhoff, lawyers,

applicant,

v

Commission of the European Communities, represented initially by
K. Mojzesowicz and S. Rating, and subsequently by K. Mojzesowicz and A. Whelan,
acting as Agents,

defendant,

* Language of the case: German.

supported by

Arcor AG & Co. KG, established in Eschborn (Germany), represented by M. Klusmann, F. Wiemer and M. Rosenthal, lawyers,

and by

CityKom Münster GmbH Telekommunikationsservice, established in Münster (Germany),

EWE TEL GmbH, established in Oldenbourg (Germany),

HanseNet Telekommunikation GmbH, established in Hamburg (Germany),

ISIS Multimedia Net GmbH & Co. KG, established in Düsseldorf (Germany),

Versatel Nord-Deutschland GmbH, previously KomTel Gesellschaft für Kommunikations- und Informationsdienste mbH, established in Flensburg (Germany),

NetCologne Gesellschaft für Telekommunikation mbH, established in Cologne (Germany),

TeleBel Gesellschaft für Telekommunikation Bergisches Land mbH, established in Wuppertal (Germany),

Versatel Süd-Deutschland GmbH, previously tesion Telekommunikation GmbH, established in Stuttgart (Germany),

Versatel West-Deutschland GmbH & Co. KG, previously VersaTel Deutschland GmbH & Co. KG, established in Dortmund (Germany),

represented by N. Nolte, T. Wessely and J. Tiedemann, lawyers,

interveners,

APPLICATION for annulment of Commission Decision 2003/707/EC of 21 May 2003 relating to a proceeding under Article 82 EC (Case COMP/C-1/37.451, 37.578, 37.579 — Deutsche Telekom AG) (OJ 2003 L 263, p. 9),

THE PRESIDENT OF THE FIFTH CHAMBER OF THE COURT
OF FIRST INSTANCE OF THE EUROPEAN COMMUNITIES

makes the following

Order

Procedure

- 1 By application lodged at the Registry of the Court of First Instance on 30 July 2003, Deutsche Telekom AG ('the applicant') brought an application for annulment of Commission Decision 2003/707/EC of 21 May 2003 relating to a proceeding under Article 82 EC (Case COMP/C-1/37.451, 37.578, 37.579 — Deutsche Telekom AG) (OJ 2003 L 263, p. 9, 'the contested decision').

- 2 By documents lodged at the Registry of the Court on 12 December 2003, Arcor AG & Co. KG ('the first intervener'), and CityKom Münster GmbH Telekommunikations-service, EWE TEL GmbH, HanseNet Telekommunikation GmbH, ISIS Multimedia Net GmbH & Co. KG, NetCologne Gesellschaft für Telekommunikation mbH, TeleBel Gesellschaft für Telekommunikation Bergisches Land mbH, Versatel Nord-Deutschland GmbH, previously KomTel Gesellschaft für Kommunikations- und Informationsdienste mbH, Versatel Süd-Deutschland GmbH, previously tesion Telekommunikation GmbH, Versatel West-Deutschland GmbH & Co. KG, previously Versatel Deutschland GmbH & Co. KG (jointly referred to as 'the second intervener'), applied for leave to intervene in this action in support of the form of order sought by the Commission.

- 3 By letter of 30 January 2004, the applicant sent the Court of First Instance a request for confidential treatment of certain passages of the application, the defence, the reply and certain annexes relating thereto.

- 4 By letter of 22 March 2004, the applicant sent the Court a request for confidential treatment of a passage from the rejoinder.

- 5 By order of the President of the First Chamber of the Court of First Instance of 6 May 2004, the companies mentioned in paragraph 2 above were granted leave to intervene in support of the form of order sought by the Commission. The decision on the validity of the request for confidential treatment was reserved.

- 6 Non-confidential versions of procedural documents, prepared by the applicant, were sent to the first and second interveners.

- 7 By letters of 24 June 2004, the first and second interveners disputed the request for confidentiality made by the applicant.

- 8 By letter of 20 December 2004, the applicant lodged observations on the objections of the first and second interveners. In the same letter, the applicant also requested that it be given the opportunity — in the event of its request for confidential treatment being completely or partially rejected — to withdraw from the Court's file the documents or parts of documents affected by the refusal of confidential treatment.

The request for confidential treatment

1. Preliminary observations

- 9 The request for confidential treatment was made on the basis of Article 116(2) of the Rules of Procedure of the Court of First Instance, which provides that ‘the intervenor shall receive a copy of every document served on the parties’, but that ‘[t]he President may, however, on application by one of the parties, omit secret or confidential documents’.
- 10 According to case-law, for the purpose of determining the conditions under which confidential treatment may be given to certain documents in the file, it is necessary to balance, in respect of each document or part of a document on the Court’s file for which confidential treatment is claimed, the applicant’s legitimate concern to prevent substantial damage to its business interests and the interveners’ equally legitimate concern to have the necessary information for the purpose of being fully in a position to assert their rights and to state their case before the Community Court (orders of the Court of First Instance in Case T-30/89 *Hilti v Commission* [1990] ECR II-163, paragraph 11, and of the President of the First Chamber of the Court of First Instance in Case T-168/01 *Glaxo Wellcome v Commission*, not published in the ECR, paragraph 35).
- 11 It must therefore be stated that sufficient grounds for the request for confidential treatment were given by the applicant in a document lodged at the Registry of the Court on 30 January 2004 and that those grounds were further supplemented by a document lodged on 20 December 2004. It stated, in respect of each item covered by the request for confidential treatment, the reasons for which it considers that the disclosure thereof would substantially damage its business interests.

- 12 Under those circumstances, so that the President can make the evaluation referred to in paragraph 10, the challenging of the request for confidentiality by the interveners must relate to precise items of the procedural documents which have been obscured and indicate the reasons for which confidentiality with regard to those items should be refused.
- 13 Finally, the applicant's request concerning the withdrawal of documents or of parts of documents in respect of which the President rejects the request for confidential treatment (see paragraph 8 above) cannot be accepted since, as presented, it seeks to circumvent the President's decision on the request for confidential treatment.

2. The items covered by the request for confidential treatment which were not disputed, expressly and precisely, by the interveners

- 14 The interveners have not disputed, expressly and precisely as referred to in paragraph 12 above, various items of the procedural documents in respect of which the applicant had requested confidential treatment. In accordance with the case-law referred to in paragraph 10 above, as regards those items, the President is unable to balance the applicant's legitimate concern to prevent substantial damage to its business interests and the interveners' equally legitimate concern to have the necessary information for the purpose of being fully able to assert their rights and to state their case before the Community Court.
- 15 Under those conditions, the applicant's request for confidential treatment must be upheld in so far as it concerns items which have not been disputed, expressly and precisely, by the interveners. Those items are:
- the contested decision (Annex A.1 to the application): the items obscured in recitals 99, 151, 152, 154, 160 to 162, 167 and 172;

- the statement of objections of 2 May 2002 (Annex A.2 to the application): the items obscured in paragraphs 26 to 28, 39, 45, 92, 124 to 126, 128, 131, 133, 137 to 140 and 143 to 147;

- the applicant's observations of 29 July 2002 on the statement of objections (Annex A.3 to the application): the items obscured on pages 4, 11 to 13, 37, 41, 65 to 67, 75, 76, 78 to 80, 88 to 91, 93, 94, 98, 100 to 106, 108, 109 and 122;

- the applicant's observations of 25 October 2002 on the complainants' responses (Annex A.4 to the application): the items obscured on pages 14 and 31;

- the supplementary statement of objections of 21 February 2003 (Annex A.5 to the application): the items obscured in paragraphs 1, 3, 4, 5 and 8 to 10;

- the applicant's observations of 14 March 2003 on the supplementary statement of objections (Annex A.6 to the application): the items obscured on pages 5, 7, 20 and 21;

- the decision of the Regulierungsbehörde für Telekommunikation und Post (German regulatory authority for telecommunications and post, 'RegTP') of 11 April 2002 (Annex A.8 to the application): the items obscured on pages 22 to 35 and 37;

- the decision of RegTP of 29 April 2003 (Annex A.9 to the application): the items obscured on pages 14, 15, 21, 22, 24, 25, 27, 30, 31 to 33 and 35;

- the decision of RegTP of 21 December 2003 (Annex A.10 to the application): the item obscured on page 13;

- the decision of RegTP of 30 March 2001 (Annex A.11 to the application): the items obscured on pages 31, 32 and 34 to 38;

- a document relating to the customer structure and consumption habits of the applicant's customers according to net household income (Annex A.15 to the application): the whole document;

- a document relating to mathematical models concerning the profitability of the applicant's competitors (Annex A.21 to the application): the items obscured on each page of this document;

- a document relating to the market shares of the applicant's competitors (Annex A.23 to the application): the entire document;

- a document concerning the development of the renting of subscriber lines (Annex A.27 to the application): the entire document;

- the defence: the figure obscured in paragraph 42;

- a letter from the German Government of 8 June 2000 (Annex B.3 to the defence): the figures obscured on page 3;

- a letter from RegTP of 3 April 2002 (Annex B.4 to the defence): the figures obscured on page 1;

- a decision of RegTP of 23 December 1999 (Annex C.2 to the reply): the items obscured on pages 12, 13 and 15;

- the rejoinder: the figure obscured in paragraph 31.

3. The items covered by the request for confidential treatment which have been disputed, expressly and precisely, by the interveners

- ¹⁶ The interveners dispute, expressly and precisely, the confidentiality of various items covered by the applicant's request for confidential treatment.
- ¹⁷ First, the first and second interveners dispute the confidentiality of the figure relating to the effect of the margin squeeze which has been obscured in paragraph 14 of the application.
- ¹⁸ Second, in addition to the item mentioned in the previous paragraph, the second intervener disputes the confidentiality of the following items of the application, which have also been obscured by the applicant:

- paragraph 76 and Annex A.14 to the application: the figures on the criteria used by people when choosing their telecommunications provider;

- paragraph 104: the information concerning the applicant's product-specific costs;

- paragraph 136: the applicant's assessment concerning the market shares of its competitors;

- paragraph 145: the figure indicating the applicant's loss of subscribers since 1998.

¹⁹ Third, the first and second interveners dispute the confidentiality of the following information, which has been obscured in the published version of the contested decision:

- recital 28: the applicant's ADSL (Asymmetric Digital Subscriber Line) turnover in the period from 1998 to 2002 (Table 2);

- recital 37: the decrease in the applicant's turnover due to price reductions from 1998 to 2001;

- recital 146: the relationship between the provision of new lines and the taking over of existing lines by the applicant;

- recital 147: the average one-off charge for all end-user lines of the applicant.

20 Fourth, in addition to the items mentioned in the preceding paragraph, the second intervener submits that the following figures contained in the contested decision cannot be considered as business secrets the disclosure of which would damage the applicant's business interests:

- recital 27: the number of the applicant's end-users from 1998 to 2002 (Table 1);

- recital 48: the percentage of the costs concerning ADSL services which are covered by the applicant's sale prices;

- recitals 143 to 145 (including Tables 3 to 7): the number of the applicant's end-users from 1998 to 2002;

- recital 148 (including Table 8): the average length of subscription of the applicant's clients, the proportionate weighted one-off charges and the average total retail price for access to the network;

— recitals 158 to 159 (including Table 11): the total monthly costs of the services offered by the applicant to end-users and the specific costs for 2001.

21 Fifth, the second intervener disputes the confidentiality of the passages obscured in pages 34 and 35 of the applicant's observations of 29 July 2002 on the statement of objections.

22 Sixth, the second intervener disputes the confidentiality of the passages obscured in the decision of RegTP of 8 February 1999 (Annex C.3 to the reply).

23 As regards the items mentioned in paragraphs 17 to 22 above, the confidentiality of which has been disputed, expressly and precisely, by the interveners, the President is able, in the light of the observations lodged by the applicant, to weigh up the interests of the parties in question (see paragraph 14 above).

4. The validity of the request for confidential treatment in so far as it covers, expressly and precisely, the items disputed by the interveners

Arguments of the parties

24 The applicant points out first of all that the contested decision concerns the prices which it charges to its competitors and to consumers for access to its local networks, which each consist of a number of local loops connecting end-users. According to

the contested decision, the applicant has infringed Article 82 EC by implementing a pricing strategy in the form of a margin squeeze, consisting in charging prices to competitors for unbundled access to local loops ('wholesale charges') which were greater than or comparable to the prices paid by the applicant's end-users for access to its fixed network ('retail charges').

- 25 It further submits that all of the items obscured in the various documents lodged and the annexes thereto constitute business secrets. They include information on its costs, sale volumes, customer structure and other economic bases of its activity. In any event, the interveners do not need the information the disclosure of which they request for the purpose of being fully in a position to assert their rights and to state their case before the Court.
- 26 The interveners reply that the obscured information relating to calculation of the applicant's costs or its turnover cannot all be considered as business secrets. The communication of this information is, in any case, necessary to allow them to verify the effect of the margin squeeze noted by the Commission and to support the latter's arguments on that point. Moreover, certain information is more than five years old and can no longer be considered as business secrets.

Findings of the Court

The request for confidential treatment of the figure obscured in paragraph 14 of the application and disputed by the first and second interveners

- 27 It must be noted that, at paragraph 14 of the application, the applicant summarises recitals 140 to 162 of the contested decision. The applicant has obscured the amount

of the margin squeeze — that is the divergence between the applicant’s wholesale charges and retail charges — existing, according to the Commission, at the time of the contested decision.

28 Since, according to the Commission, the gap between the wholesale charges and the retail charges is not sufficient to cover the applicant’s product-specific costs for providing retail services (contested decision, recital 161), the interveners would indirectly but unavoidably obtain information on the applicant’s cost structure if the exact amount of the margin squeeze was revealed to them.

29 As the aim of protecting the confidentiality of that information vis-à-vis the applicant’s competitors is legitimate, application of the exception referred to in the second sentence of Article 116(2) of the Rules of Procedure is, accordingly, justified.

30 The request for confidential treatment should therefore be granted in so far as it concerns the figure obscured in paragraph 14 of the application.

The request for confidential treatment concerning various items of the application and disputed only by the second intervener

— Paragraph 76 of the application and Annex A.14 to the application

31 In paragraph 76 of the application, the applicant provides information concerning the criteria used by people when choosing their telecommunications provider.

Those figures come from a document entitled 'Factors influencing the choice of supplier', which forms Annex A.14 to the application.

32 The information in question was obtained through a survey carried out at the applicant's request and to which third parties do not have access. Moreover, the results of that survey are such as to play an important role in the applicant's business strategy.

33 Under those circumstances, the applicant's request for confidential treatment should be granted in so far as it concerns paragraph 76 of the application and its Annex A.14.

— Paragraph 104 of the application

34 In paragraph 104 of the application, the applicant alleges that the Commission has made errors in its calculation of the weighted monthly product-specific costs per line (analogue, ISDN and ADSL lines considered together) in recital 159 of the contested decision. It has obscured, in that paragraph of the application, the figure given by the Commission in the contested decision and the allegedly correct figures relating to its product-specific costs.

35 Even if the figures in question concern 2001, they still constitute business secrets. In fact, the costs of the products which a company offers on the market directly influence its commercial behaviour. Moreover, in the present case, the applicant states that its product-specific costs have hardly changed since 2001.

36 Under those circumstances, the applicant's request for confidential treatment should be granted in so far as it concerns the items obscured in paragraph 104 of the application.

— Paragraph 136 of the application

37 In paragraph 136 of its application, the applicant has obscured its estimates relating to the market shares of its competitors in certain local areas served. Those estimates do not take account of its competitors' own networks, but are based purely on a comparison between the number of lines which the applicant uses itself and the number which it rents to its competitors. As it is, moreover, possible to deduce from this information the market shares held by the applicant itself, this information constitutes business secrets of the applicant (see, to that effect, the order of the President of the Third Chamber of the Court of First Instance of 15 October 2002 in Case T-203/01 *Michelin v Commission*, not published in the ECR, paragraph 26).

38 The request for confidential treatment should therefore be granted in so far as it concerns the items obscured in paragraph 136 of the application.

— Paragraph 145 of the application

39 In paragraph 145 of the application, the applicant has obscured the figure representing an estimate of the number of clients it has lost since 1998 to its competitors. This is information relating to the applicant's business development, and constitutes a business secret.

- 40 The request for confidential treatment should also be granted in so far as it concerns the figure obscured in paragraph 145 of the application.

The request for confidential treatment concerning various items of the contested decision and disputed by the first and second interveners

— Recital 28 (Table 2) of the contested decision

- 41 The information in recital 28 (Table 2) of the contested decision specifies the number of the applicant's analogue and digital lines which are equipped with ADSL technology. This is a business secret. Even if, as the first intervener submits, the RegTP's 2003 annual report mentions the relationship between the applicant's analogue and digital connections, it does not specify the applicant's activity in the ADSL sector.

- 42 However, in so far as the information in recital 28 (Table 2) of the contested decision concerns the years 1998 to 2000, it no longer constitutes business secrets (see, to that effect, orders of the Court of First Instance of 19 June 1996 in Joined Cases T-134/94, T-136/94 to T-138/94, T-141/94, T-145/94, T-147/94, T-148/94, T-151/94, T-156/94 and T-157/94 *NMH Stahlwerke and Others v Commission* [1996] ECR II-537, paragraph 27, and *Glaxo Wellcome v Commission*, paragraph 39). It must be underlined that the evolution of the ADSL sector has been such, from 2001, that the disclosure of information relating to the years 1998 to 2000 to the interveners would not allow them to draw precise conclusions concerning the evolution of the applicant's business as regards the different segments of that sector.

- 43 Concerning recital 28 of the contested decision, the applicant's request for confidential treatment should therefore be granted in so far as it concerns the figures contained in Table 2 concerning 2001 and 2002 and should be dismissed as to the remainder.

— Recital 37 of the contested decision

- 44 It must be pointed out, first, that in recital 35 of the contested decision it is stated that the German authorities required the applicant to reduce its retail charges by 4.3% during the period from January 1998 until December 1999 and by 5.6% during the period from January 2000 until December 2001. In recital 37, it is indicated that, during those periods, the applicant substantially lowered its prices, going beyond the mandatory reductions. The information obscured concerns the reduction in turnover resulting from the price reductions in respect of the ‘residential’ basket and the ‘business’ basket during the two abovementioned periods and the total voluntary price reductions.
- 45 It must therefore be stated that that information largely relates to facts dating from five or more years ago. Confidential treatment could, exceptionally, be granted to such information only if it were shown that, notwithstanding their historical nature, they still constitute, in this case, essential elements of the commercial position of the undertaking concerned (*Glaxo Wellcome v Commission*, paragraph 39).
- 46 To that effect, the applicant submits that the business clients sector (the ‘business’ basket), which includes important clients, comes under a particularly confidential area of its activity. The relationship between the ‘residential’ and ‘business’ baskets does not significantly change with the passing of time. It would be easy to extrapolate, from the information in recital 37 of the contested decision, the relationship between the turnover relating to the ‘residential’ basket and that relating to the ‘business’ basket.

47 Under those circumstances, the request for confidential treatment should be granted in so far as it concerns the figures obscured relating to, respectively, the 'residential' basket and the 'business' basket. However, the request for confidential treatment is rejected in so far as it concerns the total voluntary, supplementary reductions for the two baskets together.

— Recitals 146 and 147 of the contested decision

48 The information obscured in recital 146 of the contested decision concerns the relationship between the provision of new connections (that is to say completely new installations) and the taking over of existing lines of the applicant. This is sensitive commercial information which should not, in principle, be disclosed to the interveners.

49 The information obscured in recital 147 of the contested decision concerns the percentage of TDSL (Turbo Digital Subscriber Line, broadband connections) connections provided in relation to all of the applicant's end-user lines. On the basis of this percentage, the Commission then calculates the average charge for all of the applicant's end-user lines. This information, which is, moreover, recent, must also be classified as business secrets (see, to that effect, *Glaxo Wellcome v Commission*, paragraph 10 above, paragraph 47).

50 The applicant's request for confidential treatment must therefore be granted in so far as it concerns the items obscured in recitals 146 and 147 of the contested decision.

The request for confidential treatment concerning various elements of the contested decision and disputed only by the second intervener

— Recitals 27 (Table 1) and 143 to 145 (including Tables 3 to 7) of the contested decision

- 51 The information obscured in those recitals concerns the detailed breakdown of the applicant's clients in the various segments of the telephone connections market, including all of the sub-segments in the ISDN and ADSL sectors. This information constitutes, in principle, business secrets.
- 52 However, certain items in respect of which confidential treatment has been requested relate to facts dating from five years ago and no longer constitute business secrets, in view in particular of the evolution of the different segments of the market since 2001 (see, to that effect, *NMH Stahlwerke and Others v Commission*, paragraph 42 above, paragraph 27, and *Glaxo Wellcome v Commission*, paragraph 10 above, paragraph 39).
- 53 The applicant's request for confidential treatment should therefore be granted in so far as it concerns figures relating to the years 2001 and 2002 and rejected as to the remainder. Consequently, the request for confidential treatment is rejected in so far as it concerns figures relating to the years 1998 to 2000, set out in Table 1 of recital 27 of the contested decision, and in Tables 5 to 7 of recital 145 of the contested decision.

— Recitals 48, 158 and 159 of the contested decision

54 Information relating to the applicant's costs concerning its ADSL services has been obscured in recital 48 of the contested decision.

55 The figures in recitals 158 and 159 (including Table 11) concern the applicant's total monthly costs of services to end-users, differentiating between analogue, RNIS and ADSL lines.

56 For the reasons mentioned in paragraph 35 above, the applicant's request for confidential treatment should be granted in so far as it concerns the items obscured in recitals 48, 158 and 159 of the contested decision.

— Recital 148 of the contested decision

57 The applicant's customers pay, for taking over an existing telephone line, a one-off charge to which is added the monthly charge. To calculate the end-user's total average monthly charge, the one-off charge (taking account of the average length of a subscription) must be added to the monthly charge.

- 58 The items obscured in recital 148 of the contested decision give the average length of subscription of the applicant's customers. This is information concerning the applicant's customer structure, which constitutes business secrets.
- 59 The items obscured in Table 8 of recital 148 concerns the calculation of the average monthly price for the end-user for the years 1998 to 2003. This information, when recent, constitutes business secrets. Moreover, even if certain information relates to facts dating from five years ago or more, the applicant's request should nevertheless be granted in so far as it covers all of the information obscured in Table 8, as disclosure of the total average monthly price for end-users for the years 1998 to 2000 would allow the second intervener to deduce the average length of subscription of the applicant's customers.
- 60 The applicant's request for confidential treatment should therefore be granted in so far as it concerns the items obscured in recital 148 (including Table 8).

The request for confidential treatment concerning certain passages of pages 34 and 35 of the applicant's observations of 29 July 2002 on the statement of objections and disputed only by the second intervener

- 61 The passages obscured on pages 34 and 35 of the applicant's observations on the statement of objections contain a description of the contacts which have taken place between the Commission and the applicant, on the one hand, and the German authorities, on the other, during the period from 1999 to 2000.

- 62 There is nothing in those passages concerning the applicant's commercial policy. In any case, the disclosure of the items obscured in pages 34 and 35 of the applicant's observations on the statement of objections cannot prejudice the applicant's business interests. The passages in question do not in fact convey information liable to be used by third parties in the context of competitive relations to the applicant's detriment.
- 63 The request for confidential treatment must therefore be rejected in so far as it concerns the items obscured on pages 34 and 35 of the applicant's observations of 29 July 2002 on the statement of objections.

The request for confidential treatment concerning the obscured passages of RegTP's decision of 8 February 1999 and disputed only by the second intervener

- 64 It is common ground between the parties that some of the companies, which for the purposes of this order are jointly referred to as the second intervener, have had, following a judgment of the Bundesverwaltungsgericht (German Federal Administrative Court) of 15 August 2003 (BVerwG 20 F. 8.03), access to the full text of RegTP's decision of 8 February 1999.
- 65 As the information in respect of which confidential treatment has been requested constitutes information which is already available to some companies which are competitors of the applicant, the request for confidential treatment must be rejected in so far as it concerns RegTP's decision of 8 February 1999 (see, to that effect, orders of the Court of First Instance of 29 May 1997 in Case T-89/96 *British Steel v Commission* [1997] ECR II-835, paragraphs 26 and 37, and *Glaxo Wellcome v Commission*, paragraph 43).

On those grounds,

THE PRESIDENT OF THE FIFTH CHAMBER
OF THE COURT OF FIRST INSTANCE

hereby orders:

- 1. The request for confidential treatment, made by the interveners, is granted in respect of the following items:**
 - **the application, paragraph 14 (the figure obscured);**
 - **the application, paragraph 76 (the whole paragraph);**
 - **the application, paragraph 104 (the items obscured);**
 - **the application, paragraph 136 (the items obscured);**
 - **the application, paragraph 145 (the figure obscured);**
 - **the application, Annex 14 (the whole Annex);**
 - **Commission Decision 2003/707/EC of 21 May 2003 relating to a proceeding under Article 82 EC (Case COMP/C-1/37.451, 37.578, 37.579 — Deutsche Telekom AG), recital 27 (the figures obscured relating to the years 2001 and 2002 set out in Table 1);**

- **Decision 2003/707, recital 28 (the figures obscured relating to the years 2001 and 2002 set out in Table 2);**

- **Decision 2003/707, recital 37 (the figures obscured concerning respectively the ‘residential’ basket and the ‘business’ basket);**

- **Decision 2003/707, recital 48 (the figures obscured);**

- **Decision 2003/707, recital 99 (the figure obscured);**

- **Decision 2003/707, recital 143 (the figures obscured);**

- **Decision 2003/707, recital 144 (the figures obscured set out in Table 3);**

- **Decision 2003/707, recital 145 (the figures obscured set out in Table 4);**

- **Decision 2003/707, recitals 146 and 147 (the figures obscured);**

- **Decision 2003/707, recital 148 (the figures obscured including those set out in Table 8);**

- **Decision 2003/707, recitals 151, 152 and 154 (the figures obscured including those set out in Tables 9 and 10);**

- **Decision 2003/707, recitals 158 and 159 (the figures obscured including those set out in Table 11);**

- **Decision 2003/707, recitals 160 to 162, 167 and 172 (the figures obscured including those set out in Table 12);**

- **the statement of objections of 2 May 2002 (Annex A.2 to the application), paragraphs 26 to 28, 39, 45, 92, 124 to 126, 128, 131, 133, 137 to 140 and 143 to 147 (the items obscured);**

- **the applicant's observations of 29 July 2002 on the statement of objections (Annex A.3 to the application), pages 4, 11 to 13, 37, 41, 65 to 67, 75, 76, 78 to 80, 88 to 91, 93, 94, 98, 100 to 106, 108, 109 and 122 (the items obscured);**

- **the applicant's observations of 25 October 2002 on the complainants' responses (Annex A.4 to the application), pages 14 and 31 (the items obscured);**

- **the supplementary statement of objections of 21 February 2003 (Annex A.5 to the application), paragraphs 1, 3, 4, 5 and 8 to 10 (the items obscured);**

- **the applicant's observations of 14 March 2003 on the supplementary statement of objections (Annex A.6 to the application), pages 5, 7, 20 and 21 (the items obscured);**

- **the decision of the Regulierungsbehörde für Telekommunikation und Post (RegTP) of 11 April 2002 (Annex A.8 to the application), pages 22 to 35 and 37 (the items obscured);**

- **the decision of RegTP of 29 April 2003 (Annex A.9 to the application), pages 14, 15, 21, 22, 24, 25, 27, 30, 31 to 33 and 35 (the items obscured);**

- **the decision of RegTP of 21 December 2003 (Annex A.10 to the application), page 13 (the item obscured);**

- **the decision of RegTP of 30 March 2001 (Annex A.11 to the application), pages 31, 32 and 34 to 38 (the items obscured);**

- **a document relating to the customer structure and consumption habits of the applicant's clients according to net household income (Annex A.15 to the application) (the whole document);**

- **a document relating to mathematical models concerning the profitability of the applicant's competitors (Annex A.21 to the application) (the information obscured on each page of this document);**

- **a document relating to the market shares of the applicant's competitors (Annex A.23 to the application) (the entire document);**

- **a document concerning the development of the renting of subscriber lines (Annex A.27 to the application) (the whole document);**

- **the defence, paragraph 42 (the figure obscured);**

- a letter from the German Government of 8 June 2000 (Annex B.3 to the defence), page 3 (the figures obscured);

 - a letter from RegTP of 3 April 2002 (Annex B.4 to the defence), page 1 (the figures obscured);

 - a decision of RegTP of 23 December 1999 (Annex C.2 to the reply), pages 12, 13 and 15 (the items obscured);

 - the rejoinder, paragraph 31 (the figure obscured).
2. The request for confidential treatment made by the first intervener is rejected in respect of the following elements:
- Decision 2003/707, recital 28 (the figures relating to the years 1998 to 2000 set out in Table 2);

 - Decision 2003/707, recital 37 (the total amount of the supplementary voluntary reductions in respect of the ‘residential’ and ‘business’ baskets together).
3. The request for confidential treatment made by the second intervener is rejected in respect of the following elements:
- Decision 2003/707, recital 27 (the figures relating to the years 1998 to 2000 set out in Table 1);

- **Decision 2003/707, recital 28 (the figures relating to the years 1998 to 2000 set out in Table 2);**

 - **Decision 2003/707, recital 37 (the total amount of the supplementary voluntary reductions in respect of the ‘residential’ and ‘business’ baskets together);**

 - **Decision 2003/707, recital 145 (all of the figures set out in Tables 5 to 7);**

 - **the applicant’s observations of 29 July 2002 on the statement of objections (Annex A.3 to the application), pages 34 and 35 (the whole pages);**

 - **a decision of RegTP of 8 February 1999 (Annex C.3 to the reply) (the whole decision).**
- 4. A non-confidential version of the procedural documents including the passages referred to in paragraphs 2 and 3 sent by the applicant within the time-limit set by the Registrar shall be served by the Registrar on the interveners concerned.**
- 5. The costs are reserved.**

Luxembourg, 15 June 2006.

E. Coulon

Registrar

M. Vilaras

President