

DIRECTIVE 97/33/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 30 June 1997

on interconnection in Telecommunications with regard to ensuring universal service and interoperability through application of the principles of Open Network Provision (ONP)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 100a thereof,

Having regard to the proposal from the Commission (1),

Having regard to the Opinion of the Economic and Social Committee (2),

Acting in accordance with the procedure laid down in Article 189b of the Treaty (3) in the light of the joint text approved by the Conciliation Committee on 19 March 1997,

- (1) Whereas from 1 January 1998, with transition periods for certain Member States, the provision of telecommunications services and infrastructure in the Community will be liberalized; whereas the Council Resolution of 7 February 1994 on universal service principles in the telecommunications sector (4) recognizes that in order to promote Community-wide telecommunications services there is a need to ensure interconnection of public networks and, in the future competitive environment, interconnection between different national and Community operators; whereas Council Directive 90/387/EEC of 28 June 1990 on the establishment of the internal market for telecommunications services through the implementation of open network provision (5) lays down harmonized principles for open and efficient access to, and use of, public telecommunications networks and, where applicable, publicly available services; whereas the Council Resolution of 22 July 1993 on the review of the situation in the telecommunications sector and the need for further development in that market (6) recognizes that open network provision measures provide an appropriate framework for harmonizing

interconnection conditions; whereas this harmonization is essential for the establishment and proper functioning of the internal market for telecommunications services; whereas the Council Resolution of 18 September 1995 on the implementation of the future regulatory framework for telecommunications (7) recognizes as key factors of this future regulatory framework the maintenance and development of a universal service as well as a specific regulation on interconnection, and sets out some guidelines on these subjects;

- (2) Whereas a general framework for interconnection to public telecommunications networks and publicly available telecommunications services, irrespective of the supporting technologies employed, is needed in order to provide end-to-end interoperability of services for Community users; whereas fair, proportionate and non-discriminatory conditions for interconnection and interoperability are key factors in fostering the development of open and competitive markets;
- (3) Whereas the abolition of special and exclusive rights in telecommunications means that certain existing definitions need to be revised; whereas for the purposes of this Directive, telecommunications services do not include radio and television broadcasting services; whereas the technical conditions, tariffs, usage and supply conditions that apply to interconnection may be different from the conditions that apply at end-user/network interfaces;
- (4) Whereas the regulatory framework for interconnection covers those situations where the interconnected networks are used for the commercial provision of publicly available telecommunications services; whereas the regulatory framework for interconnection does not cover cases where a telecommunications network is used for the provision of telecommunications services available only to a specific end-user or to a closed user group, but covers only cases where a telecommunications network is used for the provision of publicly available services; whereas telecommunications networks which are interconnected may be owned by the parties involved or may be based on leased lines and/or transmission capacity not owned by the parties involved;

(1) OJ No C 313, 24. 11. 1995, p. 7.

(2) OJ No C 153, 28. 5. 1996, p. 21.

(3) Opinion of the European Parliament of 14 February 1996 (OJ No C 65, 4. 3. 1996, p. 69), Council Common Position of 18 June 1996 (OJ No C 220, 29. 7. 1996, p. 13) and Decision of the European Parliament of 19 September 1996 (OJ No C 320, 28. 10. 1996, p. 138). Council Decision of 2 June 1997. Decision of European Parliament of 11 June 1997.

(4) OJ No C 48, 16. 2. 1994, p. 1.

(5) OJ No L 192, 24. 7. 1990, p. 1.

(6) OJ No C 213, 6. 8. 1993, p. 1.

(7) OJ No C 258, 3. 10. 1995, p. 1.

- (5) Whereas, following the removal of special and exclusive rights for telecommunications services and infrastructure in the Community, the provision of telecommunications networks or services may require some form of authorization by Member States; whereas organizations authorized to provide public telecommunications networks or publicly available telecommunications services in all or part of the Community should be free to negotiate interconnection agreements on a commercial basis in accordance with Community law, subject to supervision and, if necessary, intervention by national regulatory authorities; whereas it is necessary to ensure adequate interconnection within the Community of certain networks and interoperability of services essential for the social and economic well-being of Community users, notably fixed and mobile public telephone networks and services, and leased lines; whereas, for the purpose of this Directive 'public' does not refer to ownership, nor does it refer to a limited set of offerings designated as 'public networks' or 'public services', but means any network or service that is made publicly available for use by third parties;
- (6) Whereas it is necessary to define those organizations which have rights and obligations for interconnection; whereas in order to stimulate development of new types of telecommunications services, it is important to encourage new forms of interconnection and special network access at points other than the network termination points offered to the majority of end-users; whereas the market power of an organization depends on a number of factors including its share of the relevant product or service market in the relevant geographical market, its turnover relative to the size of the market, its ability to influence market conditions, its control of the means of access to end-users, its international links, its access to financial resources and its experience in providing products and services in the market; whereas, the determination of which organizations have significant market power should be undertaken by national regulatory authorities taking into account the situation in the relevant market;
- (7) Whereas the concept of universal service must evolve to keep pace with advances in technology, market development and changes in user demand; whereas the new conditions for the provision of universal service should be assessed in the future review of this Directive;
- (8) Whereas obligations for the provision of universal service contribute to the Community objective of economic and social cohesion and territorial equity; whereas there may be more than one organization in a Member State with universal service obligations; whereas Member States should encourage the early introduction of new technologies like the integrated services digital network (ISDN) on as broad a basis as possible; whereas at its current stage of development in the Community, ISDN is not accessible for all users and is not subject to the universal service provisions of this Directive; whereas it may be appropriate in due course to consider whether ISDN should be part of the universal service; whereas the calculation of the net cost of universal service should take due account of costs and revenues, as well as economic externalities and the intangible benefits resulting from providing universal service but should not hinder the on-going process of tariff rebalancing; whereas costs of universal service obligations should be calculated on the basis of transparent procedures; whereas financial contributions related to the sharing of universal service obligations should be unbundled from charges for interconnection; whereas, when a universal service obligation represents an unfair burden on an organization, it is appropriate to allow Member States to establish mechanisms for sharing the net cost of universal provision of a fixed public telephone network or a fixed public telephone service with other organizations operating public telecommunications networks and/or publicly available voice telephony services; whereas this should respect the principles of Community law, in particular those of non-discrimination and proportionality and should be without prejudice to Article 100a (2) of the Treaty;
- (9) Whereas it is important to lay down principles to guarantee transparency, access to information, non-discrimination and equality of access, in particular for organizations with significant market power;
- (10) Whereas pricing for interconnection is a key factor in determining the structure and the intensity of competition in the transformation process towards a liberalized market; whereas organizations with significant market power must be able to demonstrate that their interconnection charges are set on the basis of objective criteria and follow the principles of transparency and cost orientation, and are sufficiently unbundled in terms of network and service elements offered; whereas publication of a list of interconnection services, charges, terms and conditions enhances the necessary transparency and non-discrimination;

whereas flexibility in the methods of charging for interconnection traffic should be possible, including capacity-based charging; whereas the level of charges should promote productivity and encourage efficient and sustainable market entry, and should not be below a limit calculated by the use of long-run incremental cost and cost allocation and attribution methods based on actual cost causation, nor above a limit set by the stand-alone cost of providing the interconnection in question; whereas charges for interconnection based on a price level closely linked to the long-run incremental cost for providing access to interconnection are appropriate for encouraging the rapid development of an open and competitive market;

(11) Whereas, where an organization with special or exclusive rights in a non-telecommunications field also provides telecommunications services, accounting separation or structural separation are appropriate means to discourage unfair cross-subsidies at least above a certain turnover in telecommunications activities; whereas, when an organization enjoys significant market power, appropriate accounting separation between interconnection activities and other telecom activities, so as to identify all elements of cost and revenue related to those activities, ensures transparency of internal cost transfers;

(12) Whereas national regulatory authorities have an important role in encouraging the development of a competitive market in the interests of Community users, and of securing adequate interconnection of networks and interoperability of services; whereas adequate interconnection takes account of the requests of the operator wishing to interconnect, in particular concerning the most appropriate interconnection points, with each operator having responsibility for carrying calls and setting charges to each other up to the interconnection point; whereas negotiation of interconnection agreements can be facilitated by national regulatory authorities setting down certain conditions in advance, in accordance with Community law, taking into account the recommendations defined by the Commission so as to facilitate the development of a genuine European home market, and identifying other areas to be covered in interconnection agreements; whereas in the event of a dispute over interconnection between parties in the same Member State, an aggrieved party must be able to call on the national regulatory authority to resolve the dispute; whereas national regulatory authorities must be able to require organizations

to interconnect their facilities, where it can be demonstrated that this is in the users' interests;

(13) Whereas, in accordance with Directive 90/387/EEC, the essential requirements justifying restrictions on access to and use of public telecommunications networks or services are limited to security of network operations, maintenance of network integrity, interoperability of services in justified cases, and protection of data as appropriate; whereas the reasons for these restrictions must be made public; whereas the provisions of this Directive do not prevent a Member State from taking measures justified on grounds set out in Articles 36 and 56 of the Treaty, and in particular on grounds of public security, public policy and public morality;

(14) Whereas facility sharing can be of benefit for town planning, environmental, economic or other reasons, and should be encouraged by national regulatory authorities on the basis of voluntary agreements; whereas compulsory facility sharing may be appropriate in some circumstances, but should be imposed on organizations only after full public consultation;

(15) Whereas numbering is a key element for equal access; whereas national regulatory authorities should have the responsibility for administering and controlling national numbering plans, and those naming and addressing aspects of telecommunications services where coordination at a national level is required, so as to ensure effective competition; whereas in exercising this responsibility, national regulatory authorities must have regard to the principle of proportionality, particularly as to the effect of any measures on network operators, resellers and consumers; whereas number portability is an important facility for users, and should be implemented as soon as practicable; whereas numbering schemes should be developed in full consultation with all the parties involved and in harmony with a long-term Europe-wide numbering framework and international numbering schemes as being considered in the European Conference of Postal and Telecommunications Administrations (CEPT); whereas numbering requirements in Europe, the need for the provision of pan-European and new services and the globalization and synergy of the telecommunications market require coordination of national positions in accordance with the Treaty in international organizations and fora where numbering decisions are taken;

- (16) Whereas, in accordance with Directive 90/387/EEC, the harmonization of technical interfaces and access conditions must be based on common technical specifications which take account of international standardization; whereas the development of new European standards for interconnection may be needed; whereas, in accordance with Council Directive 83/189/EEC of 28 March 1983 laying down a procedure for the provision of information in the field of technical standards and regulations⁽¹⁾, new national standards must not be developed in areas where harmonized European standards are under development;
- (17) Whereas, in accordance with Directive 90/387/EEC, open network provision conditions must be transparent and published in an appropriate manner; whereas that Directive set up a Committee (the ONP Committee) to assist the Commission, and provides a procedure for consultation with telecommunications organizations, users, consumers, manufacturers and service providers;
- (18) Whereas, in addition to the rights of recourse granted under national or Community law, there is a need for a simple procedure to resolve cross-border disputes which lie outside the competence of a single national regulatory authority; whereas this procedure, to be initiated at the request of either party in dispute, should be responsive, inexpensive and transparent;
- (19) Whereas, to enable the Commission to monitor effectively the application of this Directive, it is necessary that Member States notify to the Commission the national regulatory authorities which will be responsible for the functions created by this Directive and the organizations covered by its provisions;
- (20) Whereas, given the dynamic development in this sector, a responsive procedure for adjustment of some Annexes to this Directive should be established which takes full account of the views of Member States and should involve the ONP Committee;
- (21) Whereas a *modus vivendi*⁽²⁾ between the European Parliament, the Council and the Commission concerning the implementing measures for acts adopted in accordance with the procedure laid down in Article 189b of the Treaty was concluded on 20 December 1994;
- (22) Whereas the implementation of certain obligations must be linked to the date of liberalization of telecommunications services and infrastructure and, in particular in regard to the relevant Member States, take full account of the relevant transition periods, including the retention of special or exclusive rights in relation to direct interconnection between the mobile networks of those Member States and the fixed or mobile networks of other Member States; whereas deferment of the obligation to provide number portability may be granted where the Commission agrees that the obligation would impose an excessive burden on certain organizations;
- (23) Whereas this Directive does not, in the case of undertakings which are not established in the Community, prevent the adoption of measures in accordance with both Community law and existing international obligations designed to ensure that nationals of the Member States enjoy similar treatment in third countries; whereas Community undertakings should benefit in third countries from treatment and effective access that is comparable to the treatment and access to the market which is conferred on nationals of the countries concerned within the Community context; whereas in negotiations on telecommunications the Community will have to seek a balanced multilateral agreement which provides Community operators with effective and comparable access in third countries;
- (24) Whereas the functioning of this Directive should be reviewed by 31 December 1999, in particular to examine the scope of universal service and the timetable for number portability; whereas the situation with regard to interconnection with third countries should also be periodically reviewed, to allow appropriate action to be taken;
- (25) Whereas the essential goal of interconnection of networks and interoperability of services throughout the Community cannot be sufficiently achieved at Member State level, and can therefore be better achieved at Community level by this Directive; whereas it is desirable, when this Directive is reviewed, to assess the case for the establishment of a European Regulatory Authority, taking into account *inter alia* preparatory work undertaken by the Commission; whereas when effective competition is achieved in the market the competition rules of the Treaty will in principle be sufficient to monitor fair competition *ex-post* so that the need for this Directive will be reconsidered, with the exception of the provisions on universal service and the settlement of disputes;

⁽¹⁾ OJ No L 109, 26. 4. 1983, p. 8. Directive as last amended by Commission Decision 96/139/EC (OJ No L 32, 10. 2. 1996, p. 31).

⁽²⁾ OJ No C 102, 4. 4. 1996, p. 1.

(26) Whereas this Directive is without prejudice to the application of the competition rules of the Treaty,

HAVE ADOPTED THIS DIRECTIVE:

Article 1

Scope and aim

This Directive establishes a regulatory framework for securing in the Community the interconnection of telecommunications networks and in particular the interoperability of services, and with regard to ensuring provision of universal service in an environment of open and competitive markets.

It concerns the harmonization of conditions for open and efficient interconnection of and access to public telecommunications networks and publicly available telecommunications services.

Article 2

Definitions

1. For the purposes of this Directive:

- (a) 'interconnection' means the physical and logical linking of telecommunications networks used by the same or a different organization in order to allow the users of one organization to communicate with users of the same or another organization, or to access services provided by another organization. Services may be provided by the parties involved or other parties who have access to the network;
- (b) 'public telecommunications network' means a telecommunications network used, in whole or in part, for the provision of publicly available telecommunications services;
- (c) 'telecommunications network' means transmission systems and, where applicable, switching equipment and other resources which permit the conveyance of signals between defined termination points by wire, by radio, by optical or by other electromagnetic means;
- (d) 'telecommunications services' means services whose provision consists wholly or partly in the transmission and routing of signals on telecommunications networks, with the exception of radio and television broadcasting;
- (e) 'users' means individuals, including consumers or organizations, using or requesting publicly available telecommunications services;
- (f) 'special rights' means rights that are granted by a Member State to a limited number of undertakings through any legislative, regulatory or administrative instrument which, within a given geographical area, limits to two or more the number of such undertakings authorized to provide a service or undertake

an activity, otherwise than according to objective, proportionate and non-discriminatory criteria, or designates, otherwise than according to such criteria, several competing undertakings as being authorized to provide a service or undertake an activity, or confers, on any undertaking or undertakings, otherwise than according to such criteria, legal or regulatory advantages which substantially affect the ability of any other undertaking to provide the same service or to undertake the same activity in the same geographical area under substantially the same conditions;

- (g) 'universal service' means a defined minimum set of services of specified quality which is available to all users independent of their geographical location and, in the light of specific national conditions, at an affordable price.

2. Further definitions given in Directive 90/387/EEC shall apply, where relevant.

Article 3

Interconnection at national and Community level

1. Member States shall take all necessary measures to remove any restrictions which prevent organizations authorized by Member States to provide public telecommunications networks and publicly available telecommunications services from negotiating interconnection agreements between themselves in accordance with Community law. The organizations concerned may be in the same Member State or in different Member States. Technical and commercial arrangements for interconnection shall be a matter for agreement between the parties involved, subject to the provisions of this Directive and the competition rules of the Treaty.

2. Member States shall ensure the adequate and efficient interconnection of the public telecommunications networks set out in Annex I, to the extent necessary to ensure interoperability of these services for all users within the Community.

3. Member States shall ensure that organizations which interconnect their facilities to public telecommunications networks and/or publicly available telecommunications services respect at all times the confidentiality of information transmitted or stored.

Article 4

Rights and obligations for interconnection

1. Organizations authorized to provide public telecommunications networks and/or publicly available telecommunications services as set out in Annex II shall have a right and, when requested by organizations in that category, an obligation to negotiate interconnection with each other for the purpose of providing the services in question, in order to ensure provision of these networks and services throughout the Community. On a case-by-

case basis, the national regulatory authority may agree to limit this obligation on a temporary basis and on the grounds that there are technically and commercially viable alternatives to the interconnection requested, and that the requested interconnection is inappropriate in relation to the resources available to meet the request. Any such limitation imposed by a national regulatory authority shall be fully reasoned and made public in accordance with Article 14 (2).

2. Organizations authorized to provide public telecommunications networks and publicly available telecommunications services as set out in Annex I which have significant market power shall meet all reasonable requests for access to the network including access at points other than the network termination points offered to the majority of end-users.

3. An organization shall be presumed to have significant market power when it has a share of more than 25 % of a particular telecommunications market in the geographical area in a Member State within which it is authorized to operate.

National regulatory authorities may nevertheless determine that an organization with a market share of less than 25 % in the relevant market has significant market power. They may also determine that an organization with a market share of more than 25 % in the relevant market does not have significant market power. In either case, the determination shall take into account the organization's ability to influence market conditions, its turnover relative to the size of the market, its control of the means of access to end-users, its access to financial resources and its experience in providing products and services in the market.

Article 5

Interconnection and universal service contributions

1. Where a Member State determines, in accordance with the provisions of this Article, that universal service obligations represent an unfair burden on an organization, it shall establish a mechanism for sharing the net cost of the universal service obligations with other organizations operating public telecommunications networks and/or publicly available voice telephony services. Member States shall take due account of the principles of transparency, non-discrimination and proportionality in setting the contributions to be made. Only public telecommunications networks and publicly available telecommunications

services as set out in Part 1 of Annex I may be financed in this way.

2. Contributions to the cost of universal service obligations if any may be based on a mechanism specifically established for the purpose and administered by a body independent of the beneficiaries, and/or may take the form of a supplementary charge added to the interconnection charge.

3. In order to determine the burden if any which the provision of universal service represents, organizations with universal service obligations shall, at the request of their national regulatory authority, calculate the net cost of such obligations in accordance with Annex III. The calculation of the net cost of universal service obligations shall be audited by the national regulatory authority or another competent body, independent of the telecommunications organization, and approved by the national regulatory authority. The results of the cost calculation and the conclusions of the audit shall be open to the public in accordance with Article 14 (2).

4. Where justified on the basis of the net cost calculation referred to in paragraph 3, and taking into account the market benefit if any which accrues to an organization that offers universal service, national regulatory authorities shall determine whether a mechanism for sharing the net cost of universal service obligations is justified.

5. Where a mechanism for sharing the net cost of universal service obligations as referred to in paragraph 4 is established, national regulatory authorities shall ensure that the principles for cost sharing, and details of the mechanism used, are open to public inspection in accordance with Article 14 (2).

National regulatory authorities shall ensure that an annual report is published giving the calculated cost of universal service obligations, and identifying the contributions made by all the parties involved.

6. Until such time as the procedure described in paragraphs 3, 4 and 5 is implemented, any charges payable by an interconnected party which include or serve as a contribution to the cost of universal service obligations shall be notified, prior to their introduction, to the national regulatory authority. Without prejudice to Article 17 of this Directive, where the national regulatory authority finds, on its own initiative, or after a substantiated request by an interested party, that such charges are excessive, the organization concerned shall be required to reduce the relevant charges. Such reductions shall be applied retrospectively, from the date of introduction of the charges, but not before 1 January 1998.

*Article 6***Non-discrimination and transparency**

For interconnection to public telecommunications networks and publicly available telecommunications services as set out in Annex I provided by organizations which have been notified by national regulatory authorities as having significant market power, Member States shall ensure that:

- (a) the organizations concerned adhere to the principle of non-discrimination with regard to interconnection offered to others. They shall apply similar conditions in similar circumstances to interconnected organizations providing similar services, and shall provide interconnection facilities and information to others under the same conditions and of the same quality as they provide for their own services, or those of their subsidiaries or partners;
- (b) all necessary information and specifications are made available on request to organizations considering interconnection, in order to facilitate conclusion of an agreement; the information provided should include changes planned for implementation within the next six months, unless agreed otherwise by the national regulatory authority;
- (c) interconnection agreements are communicated to the relevant national regulatory authorities, and made available on request to interested parties, in accordance with Article 14 (2), with the exception of those parts which deal with the commercial strategy of the parties. The national regulatory authority shall determine which parts deal with the commercial strategy of the parties. In every case, details of interconnection charges, terms and conditions and any contributions to universal service obligations shall be made available on request to interested parties;
- (d) information received from an organization seeking interconnection is used only for the purpose for which it was supplied. It shall not be passed on to other departments, subsidiaries or partners for whom such information could provide a competitive advantage.

*Article 7***Principles for interconnection charges and cost accounting systems**

1. Member States shall ensure that the provisions of paragraphs 2 to 6 apply to organizations operating the public telecommunications networks and/or publicly avail-

able telecommunications services as set out in Parts 1 and 2 of Annex I, which have been notified by national regulatory authorities as having significant market power.

2. Charges for interconnection shall follow the principles of transparency and cost orientation. The burden of proof that charges are derived from actual costs including a reasonable rate of return on investment shall lie with the organization providing interconnection to its facilities. National regulatory authorities may request an organization to provide full justification for its interconnection charges, and where appropriate shall require charges to be adjusted. This paragraph shall also apply to organizations set out in Part 3 of Annex I which have been notified by national regulatory authorities as having significant market power on the national market for interconnection.

3. National regulatory authorities shall ensure the publication, in accordance with Article 14 (1), of a reference interconnection offer. The reference interconnection offer shall include a description of the interconnection offerings broken down into components according to market needs, and the associated terms and conditions including tariffs.

Different tariffs, terms and conditions for interconnection may be set for different categories of organizations which are authorized to provide networks and services, where such differences can be objectively justified on the basis of the type of interconnection provided and/or the relevant national licensing conditions. National regulatory authorities shall ensure that such differences do not result in distortion of competition, and in particular that the organization applies the appropriate interconnection tariffs, terms and conditions when providing interconnection for its own services or those of its subsidiaries or partners, in accordance with Article 6 (a).

The national regulatory authority shall have the ability to impose changes in the reference interconnection offer, where justified.

Annex IV provides a list of examples of elements for further elaboration of interconnection charges, tariff structures and tariff elements. Where an organization makes changes to the published reference interconnection offer, adjustments required by the national regulatory authority may be retrospective in effect, from the date of introduction of the change.

4. Charges for interconnection shall, in accordance with Community law, be sufficiently unbundled, so that the applicant is not required to pay for anything not strictly related to the service requested.

5. The Commission shall, acting in accordance with the procedure laid down in Article 15, draw up recommendations on cost accounting systems and accounting separation in relation to interconnection. National regulatory authorities shall ensure that the cost accounting systems used by the organizations concerned are suitable for implementation of the requirements of this Article, and are documented to a sufficient level of detail, as indicated in Annex V.

National regulatory authorities shall ensure that a description of the cost accounting system, showing the main categories under which costs are grouped and the rules used for the allocation of costs to interconnection, is made available on request. Compliance with the cost accounting system shall be verified by the national regulatory authority or another competent body, independent of the telecommunications organization and approved by the national regulatory authority. A statement concerning compliance shall be published annually.

6. Where they exist, charges related to the sharing of the cost of universal service obligations, as described in Article 5, shall be unbundled and identified separately.

Article 8

Accounting separation and financial reports

1. Member States shall require organizations providing public telecommunications networks and/or publicly available telecommunications services which have special or exclusive rights for the provision of services in other sectors in the same or another Member State to keep separate accounts for the telecommunications activities, to the extent that would be required if the telecommunications activities in question were carried out by legally independent companies, so as to identify all elements of cost and revenue, with the basis of their calculation and the detailed attribution methods used, related to their telecommunications activities including an itemized breakdown of fixed asset and structural costs, or to have structural separation for the telecommunications activities.

Member States may choose not to apply the requirements referred to in the first subparagraph to these organizations where their annual turnover in telecommunications activities in the Community is less than the limit set in Part 1 of Annex VI.

2. Member States shall require organizations operating public telecommunications networks and/or publicly available telecommunications services as set out in Parts 1 and 2 of Annex I and notified by national regulatory authorities as organizations having significant market

power which provide public telecommunications networks and/or telecommunications services available for users and which offer interconnection services to other organizations, to keep separate accounts for, on the one hand, their activities related to interconnection — covering both interconnection services provided internally and interconnection services provided to others — and, on the other hand, other activities, so as to identify all elements of cost and revenue, with the basis of their calculation and the detailed attribution methods used, related to their interconnection activity, including an itemized breakdown of fixed asset and structural costs.

Member States may choose not to apply the requirements referred to in the first subparagraph to organizations where their annual turnover in telecommunications activities in the Member States is less than the limit set in Part 2 of Annex VI.

3. Organizations providing public telecommunications networks and/or publicly available telecommunications services shall provide financial information to their national regulatory authority promptly on request and to the level of detail required. National regulatory authorities may publish such information as would contribute to an open and competitive market, while taking account of considerations of commercial confidentiality.

4. The financial reports of organizations providing public telecommunications networks or publicly available telecommunications services shall be drawn up and submitted to independent audit and published. The audit shall be carried out in accordance with the relevant rules of national legislation.

The first subparagraph shall also apply to the separate accounts required in paragraphs 1 and 2.

Article 9

General responsibilities of the national regulatory authorities

1. National regulatory authorities shall encourage and secure adequate interconnection in the interests of all users, exercising their responsibility in a way that provides maximum economic efficiency and gives the maximum benefit to end-users. In particular, national regulatory authorities shall take into account:

- the need to ensure satisfactory end-to-end communications for users,
- the need to stimulate a competitive market,
- the need to ensure the fair and proper development of a harmonized European telecommunication market,

- the need to cooperate with their counterparts in other Member States,
- the need to promote the establishment and development of trans-European networks and services, and the interconnection of national networks and interoperability of services, as well as access to such networks and services,
- the principles of non-discrimination (including equal access) and proportionality,
- the need to maintain and develop universal service.

2. General conditions set down in advance by the national regulatory authority shall be published in accordance with Article 14 (1).

In particular, in relation to interconnection between organizations set out in Annex II, national regulatory authorities:

- may set *ex ante* conditions in the areas listed in Part 1 of Annex VII;
- shall encourage coverage in interconnection agreements of the issues listed in Part 2 of Annex VII.

3. In pursuit of the aims stated in paragraph 1, national regulatory authorities may intervene on their own initiative at any time, and shall do so if requested by either party, in order to specify issues which must be covered in an interconnection agreement, or to lay down specific conditions to be observed by one or more parties to such an agreement. National regulatory authorities may, in exceptional cases, require changes to be made to interconnection agreements already concluded, where justified to ensure effective competition and/or interoperability of services for users.

Conditions set by the national regulatory authority may include *inter alia* conditions designed to ensure effective competition, technical conditions, tariffs, supply and usage conditions, conditions as to compliance with relevant standards, compliance with essential requirements, protection of the environment, and/or the maintenance of end-to-end quality of service.

The national regulatory authority may, on its own initiative at any time or if requested by either party, also set time limits within which negotiations on interconnection are to be completed. If agreement is not reached within the time allowed, the national regulatory authority shall take steps to bring about an agreement under procedures laid down by that authority. The procedures shall be open to the public in accordance with Article 14 (2).

4. Where an organization authorized to provide public telecommunications networks or publicly available tele-

communications services enters into interconnection agreements with others, the national regulatory authority shall have the right to inspect all such interconnection agreements in their entirety.

5. In the event of an interconnection dispute between organizations in a Member State, the national regulatory authority of that Member State shall, at the request of either party, take steps to resolve the dispute within six months of this request. The resolution of the dispute shall represent a fair balance between the legitimate interests of both parties.

In so doing, the national regulatory authority shall take into account, *inter alia*:

- the user interest,
- regulatory obligations or constraints imposed on any of the parties,
- the desirability of stimulating innovative market offerings, and of providing users with a wide range of telecommunications services at a national and at a Community level,
- the availability of technically and commercially viable alternatives to the interconnection requested,
- the desirability of ensuring equal access arrangements,
- the need to maintain the integrity of the public telecommunications network and the interoperability of services,
- the nature of the request in relation to the resources available to meet the request,
- the relative market positions of the parties,
- the public interest (e.g. the protection of the environment),
- the promotion of competition,
- the need to maintain a universal service.

A decision on the matter by a national regulatory authority shall be made available to the public in accordance with national procedures. The parties concerned shall be given a full statement of the reasons on which it is based.

6. In cases where organizations which are authorized to provide public telecommunications networks and/or publicly available telecommunications services have not interconnected their facilities, national regulatory authorities, in compliance with the principle of proportionality and in the interest of users, shall be able, as a last resort, to require the organizations concerned to interconnect their facilities in order to protect essential public interests and, where appropriate, shall be able to set terms of interconnection.

*Article 10***Essential requirements**

Without prejudice to action which may be taken in accordance with Articles 3 (5) and 5 (3) of Directive 90/387/EEC, the essential requirements as specified in Article 3 (2) of Directive 90/387/EEC shall for the purpose of this Directive apply to interconnection to public telecommunications networks and/or publicly available telecommunications services as set out in points (a) to (d) of this Article.

Where the national regulatory authority imposes conditions based on essential requirements in interconnection agreements, these conditions shall be published in the manner laid down in Article 14 (1).

- (a) *Security of network operations:* Member States shall take all necessary steps to ensure that the availability of public telecommunications networks and publicly available telecommunications services is maintained in the event of catastrophic network breakdown or in exceptional cases of force majeure, such as extreme weather, earthquakes, flood, lightning or fire.

In the event of the circumstances referred to in the first subparagraph, the bodies concerned shall make every endeavour to maintain the highest level of service to meet any priorities laid down by the competent national authorities.

The need to meet these requirements shall not constitute a valid reason for refusal to negotiate terms for interconnection.

Furthermore, the national regulatory authority shall ensure that any conditions for interconnection related to the security of networks as regards risk of accidents are proportionate and non-discriminatory in nature, and are based on objective criteria identified in advance.

- (b) *Maintenance of network integrity:* Member States shall take all necessary steps to ensure that the integrity of public telecommunications networks is maintained. The need to maintain network integrity does not constitute a valid reason for refusal to negotiate terms for interconnection. The national regulatory authority shall ensure that any conditions for interconnection related to protection of network integrity are proportionate and non-discriminatory in nature, and are based on objective criteria identified in advance.

- (c) *Interoperability of services:* Member States may impose conditions in interconnection agreements in order to ensure interoperability of services, including conditions designed to ensure satisfactory end-to-end

quality. Such conditions may include implementation of specific technical standards, or specifications, or codes of conduct agreed by the market players.

- (d) *Protection of data:* Member States may impose conditions in interconnection agreements in order to ensure the protection of data, to the extent necessary to ensure compliance with relevant regulatory provisions on the protection of data including protection of personal data, the confidentiality of information processed, transmitted or stored, and the protection of privacy, compatible with Community law.

*Article 11***Collocation and facility sharing**

Where an organization providing public telecommunications networks and/or publicly available telecommunications services has the right under national legislation to install facilities on, over or under public or private land, or may take advantage of a procedure for the expropriation or use of property, national regulatory authorities shall encourage the sharing of such facilities and/or property with other organizations providing telecommunications networks and publicly available services, in particular where essential requirements deprive other organizations of access to viable alternatives.

Agreements for collocation or facility sharing shall normally be a matter for commercial and technical agreement between the parties concerned. The national regulatory authority may intervene to resolve disputes, as provided for in Article 9.

Member States may impose facility and/or property sharing arrangements (including physical collocation) only after an appropriate period of public consultation during which all interested parties must be given an opportunity to express their views. Such arrangements may include rules for apportioning the costs of facility and/or property sharing.

*Article 12***Numbering**

1. Member States shall ensure the provision of adequate numbers and numbering ranges for all publicly available telecommunications services.

2. In order to ensure full interoperability of Europe-wide networks and services, Member States in accordance with the Treaty shall take all necessary steps to ensure the coordination of their national positions in international organizations and fora where numbering decisions are taken, taking into account possible future developments in numbering in Europe.

3. Member States shall ensure that national telecommunications numbering plans are controlled by the national regulatory authority, in order to guarantee independence from organizations providing telecommunications networks or telecommunications services and facilitate number portability. In order to ensure effective competition, national regulatory authorities shall ensure that the procedures for allocating individual numbers and/or numbering ranges are transparent, equitable and timely and the allocation is carried out in an objective, transparent and non-discriminatory manner. National regulatory authorities may lay down conditions for the use of certain prefixes or certain short codes, in particular where these are used for services of general public interest (e.g. freephone services, kiosk billed services, directory services, emergency services), or to ensure equal access.

4. National regulatory authorities shall ensure that the main elements of the national numbering plans, and all subsequent additions or amendments to them, are published in accordance with Article 14 (1), subject only to limitations imposed on the grounds of national security.

5. National regulatory authorities shall encourage the earliest possible introduction of the number portability facility whereby end-users who so request can retain their number(s) on the fixed public telephone network at a specific location independent of the organization providing service, and shall ensure that this facility is available at least in all major centres of population before 1 January 2003.

In order to ensure that charges to consumers are reasonable, national regulatory authorities shall ensure that pricing for interconnection related to the provision of this facility is reasonable.

6. National regulatory authorities shall ensure that numbering plans and procedures are applied in a manner that gives fair and equal treatment to all providers of publicly available telecommunications services. In particular, Member States shall ensure that an organization allocated a range of numbers shall avoid undue discrimination in the number sequences used to give access to the services of other telecommunications operators.

Article 13

Technical standards

1. Without prejudice to Article 5 (3) of Directive 90/387/EEC whereby the implementation of specified European standards may be made compulsory, national regulatory authorities shall ensure that organizations

providing public telecommunications networks or publicly available telecommunications services take full account of standards listed in the *Official Journal of the European Communities* as being suitable for the purpose of interconnection.

In the absence of such standards, national regulatory authorities shall encourage the provision of technical interfaces for interconnection according to the standards or specifications listed below:

- standards adopted by European standardization bodies such as the European Telecommunications Standards Institute (ETSI) or the European Committee for Standardization/European Committee for Electrotechnical Standardization (CEN/CENELEC), or, in the absence of such standards,
- international standards or recommendations adopted by the International Telecommunications Union (ITU), the International Organization for Standardization (ISO) or the International Electrotechnical Committee (IEC), or, in the absence of such standards,
- national standards.

2. The Commission may, acting in accordance with the procedure laid down in Article 15, request standards for interconnection and access to be drawn up, where appropriate, by European standardization bodies. Reference to standards for interconnection and access may be published in the *Official Journal of the European Communities* in accordance with Article 5 of Directive 90/387/EEC.

Article 14

Publication of and access to information

1. With regard to the information identified in Article 7 (3), Article 9 (2), Article 10 and Article 12 (4), national regulatory authorities shall ensure that up-to-date information is published in an appropriate manner in order to provide easy access to that information for interested parties. Reference shall be made in the national Official Gazette of the Member State concerned to the manner in which this information is published.

2. With regard to the information identified in Article 4 (1), Article 5 (3), Article 5 (5), Article 6 (c) and Article 9 (3), national regulatory authorities shall ensure that up-to-date specific information referred to in those Articles is made available on request to interested parties, free of charge, during normal working hours. Reference shall be made in the national Official Gazette of the Member State concerned to the times and location(s) at which the information is available.

3. Member States shall notify to the Commission before 1 January 1998 — and immediately thereafter in case of any change — the manner in which the information referred to in paragraphs 1 and 2 is made available. The Commission shall regularly publish a corresponding reference to such notifications in the *Official Journal of the European Communities*.

Article 15

Advisory Committee procedure

1. The Commission shall be assisted by the committee set up by Article 9 (1) of Directive 90/387/EEC, hereinafter referred to as the 'ONP Committee'.
2. The representative of the Commission shall submit to the committee a draft of the measures to be taken. The committee shall deliver its opinion on the draft, within a time limit which the chairman may lay down according to the urgency of the matter, if necessary by taking a vote.
3. The opinion shall be recorded in the minutes; in addition, each Member State shall have the right to ask to have its position recorded in the minutes.

The Commission shall take the utmost account of the opinion delivered by the committee. It shall inform the committee of the manner in which its opinion has been taken into account.

Article 16

Regulatory Committee procedure

1. Notwithstanding the provisions of Article 15, the following procedure shall apply in respect of the matters covered by Article 19.
2. The representative of the Commission shall submit to the committee a draft of the measures to be taken. The committee shall deliver its opinion on the draft within a time limit which the chairman may lay down according to the urgency of the matter. The opinion shall be delivered by the majority laid down in Article 148 (2) of the Treaty in the case of decisions which the Council is required to adopt on a proposal from the Commission. The votes of the representatives of the Member States within the committee shall be weighted in the manner set out in that Article. The chairman shall not vote.
3. The Commission shall adopt the measures envisaged if they are in accordance with the opinion of the committee.
4. If the measures envisaged are not in accordance with the opinion of the committee, or if no opinion is delivered, the Commission shall, without delay, submit to the Council a proposal relating to the measures to be taken. The Council shall act by a qualified majority.

If on the expiry of a period of three months from the date of referral to the Council, the Council has not acted, the proposed measures shall be adopted by the Commission.

Article 17

Procedure for resolving disputes between organizations operating under authorizations provided by different Member States

1. Without prejudice to:
 - (a) any action that the Commission or any Member State may take pursuant to the Treaty;
 - (b) the rights of the party invoking the procedure in paragraphs 2 and 3, of the organizations concerned or of any other party under applicable national law;

the procedure set out in paragraphs 2 and 3 shall be available for the resolution of interconnection disputes between organizations operating under authorizations granted by different Member States, where such dispute does not fall within the responsibility of a single national regulatory authority exercising its power in accordance with Article 9.

2. Any party having a complaint against another organization over interconnection may refer the complaint to the national regulatory authority of the Member State that has granted the authorization of the organization against which the complaint is made. The national regulatory authority shall take steps to resolve the dispute in accordance with the procedures and timescale set out in Article 9 (5).

3. Where there are concurrent disputes between the same two organizations, the national regulatory authorities concerned shall, on request of either party in dispute, coordinate their efforts in order to bring about resolution of the disputes, in accordance with the principles set out in Article 9 (1), within 6 months of referral. The solutions shall represent a fair balance between the legitimate interests of both parties in dispute and be consistent with interconnection rules in the Member States concerned, in conformity with Community law.

Article 18

Notification

1. Member States shall ensure that national regulatory authorities have the necessary means for carrying out the tasks identified in this Directive, and shall notify to the Commission by 31 January 1997 the national regulatory authorities responsible for those tasks.
2. National regulatory authorities shall notify to the Commission by 31 January 1997, and immediately thereafter in the event of any change, the names of those organizations which:

- have universal service obligations for the provision of the public telecommunications networks and publicly available telecommunications services set out in Part 1 of Annex I and which are authorized to collect directly a contribution to the net cost of universal service under the procedure in Article 5 (2),
- are subject to the provisions of this Directive concerning organizations with significant market power,
- are covered by Annex II.

The Commission may request national regulatory authorities to provide their reasons for classifying an organization as having or not having significant market power.

3. The Commission shall publish the names referred to in paragraph 2 in the *Official Journal of the European Communities*.

Article 19

Technical adjustment

Modifications necessary to adapt Annexes IV, V and VII to the Directive to new technological developments or to changes in market and consumer demand shall be determined by the Commission in accordance with the procedure laid down in Article 16.

Article 20

Deferment

1. Deferment of the obligations under Articles 3 (1), 3 (2), 4 (1), 4 (2), 9 (1) and 9 (3) insofar as those obligations concern direct interconnection between the mobile networks of that Member State and the fixed or mobile networks of other Member States, and under Article 5, shall be granted to those Member States identified in the Council Resolutions of 22 July 1993 and 22 December 1994 which benefit from an additional transition period for the liberalization of telecommunications services for as long as and to the extent that they avail themselves of such transition periods. Member States shall inform the Commission of their intention to make use of them.

2. Deferment of the obligations under Article 12 (5) may be requested where the Member State concerned can prove that they would impose an excessive burden on certain organizations or classes of organization. The Member State shall inform the Commission of the reasons for requesting a deferment, the date by which the requirements can be met, and the measures envisaged in order to meet this deadline. The Commission shall consider the request taking into account the particular situation in that Member State and the need to ensure a

coherent regulatory environment at a Community level, and shall inform the Member State whether it deems that the particular situation in that Member State justifies a deferment and, if so, until which date such deferment is justified.

Article 21

Interconnection with third country organizations

1. Member States may inform the Commission of any general difficulties encountered, *de jure* or *de facto*, by Community organizations in interconnecting with organizations in third countries, which have been brought to their attention.

2. Whenever the Commission is informed of the existence of such difficulties, the Commission may, if necessary, submit proposals to the Council for an appropriate mandate for negotiation of comparable rights for Community organizations in these third countries. The Council shall decide by qualified majority.

3. Measures taken pursuant to paragraph 2 shall be without prejudice to the Community's and Member States' obligations under relevant international agreements.

Article 22

Review

1. The Commission shall report to the European Parliament and to the Council by 31 December 1997, and periodically thereafter, on the availability of rights to interconnect in third countries for the benefit of Community organizations.

2. The Commission shall examine and report periodically to the European Parliament and to the Council on the functioning of this Directive, on the first occasion not later than 31 December 1999. For this purpose, the Commission may request information from the Member States.

The report shall examine what provisions of this Directive should be adapted in the light of the developments in the market, the evolution of technology and the changes in user demand, in particular:

- (a) for the provisions under Article 5,
- (b) to confirm the timetable laid down in Article 12 (5).

The Commission shall also investigate in the report the added value of the setting up of a European Regulatory Authority to carry out those tasks which would prove to be better undertaken at Community level.

*Article 23***Transposition**

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 31 December 1997. They shall immediately inform the Commission thereof.

When Member States adopt these provisions, these shall contain a reference to this Directive or shall be accompanied by such reference at the time of their official publication. The procedure for such reference shall be adopted by Member States.

2. Member States shall communicate to the Commission the texts of the main provisions of national law which they adopt in the field covered by this Directive.

*Article 24***Entry into force**

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

*Article 25***Addressees**

This Directive is addressed to the Member States.

Done at Brussels, 30 June 1997.

For the European Parliament

The President

J. M. GIL-ROBLES

For the Council

The President

A. NUIS

ANNEX I

SPECIFIC PUBLIC TELECOMMUNICATIONS NETWORKS AND PUBLICLY AVAILABLE TELECOMMUNICATIONS SERVICES

(referred to in Article 3(2))

The following public telecommunications networks and publicly available telecommunications services are considered of major importance at European level.

Organizations providing the public telecommunications networks and/or publicly available services identified below which have significant market power are subject to specific obligations with regard to interconnection and access, as specified in Articles 4 (2), 6 and 7.

Part 1*The fixed public telephone network*

The fixed public telephone network means the public switched telecommunications network which supports the transfer between network termination points at fixed locations of speech and 3,1 kHz bandwidth audio information, to support *inter alia*:

- voice telephony,
- facsimile Group III communications, in accordance with ITU-T Recommendations in the 'T-series',
- voice band data transmission via modems at a rate of at least 2 400 bit/s, in accordance with ITU-T Recommendations in the 'V-series'.

Access to the end-user's network termination point is via a number or numbers in the national numbering plan.

The fixed public telephone service according to Directive 95/62/EC of the European Parliament and of the Council of 13 December 1995 on the application of open network provision (ONP) to voice telephony⁽¹⁾.

The fixed public telephone service means the provision to end-users at fixed locations of a service for the originating and receiving of national and international calls, and may include access to emergency (112) services, the provision of operator assistance, directory services, provision of public pay phones, provision of service under special terms and/or provision of special facilities for customers with disabilities or with special social needs.

Access to the end-user is via a number or numbers in the national numbering plan.

Part 2*The leased lines service*

Leased lines means the telecommunications facilities which provide for transparent transmission capacity between network termination points, and which do not include on-demand switching (switching functions which the user can control as part of the leased line provision). They may include systems which allow flexible use of the leased line bandwidth, including certain routing and management capabilities.

Part 3*Public mobile telephone networks*

A public mobile telephony network is a public telephone network where the network termination points are not at fixed locations.

Public mobile telephone services

A public mobile telephone service is a telephony service whose provision consists, wholly or partly, in the establishment of radiocommunications to one mobile user, and makes use wholly or partly of a public mobile telephone network.

⁽¹⁾ OJ No L 321, 30. 12. 1995, p. 6.

ANNEX II

ORGANIZATIONS WITH RIGHTS AND OBLIGATIONS TO NEGOTIATE INTERCONNECTION WITH EACH OTHER IN ORDER TO ENSURE COMMUNITY-WIDE SERVICES

(referred to in Article 4 (1))

This Annex covers those organizations which provide switched and unswitched bearer capabilities to users upon which other telecommunications services depend.

Organizations in the following categories have both rights and obligations to interconnect with each other, in accordance with Article 4 (1). Interconnection between these organizations is subject to additional supervision by national regulatory authorities, in accordance with Article 9 (2). Special interconnection charges, terms and conditions may exist for these categories of organizations in accordance with Article 7 (3).

1. Organizations which provide fixed and/or mobile public switched telecommunications networks and/or publicly available telecommunications services, and in so doing control the means of access to one or more network termination points identified by one or more unique numbers in the national numbering plan. (See notes below).
2. Organizations which provide leased lines to users' premises.
3. Organizations which are authorized in a Member State to provide international telecommunications circuits between the Community and third countries, for which purpose they have exclusive or special rights.
4. Organizations providing telecommunications services which are permitted in this category to interconnect in accordance with relevant national licensing or authorization schemes.

Notes

Control of the means of access to a network termination point means the ability to control the telecommunications services available to the end-user at that network termination point and/or the ability to deny other service providers access to the end-user at the network termination point.

Control of the means of access may entail ownership or control of the physical link to the end-user (whether wire or wireless), and/or the ability to change or withdraw the national number or numbers needed to access an end-user's network termination point.

*ANNEX III***CALCULATING THE COST OF UNIVERSAL SERVICE OBLIGATIONS FOR VOICE TELEPHONY***(referred to in Article 5 (3))*

Universal service obligations refer to those obligations placed upon an organization by a Member State which concern the provision of a network and service throughout a specified geographical area, including — where required — averaged prices in that geographical area for the provision of that service.

The cost of universal service obligations shall be calculated as the difference between the net cost for an organization of operating with the universal service obligations and operating without the universal service obligations.

This applies whether the network in a particular Member State is fully developed or is still undergoing development and expansion.

The calculation shall be based upon the costs attributable to:

- (i) elements of the identified services which can only be provided at a loss or provided under cost conditions falling outside normal commercial standards.

This category may include service elements such as access to emergency telephone services, provision of certain public pay telephones, provision of certain services or equipment for disabled people, etc.

- (ii) specific end-users or groups of end-users who, taking into account the cost of providing the specified network and service, the revenue generated and any geographical averaging of prices imposed by the Member State, can only be served at a loss or under cost conditions falling outside normal commercial standards.

This category includes those end-users or groups of end-users which would not be served by a commercial operator which did not have an obligation to provide universal service.

In peripheral regions with expanding networks, the cost calculation should be based on the additional cost of serving those end-users or groups of end-users which an operator applying the normal commercial principles of a competitive environment would choose not to serve.

Revenues shall be taken into account in calculating the net costs. Costs and revenues should be forward-looking.

*ANNEX IV***LIST OF EXAMPLES OF ELEMENTS FOR INTERCONNECTION CHARGES***(referred to in Article 7 (3))*

Interconnection charges refer to the actual charges payable by interconnected parties.

The tariff structure refers to the broad categories into which interconnection charges are divided, e.g.

- charges to cover initial implementation of the physical interconnection, based on the costs of providing the specific interconnection requested (e.g. specific equipment and resources; compatibility testing),
- rental charges to cover the on-going use of equipment and resources (connection maintenance, etc.),
- variable charges for ancillary and supplementary services (e.g. access to directory services; operator assistance; data collection; charging; billing; switch-based and advanced services etc.),
- traffic related charges, for the conveyance of traffic to and from the interconnected network (e.g. the costs of switching and transmission), which may be on a per minute basis, and/or on the basis of additional network capacity required.

Tariff elements refer to the individual prices set for each network component or facility provided to the interconnected party.

Tariffs and charges for interconnection must follow the principles of cost orientation and transparency, in accordance with Article 7 (2).

Interconnection charges may include a fair share, according to the principle of proportionality, of joint and common costs and the costs incurred in providing equal access, and number portability, and the costs of ensuring essential requirements (maintenance of the network integrity; network security in cases of emergency; interoperability of services; and protection of data).

ANNEX V

COST ACCOUNTING SYSTEMS FOR INTERCONNECTION

(referred to in Article 7 (5))

Article 7 (5) calls for details of the cost accounting system; the list below indicates, by way of example, some elements which may be included in such accounting systems.

The purpose of publishing this information is to provide transparency in the calculation of interconnection charges, so that other market players are in a position to ascertain that the charges have been fairly and properly calculated.

This objective should be taken into account by the national regulatory authority and the organizations affected when determining the level of detail in the information published.

The list below indicates the elements to be included in the information published.

1. *The cost standard used*

e.g. fully distributed costs, long-run average incremental costs, marginal costs, stand-alone costs, embedded direct costs, etc.

including the cost base(s) used,

i.e. historic costs (based on actual expenditure incurred for equipment and systems) or forward-looking costs (based on estimated replacement costs of equipment or systems).

2. *The cost elements included in the interconnection tariff*

Identification of all the individual cost components which together make up the interconnection charge, including the profit element.

3. *The degrees and methods of cost allocation, in particular the treatment of joint and common costs*

Details of the degree to which direct costs are analyzed, and the degree and method by which joint and common costs are included in interconnection charges.

4. *Accounting conventions*

i.e. the accounting conventions used for the treatment of costs covering:

- the timescale for depreciation of major categories of fixed asset (e.g. land, buildings, equipment, etc.),
- the treatment, in terms of revenue versus capital cost, of other major expenditure items (e.g. computer software and systems, research and development, new business development, direct and indirect construction, repairs and maintenance, finance charges, etc.)

The information on cost accounting systems, as identified in this Annex, may be amended in accordance with the procedure referred to in Article 19.

*ANNEX VI***THRESHOLDS FOR TELECOMMUNICATIONS TURNOVER***(referred to in Article 8 (1) and 8 (2))***Part 1**

The threshold for annual turnover in telecommunications activities referred to in Article 8 (1) shall be fifty million ecus. (ECU 50 million)

Part 2

The threshold for annual turnover in telecommunications activities referred to in Article 8 (2) shall be twenty million ecus. (ECU 20 million)

ANNEX VII

FRAMEWORK FOR NEGOTIATION OF INTERCONNECTION AGREEMENTS

(referred to in Article 9 (2))

Part 1

Areas where the national regulatory authority may set ex ante conditions

- (a) Dispute resolution procedure,
- (b) Requirements for publication/access to interconnection agreements and other periodic publication duties,
- (c) Requirements for the provision of equal access and number portability,
- (d) Requirements to provide facility sharing, including collocation,
- (e) Requirements to ensure the maintenance of essential requirements,
- (f) Requirements for allocation and use of numbering resources (including access to directory services, emergency services and pan-European numbers),
- (g) Requirements concerning the maintenance of end-to-end quality of service,
- (h) Where applicable, determination of the unbundled part of the interconnection charge which represents a contribution to the net cost of universal service obligations.

Part 2

Other issues the coverage of which in interconnection agreements is to be encouraged

- (a) Description of interconnection services to be provided,
 - (b) Terms of payment, including billing procedures,
 - (c) Locations of the points of interconnection,
 - (d) Technical standards for interconnection,
 - (e) Interoperability tests,
 - (f) Measures to comply with essential requirements,
 - (g) Intellectual property rights,
 - (h) Definition and limitation of liability and indemnity,
 - (i) Definition of interconnection charges and their evolution over time,
 - (j) Dispute resolution procedure between parties before requesting national regulatory authority intervention,
 - (k) Duration and renegotiation of agreements,
 - (l) Procedure in the event of alterations being proposed to the network or service offerings of one of the parties,
 - (m) Achievement of equal access,
 - (n) Provision of facility sharing,
 - (o) Access to ancillary, supplementary and advanced services,
 - (p) Traffic/network management,
 - (q) Maintenance and quality of interconnection services,
 - (r) Confidentiality of non-public parts of the agreements,
 - (s) Training of staff.
-