

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

(2000/C 365 E/15)

(Text with EEA relevance)

COM(2000) 394 final — 2000/0185(COD)

(Submitted by the Commission on 23 August 2000)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the proposal from the Commission,

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

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

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

Whereas:

(1) The conclusions of the special European Council of Lisbon of 23 and 24 March 2000 note that, for Europe to fully seize the growth and job potential of the digital, knowledge-based economy, businesses and citizens must have access to an inexpensive, world-class communications infrastructure and a wide range of services. The Member States, together with the Commission, are called upon 'to work towards introducing greater competition in local access networks before the end of 2000 and unbundling the local loop, in order to help bring about a substantial reduction in the costs of using the Internet'. The Feira European Council of 20 June 2000 endorsed the proposed eEurope Action Plan⁽¹⁾ which identifies unbundled access to the local loop as a short-term priority.

(2) The 'local loop' is the physical copper line circuit in the local access network connecting the customer's premises to the operator's local switch, concentrator or equivalent facility. As noted in the Commission's Fifth Report on the implementation of the telecommunications regulatory package⁽²⁾, the local access network remains one of the least competitive segments of the liberalised telecommuni-

cations market. New entrants do not have wide-spread alternative network infrastructures and are unable, with traditional technologies, to match the economies of scale and scope of operators notified as having significant market power in the fixed public telephone network market ('notified operators'). This results from the fact that operators rolled out their old copper local access networks over significant periods of time protected by exclusive rights and were able to fund investment costs through monopoly rents.

(3) The European Parliament Resolution of 13 June 2000 on the Commission communication on the 1999 Communications review⁽³⁾ stresses the importance of enabling the sector to develop infrastructures which promote the growth of electronic communications and e-commerce and the importance of regulating in a way that supports this growth. It notes that the unbundling of the local loop is currently mainly relevant to the copper infrastructure of a dominant entity and that investment in alternative infrastructures must have the possibility of ensuring a reasonable rate of return, since that might facilitate the expansion of these infrastructures in areas where their penetration is still low.

(4) The provision of new loops with high capacity optical fibre directly to major users is a specific market that is developing under competitive conditions with new investments. This Regulation therefore does not address unbundled access to fibre local loops.

(5) It would not be economically viable for new entrants to duplicate the incumbent's copper local loop access infrastructure in its entirety and within a reasonable time. Alternative infrastructures such as cable television, satellite, wireless local loops do not generally offer the same functionality or ubiquity.

(6) It is appropriate to mandate unbundled access to the copper local loops only of notified operators. The Commission has already published an initial list of operators of fixed public telephone networks notified by the national regulatory authorities as having significant market power⁽⁴⁾.

⁽¹⁾ COM(2000) 330 final.

⁽²⁾ COM(1999) 537.

⁽³⁾ AS-0145/2000.

⁽⁴⁾ OJ C 112, 23.4.1999, p. 2.

- (7) Although commercial negotiation is the preferred method for reaching agreement on technical and pricing issues for local loop access, experience shows that in most cases regulatory intervention is necessary due to imbalance in negotiating power between the new entrant and the notified operator, and lack of other alternatives. Notified operators should provide information and unbundled access to third parties under the same conditions and of the same quality as they provide for their own services or those of their subsidiaries or partners. To this end, the publication by the notified operator of an adequate reference offer for unbundled access to the local loop, within a short time-frame and ideally on Internet, and under the supervisory control of the national regulatory authority, would contribute to creating transparent and non-discriminatory market conditions. In certain circumstances the national regulatory authority may, in accordance with Community law, intervene at its own initiative to impose terms, including pricing rules, designed to ensure interoperability of services, maximise economic efficiency and benefit end-users.
- (8) Costing and pricing rules for local loops and associated facilities (such as co-location and leased transmission capacity) should be transparent, non-discriminatory and be objective to ensure fairness. Pricing rules should ensure that the local loop provider is able to cover its appropriate costs in this regard plus a reasonable return. Pricing rules for local loops should foster fair and sustainable competition and ensure that there is no distortion of competition, in particular no margin squeeze between prices of wholesale and retail services of the notified operator. In this regard, it is considered important that competition authorities be consulted.
- (9) In Recommendation 2000/417/EC of 25 May 2000 on unbundled access to the local loop: enabling the competitive provision of a full range of electronic communications services including broadband multimedia and high-speed Internet ⁽¹⁾ and the Communication of 26 April 2000 ⁽²⁾, the Commission set out detailed guidance to assist national regulatory authorities on the fair regulation of different forms of unbundled access to the local loop and on the application of existing Community law.
- (10) In accordance with the principles of subsidiarity and proportionality as set out in Article 5 of the Treaty, the objective of achieving a harmonised framework for unbundled access to the local loop in order to enable the competitive provision of an inexpensive, world-class communications infrastructure and a wide range of services for all businesses and citizens in the

Community cannot be achieved by the Member States in a secure, harmonised and timely manner and can therefore be better achieved by the Community. This Regulation confines itself to the minimum required in order to achieve those objectives and does not go beyond what is necessary for that purpose,

HAVE ADOPTED THIS REGULATION:

Article 1

Scope

(1) This Regulation shall apply to unbundled access to the local loops of network operators that have been notified to the Commission by the national regulatory authority as having significant market power in the provision of fixed public telephone networks and services in accordance with the relevant Community provisions (hereinafter referred to as 'notified operators').

(2) This Regulation shall apply without prejudice to the obligation under the relevant Community provisions for notified operators to comply with the principle of non-discrimination when using the fixed public telephone network to provide high-speed access and transmission services to third parties under the same conditions as to its own services.

Article 2

Definitions

For the purposes of this Regulation:

- (a) 'local loop' means the physical copper line circuit in the local access network connecting the customer's premises to the fixed public telephone network operator's local switch, concentrator or equivalent facility;
- (b) 'unbundled access to the local loop' means full unbundled access to the local loop and shared access to the local loop; it does not entail a change in ownership of the copper local loop;
- (c) 'full unbundled access to the local loop' means the provision of access to the copper local loop of the incumbent operator, in such a way that the new entrant has exclusive use of the full frequency spectrum of the copper line and can offer a full range of voice and data services to end-users;

⁽¹⁾ OJ L 156, 29.6.2000, p. 44.

⁽²⁾ COM(2000) 237.

- (d) 'shared access to the local loop' means the provision of access to the non-voice frequency spectrum of a copper line over which the basic telephone service is being provided to the end-user by the incumbent operator allowing a new entrant to deploy technologies — such as asymmetrical digital subscriber line (ADSL) systems — to provide the end-user with additional services such as high-speed Internet access;
- (e) 'co-location' means the provision of physical space and technical conditioning necessary to reasonably accommodate and connect the equipment of a new entrant to access the local loop.

Article 3

Provision of unbundled access

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

component offerings and the associated terms and conditions, including prices, taking account of the list in the Annex to Recommendation 2000/417/EC.

Article 4

Regulatory supervision

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

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

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

Article 5

Entry into force

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

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