

4.3.3. Clear rules should be drawn up at European level on access to essential resources, i.e. infrastructure constructed in the past by monopolies using public resources which ought to be made accessible to all. This issue has been well regulated in relation to transport by Directive 91/440/EEC on the exploitation of railway infrastructure, but not in other areas. For example, firms entering into competition

with the old monopolies should be allowed to benefit from past public investment in Hertzian radio.

4.3.4. The Commission must propose a clear legislative text, to be adopted at European level as soon as possible, establishing a basis for partnership between the public and private sectors in order to develop the infrastructures and services which Europe needs.

Brussels, 19 October 2000.

The President

of the Economic and Social Committee

Göke FRERICHS

Opinion of the Economic and Social Committee on the 'Proposal for a Regulation of the European Parliament and of the Council on unbundled access to the local loop'

(2001/C 14/20)

On 20 September 2000 the Council decided to consult the Economic and Social Committee, under Article 262 of the Treaty establishing the European Community, on the above-mentioned proposal.

On 11 July 2000, the Bureau of the Economic and Social Committee instructed the Section for Transport, Energy, Infrastructure and the Information Society to prepare the Committee's work on the subject.

At its 376th plenary session of 19 October 2000, the Economic and Social Committee, in view of the urgency of the matter, appointed Mr Cambus rapporteur-general and adopted the following opinion by 77 votes to one.

1. Introduction

1.1. Telecommunications technology is evolving all the time — and at an ever increasing pace since the most modern computer technologies are used in the main to run the physical and virtual networks and the services which make up this sector. This sector makes a key contribution to the spread of new information technologies and thus to meeting the Union's objectives for a society based on knowledge and innovation.

1.2. This is why telecommunications operators have been explicitly asked to offer quick, easy and cheap Internet access both to the corporate sector and to private individuals before

the end of 2000. To this end, Member States are required under the Lisbon and Feira Council conclusions to open up local loops to competition by 1 January 2001 at the latest.

1.3. In legal terms the telecommunications sector has been open to full competition since the enactment of the 1996 directive, which had to be implemented by 1 January 1998. Hence, any new operator can now enter this sector and compete with incumbent operators. Moreover, the new technologies have been both a reason and a vehicle for broadening competition; the GSM system, for example, has enabled new operators to build up a customer base at a reasonable level of investment. On the other hand, the objective of opening up

all telephone subscriber services to competition cannot be achieved in the short run as long as incumbent operators are not obliged to grant their rivals access to the 'last mile' in the telephone network: the local loop.

1.4. The 'local loop' is the physical circuit connecting the customer's premises to the local distribution frame or to any other equivalent facility of the telecommunications operator. It consists of a pair of copper wires through which it was impossible until now to transmit voice telephony and digital data at the same time. An additional dedicated ISDN-type pair of wires (ISDN = integrated services data network) was needed to provide customers with digital data transmission services. Technological advances have, over the past year or so, made it possible to use the same pair of copper wires for the simultaneous transmission of both voice telephony and high-speed digital data. This is known as xDSL and is 50 to 100 times faster than existing services.

1.5. When local loops were built as networks developed and increasing numbers of people subscribed to voice telephone services, they were regulated on the basis of exclusive rights. This was necessitated by the scale of investment and long payback period involved and by the political will to secure a universal service. Local loops have become a live issue between incumbent operators and new entrants seeking access to the 'last mile' in the network in order to be able offer their new services to customers.

1.6. In theory, new entrants can do this already, provided they build competing physical or virtual equipment (e.g. local radio loops). Since it is not feasible to await the inevitably drawn-out process of developing competing networks and/or different technologies (unless the EU is to fall further behind on the IT front), the only option is to liberalise access to the local loop; this was decided at the Lisbon and Feira Councils.

1.7. From a technical standpoint, the regulation contains three concepts: (i) full unbundled access, (ii) shared access, and, to put these two concepts into effect, (iii) the collocation of a new entrant's equipment. The two technical options — full unbundled access and shared access — are not economically neutral.

2. Summary of the Commission proposal

2.1. The proposal is part of a new regulatory framework for all transmission networks and services, designed to secure the competitiveness of the electronic communications market⁽¹⁾. The proposed directive is designed both:

- to provide a legal base for the regulatory authorities in the Member States, which could have difficulty mandating unbundled access to local loops, and thus might not be in a position to reach the target set by the Lisbon and Feira European Councils; and
- to secure European-level harmonisation in the implementation of unbundled access to the local loop in order to avoid distortions of competition.

2.2. The rationale behind the regulation is set out in the recitals:

2.2.1. The local access network remains one of the least competitive segments of the liberalised telecommunications market, since new entrants do not have widespread alternative network infrastructures and are unable, with traditional technologies, to match the economies of scale and scope of fixed network operators deemed to have significant market power.

2.2.2. The unbundling of the local loop is currently mainly relevant to the copper infrastructure of a dominant entity, and 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.

2.2.3. It is better to mandate unbundled access to local loops only where these are the loops of network operators deemed by the national regulatory authorities to have significant market power under the relevant Community provisions.

2.2.4. To ensure fairness, costing and pricing rules for access to local loops and associated facilities (such as collocation and leased transmission capacity) should be transparent, non-discriminatory and objective. At the same time, they should ensure that the local loop provider is able to cover its appropriate costs in this regard plus a reasonable return.

⁽¹⁾ See in particular the Proposal for a Directive on a common regulatory framework for electronic communications networks and services — COM(2000) 393 final; TEN/057.

2.2.5. The publication by the notified operator of a reference offer for unbundled access to the local loop, within a short timeframe and ideally on the Internet, and under the supervisory control of the national regulatory authority, would contribute to creating transparent and non-discriminatory market conditions.

2.2.6. Under current national or Community law, the objective of achieving a harmonised framework for unbundled access to the local loop cannot be achieved by all the Member States in a secure, harmonised and timely manner, and will thus stand a better chance of being achieved by the Community. This regulation confines itself to the minimum required for that purpose.

2.3. *The draft has only five articles*

2.3.1. Under Article 1 (Scope), it is the remit of national regulatory authorities to identify — and give notification of — operators which have significant market power.

2.3.2. Under Article 2 (Definitions):

- 'unbundled access' means offering new entrants full or shared access;
- 'shared access' means the option of giving new entrants the use of the non-voice frequency spectrum, while retaining the voice frequency spectrum for incumbent operators;
- 'collocation' means the provision of the physical space needed to accommodate the new entrant's technical equipment within the incumbent operator's existing installation.

2.3.3. Article 3 (Provision of unbundled access) requires notified operators to provide unbundled access to the local loop under transparent and non-discriminatory conditions by 31 December 2000 at the latest. New entrants must be given access to any point of the copper local loop or sub-loop. By the same date, notified operators must publish an offer (setting out terms, conditions and prices) for the unbundled access to the local loops and associated facilities, including collocation.

2.3.4. Article 4 (Supervisory regulation) stipulates that national regulatory authorities are competent — where justified — to take action with regard to the terms of these offers for as long as there is insufficient competition, and in order to resolve disputes between operators in the application of the regulation.

2.3.5. Article 5 states that the regulation is to enter into force three days after its publication in the Official Journal.

3. **General comments**

3.1. *Appropriateness of the draft regulation*

3.1.1. A regulation has never before been adopted in the telecommunications sector. This proposal is thus a first. It will mean that the issue of unbundled access to the local loop will be considered separately from the other documents which are reappraising the regulatory framework for electronic communications networks and services. Above all, however, a regulation is the best way to secure speedier application of the provisions it contains since it does not require Member State transposition.

3.1.2. The Committee agrees on the urgency of ensuring the broadest possible dissemination of information society technologies and services both in the corporate sector and among private individuals. The legislation launching the liberalisation of the telecommunications sector was adopted in 1996. The first areas of activity to be liberalised were those which offered the most promise such as long-distance telephony, where competitors took a year to establish their position. The delay in opening up the local loop to competition is explained not only by the lack of regulatory tools but probably more so by the novelty of the technological processes involved (xDSL) and the fact that alternative operators' interest was initially focused on the more profitable areas.

3.1.3. Hence, the Committee feels it is essential to set in place the tools needed to speed up the introduction to the wider public of the new access options for the Internet and data transmission services made possible by xDSL applications. The aim is to put the Union at the forefront of global competition in the innovation and knowledge-based society applications highlighted by the Lisbon and Feira Councils. This requires the broadest possible dissemination of these applications across society and the capacity to respond immediately to the demands of current Internet users who want high-speed access to be made available at last to individual subscribers via their existing telephone line.

3.2. *Content of the draft*

3.2.1. From an economic standpoint, the draft contains the concept that, in making the local loop available, conditions must be put in place (i) to cover costs and (ii) to secure a reasonable return for the providing operator. The Committee feels that this is legitimate since all operators have a right to expect a return on investments in facilities they develop.

3.2.1.1. Moreover, the Committee also notes that the pricing arrangements for making the local loop available must have a neutral impact on technological choices. Too high a price would encourage new entrants to invest in competing equipment which is not necessarily justified. If the price were pitched too low, new entrants would make unbundled cooper pairs their first choice, without conducting serious research into more cost-effective technologies. Prices must therefore correspond as closely as possible to economic reality.

3.2.2. From a technical standpoint, the regulation contains three concepts: (i) full unbundled access, (ii) shared access, and, to put these two concepts into effect, (iii) the collocation of a new entrant's equipment. Reference is also made to the possibility of unbundling only one part of the local loop, known as the local sub-loop.

3.2.3. This Commission proposal builds on the technological and technical possibilities available for distinguishing between traditional voice telephony and new xDSL services. In this connection, the Committee would stress the need, at NRA level, to ensure that the purpose of shared access is not gradually undermined commercially by new entrants providing voice telephony via xDSL.

4. Specific comments

4.1. Scope

4.1.1. The Committee endorses the Commission's approach in relation to notified operators of fixed public telephone networks. It feels, however, that it would be wise to add at this point that NRAs have full scope to deal in the same way with localised incidences of abuse of a dominant position which may arise in fields other than fixed public telephony (e.g. more recent audiovisual cable networks).

4.2. Unbundled access: practical arrangements

4.2.1. The Committee fully endorses the obligation placed on notified operators to meet requests for 'full unbundled access'; this means leasing the entire local loop to a new operator entering this sector, but does not involve a change of ownership. This solution has the merit of simplicity, and presupposes that the new entrant may provide both voice telephony and new high-speed digital data transmission ser-

vices. However, it also enables new entrants to sub-contract voice telephony services to any operator of their choice, or even to the incumbent notified operator if, for reasons of brand loyalty, customers so desire.

4.2.2. The Committee also endorses the use of a regulation to impose the obligation of partial unbundling. This is termed 'shared access to the local loop' and means that the incumbent operator retains use of the voice telephony frequency spectrum, while making only non-voice frequencies available to new entrants.

4.2.3. However, the Committee feels that this technical arrangement must be backed up in practice by a commercial escape clause of the kind already adopted by some Member States, under which the option of full unbundled access automatically becomes operative for new entrants when customers terminate their voice telephony subscription with the incumbent operator.

4.3. Commercial arrangements

4.3.1. The Committee agrees that notified operators should be obliged to publish a reference offer for access to the local loop. It feels that this broad requirement for price specifications to be accessible via mass media such as the Internet can only reasonably relate to a service that itself is also general enough that its costs can be set on a flat-rate basis irrespective of local circumstances. The Committee feels that this should apply to full unbundled access to the local loop. For other services (particularly collocation), the reference offer must detail technical arrangements and leave pricing matters to be dealt with when individual requests are assessed in line with local circumstances and in accordance with the principle that any offer must be cost-based, or refer to the market price.

4.3.2. Article 4 of the draft regulation stipulates that prices for local loop access must follow the principle of cost orientation. It should be spelt out at this point that the costs involved are the average long run incremental costs (LRIC). These are the only way to guarantee fair and sustainable competition which is consonant both with the draft regulation and with technological neutrality.

4.3.2.1. In the same way, the Committee feels that the shared access price should be assessed on at least the same basis as the price for full unbundled access, minus the fixed subscription payable for the voice telephony service.

4.4. It is necessary to incorporate into the regulation the principle that ex ante rules of any kind cease to apply once competitiveness is secured in the high-speed access market. To this end, the Commission should report to the Council, Parliament and Committee every two years on the situation regarding competition on this high-speed access market and, in due course, propose that the regulation be withdrawn.

5. Conclusions

5.1. The Committee fully endorses the draft European Parliament and Council regulation which is designed to give Member States and NRAs a clear legal reference for securing

unbundled access to local telecommunications loops by not later than 31 December 2000 under conditions harmonised at EU level.

5.2. In setting prices on the basis of cost orientation, it must be made clear that the costs involved are the average long-run incremental costs. This prevents the emergence of economic distortions which might encourage poor choices or slow the development of more cost-effective processes.

5.3. The Committee feels that the regulation must set out clear arrangements for its revision, as part of the common regulatory framework, once competition levels are deemed sufficient in the services concerned.

Brussels, 19 October 2000.

The President
of the Economic and Social Committee
Göke FRERICHS

Opinion of the Economic and Social Committee on 'New knowledge, new jobs'

(2001/C 14/21)

At its plenary session on 27 April 2000 the Economic and Social Committee, acting under the third paragraph of Rule 23 of its Rules of Procedure, decided to draw up an opinion on 'New knowledge, new jobs'.

In accordance with Rules 11(4) and 19(1) of its Rules of Procedure the Committee set up a sub-committee to prepare its work on this subject.

The sub-committee adopted its draft opinion on 2 October 2000. The rapporteur was Mrs Engelen-Kefer, the co-rapporteur was Mr Morgan.

At its 376th plenary session (meeting of 19 October 2000) the Economic and Social Committee adopted the following opinion by 83 votes to 23 with 6 abstentions.

1. Introduction

1.1. At the Lisbon Summit on 23 and 24 March 2000 the EU set itself a new strategic objective for the next decade: 'to become the most competitive and dynamic knowledge-based economy in the world, capable of sustainable economic

growth with more and better jobs and greater social cohesion'⁽¹⁾.

1.2. Implementation of the decisions taken in Lisbon will be a key component of the French Presidency's work programme. The French Presidency is focusing on the following topics:

⁽¹⁾ Conclusions of the European Council Presidency (Lisbon) of 23 and 24 March 2000, point 5.