

Cable Television Networks in Europe

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The European Commission adopted in October 1995 a directive to allow the carriage of all liberalised telecommunications services on cable TV networks as from 1 January 1996. By adopting this directive, the European Commission aims to foster competition and new initiatives in the telecommunications field. This article refers to the enforcement and content of the Commission's directive.ⁱ

The European legislator of recent years has had a lot of difficulty with liberalising the telecommunications infrastructure which is primarily used for transmitting radio and television programmes (hereafter referred to as 'cable TV networks'). The first major steps towards a free telecommunications market, the European Council's ONP directive (ONP = Open Network Provision) and the European Commission's services directive of 1990 are confined in scope to public telecommunications networks (i.e. PTT networks).ⁱⁱ The ONP directive provided for open access to these networks, while the services directive liberalised all telecommunications services apart from voice telephony. However, neither directive applied in principle to cable TV networks because these could not be considered part of the public telecommunications infrastructure.

European Commission pushes for liberalisation

The European Commission has nevertheless intended for some time that cable TV networks - and all other forms of alternative infrastructure - should come under the services directive (and - as we may assume - eventually either wholly or partly under the ONP directive as well), so as to liberalise the telecommunications market even further.

Use of cable TV networks for liberalised services (1994/1995)	
Belgium	No
Denmark	No
France	Non-voice services only
Germany	No
Greece	(no cable TV networks)
Ireland	No legal provision
Italy	(no cable TV networks, legislation pending)
Luxembourg	No legal provision
Netherlands	Limited use
Portugal	No
Spain	No (but pending legislation)
UK	Yes

(Source European Commission/IDATE, new member states not included)

There is an undisputed need for this since studies have shown that in most countries of the European Union services which are already liberalised on the public telecommunications infrastructure could not use cable TV networks

Even before the publication of the green paper on the liberalisation of the telecommunications infrastructureⁱⁱⁱ, a draft was leaked of a Commission directive, pursuant to article 90, clause 3, EU Treaty, to oblige member states to abolish all restrictions on the use of TV networks to provide telecommunications services - with the exception of voice telephony.^{iv} Article 90, clause 3 of the EU Treaty gives the European Commission the right to pass directives aimed at preventing member states from granting extraordinary or exclusive rights to (public) undertakings, contrary to the terms of the Treaty. This draft, while receiving a lot of publicity, has never been given formal status but was an important step to further widen the debate. Similar opinions were forwarded in articles.^v

European Council sticks to its own timetable

In part I (Principle and Timetable) of the green paper published on the liberalisation of the telecommunications infrastructure, the Commission confirmed that it believed the liberalisation of existing cable TV networks should proceed.^{vi} The green paper stated that it should be possible for liberalised telecommunications service to be provided over these networks as soon as 1995. However, in December 1994 the Council of Telecommunications Ministers decided not to support the Commission's proposal, but to adhere to its previous viewpoint that the telecommunications infrastructure should be liberalised on the same date as that on which voice telephony would become liberalised, namely 1 January 1998.^{vii}

The Council's decision was not well-received by the Commission, particularly not by the directorates DG IV headed by Mr M. Van Miert and DG XIII (telecommunications) headed by Mr. M. Bangemann. Mr. Bangemann had previously been chairman of a advisory group bearing his name, which had published a report likewise recommending rapid liberalisation of the infrastructure.^{viii}

European Commission publishes draft directive

The Commission decided to take renewed action and in March 1995 published its own draft for a article 90.3-directive on liberalising the cable TV networks. This draft is notable for its simplicity. A minor amendment simply puts cable TV networks within the scope of the services directive^{ix}, which as already mentioned applied only to public telecommunication networks.^x

The obligations which the draft lays on member states - to allow all liberalised services as well as to authorise interconnection with the public telecommunications infrastructure - are almost identical to those formulated in the previously leaked proposal: Member States a) 'shall withdraw all restrictions on the supply of transmission capacity on cable TV networks and allow operators to use the cable networks to deliver their services' and b) 'shall ensure that interconnection of cable TV networks with the public telecommunications network is authorised for such purpose, in particular interconnection with leased lines, and that the restrictions on direct interconnection of cable TV networks are abolished'.

Cross ownership of telecommunications and cable TV networks

The question could be raised as to why the leaked draft of September 1994 was not immediately acted upon since there is apparently little difference in content between that and the published draft. This primarily concerns the second part of the leaked proposal. This actually said that cable TV networks and telecommunications networks should not be provided by the same operator within the same area: 'Member States shall take the necessary measures, within the framework of the licensing of cable TV and telecommunications organisations, to avoid and, where applicable, end a situation in which the same operator provides both networks in the same geographical area. A mere separation resulting in two distinct business units would not be sufficient to achieve this aim'.

The last sentence in particular was unacceptable to countries whose national PTT organisations in fact have large interests in cable TV. At the very least, these countries comprise France and Germany. But it is obvious that even in a country like the Netherlands this provision could have far-reaching consequences for KPN's stake in the Dutch cable TV networks. KPN, as majority shareholder of NV CASEMA, controls more than 1.2 million cable connections (around 20% market share)

MARKET SHARE OF TELECOMMUNICATIONS OPERATORS IN THE NATIONAL CABLE MARKET (1995)				
Country	Operator	Homes passed	Homes Connected	Market share (homes passed)
Denmark	Tele Danmark	712.000	980.000	38%
Finland	Telecom Finland	185.000	124.700	22%
France	France Télécom	1.138.858	377.293	18%
Germany	Deutsche Telekom	24.190.000	15.808.00	95%
Netherlands	Casema/NKM	1.200.000	1.150.474	20%
Norway	Telenor	--	210.000	32%

(source: Kagan)

This part of the text has been drastically amended in the published draft and in fact has lost a good deal of force. The new text merely states that in the event that cable TV networks and telecommunications networks are in the same hands in any geographical area, transparent and non-discriminatory behaviour must be ensured by separation of financial accounts in particular. A cable TV network operator must apply a similar separation between his cable TV broadcasting and telecommunication activities.

Directive enters into force next

Although there has been pressure from various member states to withdraw its initiative, the European Commission has kept to its intentions and adopted a directive at the beginning of October 1995 which entered into force as from 1 January 1996.

This definitive directive is very similar to the published draft. The directive abolishes restrictions on the use of transmission capacity on cable television networks for all telecommunications services, apart from public voice telephony.^{xi} Data communications and private/closed user group networks can therefore be set up using these networks. The directive also ensures that cable TV networks are allowed to interconnect with the public telecommunications network and directly interconnect with each other.

Secondly, the directive deals with the above-mentioned questions concerning cross-ownership of telecommunications and cable TV networks. Member states should impose regulations to ensure transparent accounting and non-discriminatory behaviour where an operator has the exclusive right to provide the infrastructure for public telecommunications networks and also provides the infrastructure for cable TV networks. In particular, there has to be a separation of financial accounts as concerns the provision of each network and its capacity as provider of telecommunications services.

Furthermore, the directive obliges Member States to take additional steps in the event that an operator has the exclusive right to provide cable TV network infrastructure in a given geographical area. In such a case, the operator concerned must keep separate financial accounts as regards the provision of network capacity for telecommunications as soon as turnover exceeds 50 million ECU in the market for telecommunications services other than the distribution of radio and TV broadcasting services in the relevant geographic area. Member states may - under certain conditions - defer this obligation for a limited time. In a situation where an operator fulfils this dual role, the Commission will carry out an overall assessment of the impact of such joint provision by January 1998.

Further liberalisation of alternative infrastructure

The European Commission completed its initiatives concerning the liberalisation of alternative infrastructure - such as the networks of railways and utility companies - with a directive on >the implementation of full competition in telecommunications markets=. ^{xii} This directive also extends the scope of the original service directive. It in fact liberalises - among other things - all forms of alternative infrastructure and obliges Member States to lift all restrictions on the provision of telecommunications services other than voice telephony over infrastructures provided by third parties no later than 1 July 1996. Various member states including Germany, France and the Netherlands introduced draft-legislation which concurred with the directive, but several Member States were not able to respect the deadline and asked the Commission for derogations. ^{xiii} Countries that were not in time with the revision of their national regulatory framework were threatened by the Commission with an Infringement procedure. ^{xiv}

Consequent to the liberalisation of the infrastructure enforced by the European Commission, it is possible that there will be renewed discussion in several Member States on the deregulation of voice telephony before the agreed date of 1 January 1998 and certain member states (ie the Netherlands) have decided to pre-empt the European timetable. In any case, telecommunications users in most countries of the European Union have - in principle - for the first time have the choice of two or more providers of liberalised telecommunications services over different infrastructures.

Notes:

i. This article is an updated and extended version of >liberalisation of cable television networks in Europe=, published in: IRIS 1995, >Legal developments in the Audiovisual sector=, Strasbourg, 1995.

ii. respectively the Council directive of 28/6/90 on the establishment of the internal market for telecommunications services through the implementation of open network provision, (90/387/EEG), Publ L 192 dd. 27/7/1990 and the Commission directive of 28 June 1990 on competition in the markets for telecommunications services, (90/388/EEG), Publ L 192 dd. 27/7/1990.

iii. Council Resolution of 22/7/93 on the 1992 telecommunications review, 93/C 213/01, Publ C 213, dd. 6/8/93.

iv. 'Member States shall ... withdraw all restrictions for the supply of liberalized services or transmission capacity on cable-TV networks and shall take the necessary measures to ensure that potential service providers may interconnect, where necessary, their installations via the telecommunications networks to the cable-TV networks'. This text was also discussed in the trade magazines (ie. Telecommunications Week 28/3/94).

v. For example, the article by two Commission employees in Telecommunications Policy: M. Haag en H. Schoof, *Telecommunications regulation and cable tv infrastructures in the European Union, current policies and future issues*, Telecommunications Policy, 1994 18(5), p. 367-377.

vi. *Green paper on the liberalisation of telecommunications infrastructure and cable television networks: part I, principle and timetable*, European Commission, Com(94)440 final dd. 25/10/94. Also: *Part II, a common approach to the provision of infrastructure for telecommunications in the European Union*, Com(94)682 final dd. 25/1/95.

vii. Resolution dd. 22/12/93, 94/C 379/03.

viii. 'Europe and the global information society - recommendations to the European Council', S 2/94, Brussel, 26/5/94. Also, the action plan that followed the report: 'Europe's way to the information society - an action plan', Brussels, COM(94) 347 final.

ix. The service directive is also based upon article 90, section 3.

x. Draft Commission directive amending Commission directive 90/388/EEC with regard to the abolition of the restrictions on the use of cable television networks for the provision of telecommunications services, Publ C 76/8, dd. 28/3/95.

xi. =Member States shall:

- Abolish all restrictions on the supply of transmission capacity by cable TV networks and allow the use of cable networks for the provision of telecommunications services, other than voice telephony;

- ensure the interconnection of cable TV networks with the public telecommunications network is authorized for such purpose, in particular interconnection with leased lines, and that the restrictions on the direct interconnection of cable TV networks by cable TV operators are abolished=.

xii. Commission Directive 96/19/EC of 13 March 1996 amending Directive 90/388/EEC with regard to the implementation of full competition in telecommunications markets.

xiii. Ireland, Portugal, Greece, and Luxembourg.

xiv. Austria, Belgium and Italy.