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(Acts whose publication is obligatory)

REGULATION (EC) No 2887/2000 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL
of 18 December 2000
on unbundled access to the local loop
(Text with EEA relevance)

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 ⁽¹⁾,

Acting in accordance with the procedure laid down in Article 251 of the Treaty ⁽²⁾,

Whereas:

(1) The conclusions of the 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 'e-Europe' Action Plan which identifies unbundled access to the local loop as a short-term priority.

(2) Local loop unbundling should complement the existing provisions in Community law guaranteeing universal service and affordable access for all citizens by enhancing competition, ensuring economic efficiency and bringing maximum benefit to users.

(3) The 'local loop' is the physical twisted metallic pair circuit in the fixed public telephone network connecting the network termination point at the subscriber's premises to the main distribution frame or equivalent facility. As noted in the Commission's Fifth Report on the implementation of the telecommunications regulatory package, the local access network remains one of the least competitive segments of the liberalised telecommunications market. New entrants do not have widespread alternative network infrastructures and are unable, with traditional technologies, to match the economies of scale and the coverage of operators designated as having significant market power in the fixed public telephone network market. This results from the fact that these operators rolled out their metallic local access infrastructures over significant periods of time protected by exclusive rights and were able to fund investment costs through monopoly rents.

(4) The European Parliament Resolution of 13 June 2000 on the Commission communication on the 1999 Communications review 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 currently concerns mainly the metallic 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.

(5) 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 addresses access to metallic local loops, without prejudice to national obligations regarding other types of access to local infrastructures.

⁽¹⁾ Opinion delivered on 19 October 2000 (not yet published in the Official Journal).

⁽²⁾ Opinion of the European Parliament of 26 October 2000 (not yet published in the Official Journal) and Decision of the Council of 5 December 2000.

- (6) It would not be economically viable for new entrants to duplicate the incumbent's metallic local access infrastructure in its entirety within a reasonable time. Alternative infrastructures such as cable television, satellite, wireless local loops do not generally offer the same functionality or ubiquity for the time being, though situations in Member States may differ.
- (7) Unbundled access to the local loop allows new entrants to compete with notified operators in offering high bit-rate data transmission services for continuous Internet access and for multimedia applications based on digital subscriber line (DSL) technology as well as voice telephony services. A reasonable request for unbundled access implies that the access is necessary for the provision of the services of the beneficiary, and that refusal of the request would prevent, restrict or distort competition in this sector.
- (8) This Regulation mandates unbundled access to the metallic local loops only of notified operators that have been designated by their national regulatory authorities as having significant market power in the fixed public telephone network supply market under the relevant Community provisions (hereinafter referred to as 'notified operators'). Member States have already notified to the Commission the names of those fixed public network operators which have significant market power under Annex I, Part 1, of 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) ⁽¹⁾, and Directive 98/10/EC of the European Parliament and of the Council of 26 February 1998 on the application of open network provision to voice telephony and on universal service for telecommunications in a competitive environment ⁽²⁾.
- (9) A notified operator cannot be required to provide types of access which are not within its powers to provide, for example where fulfilment of a request would cause a violation of the legal rights of an independent third party. The obligation to provide unbundled access to the local loop does not imply that notified operators have to install entirely new local network infrastructure specifically to meet beneficiaries' requests.
- (10) 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. In certain circumstances the national regulatory authority may, in accordance with Community law, intervene on its own initiative in order to ensure fair competition, economic efficiency and maximum benefit for end-users. Failure of the notified operator to meet lead times should entitle the beneficiary to receive compensation.
- (11) Costing and pricing rules for local loops and related facilities should be transparent, non-discriminatory and 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, in order to ensure the long term development and upgrade of local access infrastructure. Pricing rules for local loops should foster fair and sustainable competition, bearing in mind the need for investment in alternative infrastructures, 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.
- (12) 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 to their associated companies. 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 the Internet, and under the supervisory control of the national regulatory authority, would contribute to the creation of transparent and non-discriminatory market conditions.
- (13) In its 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 ⁽³⁾ and its Communication of 26 April 2000 ⁽⁴⁾, 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.
- (14) In accordance with the principle of subsidiarity 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. In accordance with the principle of proportionality as set out in that Article, the provisions of this

⁽¹⁾ OJ L 199, 26.7.1997, p. 32. Directive as amended by Directive 98/61/EC (OJ L 268, 3.10.1998, p. 37).

⁽²⁾ OJ L 101, 1.4.1998, p. 24.

⁽³⁾ OJ L 156, 29.6.2000, p. 44.

⁽⁴⁾ OJ C 272, 23.9.2000, p. 55.

Regulation do not go beyond what is necessary in order to achieve this objective for that purpose. They are adopted without prejudice to national provisions complying with Community law which set out more detailed measures, for example dealing with virtual collocation.

- (15) This Regulation complements the regulatory framework for telecommunications, in particular Directives 97/33/EC and 98/10/EC. The new regulatory framework for electronic communications should include appropriate provisions to replace this Regulation,

HAVE ADOPTED THIS REGULATION:

Article 1

Aim and Scope

1. This Regulation aims at intensifying competition and stimulating technological innovation on the local access market, through the setting of harmonised conditions for unbundled access to the local loop, to foster the competitive provision of a wide range of electronic communications services.

2. This Regulation shall apply to unbundled access to the local loops and related facilities of notified operators as defined in Article 2(a).

3. This Regulation shall apply without prejudice to the obligations for notified operators to comply with the principle of non-discrimination, when using the fixed public telephone network in order to provide high speed access and transmission services to third parties in the same manner as they provide for their own services or to their associated companies, in accordance with Community provisions.

4. This Regulation is without prejudice to the rights of Member States to maintain or introduce measures in conformity with Community law which contain more detailed provisions than those set out in this Regulation and/or are outside the scope of this Regulation *inter alia* with respect to other types of access to local infrastructures.

Article 2

Definitions

For the purposes of this Regulation the following definitions apply:

- (a) 'notified operator' means operators of fixed public telephone networks that have been designated by their national regulatory authority as having significant market power in the provision of fixed public telephone networks

and services under Annex I, Part 1, of Directive 97/33/EC or Directive 98/10/EC;

- (b) 'beneficiary' means a third party duly authorised in accordance with Directive 97/13/EC⁽¹⁾ or entitled to provide communications services under national legislation, and which is eligible for unbundled access to a local loop;
- (c) 'local loop' means the physical twisted metallic pair circuit connecting the network termination point at the subscriber's premises to the main distribution frame or equivalent facility in the fixed public telephone network;
- (d) 'local sub-loop' means a partial local loop connecting the network termination point at the subscriber's premises to a concentration point or a specified intermediate access point in the fixed public telephone network;
- (e) '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 local loop;
- (f) 'full unbundled access to the local loop' means the provision to a beneficiary of access to the local loop or local sub loop of the notified operator authorising the use of the full frequency spectrum of the twisted metallic pair;
- (g) 'shared access to the local loop' means the provision to a beneficiary of access to the local loop or local sub loop of the notified operator, authorising the use of the non-voice band frequency spectrum of the twisted metallic pair; the local loop continues to be used by the notified operator to provide the telephone service to the public;
- (h) 'collocation' means the provision of physical space and technical facilities necessary to reasonably accommodate and connect the relevant equipment of a beneficiary, as mentioned in Section B of the Annex;
- (i) 'related facilities' means the facilities associated with the provision of unbundled access to the local loop, notably collocation, cable connections and relevant information technology systems, access to which is necessary for a beneficiary to provide services on a competitive and fair basis.

Article 3

Provision of unbundled access

1. Notified operators shall publish from 31 December 2000, and keep updated, a reference offer for unbundled access to their local loops and related facilities, which shall include at least the items listed in the Annex. The offer shall be sufficiently unbundled so that the beneficiary does not have to pay for network elements or facilities which are not necessary for the supply of its services, and shall contain a description of the components of the offer, associated terms and conditions, including charges.

⁽¹⁾ Directive 97/13/EC of the European Parliament and of the Council of 10 April 1997 on a common framework for general authorisations and individual licences in the field of telecommunications services (OJ L 117, 7.5.1997, p. 15).

2. Notified operators shall from 31 December 2000 meet reasonable requests from beneficiaries for unbundled access to their local loops and related facilities, under transparent, fair and non-discriminatory conditions. Requests shall only be refused on the basis of objective criteria, relating to technical feasibility or the need to maintain network integrity. Where access is refused, the aggrieved party may submit the case to the dispute resolution procedure referred to in Article 4(5). Notified operators shall provide beneficiaries with facilities equivalent to those provided for their own services or to their associated companies, and with the same conditions and time-scales.

3. Without prejudice to Article 4(4), notified operators shall charge prices for unbundled access to the local loop and related facilities set on the basis of cost-orientation.

Article 4

Supervision by the national regulatory authority

1. The national regulatory authority shall ensure that charging for unbundled access to the local loop fosters fair and sustainable competition.

2. The national regulatory authority shall have the power to:

(a) impose changes on the reference offer for unbundled access to the local loop and related facilities, including prices, where such changes are justified; and

(b) require notified operators to supply information relevant for the implementation of this Regulation.

3. The national regulatory authority may, where justified, intervene on its own initiative in order to ensure non-discrimination, fair competition, economic efficiency and maximum benefit for users.

4. When the national regulatory authority determines that the local access market is sufficiently competitive, it shall relieve the notified operators of the obligation laid down in Article 3(3) for prices to be set on the basis of cost-orientation.

5. Disputes between undertakings concerning issues included in this Regulation shall be subject to the national dispute resolution procedures established in conformity with Directive 97/33/EC and shall be handled promptly, fairly and transparently.

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.

Done at Brussels, 18 December 2000.

For the European Parliament
The President
N. FONTAINE

For the Council
The President
D. VOYNET

ANNEX

MINIMUM LIST OF ITEMS TO BE INCLUDED IN A REFERENCE OFFER FOR UNBUNDLED ACCESS TO THE LOCAL LOOP TO BE PUBLISHED BY NOTIFIED OPERATORS

A. Conditions for unbundled access to the local loop

1. Network elements to which access is offered covering in particular the following elements:
 - (a) access to local loops;
 - (b) access to non-voice band frequency spectrum of a local loop, in the case of shared access to the local loop;
2. Information concerning the locations of physical access sites ⁽¹⁾, availability of local loops in specific parts of the access network;
3. Technical conditions related to access and use of local loops, including the technical characteristics of the twisted metallic pair in the local loop;
4. Ordering and provisioning procedures, usage restrictions.

B. Collocation services

1. Information on the notified operator's relevant sites ⁽¹⁾;
2. Collocation options at the sites indicated under point 1 (including physical collocation and, as appropriate, distant collocation and virtual collocation);
3. Equipment characteristics: restrictions, if any, on equipment that can be collocated;
4. Security issues: measures put in place by notified operators to ensure the security of their locations;
5. Access conditions for staff of competitive operators;
6. Safety standards;
7. Rules for the allocation of space where collocation space is limited;
8. Conditions for beneficiaries to inspect the locations at which physical collocation is available, or sites where collocation has been refused on grounds of lack of capacity.

C. Information systems

Conditions for access to notified operator's operational support systems, information systems or databases for pre-ordering, provisioning, ordering, maintenance and repair requests and billing.

D. Supply conditions

1. Lead time for responding to requests for supply of services and facilities; service level agreements, fault resolution, procedures to return to a normal level of service and quality of service parameters;
2. Standard contract terms, including, where appropriate, compensation provided for failure to meet lead times;
3. Prices or pricing formulae for each feature, function and facility listed above.

⁽¹⁾ Availability of this information may be restricted to interested parties only, in order to avoid public security concerns.