



TELECOMMUNICATIONS INFRASTRUCTURE LIBERALISATION

EXECUTIVE SUMMARY

- * Europe needs a competitive European telecommunications industry. This will be a key factor in helping deliver the measures for growth, industrial competitiveness and employment set out in the Delors' White Paper of December 1993;
- * the conclusions and recommendations of the Bangemann Group represent the way forward and should be implemented as a matter of urgency;
- * the Commission's Action Plan for the implementation of the Bangemann Group's recommendations (COM(94)347) is welcomed, although the difficulties surrounding the detail should not be underestimated;
- * the emerging multimedia revolution and the importance to Europe of competitive and collaborative Trans-European Networks (TENs) in telecommunications call for a rapid policy reassessment. Monopolistic industrial structures are incapable of delivering the changes required;
- * competition in public voice telephony services by 1998, as agreed by European Telecommunications Ministers in June 1993, is not enough. Competition in telecommunications infrastructure is needed as well in order to drive down prices, improve service quality, encourage innovation and attract sufficient private investment;
- * the Commission's draft Communication on lifting constraints on alternative infrastructure as a welcome first step; the first part of the Green Paper on infrastructure should build on this and call for an early Article 90 Directive;
- * the key issues which need to be resolved in connection with full infrastructure liberalisation are:
 - (i). the need to finance universal access to telecommunication services, which Telephone Operators (TOs) historically have cross-subsidised from international and business calls markets. The answer is not to prevent competition: instead, non-discriminatory access to TO networks should be allowed. At the same time, new competitors could pay charges to help contribute to TO losses incurred in providing universal service and losses incurred as a result of regulatory restrictions on tariff rebalancing. Such restrictions should be removed as quickly as possible. The funding of other universal service elements, such as payphones, support for disabled customers, emergency services, etc. must also be considered. The European Commission is looking at these issues now with the aim of

establishing a regulatory structure by the end of 1995 to facilitate public voice resale by January 1998. This work is equally relevant to infrastructure competition:

- (ii). protection of the environment. This can be achieved by sensitive planning laws and by the improving technologies in infrastructure construction.
- * unless there is action at EU-level, Europe risks a multi-speed approach. Liberalising infrastructure supply now does not mean competition tomorrow: it will take years to develop. Some countries (Portugal, Greece, Spain, Ireland) already have possible derogations to 2003 on public voice service liberalisation, although some have indicated that they may not take advantage of them. Further derogations are unnecessary;
- * a common timetable and regulatory approach is needed, spanning the converging telecommunications, broadcasting and publishing industries;
- * EURIM recommends;-
- * the development of a clear regulatory framework on infrastructure which deals with universal service issues, interconnection and access charges;
- * interim steps by 1995. The Commission should liberalise satellite services and the use of alternative telecommunications infrastructure (including the existing cable tv, railways, highways etc. and new infrastructure installed for the purpose) for provision to others of data and non-public voice services;
- * 1998 as the date for a real Single Market in Telecommunications. By that date, all services and infrastructures should have been liberalised; and there should be a timetable for the removal of regulatory or other legal restrictions on the ability of companies to compete in markets of their choice.

EURIM

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I. INTRODUCTION

1. The Council of Telecommunications Ministers decided on 16 June 1993 to require liberalisation by 1 January 1998 of public voice telephony services. No decisions were taken on infrastructure liberalisation, pending a Green Paper by the end of 1994.
2. Although this was a step forward, many believed that these decisions did not go far enough to provide for the fully open telecommunications market needed to enhance the competitiveness of European Industry. Europe is lagging behind the USA and Japan and will fall further behind unless urgent action is taken.
3. The Commission White Paper on "Growth, Competitiveness, Employment: the Challenges and Ways Forward Into the 21st Century" recognised the importance of Information Trans-European Networks (TENs) to Europe's future. The White Paper calls for the removal of "regulatory and financial obstacles" to the development of TENs. It recognises too that "the dawning of a multimedia world ... represents a radical change comparable with the first industrial revolution". Further, that "this issue is a critical aspect in the survival or decline of Europe".
4. EURIM agrees with these views. The converging multimedia industries need a common way forward. They need a plan consistent with the urgency stressed in the White Paper. Monopolistic industrial structures will not deliver the vision of a competitive European Information Society. The White Paper says that "too many monopolies and too much over-regulation persist" and that the USA, which has "taken the lead with deregulation, has the fastest growing markets and falling consumer prices". The Report of the Group to assess the issues, set up under Commissioner Bangemann by the Council of Ministers, recommends an acceleration in the pace of liberalisation, including infrastructure liberalisation, and sets out a plan for bringing the industry into line with developments in other parts of the world. The Council accepted the report at the Corfu summit on 24-25 June 1994 and the Commission has produced an Action Plan (COM(94)347) as a follow-up. EURIM supports the conclusions and recommendations in the Bangemann Group Report and welcomes the Action Plan.
5. EURIM believes that infrastructure liberalisation is an essential component in the development of a market structure that will provide Europe with the communications services it needs. Monopolies in telecommunications infrastructure, like other exclusive rights, are inconsistent with the presumption in favour of completion (Article 3 (f) in the 1957 Treaty of Rome. All special and exclusive rights granted to TOs should be removed, and not just those related to other aspects of telecommunications, as has been agreed so far.
6. However, EURIM recognises that the regulatory regime that emerges from the liberalisation process must reflect the needs of all operators, both new and incumbent, for an environment in which proper planning and investment decisions can be taken. This means clear rules, transparent processes, transparent information, and an even-handed approach. There must be rules to prevent unfair discrimination and cross-subsidy. Moreover, some forms of entry assistance, perhaps in relation to interconnection, may be appropriate for a limited period if investment is to be encouraged.

II. ADVANTAGES OF CHANGE

7. High monopoly prices in telecommunications in Europe damage the cost base on which the rest of Europe's industry relies for its regional and global competitiveness. Price competition between suppliers of telecommunications infrastructure will inevitably help reduce those costs. This will lead to keener prices in business and consumer good markets; and into sustainable opportunities for employment.

8. Innovation is best promoted by a competitive environment. This has proven to be self-evident in the computer and IT industries. It is equally true in telecommunications: an example is the UK-based proportion of Europe's broadband leased lines (80% in 1992 according to EC figures).
9. Prices for telecommunications in Europe are too high; and quality of service is too low. Competitive pressures will drive effective and rapid change. For example, in the UK, BT's main prices have fallen by over 34% in real terms since 1984; there are discount schemes for light and heavy users; its call failure percentage (network faults) reduced from 5.1% in 1984 to 0.2% in 1993, etc. Competition in infrastructure provision has been the spur for these changes and for investment in network modernisation.
10. Competition in infrastructure expands the market and stimulates market entry. It generates revenue and increases the total sector turnover to the benefit of all actors. "Liberal markets generally have higher traffic growth rates" [OECD, 31 March 1994]. To face competition and to compete for market position, TOs will need to accelerate modernisation, trans-national cooperation and service deployment plans. An entrepreneurial spirit will be released, as advocated in the Bangemann Report. By removing the regulatory barriers to infrastructure provision, a massive upsurge in private sector investment into telecommunications projects and ventures will be generated. This funding could not be replicated by the public budget.

III. NO OVERRIDING DISADVANTAGES IN CHANGE

11. Some people are concerned about the impact of the introduction of competition on the financial viability of TOs, and hence on universal service. Such warnings have proven unfounded in practice in the USA, UK, Sweden, Japan, Australia and New Zealand. All these countries have buoyant markets, effective pricing and good penetration levels. These are differences in the definitions of universal service obligations in these countries, but neither the financial viability of the operators nor the continuing commitment to universal service are in doubt.
12. The answer to these concerns is not to prevent competition but to encourage it on the basis of regulatory conditions that do not inhibit or restrict the ability of either existing or new players to behave in a normal commercial manner. The OECD for instance believes that "competition can be applied as a force to deal with unmet demand and bring down the cost of existing and future universal service goals" [OECD, 31 March 1994]. In many countries the historic cross-subsidies between access and calls businesses are enshrined by regulatory restrictions on the abilities of TOs to rebalance their prices. These restrictions should be removed as quickly as possible to an agreed timetable. Any losses on access services which the TOs make as a result of regulatory rules inhibiting their pricing freedom could be met by contributions from all operators in proportion to their market shares. The burden would, therefore, continue to fall mainly upon the incumbent TOs. There would need to be a transparent mechanism for assessing the true size of the losses which took account of any inefficiencies on the part of the TOs.
13. In this way, competition need not await further rebalancing: it can be introduced during a phased period of tariff rebalancing, with access charges bridging the gap. The Council of Telecommunications Ministers of 7 December 1993 required the Commission to develop by the end of 1995 a framework of regulatory principles for universal service, tariff rebalancing, interconnection and access charges. This was to facilitate public voice telephony liberalisation by 1 January 1998, but the work is equally relevant to the introduction of infrastructure competition.
14. Competition in services (voice, data) over networks is only part of the answer to the achievement of a truly competitive market. Competition in prices and quality will be keenest

if Service Providers have the ability to choose from two or more suppliers, or even to invest in infrastructure themselves.

15. A competitive infrastructure market does not preclude some forms of cooperation. There need be no conflict with existing competition rules since the main issue should be an assessment of potential customer benefit. For example, a number of European TOs are collaborating on various projects, including the ATM pilot and Euro-ISDN.
16. Possible concerns about the effect of liberalisation on the environment can be overcome. Progress in technology, including for laying cables and digging trenches, can play a major part, together with planning rules to protect areas of natural beauty or of other importance. Teleworking, distance learning and related applications over broadband networks can also assist by reducing travel and the strain on public transport infrastructure, by reducing pollution, and by increasing the possibilities for relocating businesses in underdeveloped areas. The proposals on alternative infrastructure will help avoid many potential environmental concerns although action must be taken to ensure that the proper authorities are granted speedily for the use of such infrastructure for telecommunications purposes.
17. The principle of reciprocity in market access with those outside the European Economic Area (EEA) is important, but is not a reason for inaction. EURIM supports efforts to conclude discussions on multilateral liberalisation in basic telecommunications services by Spring 1996. But waiting for this process to unfold should not impact on intra-EEA liberalisation of national and international telecommunications infrastructure.

IV. ISSUES AFFECTING TIMING AND SCOPE

18. Europe needs a single regulatory framework spanning the converging multimedia industries, overseeing the rules under which all operators are allowed to compete in the provision of all services. Competitive infrastructure will encourage innovation in related software, entertainment and broadcasting markets. This will fit well with the Commission's Green Paper of 7 April 1994 on the AudioVisual sector and European Programming Industry.
19. However, building, developing or enhancing telecommunications networks and dealing with issues like the setting up of billing and customer service systems, and of sales and marketing teams, takes time. A decision to liberalise today does not mean competition tomorrow. But delaying that decision means delaying the benefits of competition.
20. Some EU countries are pressing ahead anyway. There is full domestic infrastructure competition in the UK, and a duopoly in international infrastructure; the Netherlands has announced a second infrastructure operator (offering non-reserved services) in 1995; reports in France, Germany and Spain argue the case for further liberalisation. But piece-meal liberalisation will not maximise the potential benefits; the EU must have a common approach if it is not to fall further behind the other major trading areas.
21. The derogations granted to certain Member States in relation to the 1998 liberalisation of voice services would, if used, delay the introduction of competitive services to the detriment of customers and the overall efficiency of the European market. It seems that some countries may not take advantage of their derogations in recognition of this.
22. EURIM believes that such derogations are unnecessary, that granting further derogations relating to infrastructure liberalisation would be a mistake, and that reciprocal market opening should be one of the factors to be considered in any licence application process. It would be inequitable to allow monopolists operating in closed home markets to compete freely elsewhere.

23. Full liberalisation will take time to have an effect. In the meantime, denying existing infrastructure owners the right to sell spare capacity to third parties is wasteful. The draft Commission Communication on lifting constraints on alternative infrastructure for the provision of competitive telecommunications services of 22 July 1994 recommends lifting restrictions on the use of own or third party infrastructure (including cable tv, railways, energy, highways etc.) to provide satellite, mobile and voice data services.
24. EURIM looks forward to these ideas being developed in the two-parts of the Green Paper due in November 1994 and January 1995. There is no reason for delay: liberalisation to this extent would have no relevant impact on universal service financing. The Commission must take urgent action compelling Member States to remove exclusive rights in this area. Alternative network owners should also be able to develop, enhance and extend their networks for commercial use: it would be absurd if they were prevented from doing so.
25. Allowing companies the option to self-provide infrastructure for their own use would also help. But whilst the proposals in the Commission's Green Paper on Mobile and Personal Communications [COM94)145] for mobile network operators to have this freedom are welcome, such networks should be able to carry any call, if spare capacity exists, not just those to or from a mobile terminal.
26. Moreover, the right of self-provision using microwave should be explicit, and a means for ensuring the adequate provision of spectrum needs to be in place. Without this, the general principle for self-provision will be undermined.

V. CONCLUSIONS

27. New circumstances demand new policies and a new regulatory structure. European competitiveness is at a crossroads. Urgent action is needed to foster Europe's Information Society. An appropriate pro-competitive European-level regulatory structure is vital to achieving a Single Market in telecommunications and multimedia services. The structure should be stable and predictable, minimising the burden on industry. The new rules, which must apply with equal force throughout the EU, should:
 - * encourage market entry and investment;
 - * end distortions of competition;
 - * liberalise infrastructure provision;
 - * safeguard competition and diversity in all markets;
 - * allow the provision of all kinds of services by all operators without discrimination;
 - * avoid State aids;
 - * encourage commercial standards;
 - * develop a transparent method of funding universal service;
 - * ensure interconnection between broadband networks;
 - * ensure freedom of speech and expression by allowing open access on suitable terms to all public networks.

28. A commitment to urgent and important decisions is needed. Europe needs a real Single Market in Telecommunications. By 1 January 1995, Europe should have:

- * full liberalisation of satellite services; and
- * liberalisation of the use of, and development of, alternative telecommunications infrastructure (cable television, railways etc.) for third party provision of mobile, data and non-public voice services.

29. By 1 January 1998, Europe should have:

- * full liberalisation of services;
- * full liberalisation of infrastructure;
- * agreed a timetable for the removal of regulatory restrictions, so that all operators are able to provide all services;
- * abandoned two-speed policies.

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