

COMMISSION

COMMISSION RECOMMENDATION

of 29 March 2005

on the provision of leased lines in the European Union — Part 2 — pricing aspects of wholesale leased lines part circuits

(notified under document number C(2005) 951)

(Text with EEA relevance)

(2005/268/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to Directive 2002/21/EC of the European Parliament and of the Council of 7 March 2002 on a common regulatory framework for electronic communications networks and services⁽¹⁾ (the framework Directive), and in particular Article 19(1) thereof,

Whereas:

- (1) New entrants (or other authorised operators) often have to rely on the incumbent to provide a short-distance leased circuit to link the customer's premises to the new entrant's network (a leased line part circuit).
- (2) (Under 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)⁽²⁾ and Council Directive 92/44/EEC of 5 June 1992 on the application of Open Network Provision to leased lines⁽³⁾, that have now been repealed⁽⁴⁾, certain organisations operating leased lines services were obliged to provide their leased line services (including leased lines part circuits) under the principles of non-discrimination and cost orientation.
- (3) In accordance with Article 27 of the Framework Directive and Article 16(1) of Directive 2002/22/EC of

the European Parliament and of the Council of 7 March 2002 on universal service and user's rights relating to electronic communications networks and services⁽⁵⁾ (the universal service Directive) and Article 7 of Directive 2002/19/EC of the European Parliament and of the Council of 7 March 2002 on access to, and interconnection of, electronic communications networks and associated facilities⁽⁶⁾ (the access Directive), the former obligations are therefore maintained until such time as the relevant markets have been reviewed in accordance with Article 16 of the framework Directive and Article 16(3) of the universal service Directive.

- (4) In accordance with Article 16(4) of the framework Directive, where a national regulatory authority (NRA) determines that a relevant market is not effectively competitive, it shall identify undertakings with significant market power and shall impose appropriate specific regulatory obligations on such undertakings, or maintain or amend such obligations where they already exist. In accordance with Article 18(1) of the Universal Service Directive, where an NRA determines that the market for the minimum set of leased lines is not effectively competitive, it shall identify undertakings with significant market power and impose obligations regarding the provision of the minimum set and the conditions for such provision. Hereinafter undertakings with obligations under any of the abovementioned directives are referred to as 'notified operators'.
- (5) On 11 February 2003, the Commission adopted a recommendation on relevant product and service markets⁽⁷⁾ defining the relevant markets within the electronic communications sector that NRAs must analyse under the provisions of Article 15 of the framework Directive. The list includes wholesale terminating segments of leased lines and wholesale trunk segments of leased lines.

⁽¹⁾ OJ L 108, 24.4.2002, p. 33.

⁽²⁾ OJ L 199, 26.7.1997, p. 32. Directive as amended by Directive 98/61/EC, OJ L 268, 3.10.1998, p. 37).

⁽³⁾ OJ L 165, 19.6.1992, p.27. Directive as last amended by Commission Decision 98/80/EC, OJ L 14, 20.1.1998, p. 27).

⁽⁴⁾ These Directives were repealed by Article 26 of the framework Directive with effect on 24 July 2003.

⁽⁵⁾ OJ L 108, 24.4.2002, p. 51.

⁽⁶⁾ OJ L 108, 24.4.2002, p. 7.

⁽⁷⁾ C(2003) 497, OJ L 114, 8.5.2003, p. 45.

- (6) The supply of leased lines part circuits is included in the market of wholesale terminating segments of leased lines and for sufficient line lengths also in the market for wholesale trunk segments of leased lines referred to in the Recommendation of the Commission of 11 February 2003. It is a matter for the NRA to decide what constitutes a terminating segment depending on the network topology specific to their national market.
- (7) Without prejudice to the market reviews and market power assessments by NRAs in accordance with Articles 15 and 16 of the framework Directive and Article 16(3) of the universal service Directive, information provided by Member States reveals a persistent pattern of worsening problems with the level of prices for leased line part circuits given by notified operators and confirms problems with the variation of such prices.
- (8) Where, in accordance with Article 13 of the Access Directive or Article 18 of the universal service Directive, a national regulatory authority imposes obligations for cost orientation with regard to leased line part circuits, it may take into account the fact that the cost information received from the operator concerned may not fully reflect the costs of an efficient operator deploying modern technologies. It may also take into account prices available in comparable competitive markets with regard to mandated cost recovery mechanisms or pricing methodologies.
- (9) In these circumstances, the publication of recommended price ceilings for leased line part circuits should inform and guide NRAs as to how to apply the best current practices in leased line provision, when devising regulatory remedies for leased line markets that are not effectively competitive in their territory. In so doing, it would contribute to the development of an internal market by improving EU-wide consistency in application of the regulatory framework and thereby underpin the creation of a more competitive and cost-efficient market for leased lines.
- (10) The derivation of price ceilings in this recommendation takes account of average prices in those Member States that allow notified operators price flexibility in different geographical areas.
- (11) As provided in Article 13(3) of the access Directive, NRAs may require a SMP-designated undertaking to
- provide full justification for its prices, and may, where appropriate, require prices to be adjusted.
- (12) The Commission shall consider the need to review this recommendation no later than 31 July 2006 in order to take account of changing technologies and of markets.
- (13) The Communications Committee has been consulted in accordance with the procedure referred to in Article 22(2) of the framework Directive,
- HEREBY RECOMMENDS:
- For the purpose of this recommendation, the following definitions shall apply:
 - a 'leased line part circuit' (LLPC) means the dedicated link between the customer premises and the point of interconnection of the other authorised operator at (or close to) the network node of the notified operator, and should be regarded as a particular type of a wholesale leased line which can be used by the other authorised operator to provide services to retail users, other operators or for its own use such as, but not limited to, leased lines, connections to the switched telephone network, data services or broadband access;
 - 'line length' means the radial distance between the locations of the two ends of the line, i.e. from the point of interconnection to the customer premises;
 - 'customer' means customer of the other authorised operator.
 - When imposing or maintaining an obligation for cost orientation of prices under Article 13(1) of Directive 2002/19/EC (the access Directive) with regard to operators providing leased line part circuits, national regulatory authorities should:
 - ensure that the prices associated with the provision of a leased line part circuit reflect only the costs of the underlying network elements and the services being requested including a reasonable rate of return. In particular, the tariff structure may include one-off connection prices covering the justified initial implementation costs of the service being requested (e.g. specific equipment, line conditioning, testing and human resources), and monthly prices covering the on-going cost for maintenance and use of equipment and resources provided;

- (b) ensure that any of the price ceilings listed in Annex I for leased line part circuits based on the price data and methodology given in the Commission services working document are respected unless there is reliable evidence from cost accounting analysis as approved by the national regulatory authority that the recommended ceiling would result in a price level below the efficient costs of the underlying network elements and the services being requested including a reasonable rate of return.
- (c) use their rights under Article 13 of the access Directive to request full justification of the proposed charges, and if appropriate, to require these charges to be adjusted.
3. This Recommendation is addressed to the Member States.

Done at Brussels, 29 March 2005.

The methodology used to calculate recommended price ceilings, as described in the associated Commission Staff working document ⁽¹⁾, is considered to be appropriate to cover recognised cost differences between different operators in different Member States;

For the Commission
Viviane REDING
Member of the Commission

⁽¹⁾ 'Commission staff working document — Methodology, reference configuration and data of leased lines in Member States related to the Commission recommendation on the provision of leased lines in the European Union — Part 2 — Pricing aspects of wholesale leased line part circuits' — http://europa.eu.int/information_society/topics/ecom/useful_information/library/commiss_serv_doc/index_en.htm

ANNEX

(EUR)

Capacity	Ceiling for the sum of the monthly price and 1/24 of the one-off connection price for a circuit length of up to 2 km	Ceiling for the sum of the monthly price and 1/24 of the one-off connection price for a circuit length of up to 5 km	Ceiling for the sum of the monthly price and 1/24 of the one-off connection price for a circuit length of up to 15 km	Ceiling for the sum of the monthly price and 1/24 of the one-off connection price for a circuit length of up to 50 km	Ceiling for the One-off connection price
64 kbit/s	61	78	82	99	542
2 Mbit/s	186	248	333	539	1 112
34 Mbit/s	892	963	1 597	2 539	2 831
155 Mbit/s	1 206	1 332	1 991	4 144	3 144