

## COMMISSION RECOMMENDATION

of 21 January 2005

**on the provision of leased lines in the European Union (Part 1 — Major supply conditions for wholesale leased lines)***(notified under document number C(2005) 103)*

(2005/57/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 (Framework Directive)<sup>(1)</sup>, and in particular Article 19(1) thereof,

Whereas:

- (1) Users in the Community require the competitive provision of leased lines, and access to high-speed transmission data services so that in particular Europe's small and medium-sized enterprises can benefit from the opportunities offered by the rapid development of the Internet and electronic commerce.
- (2) Competitive provision of leased lines has begun to emerge since liberalisation of telecommunications infrastructure on 1 January 1996, but has been largely confined to long distance high capacity routes; leased line markets will be reviewed as explained below.
- (3) Certain organisations operating leased lines services had the obligation to provide these services under the principles of non-discrimination in accordance with 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)<sup>(2)</sup> and Council Directive 92/44/EEC of 5 June 1992 on the application of Open Network Provision to leased lines<sup>(3)</sup>; these Directives were repealed by Article 26 of the Framework Directive with effect on 24 July 2003.
- (4) However, the obligations will remain in place according to Article 27 of the Framework Directive and Article 16 of Directive 2002/22/EC of the European Parliament and of the Council of 7 March 2002 on universal service and users' rights relating to electronic communications networks and services (Universal Service Directive)<sup>(4)</sup>. In accordance with Article 16(1) of 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 (Access Directive)<sup>(5)</sup>, the former obligations are 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.
- (5) 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 on such undertakings impose appropriate specific regulatory obligations 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. In accordance with Article 5(1) of the Access Directive, NRAs shall encourage and where appropriate ensure adequate access and interconnection and shall be able to impose obligations to that effect.
- (6) On 11 February 2003 the Commission adopted Recommendation 2003/311/EC<sup>(6)</sup> on relevant product and service markets, defining the relevant markets within the electronic communications sector that NRAs should analyse. The list includes wholesale terminating segments of leased lines and wholesale trunk segments of leased lines. The supply of the services addressed in this recommendation, namely the supply of wholesale leased lines and leased line part circuits, is included in these markets.

<sup>(1)</sup> OJ L 108, 24.4.2002, p. 33.<sup>(2)</sup> OJ L 199, 26.7.1997, p. 32. Directive as last amended by Directive 98/61/EC (OJ L 268, 3.10.1998, p. 37).<sup>(3)</sup> 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).<sup>(4)</sup> OJ L 108, 24.4.2002, p. 51.<sup>(5)</sup> OJ L 108, 24.4.2002, p. 7.<sup>(6)</sup> OJ L 114, 8.5.2003, p. 45.

- (7) The supply of wholesale leased lines and leased line 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 Recommendation 2003/311/EC; the NRA will decide what constitutes a terminating segment depending on the network topology specific to their national market.
- (8) The supply of 64 kbit/s, 2 Mbit/s unstructured and 2 Mbit/s structured leased lines is included in the minimum set of leased lines services referred to in the Recommendation on relevant markets. The minimum set of leased lines is defined in Commission Decision 2003/548/EC of 24 July 2003 on the minimum set of leased lines with harmonised characteristics and associated standards referred to in Article 18 of the Universal Service Directive<sup>(1)</sup>.
- (9) Information provided by Member States reveals problems with the length and the variation of delivery times for retail and wholesale leased lines and leased line part circuits. This is without prejudice to the review by NRAs of relevant markets in accordance with Article 16 of the Framework Directive and Article 16(3) of the Universal Service Directive.
- (10) Where, in accordance with Article 10 of the Access Directive and Article 18 of and Annex VII to the Universal Service Directive, NRAs impose obligations of non-discrimination for the provision of certain leased line services, the principle of non-discrimination applies to all relevant aspects of the services provided such as ordering, migration, delivery, quality, repair time, reporting and penalties; in leased line contracts it is most appropriate to cover these aspects by a service level agreement; instead of penalties, compensation for failure to meet contractual requirements could be included into the agreement where this would be more appropriate with regard to the legal context in a Member State.
- (11) In particular, contractual delivery times should be included in the service level agreement so as to ensure that delivery times for wholesale leased lines by such operators are the same as those provided for their own services and thus sufficiently below delivery times observed on retail markets.
- (12) The publication of best current practice figures for overall delivery times of leased lines will help NRAs to ensure that contractual delivery times applied to wholesale leased lines and leased line part circuits in particular provided by operators with an obligation for non-discrimination do not prevent other operators competing in leased lines retail markets from providing similar delivery time figures to their customers. Contractual delivery times for wholesale leased lines should therefore at least permit competing operators in retail markets to meet best current practice delivery times of designated operators providing leased lines in these retail markets. Retail delivery times longer than best current practice delivery times could result in obstacles to the development of the internal market for electronic communication networks and services; in accordance with Article 8(3)(a) of the Framework Directive, it is an objective for NRAs to remove such obstacles. Best current practice delivery times of designated operators in retail markets include the retail delivery processes of designated operators; thus corresponding wholesale delivery times would be shorter.
- (13) According to Article 18 of and Annex VII to the Universal Service Directive, NRAs are to ensure that the typical delivery period for the minimum set of leased lines provided by identified undertakings is published; in order to review this Recommendation the Commission may need to have also available data on leased lines not covered by the minimum set.
- (14) The Commission will review this Recommendation no later than 31 December 2005 in order to take account of changing technologies and of markets.
- (15) The Communications Committee has delivered its opinion in accordance with Article 22(2) of the Framework Directive,
- HEREBY RECOMMENDS:
1. When imposing or maintaining an obligation for non-discrimination under Article 10 of the Access Directive or Article 18 of and Annex VII to Directive 2002/22/EC (the Universal Service Directive) with regard to operators providing leased line services (hereinafter referred to as designated operators), national regulatory authorities should:
- (a) ensure that contracts include enforceable agreements (hereinafter referred to as service level agreements) which cover all relevant aspects of the wholesale leased line services provided such as ordering, migration, delivery, quality, repair time, reporting and dissuasive financial penalties;

<sup>(1)</sup> OJ L 186, 25.7.2003, p. 43.

(b) ensure that the contractual delivery times for wholesale leased lines in these service level agreements are as short as possible for each category of lines. Contractual delivery times at the wholesale level should be in any case shorter than best current practice delivery times of designated operators in retail markets. Best current practice delivery times of designated operators in the retail markets for 64 kbit/s, 2 Mbit/s unstructured, 2 Mbit/s structured and 34 Mbit/s unstructured are given in the Annex.

The methodology used to calculate the best current practice figures given in the Annex is considered to be appropriate to cover recognised differences of network structures and delivery procedures between different designated operators in different Member States;

(c) ensure in particular that financial penalties included into the contracts as referred to in paragraph (a) apply in cases of delayed delivery of lines and consist of a specified amount for each day of delay for each line ordered; the contract

shall provide also that the amount shall not be due where and insofar as the designated operator provides proof that the reason for the delay does not lie on him;

(d) ensure that the information necessary to prepare any review of this Recommendation is provided in accordance with Article 5(1) of Directive 2002/21/EC (the Framework Directive) and report this information to the Commission in accordance with Article 5(2) of the Framework Directive.

2. This Recommendation is addressed to the Member States.

Done at Brussels, 21 January 2005.

*For the Commission*  
Viviane REDING  
*Member of the Commission*

## ANNEX

**METHODOLOGY AND DATA FOR LEASED LINES IN MEMBER STATES****Methodology**

The methodology for recommended ceilings for contractual delivery times is based on the third lowest value observed in the Member States in order to accommodate justified differences in network structures and delivery procedures in the different Member States. Based on this methodology and the data given below, the following best current practice delivery time figures have been derived for leased lines provided by designated operators:

1. for **64 kbit/s** leased lines: **18** calendar days
2. for **2 Mbit/s** leased lines unstructured: **30** calendar days
3. for **2 Mbit/s** leased lines structured: **33** calendar days
4. for **34 Mbit/s** leased lines unstructured: **52** calendar days

**Delivery time data for leased lines in Member States**

The Commission has obtained data from Member States on delivery times for leased lines of operators notified by the NRA as having significant market power according to Article 11(1)(a) of Directive 92/44/EEC in response to the questionnaire for the Leased Lines Report 2002<sup>(1)</sup>. The data was received by September 2003. Delivery times reported are defined as the periods, counted from the date when the user has made a firm request for a leased line, in which 95 % of all leased lines of the same type have been put through to the customers<sup>(2)</sup> <sup>(3)</sup>.

<sup>(1)</sup> 2001 Report available at:

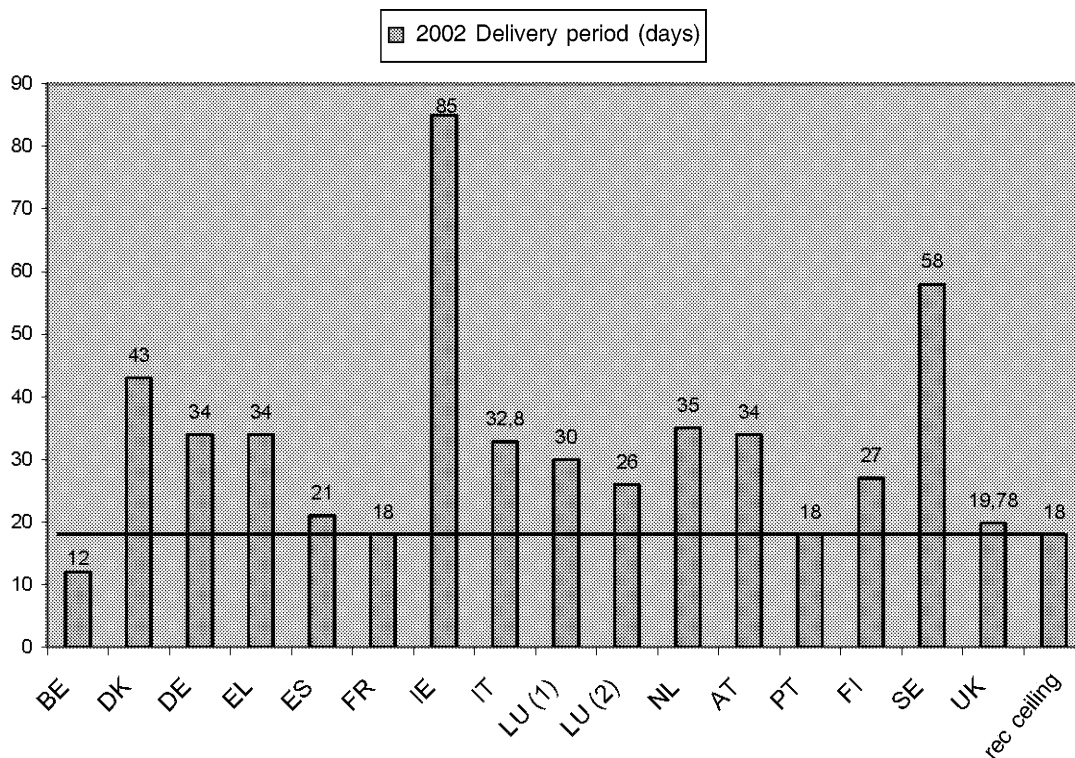
[http://europa.eu.int/information\\_society/topics/telecoms/implementation/leasedlines/doc/COCOM02-10%20final.pdf](http://europa.eu.int/information_society/topics/telecoms/implementation/leasedlines/doc/COCOM02-10%20final.pdf)

<sup>(2)</sup> See Article 2(3) of Directive 97/51/EC of the European Parliament and of the Council (OJ L 295, 29.10.1997, p. 23).

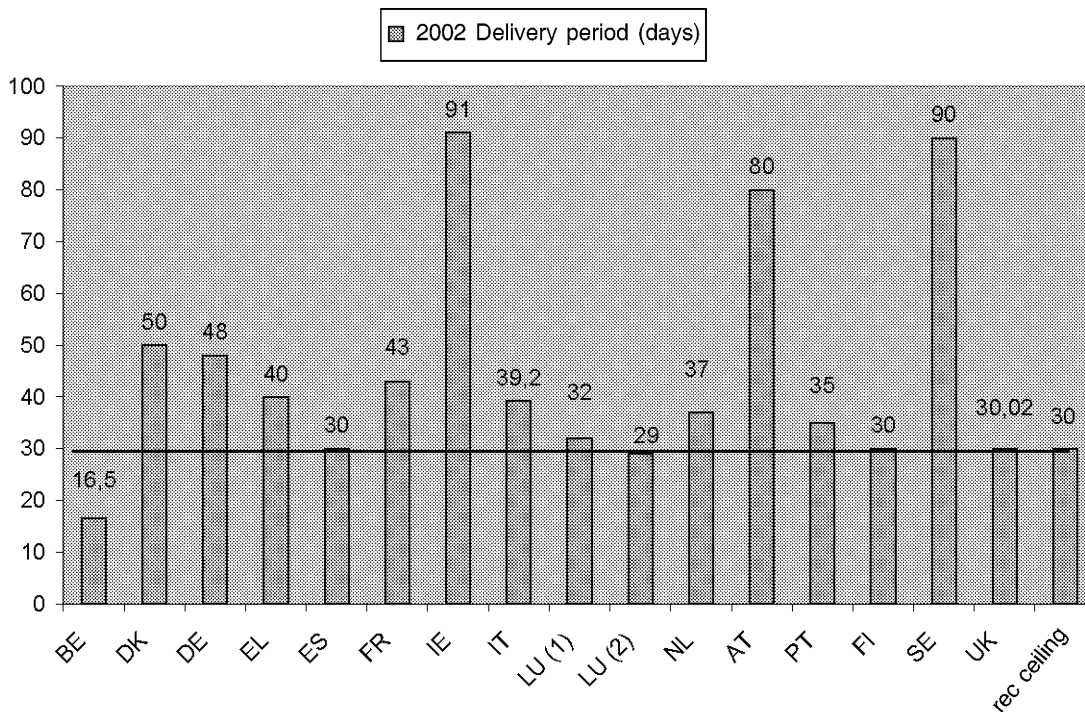
<sup>(3)</sup> Luxembourg provided only half year figures for 2002. Here the figures for both half year periods are displayed. In relevant cases the higher of the two half year figures has been taken into account as an upper bound for full year figures in order to derive best current practice figures.

Data given for Austria: data concern retail and wholesale lines; statistics correspond to the Directive (95 % of delivery times), data include also orders in locations where infrastructure has to be built; for 2 Mbit/s no distinction between structured and unstructured lines; for 34 Mbit/s and 155 Mbit/s the sample is too small for reliable statistics; specific customer delay, customer-requested changes on the target-delivery date (no 'best effort deliveries') and on project orders are excluded; delivery times are calculated from time of acceptance of a signed contract, if no other date (see customers' delays) is agreed.

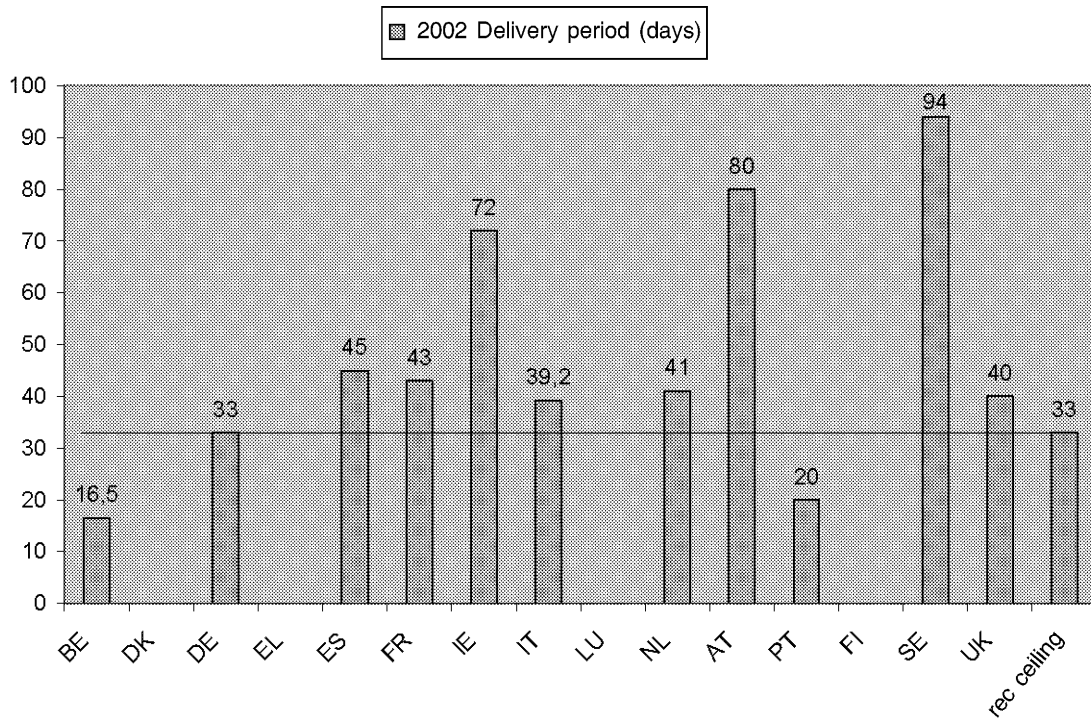
64 kbit/s Leased Lines



2 Mbit/s Unstructured Leased Lines



## 2 Mbit/s Structured Leased Lines



## 34 Mbit/s Unstructured Leased Lines

