EUROPEAN PARLIAMENT

1999 *2004*

Session document

FINAL
A5-0145/2000

25 May 2000

REPORT

on the Commission communication to the Council, the European Parliament, the Economic and Social Committee and the Committee of the Regions entitled: 'Towards a new framework for Electronic Communications infrastructure and associated services – The 1999 Communications review' (COM(1999) 539 – C5-0141/2000 – 2000/2085(COS))

Committee on Industry, External Trade, Research and Energy

Rapporteur: W.G. van Velzen

CONTENTS

Page

PROCEDURAL PAGE 3

MOTION FOR A RESOLUTION.....4

EXPLANATORY STATEMENT 10

OPINION OF THE COMMITTEE ON LEGAL AFFAIRS AND THE INTERNAL MARKET.....15

OPINION OF THE COMMITTEE ON THE ENVIRONMENT, PUBLIC HEALTH AND CONSUMER POLICY 21

OPINION OF THE COMMITTEE ON CULTURE, YOUTH, EDUCATION, THE MEDIA AND SPORT 24

PROCEDURAL PAGE

By letter of 11 November 1999, the Commission forwarded to Parliament a communication to the Council, the European Parliament, the Economic and Social Committee and the Committee of the Regions entitled: 'Towards a new framework for Electronic Communications infrastructure and associated services – The 1999 Communications review' (COM(1999) 539 – 2000/2085(COS)).

At the sitting of 17 March 2000 the President of Parliament announced that she had referred the communication to the Committee on Industry, External Trade, Research and Energy as the committee responsible and to the Committee on Legal Affairs and the Internal Market, the Committee on the Environment, Public Health and Consumer Policy and the Committee on Culture, Youth, Education, the Media and Sport for their opinions (C5-0141/2000).

The Committee on Industry, External Trade, Research and Energy had appointed W.G. van Velzen rapporteur at its meeting of 7 December 1999.

The committee considered the Commission communication and the draft report at its meetings of 21 March, 19 April and 24 and 25 May 2000.

At the last meeting it adopted the motion for a resolution by 37 votes to 1, with 3 abstentions.

The following were present for the vote: Carlos Westendorp y Cabeza, chairman; Renato Brunetta, Nuala Ahern, Peter Michael Mombaur, vice-chairmen; W.G. van Velzen, rapporteur; Bastiaan Belder (for Yves Butel), Felipe Camisón (for Jaime Valdivielso de Cué), Massimo Carraro, Gérard Caudron, Willy C.E.H. De Clercq, Raina A. Mercedes Echerer (for Caroline Lucas), Concepció Ferrer, Alfred Gomolka (for Konrad K. Schwaiger), Lisbeth Grönfeldt Bergman (for Dominique Vlasto), Malcolm Harbour, Rolf Linkohr, Linda McAvan, Eryl Margaret McNally, Nelly Maes, Marjo Tuulevi Matikainen-Kallström, Luisa Morgantini, Angelika Niebler, Neil Parish (for John Purvis, pursuant to Rule 153(2), Elly Plooij-van Gorsel, Samuli Pohjamo (for Astrid Thors), Godelieve Quisthoudt-Rowohl, Bernhard Rapkay (for Glyn Ford), Daniela Raschhofer, Imelda Mary Read, Mechtild Rothe, Paul Rübig, Jacques Santer (for Umberto Scapagnini), Ilka Schröder, Esko Olavi Seppänen, Helle Thorning-Schmidt (for François Zimeray), Alejo Vidal-Quadras Roca and Anders Wijkman.

The opinions of the Committee on Legal Affairs and the Internal Market, the Committee on the Environment, Public Health and Consumer Policy and the Committee on Culture, Youth, Education, the Media and Sport are attached.

The report was tabled on 25 May 2000.

The deadline for tabling amendments will be indicated in the draft agenda for the relevant part-session.

MOTION FOR A RESOLUTION

European Parliament resolution on the Commission communication to the Council, the European Parliament, the Economic and Social Committee and the Committee of the Regions entitled: 'Towards a new framework for Electronic Communications infrastructure and associated services – The 1999 Communications review' (COM(1999) 539 – C5-0141/2000 – 2000/2085(COS))

The European Parliament,

– having regard to the Commission communication (COM(1999) 539 – C5-0141/2000[1]),

– having regard to its resolution of 16 March 2000 on the Commission communication entitled: '*e*Europe – An Information Society for All: a Commission Initiative for the Special European Council of Lisbon, 23 and 24 March 2000', and in particular paragraph 13 thereof,[2]

– having regard to its resolution of 18 May 2000 on the Commission communication to the European Parliament, the Council, the Economic and Social Committee and the Committee of the Regions on the Fifth Report on the Implementation of the Telecommunications Regulatory Package[3],

– having regard to its resolution of 18 May 2000 on the Commission communication to the Council, the Economic and Social Committee and the Committee of the Regions entitled: 'Next Steps in Radio Spectrum Policy – Results of the Public Consultation on the Green Paper'[4],

– having regard to its resolution of …. June 2000 on the Commission communication to the Council, the Economic and Social Committee and the Committee of the Regions entitled: 'The development of the Market for Digital Television in the European Union – Report in the context of Directive 95/47/EC of the European Parliament and of the Council of 24 October 1995 on the use of standards for the transmission of television signals'[5],

– having regard to Rule 47(1) of its Rules of Procedure,

– having regard to the report of the Committee on Industry, External Trade, Research and Energy and the opinions of the Committee on Legal Affairs and the Internal Market, the Committee on the Environment, Public Health and Consumer Policy and the Committee on Culture, Youth, Education, the Media and Sport (A5-0145/2000),

---

[1] OJ C not yet published.
[2] A5-0067/2000 – OJ C not yet published.
[3] A5-0094/2000 – OJ C not yet published.
[4] A5-0122/2000 – OJ C not yet published.
[5] See Thors report A5-0143/2000 on the Agenda of the sitting of … - OJ C not yet published.

A. whereas, while it is not yet possible to use general competition law as the applicable legal system, the long-term goal of the liberalisation process of the telecom-related market is effective competition, and whereas all proposed regulatory measures should be instruments which will finally lead to effective competition, as derived from general competition law and supervised by the national competition authorities, taking into consideration users' and consumers' rights, but whereas markets must be defined in a way which is not discriminatory and disadvantageous for operators in smaller markets,

B. whereas the policy objectives of the future creation of a level playing field must be to prepare EU telecommunications policy for a sufficiently competitive EU telecom market to prepare players in the EU to compete effectively against global players, providing a predictable climate for investors, with the necessary flexibility and sunset clauses which enable the EU and Member States to react to market changes,

C. whereas it is necessary to ensure convergence between regulatory policies for the various electronic communication infrastructures,

D. whereas, while the sector of fixed networks is in a transitional phase in the period 2002-2008, elements of full competition already exist in the mobile telephony sector; whereas, in many Member States, the cable sector is developing new and more sophisticated broadband infrastructures, including digital TV, and whereas there is a need for convergence of regulatory policy, just as there is convergence of networks and services, now that barriers between networks, and devices attached to those networks, are disappearing,

E. whereas the process of opening up the market is not yet finished, with the obstacles emphasised in Parliament's resolution of 18 May 2000[6] needing to be taken into account, especially swift action to resolve the following issues which are particularly relevant to European consumers:

- the high roaming prices and the higher prices for calls from the fixed network to the mobile network than from the mobile network to the fixed and than calls from the mobile network to the mobile network are clear examples of market imperfections; the Commission should consider possible ways of lowering those prices to acceptable and transparent levels; in so doing, however, the Commission should, if at all possible, avoid regulatory intervention in the mobile communications market, which has grown freely;

– 112-operators in all Member States must be able to deal with emergency calls in at least one other official EU language; there should be a caller location obligation for emergencies services (112), caller location for services should be at the discretion of the consumer, but the use of caller location facilities by suppliers of services or networks should be permitted only if the user is aware of them and has given his/her prior consent; in order to protect the privacy of the user, permission must regularly be requested again for the use of caller location facilities in connection with commercial applications; these conditions should not apply to emergency calls; the choice of the caller location system for mobile telephony must be made in

[6] A5-0094/2000.

consultation with the industry;

– consumers must have easy access to accurate and transparent information about the price of individual outgoing or incoming calls;

– consumers have a right to information on the quality of the service delivered by the suppliers;

– for consumers to benefit from increased competition, prices need to be comparable;

– consumers must be informed well in advance (at least before the contract has been concluded) about all contractual terms, in writing and in a clear, transparent and comprehensive manner. These contractual terms must be fair. Action has to be taken, within or outside the scope of Directive 93/13/EC on Unfair Contract Terms, to address this issue; consumers must be protected against unfair or misleading selling methods;

– number portability is a user right and a good trigger for competition. It should be available for both fixed and mobile subscriptions, as the absence of number portability has the effect of locking consumers into one particular network; national regulatory authorities should ensure that the introduction of number portability is not impeded by tied sales, technical measures or other arrangements which limit the consumers' choice of operators or service providers;

- consumers must have access to simple, inexpensive and independent complaint processing and clear and effective redress mechanisms. Due attention has to be paid to cross-border complaint processing and dispute settlement;

– information on the results of studies, e.g. from the 5th Framework Research Programme on health risks linked with the use of mobile handsets and related devices, should be made publicly available;

F. whereas the NRAs must act according to pre-defined guidelines published by the Commission and including market definitions, in order to achieve common, objective criteria which minimise the need for case-by-case assessments by regulators; whereas the Commission should have the right to challenge actions by Member States which do not comply with guidelines or will damage the single market; whereas such actions should be suspended through a transparency procedure;

1. Wishes to compliment the European Commission on its communication, which demonstrates a broad and complete analysis and includes sensible proposals, but considers that there is a need for further consideration of a number of themes, such as the concept of competition, the question of dealing with an imperfect market, the proposed system of Significant Market Power and Dominant Positions, general authorisation and auctions, and the institutional framework with respect to the democratic basis and certainty for market players; considers that the Commission should promote the creation of a level playing field in relation to the three objectives of the 99 Review and stresses that, in some Member States, no auctions of UMTS frequencies are held, as a result of which some ICT companies obtain UMTS

frequencies at far lower prices than their competitors; points out that this does not create a level playing field; observes that the influence of governments on national ICT companies is regulated in very different ways (e.g. by means of minority holdings or golden shares) and that this has constituted an obstacle to mergers between European ICT companies; calls on the Commission to create a level playing field in this respect too;

2. Stresses the importance of having the necessary new regulation and rules, which take due account of the convergence in this field, in place during the year 2001; agrees with the principles of regulation and the description of the regulatory framework as formulated by the Commission and that, while there will be a general trend to replacing sector-specific regulation with rules based on the principles of general competition law, sector-specific regulation will still be required, for example for the regulation of markets where effective competition is unlikely to emerge and for the achievement of certain public policy objectives; believes that there must be periodic reassessments in order to determine the extent to which a need for sector-specific regulation still exists and to make it possible to react to rapid market developments; therefore considers that the period of validity of the Directives which will follow the Review must be limited until 2005 and that, after 2005, there must be a reassessment in order to determine whether a need for sector-specific regulation still exists or whether a new need for sector-specific regulation has arisen; believes that one method of regulation is to further develop recommendations adopted at EU level and implemented by NRAs;

3. Stresses that guaranteeing access to all communications services at an affordable price should be a priority, with the aim of enabling all citizens to participate in the information society; approves the provisions of the current framework, which makes it possible to finance public access by drawing on the state budget and to establish arrangements for the financing of the universal service while taking care not to create distortions of competition;

4. Emphasises the fact that, while universal service is a dynamic concept, the scope of which must be reviewed on a regular basis, universal service obligations need not be extended at present, without prejudice to the possibility for Member States to offer extras by means of state funding; considers that auctions of frequencies could increase the prices charged to consumers, which would be contrary to the Lisbon decisions concerning an information society accessible to all; believes that the new framework must maintain the possibility for Member States to establish schemes to compensate the universal service provider, where such provision constitutes an unfair burden on the operator, and that such schemes must be justified, transparent, and proportionate;

5. Considers that, while market failures persistently occur, there is a need to work with ex ante obligations, formulated in a Directive and implemented by the NRAs with notification to the Commission, in order to avoid abuse of dominant positions; believes that NRAs must act in accordance with pre-defined guidelines published by the Commission and that the guidelines must contain market definitions in order to achieve common, objective criteria which minimise the need for case-by-case assessments by regulators; notes that the question of market power is very complex, one which cannot be covered in one mechanical model; believes that the analysis of the economic market situation is best made at a decentralised level by the NRA or by the NRA together with

the Competition Authority and that, in any situation of market failure that may arise, the NRAs must propose measures of regulation in a manner appropriate to the gradation of market failure in the sector and aimed at more competition and must consult the market players to find out if the sector can break the logjam in question without regulation; takes the view that NRAs have to justify their decisions against pre-defined guidelines published by the Commission in order to achieve common, objective criteria which minimise the need for non-objective judgements by regulators and that the Commission must be able to challenge and possibly revoke the decisions taken by the NRAs if they are not justified according to the regulatory framework; calls for the imposed measures to be published and to be applicable for a limited period; emphasises that the NRAs and the Commission must conduct on a yearly basis benchmark studies focusing on progress towards full competition and reassessing the need for continuing the ex ante regulations for particular sectors;

6. Considers that the regulatory framework and its implementation by Member States must stimulate cross-border cooperation and thus be able to implement the concept of 'one-stop-shopping' for the general authorisation of licences; believes that, in each Member State, there must be a timetable for the integration of the NRA into the national competition authority and that the Commission should reformulate the tasks of the NRAs in a Directive including sunset clauses in order to bring about transparency and a common minimum package of tasks of NRAs; takes the view that the NRAs must be encouraged to undertake cross-border cooperation and be responsible for cross-border dispute settlements in cooperation with the Commission; notes that the existence of the HLCG is limited to the period during which NRAs are not yet integrated into national competition authorities; calls on the Commission to foster the dialogue between NRAs and representatives of consumers and of the ICT industrialists and telecom operators; bears in mind the possibility of a yearly communication from the IRG to Parliament;

7. Stresses that the Commission is responsible for the implementation of the Directives and not the Communications Committee and that the Council should have time-limits imposed on it for the preparation of common positions in the ICT sector in order to respond to rapid market developments; calls for an EP-mandated working party to discuss with the Commission the same subjects that it raises in the Communications Committee;

8. Accepts that 'must-carry' rules remain justified in the digital broadcasting environment and that the regulatory framework must take full account of the need to ensure universal access to public service content; believes that this can be achieved through the use of 'must-carry' rules on key networks and guarantees of access for public service content through other key distribution networks and facilities such as set-top boxes and receivers; believes that such content should be easily accessible and prominently displayed on navigators or guides, provided that such rules are proportionate and limited to those channels that are covered by a public service broadcast remit as referred to in Protocol 32 annexed to the Treaty of Amsterdam and that operators subject to such rules receive reasonable remuneration, taking into account the non-profit nature of public service broadcasting and the value of these broadcast channels to operators; takes the view that, in the case of possible commercial activities of public broadcasters, general competition law must be applied and no cross-subsidies allowed;

9. Stresses the importance of enabling the sector to develop infrastructures which promote the growth of e-communications and e-commerce and the importance of regulating in a way that supports this growth; notes that the unbundling of the Local Loop is currently mainly relevant to the copper 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

10. Stresses that the regulatory framework should include a maximum list of absolutely essential conditions to be attached to general authorisations; believes that rights of way do not justify specific authorisation, since this kind of right is not specific to an individual organisation; believes further, that the use of spectrum does not justify individual licences when there is no risk of harmful interference, in particular when spectrum assignment has been harmonised at European level; considers that guidelines to benchmark fee levels could be useful in bringing greater consistency to licence fees across the EU; is concerned to note that the Commission does not discourage spectrum auctions, since auctions tend to raise licence fees above their economic value, raise consumer tariffs and hamper the introduction of new services; encourages the Member States to use the revenues raised as a result of auctions, fees and radio spectrum pricing to create better conditions for the development of an information society and e-commerce in the European Union, in accordance with the conclusions of the Lisbon Summit;

11. Welcomes the Commission's proposal to check for duplication and ensure transparency in the decision-making process; asks, in particular, for a clearer definition of 'soft law' embodying a procedure which involves Parliament and the Communications Committee, with more attention being paid to democratic accountability and a better balance between legal certainty and flexibility for the market players than currently proposed by the Commission;

12. Instructs its President to forward this resolution to the Council, the Commission, the Economic and Social Committee and the Committee of the Regions.

EXPLANATORY STATEMENT

Introduction

This communication, the publication of which is a direct consequence of the revision clauses contained in the ONP directives of the 1998 package, demonstrates a broad and complete analysis and includes good proposals. Although the general reaction of your rapporteur is positive, there is a need for further reflection on a number of themes, such as the concept of competition, the question of dealing with an imperfect market, the proposed system of Significant Market Power and Dominant Positions, general authorisation and auctions, and the institutional framework with respect to the democratic basis and certainty for market players.

Because the long-term goal of the liberalisation process of the telecom-related market is full competition, all proposed regulatory measures should be derived from general competition law. Although, in the long term, competition law will be the applicable legal system, at this moment this is not yet possible. There is a need for an inventory of instruments that will finally lead to full competition.

Extension of policy objectives

In appraising the telecommunications markets, your rapporteur has tried to look at them globally and as a dynamic concept, encompassing foreseeable evolution and convergence, rather than considering their present segmentation according to given network/service combinations.

It therefore appears necessary to extend the first policy objective as proposed by the Commission with the future creation of a level playing field and with the consolidation of the internal market in a converging environment. A new third policy objective for the 1999 Review must be to prepare the EU telecommunications policy for competition on a global level.

The need exists to create, via an EU regulatory framework, a clear, predictable climate for investors, with the necessary flexibility and sunset clauses to react to market changes.

While agreeing with the principles of regulation as formulated by the Commission and confirming that the description of the regulatory framework is the right approach, your rapporteur considers that the period of validity of the set of Directives which will follow the Review must be limited, for instance until the year 2005, and combined with sunset clauses which offer the possibility of reacting to rapid market developments. After 2005, there must be a reassessment in order to determine if a need for sector-specific regulation still exists.

Since the ICT sector is in a transitional phase, with full competition as the final goal, the use of competition principles is appropriate. In so doing, the market definition must be related to global competition.

Convergence in a transitional phase

In the sector of mobile telephony, virtually full competition exists in the field of the DCS 900 and 1800 standards. For WAP and UMTS, there will be a lot of growth in the near future. In many Member States, the cable sector is still in the stage of full development of new and more sophisticated infrastructures. Digital TV is in full development. Barriers between networks, and between devices attached to those networks, are disappearing.

However, the period 2002-2008 will be a transitional phase for fixed networks. Infrastructure competition is increasing, and different stages of market developments exist. There is a need for convergence of regulatory policy, just as there is convergence of networks and services.

Lessons to be drawn from the 5th implementation report

The process of opening up the market is not yet finished, so the obstacles as analysed by Mr Paasilinna in his report on the implementation of telecom-related legislation must be taken into account. Unresolved specific aspects must be tackled:

- the high roaming prices and the high prices of calls from fixed networks to mobile and mobile to fixed are clear examples of market failure. The Commission should take appropriate measures to lower these prices to acceptable and transparent levels;
- caller location can be a threat to privacy. The introduction of a caller location obligation for the emergency services (112) is in the interest of the consumer. The use of caller location facilities should not be permitted except in such cases of emergency;
- 112-operators in all Member States must be able to deal with emergency calls in at least one other official EU language;
- consumers must have easy access to accurate and transparent information about the price of individual outgoing or incoming calls. Per-call tariff information should therefore be obligatory;
- consumers must have access to simple, inexpensive complaint processing and dispute resolution procedures, with the basic principles of such schemes being set out at European level;
- number portability for both fixed and mobile subscriptions is a user right and a good trigger for competition. Absence of number portability has the effect of locking in consumers to one particular network. The upcoming Intelligent Networks make number portability technically easy to implement;
- the Directives should include a maximum list of conditions, restricted to those which are absolutely essential, to be attached to both general authorisations and individual licences. Rights of way do not justify specific authorisation, since this kind of right is not specific to an individual organisation. Guidelines to benchmark fee levels could be useful in bringing greater consistency to licence fees across the EU;
- unbundling of the Local Loop is currently mainly relevant to the copper infrastructure. Existing and new infrastructures, such as optical fibres, must be able to ensure a return on investments. The latter can facilitate the extension of the penetration of Cable TV in Member States with a low degree of penetration.

Universal Service

Universal Service Obligations (USO) are a dynamic concept, the scope of which must be reviewed on a regular basis.

At present, USO need not be extended, without prejudice to the possibility for some Member States of offering extras by means of state funding. The costs of these extras will not be carried by the telecom, but the possible revenues from auctions and licences or frequencies may properly be used for this purpose. The new framework will maintain the possibility for Member States to establish schemes to compensate the universal service provider where such provision constitutes an unfair burden on the operator. These schemes must be justified, transparent and proportionate.

Objections against SMP and DP

In the contributions received, many objections were raised against the distinction between essential facilities, significant market power (25%) and dominant position (50%): ex ante obligations do not fit in a market with effective competition: percentages are too mechanical, and the actual functioning of the market must be considered. The vagueness of the proposed obligations for SMP, and the expected crossing of the 25% boundary of companies in the developing, dynamic telecom market, lead to legal uncertainty.
The SMP/DP methodology does not address a situation where non-regulation of the relevant market may damage competition in related, converging but not substitutable markets.

The question of market power is very complex, one which cannot be covered in one mechanical model. This subject can only be looked at on the basis of analysis of the dominant market situation. Percentages are too stiff, because the market develops rapidly, and the main focus should be on the actual process of competition. If market failure occurs, there must be a possibility of applying a number of competition rules.

Role of NRAs

The analysis of the economic market situation is best made at a decentralised level by the NRAs. Parties which have economic power in a relevant market of access-infrastructure will have ex ante obligations, such as obligations to allow their competitors access and interconnection to their infrastructure, cost orientation, and ex ante price regulation. These ex ante obligations must be described in the corresponding Directive in order to facilitate prompt and adequate action by the NRAs.

When market failure occurs, the NRAs must be able to intervene. Possible indicators for competition might be pricing dynamics, evolution of services offered, demand developments, and new entrants' ability to secure significant market shares.

The Directives must include measures and procedures which can be applied in the event of market failure. The inclusion of the measures and procedures in the Directives will avoid the need for time-consuming procedures at the European Commission or European Court of Justice. When full competition is attained, such provisions will become unnecessary.

The measures taken by the NRAs must be commensurate with the gradation of market failure in the sector. NRAs must stimulate cross-border cooperation and thus be able to implement the concept of 'one-stop-shopping' for general authorisation of licences. The NRAs must consider the possible consequences of its regulations on the investment of market players. Before enforcing a regulation, the NRAs must consult the market players to find out if the sector can break the logjam in question without regulation.
NRAs have to justify their decisions against pre-defined guidelines published by the Commission in order to achieve common, objective criteria which minimise the need for non-objective judgments by regulators. The Commission must be able to challenge and possibly revoke the decisions taken by the NRAs if they are not justified on the basis of regulatory framework.

Since telecom operators are working on a pan-European scale, the NRAs should adapt in the same direction, given that the NRAs are responsible for cross-boarder dispute settlement.

In the long run, the NRAs must develop towards, or be integrated into, the National Competition Authorities. In the Access Directive, the powers of the NRAs to enforce regulation must be limited in time, providing a one-year or two-year incentive for the actual development of competition.

In order to achieve coherence and internal consistency in EU telecom policy, the European Commission will have to discuss case studies, best practices and benchmarking in a dialogue with the Independent Group of Regulators (IRG). In the short term, a discussion is required about the role of the IRG, without prejudice to the future integration of the NRAs into the National Competition Authorities.

This requires an adequate economic analysis of the European market position of the party involved, since ICT companies and operators are quickly developing into pan-European organisations. With this development, it will be harder to work only with National Regulatory Authorities. Hence the role of the High Level Communications Group, which should discuss its cases transparently, and the importance of a dialogue between NRAs and representatives of consumers and of the ICT industrialists and telecom operators. In this context, the European ICT/telecom sector should analyse the composition of ETNO and EICTA.

Digital TV and public broadcasting

'Must-carry' rules may remain justified in the digital broadcasting environment. Member States will therefore continue to be able to impose 'must-carry' obligations on network operators, i.e. to require them to carry specified broadcasts. Such rules must be proportionate and limited to those channels that are covered by a public service broadcast remit as defined in Protocol 32 annexed to the Treaty of Amsterdam. Cable operators subject to such rules must also receive reasonable remuneration, taking into account the non-profit nature of public service broadcasting and the value of these broadcast channels to operators.

Democratic deficit

In the current communication about the Review, the European Parliament has the least developed role. The Council participates via the ONP Committee, but, after the adoption of the directives, the role of the EP is marginal.

The following option is possible to eliminate this democratic deficit: The European Parliament should mandate an EP working party to monitor the work in progress of the Commission and ONP Committee and to negotiate with them. Periodically, the Commission should report, via communications, to the EP about the developments in the HLCG and the Communications Committee. The disadvantage of this option is the need for a new working method in the EP to be developed for this purpose. The example of the Transatlantic Council proves that there is room for new working methods.

At the moment, there is a need for a clearer definition of 'soft law', with more attention being paid to democratic accountability and a better balance between legal certainty and flexibility for the market players than currently proposed by the Commission. 'Soft law' should be avoided as much as possible, since there is no legal basis for it, or included within a specific procedure involving the CoCom and an EP working party.

23 May 2000

OPINION OF THE COMMITTEE ON LEGAL AFFAIRS AND THE INTERNAL MARKET

for the Committee on Industry, External Trade, Research and Energy

on the communication from the Commission to the Council, the European Parliament, the Economic and Social Committee and the Committee of the Regions entitled:

'Towards a new framework for Electronic Communications infrastructure and associated services – the 1999 Communications Review'
(COM(1999) 539 – C5-0141/2000 – 2000/2085(COS))

Draftsman: Angelika Niebler

PROCEDURE

The Committee on Legal Affairs and the Internal Market appointed Angelika Niebler draftsman at its meeting of 28 March 2000.

It considered the draft opinion at its meetings of 9 and 24 May 2000.

At the latter meeting it adopted the conclusions below unanimously.

The following were present for the vote: Ana Palacio Vallelersundi, chairman; Rainer Wieland, vice-chairman; Angelika Niebler, draftsman; Maria Berger, Charlotte Cederschiöld, Raina A. Mercedes Echerer, Francesco Fiori (for Antonio Tajani pursuant to Rule 153(2)), Janelly Fourtou, Marie-Françoise Garaud, Evelyne Gebhardt, Malcolm Harbour, Ruth Hieronymi (for Bert Doorn pursuant to Rule 153(2)), The Lord Inglewood, Kurt Lechner, Klaus-Heiner Lehne, Donald Neil MacCormick, Manuel Medina Ortega, Diana Paulette Wallis and Stefano Zappalà.

SHORT JUSTIFICATION

Introduction

Since 1990 the European Community has gradually established a comprehensive regulatory framework for the liberalisation of the telecommunications market in Europe. This has resulted in the rapid and economically successful development of these markets: telecommunications services have become significantly cheaper, and jobs have been, and continue to be, created in the IT and telecoms sector. Technological developments have yielded new applications and services. The whole European economy is deriving enormous benefit from this process, particularly in the form of reductions in business costs. The most important point for the future is that fixed and mobile Internet access with high data-transmission rates should become available at affordable prices.

Purpose of this opinion

The communication from the Commission is about 100 pages long. In this opinion, it will naturally only be possible to cover a few aspects which the draftsman considers essential.

It is proposed that the existing regulatory framework for telecommunications should be overhauled in such a way as to replace the existing 20 instruments with just six. Since it will take at least two years to implement the new framework, while communications markets are developing rapidly, the provisions must be couched in general terms. Moreover, decision-makers must be allowed maximum discretion. On the other hand, the possibility cannot be excluded that allowing ample powers of discretion may result in differing practices in the individual Member States and, hence, distortions of competition. In order to avoid such an eventuality, common objectives and principles must be laid down clearly in the regulatory framework.

The key objective of the communication is to increase competition in all segments of the market, particularly at local level. It is hoped that competition will extend to new, dynamic and largely unpredictable markets with substantially more operators than at present.

To this end, it is first of all necessary to transpose and apply the existing rules completely and properly in all Member States.

A second important point is that the media are converging: increasingly, the same services are being provided through a variety of communications channels, such as fixed or mobile radiocommunications, telecommunications, cable TV, satellite or terrestrial networks. Consequently, there ought in principle no longer to be any differences of regulation between them. However, special rules remain justified in the case of markets where free competition has recently replaced a monopoly but is not yet mature.

Thirdly, greater competition is needed in market segments which are still dominated by the established operators, such as the market for communications services at local level.

National telecommunications markets should also be encouraged to develop into a single European telecommunications market. One appropriate way of attempting this is, as the communication indicates, to further simplify and harmonise the rules on licensing of

communications services and networks.

Finally, in developing the new regulatory framework, it needs to be decided to what extent and in what form the existing sector-specific rules, which made it possible to destroy the previous monopolies, can be replaced with general competition law. The gradual transition from separate rules for each sector to general competition law should go hand-in-hand with the development of the market. Otherwise, excessive regulation would result.

The gradual changeover from sector-specific rules to general competition rules would probably not be assisted by further differentiation of the sector-specific rules from 2002 onwards.

CONCLUSIONS

The Committee on Legal Affairs and the Internal Market calls on the Committee on Industry, External Trade, Research and Energy, as the committee responsible, to incorporate the following points in its motion for a resolution:

The European Parliament,

A. General

1. Welcomes the Commission's intention of merging existing Directives, and thus simplifying the law, and of adapting legislation in the light of developments on the market;

2. Calls for a clear and unambiguous formulation of the political aims and principles underlying the further development of the European telecommunications market; notes that objectives have hitherto been formulated too generally; calls, moreover, for priorities to be stated for the objectives; regrets the failure to state a further objective, namely that of supporting European telecommunications enterprises in their aim of establishing themselves on the world market;

3. Calls on the Commission to adopt positive and urgent measures to guarantee rapid implementation of the existing Directives, so that the major disparities in the liberalisation of national markets do not impede the implementation of the new regulatory framework;

4. Urges the Commission, in the light of the difficulties experienced by Member States and by individual companies in implementing Directives 95/46/EC and 97/66/EC, to develop compliance mechanisms in order to enable businesses to both better understand and better fulfil their obligations under these Directives as well as their new requirements under the Review proposals on data protection;

5. Expresses reservations about the Commission's idea of developing a kind of binding 'soft law';

B. Deregulation/transition to general competition law

6. Fears that deregulation will begin only when all Member States have attained the same level of liberalisation; takes the view, therefore, that possibilities of deregulation should be provided for in the Directives themselves;

7. Criticises the Commission proposal to introduce a dual system whereby ex ante obligations would be imposed on operators if they either possessed significant market power or occupied a dominant position on the market; considers that, in order to define public policy objectives in these fast-moving markets, ex ante rules will still be appropriate where effective competition is unlikely to develop; considers that, where the establishment of effective competition would be dependent upon gaining access to consumers through gateways which it would be either impossible or economically prohibitive to replicate, the consumer interest would best be served by ex ante obligations on the gateway controllers to grant fair, reasonable and non-discriminatory access;

8. Calls on the Commission to establish a clear and concise legal definition of the term 'significant market power' in order to provide for uniform interpretation of the new regulatory framework and to prevent legal uncertainty in its application;

9. Hopes that Member States will be required to develop and lay down a binding model for cooperation between national regulatory authorities and national competition authorities;

(Justification: it is necessary to improve relations between national regulatory authorities and national competition authorities so that the two may coordinate their activities more effectively and adopt consistent positions; this is particularly necessary with regard to the transitional period during which sector-specific rules are to be replaced by general competition law.)

C. No sector-specific regulation of markets which have grown freely

10. Stresses that sector-specific rules make sense only if it is already possible to foresee in advance that the market will fail to operate; notes, accordingly, that effective rules must be devised to prevent this happening; concludes from this that a market which has grown freely and is highly competitive, such as the mobile communications market, should not be covered by the general rules on the fixed network;

11. Emphasises that the instruments for regulating access and interconnection and for selecting operators should not be extended to the mobile communications market, since it is neither necessary nor appropriate to intensify competition by means of such regulation; takes the view that, if this were to be done, it might make operators less willing and financially able to invest further in infrastructure and innovation; for the same reasons, observes that access and interconnection rules should not be extended to ISP (Internet service providers);

12. Calls for intensive research to determine whether number portability in the field of mobile communications really is desirable from the point of view of consumers, particularly bearing in mind that it will ultimately be consumers who have to bear

the additional cost involved;

D. Licensing of communications services and networks

13. Advocates a commitment to grant general authorisations applicable to operators at large and a relaxation of the conditions to which licences may be subject; notes, however, that existing requirements applicable to operators, with particular regard to their expertise and capabilities, must not become less stringent; observes, moreover, that national regulatory authorities must continue to be empowered to obtain business data from operators and must be procedurally able to do so;

14. Shares the Commission's view that different licences, for example to operate network infrastructure and to transmit content, should continue to be issued separately;

E. Unbundling of subscriber access

15. Considers it desirable for the former monopolists to allow their competitors unbundled access to subscriber lines; takes the view that Member States should themselves decide in what form to comply with this requirement; considers that, in this connection, tariff models are appropriate which provide for tariffs to increase in stages over a number of years;

(Justification: unbundling of subscriber access will ensure greater competition in the 'last mile' to the final customer and make it possible for competitors to offer broadband services.)

A tariff structure along these lines will initially make it easier for potential competitors to launch an operation; in the course of time, as tariffs rise, they will be encouraged to establish alternative infrastructure.

F. Digital television

16. Observes that, in some Member States, operators of cable networks and telecommunications networks are still too interdependent, with the result that adequate competition still does not exist between the various transmission channels, and that there is a lack of will to invest in the expansion of cable networks;

17. Considers that a lack of open standards and declared or standardised interfaces within decoders may be used by vertically-integrated operators to deny consumers the benefits of the competition in the supply of digital TV programmes and digital interactive TV services;

G. Universal service

18. Opposes the extension of universal service to broadband services and Internet access and takes the view that such an extension should not be financed by other participants in the market;

(Justification: the introduction of such innovative new services should initially be left to the market.)

H. Deadline for implementation of the new legal framework

19. Advocates that Member States be given at least two years in which to transpose the directives which are to be adopted;

25 April 2000

OPINION OF THE COMMITTEE ON THE ENVIRONMENT, PUBLIC HEALTH AND CONSUMER POLICY

for the Committee on Industry, External Trade, Research and Energy

on the communication from the Commission to the European Parliament, the Council, the Economic and Social Committee and the Committee of the Regions entitled: 'Towards a new framework for Electronic Communications infrastructure and associated services; the 1999 Communications Review'
(COM(1999) 539 – C5 - 0141/2000 – 2000/2085(CNS))

Draftsman: Caroline F. Jackson

PROCEDURE

The Committee on the Environment, Public Health and Consumer Policy appointed Caroline F. Jackson draftsman at its meeting of 3 April 2000.

It considered the draft opinion at its meeting of 19 April 2000.

At that meeting it adopted the conclusions below unanimously.

The following were present for the vote: Caroline F. Jackson, chairman and draftsman; Alexander de Roo, vice-chairman; Hans Blokland, David Robert Bowe, John Bowis, Philip Rodway Bushill-Matthew (for Marielle de Sarnez), Chris Davies, Robert Goodwill, Roger Helmer, Eija-Riitta Anneli Korhola, Torben Lund, Jules Maaten, Erik Meijer (for Jonas Sjöstedt), Jorge Moreira Da Silva, Marit Paulsen, Encarnación Redondo Jiménez (for Maria del Pilar Ayuso González), Frédérique Ries, Dagmar Roth-Behrendt, Guido Sacconi, Karin Scheele, Robert William Sturdy (for Avril Doyle) and Marianne L.P. Thyssen (for Per-Arne Arvidsson).

SHORT JUSTIFICATION

The Commission Communication presents an assessment of existing EU regulations in telecommunications and proposes policy objectives, regulatory principles and proposals for the design of a new regulatory framework which would cover all communications infrastructure and associated services, e.g. telecommunications networks (fixed and mobile), satellite networks, cable TV networks and terrestrial broadcast networks. The Commission proposes to base the new framework on four key policy objectives:

- ✓ to promote and sustain an open and competitive European market for communications services,

- ✓ to boost benefits to the European citizen by ensuring that all have affordable access to basic information society services (universal service) and by ensuring data protection and privacy as well as transparency of tariffs and conditions for using communications services,

- ✓ to consolidate the internal market by removing obstacles to the provision of communications networks,

- ✓ to safeguard Community interests in international negotiations, especially within the context of the WTO.

The new regulatory framework would consist of a Framework Directive and four specific Directives on licensing, access and interconnection, universal service, privacy and data protection, thereby bringing down the number of sector-specific legal measures from twenty to five.

The Commission also proposes that the new regulatory framework should be accompanied by a set of flexible non-binding measures such as recommendations, guidelines and codes of conduct.

CONCLUSIONS

The Committee on the Environment, Public Health and Consumer Policy calls on the Committee on Industry, External Trade, Research and Energy, as the committee responsible, to incorporate the following points in its draft resolution:

The Committee on the Environment, Public Health and Consumer Policy:

1. Welcomes the Commission Communication as a step towards a more coherent and straightforward regulatory framework for communications infrastructure and associated services,

2. Considers that a common definition of universal service is an indispensable tool for guaranteeing that consumers will be able to participate in the Information Society; notes that technological progress constantly changes the conditions for setting a common definition and therefore supports the establishment in Community legislation

of a mechanism for the periodic review of the scope of universal service;

3. Notes that the liberalisation of the telecom sector in Europe might lead to increased vertical integration which could hamper the consumer's freedom of choice and therefore urges the Commission to adopt a cross-sectoral approach in order to guarantee that EU competition rules are respected;

4. Emphasises that consumers must be provided with clear and comparable information on tariffs, contractual terms and quality of service in order to reap the full benefit from the liberalised telecom market; therefore supports the proposals to introduce a requirement for per-call tariff information and an obligation on suppliers to publish information on quality of service;

5. States that the establishment of a European Ombudsman Scheme could be an effective instrument for processing cross-border complaints and dispute settlements;

6. Welcomes the Commission's proposal to update the Telecom Data Protection Directive in order to take account of technological developments;

7. Notes that the Commission proposes a number of voluntary measures to accompany the new regulatory framework but regrets that the Commission does not specify how such measures should be applied and enforced.

24 May 2000

OPINION OF THE COMMITTEE ON CULTURE, YOUTH, EDUCATION, THE MEDIA AND SPORT

for the Committee on Industry, External Trade, Research and Energy

on the Communication from the Commission to the Council, the European Parliament, the Economic and Social Committee and the Committee of the Regions entitled: 'Towards a new framework for electronic communications infrastructure and associated services – The 1999 Communications Review'
(COM(1999) 539 – C5-0151/2000 – 2000/2085(COS))

Draftsman: Mónica Ridruejo

PROCEDURE

The Committee on Culture, Youth, Education, the Media and Sport appointed Mónica Ridruejo draftsman at its meeting of 27 March 2000.

It considered the draft opinion at its meetings of 3 and 24 May 2000.

At the latter meeting it adopted the amendments below unanimously.

The following were present for the vote: Gargani, chairman; Graça Moura, vice-chairman; Iivari, vice-chairman; Ridruejo, draftsman; Andreasen, Aparicio Sanchez, Fatuzzo (for Sgarbi, pursuant to Rule 153(2)), Fraisse, Gemelli (for Buttiglione, pursuant to Rule 153(2)), Heaton Harris, Hieronymi, Junker (for Gröner), Manisco, Mauro, Mennea, O'Toole, Okking, Pack, Perry, Sanders-ten-Holte, Van Brempt, Vander Taelen, Wyn, Zabell Lucas, Zissener and Zorba (for Veltroni).

CONCLUSIONS

The Committee on Culture, Youth, Education, the Media and Sport calls on the Committee on Industry, External Trade, Research and Energy, as the committee responsible, to incorporate the following into the motion for a resolution which it adopts:

Lisbon European Council (LEC)

1. Considers the LEC's conclusions concerning an Information Society (IS) For All to be fitting, as is the e-learning initiative which highlights the issue of the substance and education of this new information society; supports the establishment of an integrated, liberalised telecommunications market by December 2001 and points out that there is currently a marked difference in the ways in which the telecommunications sector and the audiovisual sector are regulated;

2. Calls on the Member States to reduce to a minimum the cost of access to the Internet and to provide such access in all schools and universities, hospitals, R&D centres and libraries, to elderly people and at non-profit-making cultural events, since providing all schools and universities with access by December 2001 will enable them to offer up-to-date teaching;

Scope of the 1999 Review

3. Considers that a new regulatory framework for all communications infrastructures and for services which should be regulated separately should be devised as a matter of urgency where necessary and without prejudicing the competitive position of European companies, since the definition of technological neutrality needs to be clarified, and all technologies should be considered jointly and on an equal footing where this is possible and appropriate; takes the view that the telecommunications, media and Internet sectors should generally be treated by applying common rules but with their different functions being taken into account; believes that technical concepts and competition rules in the EU and the Member States should be clarified so as to prevent the emergence of dominant positions regarding not only control of the means of communication but also the content purveyed and the lack of competitive capacity of European groups;

4. Considers that the new regulatory framework must ensure the development of artistic and intellectual creativity and should not weaken the rules on intellectual property, particularly copyright and associated rights;

Regulation and institutional reform

5. Maintains that, in order to assess a dominant operator, the functioning of the markets should be analysed vertically, horizontally and intersectorally and not just in percentage terms; considers that operators in a dominant position should be subject to ex ante obligations (non-discrimination, breakdown of indicative costs, interconnection services); calls on the Commission to *recognise* the dominant positions of audiovisual services on the basis of economic and general criteria, including the impact on pluralism, European languages, and cultural identity (Article 151(4) of the EC Treaty);

6. Calls on the Commission and the Member States to provide for greater cooperation between competition bodies and the telecommunications and audiovisual sector regulators so as to ensure that general EU principles (dominant position, non-discrimination, etc.) are implemented effectively and consistently; considers that the Commission should define pan-European requirements (both technical and competition-related) for future transnational operators and grant pan-European licences and authorisations;

7. Considers it necessary to stress the importance of the concepts of (1) public service (open-access/private television versus public service/publicly-owned television) in the audiovisual sector, irrespective of the transmission system, and (2) general interest in communications, since that would provide a more solid basis for operators of publicly-owned public services by maintaining the rules in accordance with the Treaty of Amsterdam and for private operators who are required to compete on equal terms with other global operators;

8. Considers it important to assign an ample and dynamic role to the public services in performing general interest duties in connection with the possibilities afforded by the new communications environment;

9. Emphasises that 'must-carry' rules should remain justified in the digital broadcasting environment, provided that such rules are proportionate and limited to those channels which are covered by a public service broadcasting remit as defined in Protocol 32 annexed to the Treaty of Amsterdam, and that operators subject to such rules should receive reasonable remuneration, taking into account the nature of public service broadcasting and the value of these broadcast channels to operators;

10. Considers that the rules governing private free-to-air television should be distinct from those governing public television (public service), irrespective of the transmission system and taking into account the cultural diversity, since such a distinction would enable options to be weighed up as regards obligations, financing and other issues which hinder the deregulation of the audiovisual sector and hamper competition; takes the view that publicly owned, national or regional public-service television should continue to be regulated in accordance with the Treaty of Amsterdam in order to guarantee plurality and cultural diversity in each Member State;

11. Considers that account should be taken of new issues which have emerged in the sector, such as, for example:

- webcasting via the Internet
- charges, network investment, access by operators and users (telecommunications and broadcasting, ISPs)
- standardisation of authorising documents for telecommunications, television, and others, e.g. ISPs
- grouping of services
- mirroring, cache
- intellectual property, exclusivity, copy;

12. Recommends promoting interoperability between digital signal and API reception platforms, e.g. by means of the standards which have emerged from the DVB-MHP group, since APIs for interactive services and EPGs allow consumers access to new services (interactive television, television commerce and access to the Internet via a traditional television receiver equipped with a decoder and via a digital television receiver in the case of digital broadcasting);

13. Considers that there is an urgent need for revision of the 'Television Without Frontiers' Directive, and for separation of the concepts of (a) broadcasting and transmission, and (b) content: TV channels, pay-per-view, advertising, interactive services, and that a separation should also be made as regards the requirements of: (1) open broadcasting by generalist channels, (2) open broadcasting by thematic channels, (3) open broadcasting by pay channels, (4) open broadcasting by premium channels, (5) pay-per-view, (6) interactive services and the new arrangements for running multichannel digital platforms;

14. Maintains that the audiovisual market is increasingly innovative and that it embodies new aspects of competition which need to be considered; calls on the Commission to bring forward as a matter of urgency the revision of the 'Television Without Frontiers' Directive to 2001 (to coincide with the 1999 Communications Review) in order to provide a consistent interpretation of all communications services, including a definition of television public-service broadcasting (taking into account Protocol 9 annexed to the Treaty of Amsterdam) and the convergence process;

15. Stresses the need for continuous research and gathering of data in the European context as an aid to monitoring content and the formulation of policy;

Access and interconnection

16. Maintains that public access to communications is essential if an information society is to be created and that democratic and cultural considerations should be taken into account without preventing closer access to the market, with the production of European communication and multimedia services for television and third-generation mobile telephony being promoted;

17. Considers that the regulatory framework must take full account of the need to ensure universal access to public-service content, which can be achieved through the use of 'must-carry' rules on key networks, guarantees of access for public-service content through other key distribution networks and facilities such as set-top boxes and receivers, as well as by enhancing the skills of the general public;

18. Recognises the importance of multiplying the number of infrastructure access options (fixed, mobile, cordless, terrestrial, cable or satellite) and of promoting new technologies and calls for the promotion of Community action on television and telecommunications access and interconnection;

19. Maintains that there should be effective competition between new and existing operators, irrespective of the broadcasting medium, and that common principles relating to interconnection and access to communication infrastructures need to be established; considers that the framework for regulating audiovisual and telecommunications services should be flexible in order to ensure interoperability in the digital-television market and in broadcasting content and services;

Consumer rights

20. Considers that, in order to maintain economic growth and stability, to prevent social illiteracy and to promote freedom of expression, pluralism and cultural diversity, the general interest and universal service should be strengthened;

21. Considers that the earlier bases, including universal service and the general interest, public service, guarantees concerning pluralism, diversity and quality in the content of digital services, the protection of consumers and minors, public information, advertising and the sale of regulated products, intellectual property rights, etc., and guaranteed access to broad-band universal service should be revised with a view to adapting them to a global environment;

22. Recognises the importance of universal service to prevent social exclusion by ensuring that consumers have affordable access to communication services, takes the view that services defined as universal may be guaranteed through the provision of financial support (fees, contributions from competitors, public funding, etc.) if the Member States consider universal service to be an unfair burden on providers;

23. Advocates the setting up of Multimedia Centres co-financed by the Commission and each Member State, in order to familiarise the general public with new technologies;

24. Considers it essential for there to be greater transparency in contracts and information exchanged between operators and consumers, so as to enable the latter to make informed choices, and recognises that laws relating to privacy and data protection must be used to guarantee security and confidentiality as regards telecommunications and audiovisual services, traffic data, the privacy of those who request or consume a multimedia product and the publication of personal data;

25. Notes that the possibilities afforded by the digital era in the technical and production fields could lower barriers by making content in their own language available to consumers and that this will enhance cultural diversity.