

EN

EN

EN



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 21.1.2005
C(2005) 103/2

COMMISSION RECOMMENDATION

on the provision of leased lines in the European Union

Part 1 - Major supply conditions for wholesale leased lines

COMMISSION RECOMMENDATION

on the provision of leased lines in the European Union

Part 1 - Major supply conditions for wholesale leased lines

EXPLANATORY MEMORANDUM

1. PURPOSE

Leased lines are fundamental building blocks in the communications market, used by network operators and service providers as the basic transport infrastructure upon which their services are built, and by large business users as the means of linking their locations world-wide for the transport of internal voice and data communications traffic.¹ Internet service providers rely extensively on the availability of leased lines to connect to the world-wide Internet backbone, both for broadband and narrowband access. The timely and efficient availability of leased lines is a necessary condition for the development of a world class communications infrastructure in Europe.

The purpose of this Recommendation (Part 1) is to offer practical guidance, based on best current practice for delivery times, to national regulatory authorities with regard to measures imposed on providers of leased line services who have been designated as operators with significant market power in that market.

Subsequent Parts will address other aspects of leased line provision, including pricing.

2. REGULATION OF LEASED LINES

Under the Leased Lines² and Interconnection Directives³, national regulatory authorities were required to impose obligations for transparency and non-discrimination on certain services provided by operators notified as having significant market power, including leased line services. Moreover, the Leased Lines Directive and its subsequent amendments required Member States to ensure that notified operators provide a minimum set of leased lines and to encourage provision of additional types of high speed leased lines.

3. EFFECT OF REGULATORY MEASURES ON THE MARKET

As regards lead times for the provisioning of leased lines, data collected for the preparation of the Leased Lines Report 2002⁴ shows wide variations of delivery times between Member

¹ The number of retail leased lines is currently growing only in some Member States and in the Accession Countries. However, in most Member States the figure of total retail leased lines is not changing or even decreasing. For the EU as a whole the figure is decreasing at 3%. See study of IDC EDMA on behalf of the European Commission
http://europa.eu.int/information_society/topics/telecoms/implementation/studies/monitoringeucomop/finalwordversion.doc

² Council Directive 92/44/EEC of 5 June 1992 on the application of Open Network Provision to leased lines (OJ L 165, 19.6.1992, p. 27), as last amended by Commission Decision 98/80/EC (OJ L 14, 20.1.1998, p. 27).

³ 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) (OJ L 199, 26.7.1997, p. 32), as amended by Directive 98/61/EC (OJ L 268, 3.10.1998, p. 37).

⁴ The Leased Lines Report 2001 can be found at
http://europa.eu.int/information_society/topics/telecoms/implementation/leasedlines/doc/COCOM02-10%20final.pdf

States. Here the focus is on lead times for the provisioning of national digital leased lines for capacities of 64 kbit/s, 2 Mbit/s and 34 Mbit/s which are both most relevant with regard to future market developments and for which sufficient data from Member States is available (see annexes to the recommendation).

For 64 kbit/s lines the delivery time of leased lines part circuits in the Member State with the longest delivery time is eight times higher than in the Member State with the shortest delivery time. This ratio of the highest value observed in a Member State to the lowest value observed in (another) Member State is hereinafter referred as 'variation ratio'. In some Member States, such as Italy and Finland the situation has worsened considerably since reporting year 2000.⁵ The variation ratio for the delivery of a 2 Mbit/s is about 5. In Portugal and Sweden delivery times for 2 Mbit/s unstructured lines have increased by 200%, in the UK by 150% for structured lines, and in some other Member States, such as Denmark, Italy, Luxembourg, Sweden and Finland, the situation has worsened considerably since reporting year 2000, in one of the two categories at least. As to 34 Mbit/s lines, the variation ratio for unstructured lines is 3. In Denmark and Portugal the situation has worsened considerably since reporting year 2000.

The considerable differences in delivery times across the Community cannot be justified in terms of differing costs or conditions either.

Delivery delays continue to be an issue in the provision of leased line services in the EU. Very long delivery times have been observed in Ireland, Denmark and Austria.

Experience of national regulatory authorities shows that without financial penalties for late delivery included in the contracts for leased line part circuits and wholesale leased lines there remains a clear risk that lines are delivered late⁶.

4. THE NEW LEGAL FRAMEWORK

Under the new regulatory framework, the measures that are in place with regard to leased lines will be carried over, at least until a review of relevant markets, designated operators and imposed remedies has been conducted in accordance with the new rules. Depending on the results of this review, existing measures will either be withdrawn, adapted or maintained and new measures may be imposed.

To provide guidance for the review the Commission has already adopted Guidelines on significant market power⁷ and a Recommendation on relevant markets⁸.

⁵ See Annex to the Leased Lines Report 2000, available at http://europa.eu.int/information_society/topics/telecoms/implementation/leasedlines/doc/Leasedlines2000.pdf

⁶ See Annex 3 to the 8th Implementation Report, available at http://europa.eu.int/information_society/topics/telecoms/implementation/annual_report/8threport/index_en.htm

⁷ Commission guidelines on market analysis and the assessment of significant market power under the Community regulatory framework for electronic communications networks and services (OJ C 165, 11.7.2002, p. 6).

⁸ Commission Recommendation C(2003) 497 of 11 February 2003 on Relevant Product and Service Markets within the electronic communications sector susceptible to ex ante regulation in accordance

The markets for which such reviews must be conducted are identified in the Commission Recommendation on relevant markets and include the retail market for the minimum set of leased lines (which comprises the specified types of leased lines up to and including 2Mbit/s as referenced in Article 18 and Annex VII of the Universal Service Directive and in the List of Standards published in the Official Journal⁹) and the wholesale markets of local dedicated capacity (wholesale terminating segments of leased lines, and, where applicable wholesale trunk segments of leased lines).

Where as a result of market analysis a national regulatory authority maintains obligations for the provision of specific types of leased lines in the minimum set in accordance with Article 18(1) of the Universal Service Directive, then it must for those specific types of leased lines impose the conditions set out in Annex VII of the Universal Service Directive, i.e. follow the basic principles of non-discrimination, cost orientation, where appropriate, and transparency. For leased lines outside the minimum set, but which are covered by the markets identified in the Recommendation on relevant markets, the range of possible remedies that can be imposed by NRAs is as set out in Articles 8-13 of the Access Directive.

Concepts for relevant subsets of Leased Lines used in this Recommendation

Retail leased lines:	Leased lines provided to end users
Wholesale leased lines:	Leased lines provided to a third party wishing to supply end users
Wholesale terminating / trunk segments of leased lines:	as defined in the Recommendation on relevant product and service markets on 11 February 2003 ¹⁰
Minimum set of leased lines:	as defined in Article 18(1) of the Universal Service Directive
Leased line part circuit:	for the purpose of this Recommendation is defined as the dedicated link between the customer premises and the point of interconnection of the new entrant, and is regarded as a particular type of a wholesale leased line

5. APPLICABILITY OF THE PRESENT RECOMMENDATION

This Recommendation is without prejudice to the market analysis carried out by NRAs in accordance with Articles 15(3) and 16 of the Framework Directive.

with Directive 2002/21/EC of the European Parliament and of the Council on a common regulatory framework for electronic communication networks and services, OJ L 114, 8.5.2003, p. 45.

⁹ 2002/C331/04, OJ C 331, 31.12.2002, p. 32.

¹⁰ See footnote 8.

This Recommendation applies only in cases where obligations for non-discrimination are imposed on operators providing leased line services, and in this case only to the provision of leased line part circuits and of wholesale leased lines.

Where NRAs find that there is effective competition on the markets for specific types of leased line, they must remove ex-ante obligations in accordance with Article 16(3) of the Framework Directive, and this Recommendation would not apply.

6. THE RECOMMENDED MEASURES

6.1. Methodology

Best current practice delivery times for retail leased lines are defined by comparing the data of all Member States and identifying the Member State with the third lowest price or delivery time¹¹.

Existing network structures of designated operators serve multiple purposes. Thus network structures and internal procedures could not be optimised for the purposes of low costs for leased line part circuits or for short delivery times for wholesale leased lines alone. There are also factors such as network density, labour conditions and geological factors which vary between EU Member States. While such variations will to some extent affect achievable delivery times, it is considered that the differences can be accommodated within the 'best current practice' figures recommended here. The figure in the third best Member State has already been achieved in practice in three different Member States with different sets of the factors mentioned.

6.2. Service level agreements and delivery times

Information on 'best current practice delivery times' is available for retail¹² leased lines of those capacities that are most relevant to the needs of users, namely digital 64 kbit/s and 2 Mbit/s and 34 Mbit/s circuits.

In the context of the competitive provision of leased lines, this Recommendation advises NRAs to ensure that operators providing leased line services under a non-discrimination obligation provide *wholesale* leased line products, which by definition include leased line part circuits, under enforceable service level agreements and within contractual delivery times. These contractual delivery times should be as short as possible and at least permit competing operators in retail markets to achieve best current practice delivery times in those markets.

¹¹ A similar approach was used for interconnect pricing of call termination services in Recommendation 98/511/EC of 29 July 1998 on Interconnection in a liberalised telecommunications market (Part 1 - Interconnection Pricing), amended by Commission Recommendation C(2002) 561 of 22 February 2002 and by Commission Recommendation 2000/263/EC of 20 March 2000.

¹² For the purpose of this Recommendation the delivery time information given by Member States for the Leased Line Reports is considered to reflect sufficiently the situation in retail markets. While there is no distinction between retail and wholesale lines in the report there are only few Member States where more favorable delivery times were offered for wholesale lines compared to retail lines over the reporting period. Where retail conditions were comparatively more favorable, operators have often relied on retail offers even for their wholesale business.

By focusing on provisioning times for all lengths of lines, the aim is to stimulate the emergence of a competitive leased lines market and a quick development of broadband networks in particular.

6.3. Financial penalties

NRAs should ensure that contracts include proportionate financial penalties in case contractual delivery times and other conditions are not met. Such penalties could consist of a fixed amount for each day of delay for each line ordered. If the cause of any delay is contested, the burden of proof should be on the designated operator.

Financial penalties should be sufficiently dissuasive in order to ensure timely delivery. In particular NRAs should take into account that late delivery causes losses and competitive disadvantages to contracting operators competing in retail markets. Those disadvantages are in particular the lost revenue in the retail market from the line concerned, due to the inability to provide tight and binding delivery times to customers, and the competitive disadvantage from the perception in the market, that the company which ordered the lines from a designated operator is unable to keep agreed delivery times for retail lines in general.

Damages increase with the duration of the delay in delivery. Thus financial penalty schemes must still provide an incentive for quick delivery in cases where a delay has already occurred.

6.4. Scope

The availability of leased lines of higher bandwidths above 34 Mbit/s is of growing importance, for broadband in particular. A market analysis may reveal that lines of intermediate capacities between 64 kbit/s, 2 Mbit/s and 34 Mbit/s are relevant also. However, the Commission has not gathered comparable data on such lines. Nevertheless, where obligations are imposed regarding these lines too, NRAs may want to follow a similar approach as set out in this Recommendation.

7. CONCLUSION

In summary, this Recommendation should further contribute to the creation of a more competitive market for leased lines and high-speed Internet access services in the Community. This will allow European users and in particular SMEs to benefit from more competitive offerings.