COMMISSION DIRECTIVE 96/19/EC

of 13 March 1996

amending Directive 90/388/EEC with regard to the implementation of full competition in telecommunications markets

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community, and in particular Article 90 (3) thereof,

Whereas:

(1) According to Commission Directive 90/388/EEC of 28 June 1990 on competition in the markets for telecommunications services [1], as last amended by Directive 96/2/EC [2], telecommunications services, with the exception of voice telephony to the general public and those services specifically excluded from the scope of that Directive, must be open to competition. These services were the telex service, mobile communications and radio and television broadcasting to the public. Satellite communications were included in the scope of the Directive through Commission Directive 94/46/EC [3]. Cable television networks were included in the scope of the Directive through Commission Directive 95/51/EC [4], and mobile and personal communications were included in the scope of the Directive through Directive 96/2/EC. Under Directive 90/388/EEC, Member States must take the measures necessary to ensure that any operator is entitled to supply such services.

(2) Subsequent to the public consultation organized by the Commission in 1992 on the situation in the telecommunications sector (the 1992 Review), the Council, in its resolution of 22 July 1993 [5], unanimously called for the liberalization of all public voice telephony services by 1 January 1998, subject to additional transitional periods of up to five years to allow Member States with less developed networks, i.e. Spain, Ireland, Greece and Portugal, to achieve the necessary adjustments, in particular tariff adjustments. Moreover, very small networks should, according to the Council also be granted an adjustment period of up to two years where so justified. The Council subsequently unanimously recognized, in its resolution of 22 December 1994 [6], that the provision of telecommunications infrastructure should also be liberalized by 1 January 1998, subject to the same transitional periods as agreed for the liberalization of voice telephony. Furthermore, in its resolution of 18 September 1995 [7], the Council established basic guidelines for the future regulatory environment.

(3) Directive 90/388/EEC establishes that the granting of special or exclusive rights to telecommunications services to telecommunications organizations is in breach of Article 90 of the Treaty, in conjunction with Article 59 of the Treaty, since they limit the provision of cross-border services. As far as telecommunications services and networks are concerned such special rights were defined in that Directive.

According to Directive 90/388/EEC exclusive rights granted for the provision of telecommunications services are also incompatible with Article 90 (1) of the Treaty, in conjunction with Article 86 of the Treaty, where they are granted to telecommunications organizations which also enjoy exclusive or special rights for the establishment and the provision of telecommunications networks since their grant amounts to the reinforcement or the extension of a dominant position or necessarily leads to other abuses of such position.

(4) In 1990, the Commission, however, granted a temporary exception under Article 90 (2) in respect of exclusive and special rights for the provision of voice telephony, since the financial resources for the development of the network still derived mainly from the operation of the telephony service and the opening-up of that service could, at that time, threaten the financial stability of the telecommunications organizations and obstruct the performance of the task of general economic interest assigned to them, consisting in the provision and exploitation of a universal network, i.e. one having general geographic coverage, and that connection to it is being provided to any service provider or user upon request within a reasonable period of time.

Moreover, at the time of the adoption of Directive 90/388/EEC, all telecommunications organizations were also in the course of digitalizing their network to increase the range of services which could be

(1) OJ No L 192, 24. 7. 1990, p. 10.
(2) OJ No L 20, 26. 1. 1996, p. 59.
(3) OJ No L 268, 19. 10. 1994, p. 15.
(4) OJ No L 256, 26. 10. 1995, p. 49.
(5) OJ No C 213, 6. 8. 1993, p. 1.
(6) OJ No C 379, 31. 12. 1994, p. 4.
(7) OJ No C 258, 3. 10. 1995, p. 1.

provided to the final customers. Today, coverage and digitalization are already achieved in a number of Member States. Taking into account the progress in radio frequency applications and the on-going heavy investment programmes, optic fibre-coverage and network penetration are expected to improve significantly in the other Member States in the coming years.

In 1990, concerns were also expressed against immediate introduction of competition in voice telephony while price structures of the telecommunications organizations were substantially out of line with costs, because competing operators could target highly profitable services such as international telephony and gain market share merely on the basis of existing substantially distorted tariff structures. In the meantime efforts have been made to balance differences in pricing and cost structures in preparation for liberalization. The European Parliament and the Council have in the meantime recognized that there are less restrictive means than the granting of special or exclusive rights to ensure this task of general economic interest.

(5) For these reasons, and in accordance with the Council resolutions of 22 July 1993 and of 22 December 1994, the continuation of the exception granted with respect of voice telephony is no longer justified. The exception granted by Directive 90/388/EEC should be ended and the Directive, including the definitions used, amended accordingly. In order to allow telecommunications organizations to complete their preparation for competition and in particular to pursue the necessary rebalancing of tariffs, Member States may continue the current special and exclusive rights regarding the provision of voice telephony until 1 January 1998. Member States with less developed networks or with very small networks must be eligible for a temporary exception where this is warranted by the need to carry out structural adjustments and strictly only to the extent necessary for those adjustments. Such Member States should be granted, upon request, an additional transitional period respectively of up to five and of up to two years, provided it is necessary to complete the necessary structural adjustments. The Member States which may request such an exception are Spain, Ireland, Greece and Portugal with regard to less developed networks and Luxembourg with regard to very small networks. The possibility of such transitional periods has also been called for in the Council resolutions of 22 July 1993 and of 22 December 1994.

(6) The abolition of exclusive and special rights as regards the provision of voice telephony will in particular allow the current telecommunications organizations from one Member State to directly provide their service in other Member States as from 1 January 1998. These organizations currently possess the skills and the experience required to enter into the markets opened to competition. However, in almost all Member States, they will compete with the national telecommunications organizations which are granted the exclusive or special right to provide not only voice telephony but also to establish and provide the underlying infrastructure, including the acquisition of indefeasible rights of use in international circuits. The flexibility and the economies of scope which this allows will prevent this dominant position being challenged in the normal course of competition once the liberalization of voice telephony takes place. This will make it possible for the telecommunications organizations to maintain their dominant position on their home markets unless the new entrants in the voice telephony market were entitled to the same rights and obligations. In particular, if new entrants are not granted free choice as regards the underlying infrastructure to provide their services in competition with the dominant operator, this restriction would *de facto* prevent them from entering the market for voice telephony, including for the provision of cross-border services. The maintenance of special rights limiting the number of undertakings authorized to establish and provide infrastructure would therefore limit the freedom to provide services contrary to Article 59 of the Treaty. The fact that the restriction on establishing own infrastructure would apparently apply in the Member State concerned without distinction to all companies providing voice telephony other than the national telecommunications organizations would not be sufficient to remove the preferential treatment of the latter from the scope of Article 59 of the Treaty. Given the fact that it is likely that most new entrants will originate from other Member States such a measure would in practice affect foreign companies to a larger extent than national undertakings. On the other hand, while no justification for these restrictions appears to exist, less restrictive means such as licensing procedures would in any event be available to ensure general interests of a non-economic nature.

(7) In addition, the abolition of exclusive and special rights on the provision of voice telephony would have little or no effect, if new entrants would be obliged to use the public telecommunications

network of the incumbent telecommunications organizations, with whom they compete in the voice telephony market. Reserving to one undertaking which markets telecommunications services the task of supplying the indispensable raw material, i.e. the transmission capacity, to all its competitors would be tantamount to conferring upon it the power to determine at will where and when services can be offered by its competitors, at what cost, and to monitor their clients and the traffic generated by its competitors, placing that undertaking in a position where it would be induced to abuse its dominant position. Directive 90/388/EEC did not explicitly address the establishment and provision of telecommunications networks, as it granted a temporary exception under Article 90 (2) of the Treaty in respect of exclusive and special rights for the by far most important service in economic terms provided over telecommunications networks, i.e. voice telephony. However, the Directive provided for an overall review by the Commission of the situation in the whole telecommunications sector in 1992.

It is true that Council Directive 92/44/EEC of 5 June 1992 on the application of open network provision to leased lines, amended by Commission Decision 94/439/EC [1], harmonizes the basic principles regarding the provision of leased lines, but it only harmonizes the conditions of access and use of leased lines. The aim of that Directive is not to remedy the conflict of interest of the telecommunications organizations as infrastructure and service providers. It does not impose a structural separation between the telecommunications organizations as providers of leased lines and as service providers. Complaints illustrate that even in Member States which have implemented that Directive, telecommunications organizations still use their control of the access conditions to the network at the expense of their competitors in the services market. Complaints show that telecommunications organizations still apply excessive tariffs and that they use information acquired as infrastructure providers regarding the services planned by their competitors, to target clients in the services market. Directive 92/44/EEC only provides for the principle of cost-orientation and does not prevent telecommunications organizations to use the information acquired as capacity provider as regards subscribers' usage patterns, necessary to target specific groups of users, and on price elasticities of demand in each service market segment and region of the country. The current regulatory framework does not resolve the conflict of interest mentioned above. The most appropriate remedy to this conflict of interest is therefore to allow service providers to use own or third party telecommunications infrastructure to provide their services to the final customers instead of the infrastructure of their main competitor. In its resolution of 22 December 1994 the Council also approved the principle that infrastructure provision should be liberalized.

Member States should therefore abolish the current exclusive rights on the provision and use of infrastructure which infringe Article 90 (1) of the Treaty, in combination with Articles 59 and 86 of the Treaty, and allow voice telephony providers to use own and/or any alternative infrastructure of their choice.

(8) Directive 90/388/EEC states that the rules of the Treaty, including those on competition, apply to telex services. At the same time it establishes that the granting of special or exclusive rights for telecommunications services to telecommunications organizations is in breach of Article 90 (1) of the Treaty, in conjunction with Article 59 of the Treaty, since they limit the provision of cross-border services. However, it was considered in the Directive that an individual approach was appropriate, as a rapid decline of the service was expected. It the meantime it has become clear that the telex service will continue to coexist with new services like facsimile in the forseeable future, given that the telex network is still the only standardized network with worldwide coverage and providing legal proof in Court. It is therefore no longer justified to maintain the initial approach.

(9) As regards the access of new competitors to the telecommunications markets, only mandatory requirements can justify restrictions to the fundamental freedoms provided for in the Treaty. These restrictions should be limited to what is necessary to achieve the objective of a non-economic nature pursued. Member States may therefore only introduce licensing or declaration procedures where it is indispensable to ensure compliance with the applicable essential requirements and, with regard to the provision of voice telephony and the underlying infrastructure, introduce requirements in the form of trade regulations where it is necessary in order to ensure, in accordance with Article 90 (2) of the Treaty, the performance in a competitive environment of the particular tasks of public service assigned to the relevant undertakings in the telecommunications field and/or to ensure a contribution to the financing of universal service. Other public service requirements can be included by Member States in certain categories of licences, in line with the principle of proportionality and in conformity with Articles 56 and 66 of the Treaty.

[1] OJ No L 165, 19. 6. 1992, p. 27.

The provisions of Directive 90/388/EEC are therefore not to prejudice the applicability of provisions laid down by law, regulation or administrative action providing for the protection of public security and in particular the lawful interception of communications.

In the framework of the adoption of authorization requirements under Directive 90/388/EEC, it appeared that certain Member States were imposing obligations on new entrants which where not in proportion with the aims of general interest pursued. To avoid such measures being used to prevent the dominant position of the telecommunications organizations being challenged by competition once the liberalization of voice telephony takes place, thus making it possible for the telecommunications organizations to maintain their dominant position in the voice telephony and public telecommunications networks markets and thereby strengthening the dominant position of the incumbent operator, it is necessary that Member States should notify any licensing or declaration requirements to the Commission, before they are introduced, to enable the latter to assess their compatibility with the Treaty and in particular the proportionality of the obligations imposed.

(10) According to the principle of proportionality, the number of licences may only be limited where this is unavoidable to ensure compliance with essential requirements concerning the use of scarce resources. As the Commission stated in its communication on the consultation on the Green Paper on the liberalization of telecommunications infrastructure and cable television networks, the sole reason in this respect should be the existence of physical limitations, imposed by the lack of necessary frequency spectrum.

As regards the provision of voice telephony, public fixed telecommunications networks and other telecommunications networks involving the use of radio frequencies, the essential requirements would justify the introduction or maintenance of an individual licensing procedure. In all other cases, a general authorization or a declaration procedure suffices to ensure compliance with the essential requirements. Licensing is not justified when a mere declaration procedure would suffice to attain the relevant objective.

As regards the provision of packet- or circuit-switched data services, Directive 90/388/EEC allowed the Member States under Article 90 (2) of the Treaty to adopt specific sets of public service specifications in the form of trade regulations with a view to preserving the relevant public service requirements. The Commission has in the course of 1994 assessed the effects of the measures adopted under this provision. The results of this review were made public in its Communication on the status and the implementation of Directive 90/388/EEC. On the basis of that review, which also took account of the experience in most Member States where the relevant public service objectives were achieved without the implementation of such schemes, there is no justification to continue this specific regime and the current schemes should be abolished accordingly. However, Member States may replace these schemes by a declaration or a general authorization procedure.

(11) Newly authorized voice telephony providers will be able to compete effectively with the current telecommunications organizations only if they are granted adequate numbers to allocate to their customers. Moreover, where numbers are allocated by the current telecommunications organizations, the latter will be induced to reserve the best numbers for themselves and to give their competitors insufficient numbers or numbers which are commercially less attractive, for example, because of their length. By maintaining such power in the hands of their telecommunications organizations Member States would therefore induce the former to abuse their power on the market for voice telephony and infringe Article 90 of the Treaty, in conjunction with Article 86 of the Treaty.

Consequently, the establishment and administration of the national numbering plan should be entrusted to a body independent from the telecommunications organization, and a procedure for the allocation of numbers should, where required, be drafted, which is based on objective criteria, is transparent and without discriminatory effects. Where a subscriber changes service providers, telecommunications organizations should communicate, in the way and to the extent required by Article 86 of the Treaty, the information on his new number for a sufficient period of time to parties seeking to contact him under his old number. Subscribers changing service providers should also have the possibility of keeping their numbers in return for a reasonable contribution to the cost of transferring the numbers.

(12) As Member States are obliged by this Directive to withdraw special and exclusive rights for the provision and operation of fixed public telecommunications networks, the obligation set out in Directive 90/388/EEC to take the necessary measures to ensure objective, non-discriminatory and published access conditions should be adapted accordingly.

(13) Subject to reasonable compensation, the right of new providers of voice telephony to interconnect

their service for call completion purposes with the existing public telecommunications network at the necessary interconnection points, including access to customer databases necessary for the provision of directory information, is of crucial importance in the initial period after the abolition of the special and exclusive rights regarding voice telephony and telecommunications infrastructure provision. Interconnection should in principle be a matter for negotiation between the parties, subject to the application of the competition rules addressed to undertakings. Given the imbalance in negotiating power of new entrants compared with the telecommunications organizations whose monopoly position results from their special and exclusive rights, it is likely that, as long as a harmonized regulatory framework has not been established by the European Parliament and the Council, interconnection would be delayed by disputes as to terms and conditions to be applied. Such delays would jeopardize the market entry of new entrants and hence prevent the abolition of special and exclusive rights to become effective. The failure by Member States to adopt the necessary safeguards to prevent such a situation would lead to a continuation *de facto* of the current special and exclusive rights, which as set out above are considered to be incompatible with Article 90 (1) of the Treaty, in conjunction with Articles 59 and 86 of the Treaty.

In order to allow for effective market entry and to prevent the *de facto* continuation of special and exclusive rights contrary to Article 90 (1) of the Treaty, in conjunction with Articles 59 and 86 of the Treaty, Member States should ensure that, during the time period necessary for such entry by competitors, telecommunications organizations publish standard terms and conditions for interconnection to the voice telephony networks which they offer to the public, including interconnect price lists and access points, no later than six months before the actual date of liberalization of voice telephony and telecommunications transmission capacity. Such standard offers should be non-discriminatory and sufficiently unbundled to allow the new entrants to purchase only those elements of the interconnection offer they actually need. Furthermore, they may not discriminate on the basis of the origin of the calls and/or the networks.

(14) Moreover in order to allow the monitoring of interconnection obligations under competition law, the cost accounting system implemented with regard to the provision of voice telephony and public telecommunications networks should, during the time period necessary to allow for effective market entry, clearly identify the cost elements relevant for pricing interconnection offerings and, in particular for each element of the interconnection offered, identify the basis for that cost element, in order to ensure in particular that this pricing includes only elements which are relevant, namely the initial connection charge, conveyance charges, the share of the costs incurred in providing equal access and number-portability and of ensuring essential requirements and, where applicable, supplementary charges aimed to share the net cost of universal service, and provisionally, imbalances in voice telephony tariffs. Such cost accounting should also make it possible to identify when a telecommunications organization charges its major users less than providers of voice telephony networks.

The absence of a quick, cheap and effective procedure to solve interconnection disputes, and one which would prevent the telecommunications organizations causing delays or using their financial resources to increase the cost of available remedies under applicable national law or Community law, would make it possible for the telecommunications organizations to maintain their dominant position. Member States should therefore establish a specific recourse procedure for interconnection disputes.

(15) The obligation to publish standard charges and interconnection conditions is without prejudice to the requirement on undertakings in a dominant position, under Article 86 of the Treaty, to negotiate special or tailor-made agreements for a particular combination or use of unbundled public switched telephony network components and/or the granting of discounts for particular service providers or large users where these are justified and non-discriminatory. Any interconnection discounts should be justified on an objective basis and be transparent.

(16) The requirement to publish standard interconnection conditions is also without prejudice to the obligation of dominant undertakings under Article 86 of the Treaty to allow interconnected operators on whose network a call originates to remain responsible for setting the tariff for the customer between the calling and the called party and for routing its clients' traffic up to the interconnection point of its choice.

(17) A number of Member States are currently still maintaining exclusive rights with regard to the establishment and provision of telephone directory and enquiry services. These exclusive rights are generally granted either to organizations which are

already enjoying a dominant position in providing voice telephony, or to one of their subsidiaries. In such a situation, these rights have the effect of extending the dominant position enjoyed by those organizations and therefore strengthening that position, which, according to the case-law of the Court of Justice of the European Communities, constitutes an abuse of a dominant position contrary to Article 86. The exclusive rights granted in the area of telephone directory services are consequently incompatible with Article 90 (1) of the Treaty, in conjunction with Article 86. These exclusive rights consequently have to be abolished.

(18) Directory information constitutes an essential access tool for telephony services. In order to ensure the availability of directory information to subscribers to all voice telephony services, Member States may include obligations for the provision of directory information to the general public within individual licences and general authorizations.

Such an obligation should not, however, restrict the provision of such information by new technological means, nor the provision of specialized and/or regional and local directories contrary to Article 90 (1) of the Treaty, in conjunction with point (b) of the second paragraph of Article 86 of the Treaty.

(19) In the case where universal service can be provided only at a loss or provided under costs falling outside normal commercial standards, different financing schemes can be envisaged to ensure universal service. The emergence of effective competition by the dates established for full liberalization would, however, be seriously delayed if Member States were to implement a financing scheme allocating too heavy a share of any burden to new entrants or were to determine the size of the burden beyond what is necessary to finance the universal service.

Financing schemes disproportionately burdening new entrants and accordingly preventing the dominant position of the telecommunications organizations being challenged by competition once the liberalization of voice telephony takes place, thus making it possible for the telecommunications organizations to entrench their dominant position, would be in breach of Article 90 of the Treaty, in conjunction with Article 86 of the Treaty. Whichever financing scheme they decide to implement, Member States should ensure that only providers of public telecommunications networks contribute to the provision and/or financing of universal service obligations harmonized in the framework of ONP and that the method of allocation amongst them is based on objective and non-discriminatory criteria and is in accordance with the principle of proportionality. This principle does not prevent Member States from exempting new entrants which have not yet achieved any significant market presence.

Moreover, the funding mechanisms adopted should seek only to ensure that market participants contribute to the financing of universal service, and not to other activities not directly linked to the provision of the universal service.

(20) As regards the cost structure of voice telephony, a distinction must be made between the initial connection, the monthly rental, local calls, regional calls and long distance calls. The tariff structure of voice telephony provided by the telecommunications organizations in certain Member States is currently still out of line with cost. Certain categories of calls are provided at a loss and are cross-subsidized out of the profits from other categories. Artificially low prices, however, impede competition since potential competitors have no incentive to enter into the relevant segment of the voice telephony market and are contrary to Article 86 of the Treaty, as long as they are not justified under Article 90 (2) of the Treaty as regards specific identified end-users or groups of end-users. Member States should phase out as rapidly as possible all unjustified restrictions on tariff rebalancing by the telecommunications organizations and in particular those preventing the adaptation of rates which are not in line with costs and increase the burden of universal service provision. Where this is justified, the proportion of net costs insufficiently covered by the tariff structure may be reapportioned among all parties concerned in a non-discriminatory and transparent manner.

(21) As re-balancing could make certain telephone service less affordable in the short term for certain groups of users, Member States may adopt special provisions to soften the impact of re-balancing. In this way, the affordability of the telephone service during the transitional period would be guaranteed while telecommunications operators would still be able to continue their re-balancing process. This is in line with the statement of the Commission concerning the Council resolution on universal service [1], which states that there should be reasonable and affordable prices throughout the territory for initial connection, subscription, periodic rental, access and the use of the service.

[1] OJ No C 48, 16. 2. 1994, p. 8.

(22) Where Member States entrust the application of the financing scheme of universal service obligations to their telecommunications organization with the right to recoup a share of it from competitors, the former will be induced to charge a higher amount than justified, if Member States would not ensure that the amount charged to finance universal service is made separate and explicit with respect to interconnection (connection and conveyance) charges. In addition, the mechanism should be closely monitored and efficient procedures for timely appeal to an independent body to settle disputes as to the amount to be paid must be provided, without prejudice to other available remedies under national law or Community law.

The Commission should review the situation in Member States five years after the introduction of full competition, to ascertain whether this financing scheme does not lead to situations which are incompatible with Community law.

(23) Providers of public telecommunications networks require access to pathways across public and private property to place facilities needed to reach the end users. The telecommunications organizations in many Member States enjoy legal privileges to install their network on public and private land, without charge or at charges set simply to recover incurred costs. If Member States do not grant similar possibilities to new licensed operators to enable them to roll out their network, this would delay them and in certain areas be tantamount to maintaining exclusive rights in favour of the telecommunications organization.

Moreover Article 90 of the Treaty, in conjunction with Article 59 of the Treaty, requires that Member States should not discriminate against new entrants, who generally will originate from other Member States, in comparison with their national telecommunications organizations and other national undertakings, which have been granted rights of way facilitating the roll out of their telecommunications networks.

Where essential requirements, in particular with regard to the protection of the environment or with regard to town and country planning objectives, would oppose the granting of similar rights of way to new entrants which do not already have their own infrastructure, Member States should at least ensure that the latter have, where it is technically feasible, access, on reasonable terms, to the existing ducts or poles, established under rights of way by the telecommunications organization, where these facilities are necessary to roll out their network. In the absence of such requirements the telecommunications organizations would be induced to limit access by their competitors to these essential facilities and thus abuse their dominant position. A failure to adopt such requirements would therefore be contrary to Article 90 (1) of the Treaty, in conjunction with Article 86 of the Treaty.

In addition, pursuant to Article 86, all public telecommunications network operators having essential resources for which competitors do not have economic alternatives are to provide open and non-discriminatory access to those resources.

(24) The abolition of special and exclusive rights in the telecommunications markets will allow undertakings enjoying special and exclusive rights in sectors other than telecommunications to enter the telecommunications markets. In order to allow for monitoring under the applicable rules of the Treaty of possible anti-competitive cross-subsidies between, on the one hand, areas for which providers of telecommunications services or telecommunications infrastructures enjoy special or exclusive rights and, on the other, their business as telecommunications providers, Member States should take the appropriate measures to achieve transparency as regards the use of resources from such protected activities to enter in the liberalized telecommunications market. Member States should at least require such undertakings once they achieve a significant turnover in the relevant telecommunications service and/or infrastructure provision market, to keep separate financial records, distinguishing between *inter alia,* costs and revenues associated with the provision of services under their special and exclusive rights and those provided under competitive conditions. For the time being, a turnover of more than ECU 50 million could be considered as a significant turnover.

(25) Most Member States also currently maintain exclusive rights for the provision of telecommunications infrastructure for the supply of telecommunications services other than voice telephony.

Under Directive 92/44/EEC, Member States must ensure that the telecommunications organizations make available certain types of leased lines to all providers of telecommunications servies. However,

the Directive provides only for such offer of a harmonized set of leased lines up to a certain bandwidth. Companies needing a higher bandwidth to provide services based on new high-speed technologies such as SDH (synchronous digital hierarchy) have complained that the telecommunications organizations concerned are unable to meet their demand whilst it could be met by the optic fibre networks of other potential providers of telecommunications infrastructure, in the absence of the current exclusive rights. Consequently, the maintenance of these rights delays the emergence of new advanced telecommunications services and therefore restricts technical progress at the expense of the users contrary to Article 90 (1) of the Treaty, in conjunction with point (b) of the second paragraph of Article 86 of the Treaty.

(26) Given that the lifting of such rights will concern mainly services which are not yet provided and does not concern voice telephony, which is still the main source of revenue of those organizations, it will not destabilize the financial situation of the telecommunications organization. There is consequently no justification to maintain exclusive rights on the establishment and use of network infrastructure for services other than voice telephony. In particular, Member States should ensure that all restrictions on the provision of telecommunications services other than voice telephony over networks established by the provider of the telecommunications service, the use of infrastructures provided by third parties and the sharing of networks, other facilities and sites are lifted as from 1 July 1996.

In order to take account of the specific situation in Member States with less-developed networks and in Member States with very small networks, the Commission will grant, upon request, additional transitional periods.

(27) Whilst Directive 95/51/EC lifted all restrictions with regard to the provision of liberalized telecommunications services over cable television networks, some Member States still maintain restrictions on the use of public telecommunications networks for the provision of cable television capacity. The Commission should assess the situation with regard to such restrictions in the light of the objectives of that Directive once the telecommunications markets approach full liberalization.

(28) The abolition of all special and exclusive rights which restrict the provision of telecommunications services and underlying networks by undertakings established in the Community is without regard to the destination or the origin of the communications concerned.

However, Directive 90/388/EEC does not prevent mesures regarding undertakings, which are not established in the Community, being adopted in accordance with Community law and existing international obligations so as to ensure that nationals of Member States are afforded comparable and effective treatment in third countries. Community undertakings should benefit from effective and comparable access to third country markets and enjoy a similar treatment in a third country as is offered by the Community framework to undertakings owned, or effectively controlled, by nationals of the third country concerned. World Trade Organization telecommunications negotiations should result in a balanced and multilateral agreement, ensuring effective and comparable access for Community operators in third countries.

(29) The process of implementing full competition in telecommunications markets raises important issues in the social and employment fields. These are referred to in the Commission's communication on the consultation on the Green Paper on the liberalization of telecommunications infrastructure and cable television networks of 3 May 1995.

Always remaining in line with a horizontal policy approach, efforts should now be undertaken to support the transition process to a fully liberalized telecommunications environment; responsibility for such measures rests mainly at Member State level, although Community structures, such as the European Social Fund, may also play a part. In line with existing initiatives, the Community should play a role in facilitating the adaptation and retraining of those whose traditional activities are likely to disappear during the process of industrial restructuring.

(30) The establishment of procedures at national level concerning licensing, interconnection, universal service, numbering and rights of way is without prejudice to the harmonization of the latter by appropriate European Parliament and Council legislative instruments, in particular in the framework of open network provision (ONP). The Commission should take whatever measures it considers appropriate to ensure the consistency of these instruments and Directive 90/388/EEC,

HAS ADOPTED THIS DIRECTIVE:

Article 1

Directive 90/388/EEC is amended as follows:

1. Article 1 is amended as follows:

(a) Paragraph 1 is amended as follows:

(i) The fourth indent is replaced by the following:

'— "public telecommunications network" means a telecommunications network used *inter alia* for the provision of public telecommunications services;

— "public telecommunications service" means a telecommunications service available to the public,'.

(ii) The 15th indent is replaced by the following:

'— "essential requirements" means the non-economic reasons in the general interest which may cause a Member State to impose conditions on the establishment and/or operation of telecommunications networks or the provision of telecommunications services. These reasons are security of network operations, maintenance of network integrity, and, in justified cases, interoperability of services, data protection, the protection of the environment and town and country planning objectives as well as the effective use of the frequency spectrum and the avoidance of harmful interference between radio based telecommunications systems and other, space-based or terrestrial, technical systems.

Data protection may include protection of personal data, the confidentiality of information transmitted or stored as well as the protection of privacy.'

(iii) The following indents are added:

'— "telecommunications network" means the transmission equipment and, where applicable, switching equipment and other resources which permit the conveyance of signals betweeen defined termination points by wire, by radio, by optical or by other electromagnetic means;

— "interconnection" means the physical and logical linking of the telecommunications facilities of organizations providing telecommunications networks and/or telecommunications services, in order to allow the users of one organization to communicate with the users of the same or another organization or to access services provided by third organizations.'

(b) Paragraph 2 is deleted.

2. Article 2 is replaced by the following:

'Article 2

1. Member States shall withdraw all those measures which grant:

(a) exclusive rights for the provision of telecommunications services, including the establishment and the provision of telecommunications networks required for the provision of such services; or

(b) special rights which limit to two or more the number of undertakings authorized to provide such telecommunications services or to establish or provide such networks, otherwise than according to objective, proportional and non-discriminatory criteria; or

(c) special rights which designate, otherwise than according to objective, proportional and non-discriminatory several competing undertakings to provide such telecommunications services or to establish or provide such networks.

2. Member States shall take the measures necessary to ensure that any undertaking is entitled to provide the telecommunications services referred to in paragraph 1 or to establish or provide the networks referred to in paragraph 1.

Without prejudice to Article 3c and the third paragraph of Article 4, Member States may maintain special and exclusive rights until 1 January 1998 for voice telephony and for the establishment and provision of public telecommunications networks.

Member States shall, however, ensure that all remaining restrictions on the provision of telecommunications services other than voice telephony over networks established by the provider of the telecommunications services, over infrastructures provided by third parties and by means of sharing of networks, other facilities and sites are lifted and the relevant measures notified to the Commission no later than 1 July 1996.

As regards the dates set out in the second and third subparagraphs of this paragraph, in Article 3 and in Article 4a (2), Member States with less developed networks shall be granted upon request an additional implementation period of up to five years and Member States with very small networks shall be granted upon request an additional implementation period of up to two years, provided it is needed to achieve the neces-

sary structural adjustments. Such a request must include a detailed description of the planned adjustments and a precise assessment of the timetable envisaged for their implementation. The information provided shall be made available to any interested party on demand having regard to the legitimate interest of undertakings in the protection of their business secrets.

3. Member States which make the supply of telecommunications services or the establishment or provision of telecommunications networks subject to a licensing, general authorization or declaration procedure aimed at compliance with the essential requirements shall ensure that the relevant conditions are objective, non-discriminatory, proportionate and transparent, that reasons are given for any refusal, and that there is a procedure for appealing against any refusal.

The provision of telecommunications services other than voice telephony, the establishment and provision of public telecommunications networks and other telecommunications networks involving the use of radio frequencies, may be subjected only to a general authorization or a declaration procedure.

4. Member States shall communicate to the Commission the criteria on which licences, general authorizations and declaration procedures are based together with the conditions attached thereto.

Member States shall continue to inform the Commission of any plans to introduce new licensing, general authorization and declaration procedures or to change existing procedures.'

3. Article 3 is replaced by the following:

'Article 3

As regards voice telephony and the provision of public telecommunications networks, Member States shall, no later than 1 January 1997, notify to the Commission, before implementation, any licensing or declaration procedure which is aimed at compliance with:

— essential requirements, or

— trade regulations relating to conditions of permanence, availability and quality of the service, or

— financial obligations with regard to universal service, according to the principles set out in Article 4c.

Conditions relating to availability can include requirements to ensure access to customer databases necessary for the provision of universal directory information.

The whole of these conditions shall form a set of public-service specifications and shall be objective, non-discriminatory, proportionate and transparent.

Member States may limit the number of licences to be issued only where related to the lack of availability spectrum and justified under the principle of proportionality.

Member States shall ensure, no later than 1 July 1997, that such licensing or declaration procedures for the provision of voice telephony and of public telecommunications networks are published. Before they are implemented, the Commission shall verify the compatibility of these drafts with the Treaty.

As regards packet- or circuit-switched data services, Member States shall abolish the adopted set of public-service specifications. They may replace these by the declaration procedures or general authorizations referred to in Article 2.'

4. In Article 3b, the following paragraph is added:

'Member States shall ensure, before 1 July 1997, that adequate numbers are available for all telecommunications services. They shall ensure that numbers are allocated in an objective, non-discriminatory, proportionate and transparent manner, in particular on the basis of individual application procedures.'

5. In Article 4, the first paragraph is replaced by the following:

'As long as Member States maintain special or exclusive rights for the provision and operation of fixed public telecommunications networks they shall take the necessary measures to make the conditions governing access to the networks objective and non-discriminatory and shall publish them.'

6. The following Articles 4a to 4d are inserted:

'Article 4a

1. Without prejudice to future harmonization of the national interconnection regimes by the European Parliament and the Council in the framework of ONP, Member States shall ensure that the telecommunications organizations provide interconnection to their voice telephony service and their public switched telecommunications network to other undertakings authorized to provide such services or networks, on non-discriminatory, proportional and transparent terms, which are based on objective criteria.

2. Member States shall ensure in particular that the telecommunications organizations publish, no later than 1 July 1997, the terms and conditions for interconnection to the basic functional components of their voice telephony service and their public switched telecommunications networks, including the interconnection points and the interfaces offered according to market needs.

3. Furthermore, Member States shall not prevent that organizations providing telecommunications networks and/or services who so request can negotiate interconnection agreements with telecommunications organizations for access to the public switched telecommunications network regarding special network access and/or conditions meeting their specific needs.

If commercial negotiations do not lead to an agreement within a reasonable time period, Member States shall upon request from either party and within a reasonable time period, adopt a reasoned decision which establishes the necessary operational and financial conditions and requirements for such interconnection without prejudice to other remedies available under the applicable national law or under Community law.

4. Member States shall ensure that the cost accounting system implemented by telecommunications organizations with regard to the provision of voice telephony and public telecommunications networks identifies the cost elements relevant for pricing interconnection offerings.

5. The measures provided for in paragraphs 1 to 4 shall apply for a period of five years from the date of the effective abolition of special and exclusive rights for the provision of voice telephony granted to the telecommunications organization. The Commission shall, however, review this Article if the European Parliament and the Council adopt a directive harmonizing interconnection conditions before the end of this period.

Article 4b

Member States shall ensure that all exclusive rights with regard to the establishment and provision of directory services, including both the publication of directories and directory enquiry services, on their territory are lifted.

Article 4c

Without prejudice to the harmonization by the European Parliament and the Council in the framework of ONP, any national scheme which is necessary to share the net cost of the provision of universal service obligations entrusted to the telecommunications organizations, with other organizations whether it consists of a system of supplementary charges or a universal service fund, shall:

(a) apply only to undertakings providing public telecommunications networks;

(b) allocate the respective burden to each undertaking according to objective and non-discriminatory criteria and in accordance with the principle of proportionality.

Member States shall communicate any such scheme to the Commission so that it can verify the scheme's compatibility with the Treaty.

Member States shall allow their telecommunications organizations to re-balance tariffs taking account of specific market conditions and of the need to ensure the affordability of a universal service, and, in particular, Member States shall allow them to adapt current rates which are not in line with costs and which increase the burden of universal service provision, in order to achieve tariffs based on real costs. Where such rebalancing cannot be completed before 1 January 1998 the Member States concerned shall report to the Commission on the future phasing out of the remaining tariff imbalances. This shall include a detailed timetable for implementation.

In any case, within three months after the European Parliament and the Council adopt a Directive harmonizing interconnection conditions, the Commission will assess whether further initiatives are necessary to ensure the consistency of both Directives and take the appropriate measures.

In addition, the Commission shall, no later than 1 January 2003, review the situation in the Member States and assess in particular whether the financing schemes in place do not limit access to the relevant markets. In this case, the Commission will examine whether there are other methods and make any appropriate proposals.

Article 4d

Member States shall not discriminate between providers of public telecommunications networks with regards to the granting of rights of way for the provision of such networks.

Where the granting of additional rights of way to undertakings wishing to provide public telecommunications networks is not possible due to applicable essential requirements, Member States shall ensure access to existing facilities established under rights of way which may not be duplicated, at reasonable terms.'

7. In the first paragraph of Article 7, the words 'numbers, as well as the' are inserted before the word 'surveillance'.

8. Article 8 is replaced by the following:

'Article 8

Member States shall, in the authorization schemes for the provision of voice telephony and public telecommunications networks, at least ensure that where such authorization is granted to undertakings to which they also grant special or exclusive rights in areas other than telecommunications, such undertakings keep separate financial accounts as concerns activities as providers of voice telephony and/or networks and other activities, as soon as they achieve a turnover of more than ECU 50 million in the relevant telecommunications market.'

9. Article 9 is replaced by the following:

'Article 9

By 1 January 1998, the Commission will carry out an overall assessment of the situation with regard to remaining restrictions on the use of public telecommunications networks for the provision of cable television capacity.'

Article 2

Member States shall supply to the Commission, not later than nine months after this Directive has entered into force, such information as will allow the Commission to confirm that points 1 to 8 of Article 1 are complied with.

This Directive is without prejudice to existing obligations of the Member States to communicate, no later than 31 December 1990, 8 August 1995 and 15 November 1996 respectively, measures taken to comply with Directives 90/388/EEC, 94/46/EC and 96/2/EC.

Article 3

This Directive shall enter into force on the 20th day following its publication in the *Official Journal of the European Communities.*

Article 4

This Directive is addressed to the Member States.

Done at Brussels, 13 March 1996.

For the Commission

Karel VAN MIERT

Member of the Commission