

## **Immediate Steps for Improvement of the Competitive Situation in Germany**

### **1. Define a Coherent Concept for Appropriate Tariff Structures**

***The regulatory authority must lower prices for customer local loops significantly.***

The Regulatory Authority for Telecommunications and Post (“RegTP”) must immediately and significantly correct downward its decision concerning the charges permitted to be imposed by Deutsche Telekom AG (“DTAG”) on competitors for use of the DTAG’s local loops (“TAL”). This result is already implied by the antitrust case opened against DTAG by the EU in order to fight against the unchanged and persistent barriers to competition in the local network.

The goal of these measures must be to correct the inappropriate gap existing between the retail pricing for local loop connectivity charged DTAG retail customers and the prices charged competitive carriers by DTAG which is lingering for four years. Up to the present, there exists no viable concept in which new competitive offerings for local services – such as “call-by-call” (dial around) or resale – could be integrated. Local competition can only succeed when an appropriate profit margin exists between the price payable by the competitor for the DTAG local copper wire and that price paid by retail customers for local connectivity. Retail consumer prices should under no circumstance be raised. According to the cost documentation available to us, the retail price of the local loop must lowered for competitors, and therefore indirectly for retail customers as well.

The German federal government too has meanwhile come to agree that there is no alternative to an appropriate concept for price regulation, as may be inferred from its comments on proposals of the *Bundesrat* (representing the states) relating to the “small revision of the Telecommunications Act,” in which the government too calls for a nuanced concept of price regulation.

## **2. Enforce Access to all Services Substantially Necessary for Competition**

***RegTP should only approve DTAG's bundled service offerings where competitors are given the possibility to offer their own corresponding services simultaneously***

In order to put an end to the increasing transfer of market power to DTAG caused by its use of bundled service offerings, competitors must, with respect to all forms of offerings (unbundled local loops, interconnection, resale), be given access to the corresponding unbundled DTAG pre-products. Where an unbundled pre-product can not be offered to competitors (for example free connectivity on weekends and holidays under DTAG's XXL tariff), the bundled DTAG offer must not be approved.

***RegTP must, through the introduction of contractual penalties and the increased creation of standard offerings, create greater legal and planning certainty for competitors.***

DTAG's compliance with its contractual obligations must be assured through effective sanctions. The formulation of standard offerings for a greater range of services is required to counter DTAG's practice of constant termination and replacement of contract, and the use of interim arrangements so in order to inhibit and confound competition. EU law too has now for some time required the establishment of standard offers (as for example the reference interconnection offer or "RIO"). RegTP's long championed "primacy of negotiations" over requiring standard offerings must be reevaluated in light of the experiences to date, which are the result of negotiations between parties with disparate bargaining power.

***Internet flat rate service should be made available to retail consumers with normal telephone connections.***

In rural areas and in the new states (the former East Germany), high-speed broadband access to the Internet via DSL connections will not be available for the foreseeable future. In order to implement the policy of structural (and Eastern-region) development and to avoid a digital divide, it is necessary and indeed crucial to require that flat-rated narrowband connectivity be offered to these consumers. In order to be permitted to offer to retail customers a flat-rated, narrowband Internet access package, DTAG should offer to competitors a corresponding pre-product. Recently, RegTP obligated DTAG to do so. Now, it is necessary to implement this obligation without delay.

### **3. Increase the Speed of Proceedings**

***The duration of market abuse proceedings has to be significantly abbreviated.***

The time frame required for a RegTP decision to be rendered must be shortened. The measure here should be – as it is for tariff approvals procedures – a procedural timeframe of maximally 10 weeks. Establishing this time frame for market abuse proceedings is already possible under current law and could therefore be done immediately.

The long duration of abuse proceedings turns is a substantial impediment to competition. For example, eight months elapsed between the application to open an abuse proceeding concerning the provisioning of leased lines and RegTP's decision in the matter. Last year's decisions concerning line sharing and resale respectively required about nine months to complete. If one adds to this time frame the additional time since DTAG routinely (and independently of the merits and its chances of success) challenges all decisions with the administrative courts in expedited proceedings, one arrives at a total term from the application to the implementation of a decision of one-and-a-half to two years. The prize in this regard goes to the tariff proceeding concerning DTAG's "TDN" contracts. In this proceeding, it took RegTP took nearly two years merely to initiate a proceeding.