



Annual Report

**Overview over the Year 2001
in the Telecommunications Sector**

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» Preface

Four years have passed since January 1, 1998, when voice telephony was opened up to competition and the German telecommunications market was liberalized. At that point in time, we had already undergone a process that spanned approximately ten years. The terminal equipment market was deregulated first, followed by the mobile telecommunication sector. Thanks to liberalization, both these market sectors experienced a tremendous upswing. The success of mobile telecommunications is borne out by the number of customers: the rather bold estimates of more than five million subscribers by the turn of the millennium were exceeded by a factor of more than ten.

Expectations were great when, in what appeared to be the last bastion to have fallen, voice telephony was opened up to competition. We did not harbor any illusions as to the special problems which new enterprises would encounter in a marketplace that had been a monopoly in the past, but we did place our trust in the German Telecommunications Act (TKG) which was considered to be remarkably liberal. The objective was to quickly establish a general framework in which to promote fair competition. And we placed our trust in the institution of a Regulatory Authority whose decisions would be independent of day-to-day politics and ensure the equal opportunities we had been promised.

The law intentionally provided for a low entry level for private providers, and many new providers became active in this promising industry, among them many foreign companies who not only brought valuable know-how gained in their previously liberalized home markets such as the US or Great Britain, but also billions of investment Marks into the German economy.

All told, competitors invested more than DM 140 billion in infrastructure and licensing fees. 60,000 jobs were created. Because of the competition, both the public and the private sectors were able to realize savings in the billions. However, there is great disillusionment among the private telecommunications providers, especially those in the fixed network sector. Almost all of them are still operating in the red; many have already given up. Planning reliability, an important factor for the companies' existence,

has decreased rather than increased. Especially foreign investors are in a state of great uncertainty, and many are withdrawing from the German market.

How did this happen? After some rather promising and fast initial successes for the new competitors, the former monopoly flexed its muscles and did everything it could to thwart the competition (which it might initially have underestimated). In defending its own market position, it used every means available, from refusing and/or delaying services to utilizing the courts. In order to shore up its position, it even accepts massive losses in its own operations by undercutting prices. In the case of DSL (Digital Subscriber Line), it even managed to establish a new monopoly. Effective price controls are difficult if not impossible because of the constantly increasing number of bundled products and a very complex rate structure. Deutsche Telekom has lost hardly any customers at all over the past four years, and it has continued to claim the local telephone network as its own domain. The Regulatory Authority has not been able to stop this.

As a consequence, competition has been stagnating for the past two years. But even worse, during this past year, private telecom providers have lost to Telekom some of the market shares they had gained in the long-distance market. The result: in spite of generally falling prices, prices for long distance calls increased by 1.3 percent over November 2000.

And what does the government do? Nothing. Or at least not the right thing. On the contrary, it praises the “success” of the DSL market and ignores the fact that a new monopoly has been created.

In its current special report, “Unsicherheit und Stillstand” (Uncertainties and Standstill), the Monopolies Commission notes that the development of the competitors has come to a standstill and that, four years after the liberalization of the market, there is no real competition to speak of!

The EU sets standards, which the Federal Government, the Regulatory Authority, and Deutsche Telekom do not implement. If we want to foster competition, we must act. Immediately.

This yearbook is intended to provide an overview over the year 2001 in the telecommunications sector. We will show how the situation changed for competitors in the course of the year, and which decisions were key factors in effecting these changes. Often, correlations can only be seen in hindsight, and only then is it possible to assess and categorize them properly.

We will give an overview over the market and then report in greater detail on individual market sectors. What was the situation at the beginning of the year, what decisions were made, and how did that affect competition? Chief executives and board members of our member companies will provide commentary on individual market sectors. Guest commentaries by leading telecom experts from various other industries will add a broader perspective.

I hope you will find this interesting reading.

Sincerely yours,



Dr. Joachim Dreyer
President, VATM

I. Market Overview

Four years after the complete liberalization of the German telecom market, competition in the market is essentially at a standstill. Some decisions issued by the *Regulierungsbehörde für Telekommunikation und Post* (or RegTP, the Regulatory Authority for Telecommunications and Postal Matters), which should have had positive effects on competition, turned out to be of little use to the new carriers. The Deutsche Telekom AG (DTAG), the former monopolist, is pursuing a defensive strategy that is as simple as it is successful. The Regulatory Authority's decisions are either not implemented at all, are delayed unnecessarily or are attacked in the courts, a strategy that leads to further problems.

The new telecom companies cannot understand that government and regulators have so far done practically nothing. There is not a single case of delay or obstruction in which the Regulatory Authority threatened to take serious sanctions against DTAG or even impose a penalty, even though VATM's urgent warnings are meanwhile being supported by the *Wissenschaftlicher Arbeitskreis der Regulierungsbehörde für Telekommunikation und Post* (scientific working group of the Regulatory Authority) and by most scientists.

Thanks to such massive delay and obstructionist tactics, DTAG was not only able to hold on to its market shares in 2001, but the former monopolist even re-gained some of the market shares it had lost to the competition in the long-distance market.

Increased Re-Monopolization

The trend towards re-monopolization of the telecom market, which was already evident last year, has clearly increased in 2001. Whether they operate fixed networks, offer Internet, online or value-added services, the new carriers are confronted with regulations, which do not promote competition but rather tend to reinforce Deutsche Telekom's existing dominant position in the market. Even worse: these policies and regulations give DTAG leeway to build up new monopolies. Case in point: fast access technologies (e.g., DSL). These technologies are strategically especially important for Internet access. DTAG pursued an extremely aggressive pricing policy in offering these technologies and attained an almost 98 percent market share within a very short time. Even the Regulatory Authority agreed that DTAG's DSL rates did not cover its costs.

DTAG attacked the pre-selection market with improper clauses in its General Terms and Conditions and with miserable switching quality. In the subscriber access market, it attacks the privates with price dumping measures and massive delays in provisioning both the required technology (collocation space) and lines (leased lines).

Delay Tactics

The delay tactics in provisioning leased lines run like a red thread through all market segments and also affect mobile communications, WLL (Wireless Local Loop) and online services. Meanwhile, even the Regulatory Authority had to admit that DTAG has not kept its promise of significant improvements in the area of provisioning. Now the Authority is saying that drastic improvements cannot be expected in the near term.

It is thus all the more important that the Regulatory Authority intervene specifically to set conditions under which Deutsche Telekom has sufficient “incentives” to adhere to its contractual obligations.

According to the current decision (dated October 2001) by the Regulatory Authority, Deutsche Telekom is now obligated to make the so-called private carrier circuits available – albeit with delays that are still much too long. But once again, no sanctions were imposed.

High Prices for Security and Protection

The Federal Government attempted a regulatory balancing act when it improved data protection and tightened the supervision of telephone and data networks.

In order to improve customer protection, a new procedure for interception circuits was to be established to provide citizens with efficient and effective protection. The amendment to the telecommunications data protection ordinance (*Telekommunikations-Datenschutzverordnung – TDSV*) contains new regulations that govern the procedures for giving customers who are being harassed or threatened access to certain data. However, the authors of the ordinance did not define the cross-network communication that is required for these procedures to work. VATM members, in close cooperation with other cellular carriers, have established a secure and practical process for transmitting the data amongst the various providers.

The new draft of the telecommunications supervisory ordinance (*Telekommunikationsüberwachungsverordnung – TKÜV*) also caused big problems. The first draft drew heavy criticism from VATM and other associations. While the proposed regulations did not offer efficient protection, they would have resulted in significantly higher and unnecessary costs for the providers. At the end of the day, a compromise was reached that, in VATM's estimation, still constitutes a significant additional burden on the telecom companies, but at least it does not include the internet nodes.

Meanwhile, however, in the wake of the events of September 11, 2001, the 2nd security package is being debated in the German parliament.

Crowding out by Means of Cut-Rate Prices and Bundling

The former monopolist's attempts at crowding out the competition are especially glaring in the area of the so-called "Telekom Designed Networks" (TDN). The former monopolist targets such offers specifically at large companies or municipalities in order to win them as its customers. But these reduced rates are not only offered for communication services among the members of the closed user groups, they also apply to voice calls to third parties – illegally so since there was no prior approval for this practice. The Regulatory Authority finally tried to put a stop to this with its decision of October 15, 2001. However, DTAG has taken this decision to court as well.

Competition is also a serious risk due to growing number of strategic package deals DTAG throws on the market. By offering complex, bundled tariffs, the former monopolist is able to hamper efficient price controls.

Another cause for great concern to the private telecom companies is DTAG's new, broad-based customer loyalty program "Happy Digits". This program is offered to fixed network, mobile, and Internet Telekom customers and awards a so-called "digit" for each Euro they spend. The digits can be collected and exchanged for premiums. The competitive providers fear that this will also result in a shift of further market segments towards DTAG since there is no other large, vertically integrated provider of practically all telecom services.

Quick Reduction of Regulation Unlikely

Again and again there are demands for a softening of regulation. Such demands seem almost grotesque; the competitive carriers are gaining only very small market shares in the local telephone markets and have actually been losing market shares in the long-distance markets. Last year, DTAG went on the offensive in the long-distance sector with the clear objective of influencing the upcoming reform of the Telecommunications Act (TKG) in its favor.

Citing an expert opinion it had commissioned, DTAG is trying to keep market shares from being reported and evaluated on a nation-wide basis as mandated by the current Telecommunications Act. Instead, it wants to restrict evaluations to regional markets or even certain product groups in hopes that it might no longer be considered the incumbent within such a narrowly defined segment.

In their report (which was commissioned by DTAG), Professors Immenga, Kirchner, Knieps, and Kruse expressed the opinion that DTAG could not be subject to regulation in narrowly defined regional markets if, irrespective of its market share, there was only one single competitive provider in that market. They felt that the same principle should apply to those product areas in which there is already some functioning competition (or whatever constitutes competition according to DTAG).

DTAG's current focus is Berlin. DTAG has already filed an application with the Regulatory Authority in which it asks that it be no longer considered the incumbent carrier in its self-defined "regional market for business customers in Berlin". If the application is approved, DTAG's rates for this "regional market" would no longer be subject to rate regulations by the Regulatory Authority, and it would mark the first time that Deutsche Telekom could set different prices for its subscribers (DTAG end user prices are currently uniform in the entire country).

DTAG is trying to circumvent regulation in the long-distance market, too. It picks one state after another, like raisins in a cake, even though the competitive carriers' market shares are stagnating.

DTAG's objective is to abolish the regulation of end user rates in the German telecommunications market. Because of the far-reaching consequences of such a measure, the Regulatory Authority published a paper in February 2001, in which it presented, and invited public comment on, key elements on market penetration and market dominance. The ensuing scientific debate was largely influenced by the expert opinion by

Professors Bunte (Hamburg) and Welfens (Potsdam), which VATM published in the spring. In their report, these two scientists conclude that market segmentation on a regional basis would be extremely problematic, both from a legal and from a regulatory point of view. They are firm in their belief that competition in the telecommunications market is not yet self-sustaining and they therefore warn against allowing DTAG to soften price regulation, even in partial areas.

Many prominent scientific institutions share this opinion. The *Wissenschaftlicher Arbeitskreis für Regulierungsfragen* (scientific working group of the Regulatory Authority), noted in a paper published in late August that an exemption of individual local networks from rate regulations would raise “significant problems”, and that, realistically, there is currently no local market that could be exempted from regulation.

In late August 2001, the Regulatory Authority held a hearing, which came to the same conclusion. At this hearing, Dr. Neumann, the director of the renowned *Wissenschaftliches Institut für Kommunikationsdienste* (or WIK; the Scientific Institute for Communications Services), and Prof. Hellwig, the chairman of the Monopolies Commission, both advised against exempting DTAG from rate regulations, even on a partial basis.

In a report commissioned by the Regulatory Authority, Professors Klaue and Schwintowski (Berlin) also point out that market zoning would not correspond to consumer demands, neither in terms of their wishes nor in terms of their behavior.

Meanwhile, the Economics Ministry, which is preparing an amendment to the Telecommunications Act, has apparently taken note of the fact that the telecom market, one of Germany’s most significant and innovative markets of the future, is currently in an extremely critical state.

But time is running out. Unless there is an immediate correction of current regulatory practices and a clear willingness to use any and all suitable means to force Telekom to toe the line of fair competition, liberalization will, less than half a decade after it started, come to an ignominious end. Numerous companies, even well known companies, were forced to give up already; many others are struggling to stay alive.

In most of these cases, this is not just a case of market consolidation, a rather common phenomenon in young markets. Rather, the difficult economic situation of many companies is due to increasingly unreliable planning parameters and the political and regulatory framework. Investors are faced with great uncertainty and retract their commitments.

Investment Shortfall

During the past five years, investments, primarily from foreign sources, in the fixed network, Internet and data services sectors amounted to almost DM 15 billion. Investments in the entire telecommunications market, including mobile communications, amounted to more than DM 140 billion. That makes telecommunications one of the most important and successful investment drivers.

Because of the increasingly critical developments in the market, there will be an investment shortfall of more than DM 5 billion next year in the fixed network and online services sectors alone – and the trend is going up. Jobs are lost or cannot be created.

This development constitutes a threat not only to individual companies or an industry, but it touches the nerve of the German industry of the future and the credibility of Germany as a desirable location for doing business. Now it seems that the investment trap is about to be sprung in Germany, which until recently was the European telecommunications leader.

Therefore, both the EU Commission and the Federal Cartel Office are increasingly critical of national regulation in Germany. Both are demanding a clearer and, above all, more competitive course. The overall success of German liberalization policies – not only in the telecommunications sector – is being called into question.

DTAG treats the Regulatory Authority as if it were a toothless tiger, which does not need to be taken seriously, and which can easily be tricked. The Regulatory Authority has learned that DTAG uses the “Round Tables” only for further delays, and that it does not keep its promises. A flood of DTAG-initiated lawsuits negates the Regulatory Authority’s directives and their “immediate enforceability”. But it appears as if the tiger is finally starting to strike back, with deadlines and sanctions, with prohibitions and orders. It will be months before these measures take hold – for some companies, that will be too late. The German telecom market will only have a chance if significant changes are made to the regulatory framework.

» Statement

By Harald Stöber
Chairman of the Board, Arcor AG & Co
Member of the Executive Committee, VATM

» If Telekom uses every means at its disposal to defeat directives by the Regulatory Authority, then we must act immediately. By offering combination rates and bundling its offers, the former monopolist all too often succeeds in keeping others out of the market. Germany is still a long ways away from vital competition. Time has become critical as Telekom continues to use its market power to restrict competition. We need strong, far-reaching regulations. «

II. The Market Segments

1) Call-by-Call and Pre-selection

Call-by-Call

Just a year ago, call-by-call was the ideal method for new competitors to enter the telecommunications market. There was no other sector where private providers could place their products more quickly, or where customers could realize savings more easily. By the end of 2000, 76.7 percent of all customers of the private provider used call-by-call for their phone calls. But in the course of this year, and for the first time since the telecommunications monopoly was broken up, this number has decreased to 51 percent.

This has many reasons. Billing and collection are a constant bone of contention between Deutsche Telekom and the competitors. The Regulatory Authority's mediation decision on collection (late February 2001) has serious repercussions. DTAG must continue to do the billing, but

can charge considerably higher prices for this service. The responsibility for the collection process itself, i.e. demanding payments and collecting, now rests with each individual provider. For the competitive carriers, this is a fatal decision: reduced services at higher costs.

Gnashing their teeth, the competitive carriers agreed just so that the contentious issue could be put to rest and to ensure more planning reliability. However, as early as March 1, VATM issued a press release, warning of the negative consequences of the decision. And rightly so: the already complicated economic situation of the competitors was aggravated even further by higher purchase prices for the advance provisioning products for call-by-call and the expensive collection processes. Add to this recurrent technical difficulties and errors in transmitting customer data and open invoice amounts. As a result, dunning letters are being sent out erroneously, and that makes for unhappy customers. Further, the competitors cannot collect the monies due them because data is not transmitted correctly. If the collection provider market should consolidate even further, the Regulatory Authority's collection decision will need to be reviewed. Even today private providers have the choice between only two collection providers, and DTAG has a substantial share in one of them, Deutsche Post AG has a share in the other one.

So private telecommunications providers are turning away from the call-by-call market as a stepping-stone into the market. This is a step backwards on the way to greater competition in telecommunications since almost half the population still has not discovered the services offered by competitive carriers and exclusively uses DTAG as their carrier. Thus call-by-call continues to be significant as an entry-level model for customers. Regulators should take this very seriously and not lose sight of the call-by-call market.

Pre-selection

Next to call-by-call, pre-selection, the permanent preset to an alternative carrier for long-distance calls, is the second method for competitive carriers to enter the telecommunications market. By presetting their long distance carrier, customers without having changed the provider completely can easily use a private provider's network. In early 2001, the competitive carriers gained 4.6 million customers in this sector, in spite of DTAG's constant delays in switching these telephone customers over to their new providers. The former monopolist took its tactics to new extremes with restrictive contractual clauses in its package deals. An example: pre-

selection is prohibited in DTAG's much-advertised "AktivPlus XXL" package, but that prohibition is tucked away in the small print.

With its directive of September 25 of this year, the Regulatory Authority put an end to these business practices. The independent authority approved the tariff only with the proviso that DTAG allow fixed pre-selections of competitive carriers' networks. The agency reasoned that the exclusion of pre-selection without a compelling objective reason constitutes an obstruction to the competitiveness of other carriers. The number of pre-selection customers is expected to reach approximately 7.1 million by year's end 2001. This number would probably have been much higher had it not been for the "interference" run by Telekom.

Overall, developments this year trended away from call-by-call and towards pre-selection. The private competitors see great opportunities in their customers' loyalty. And the customers, by choosing alternative providers, demonstrate their confidence in the reliability and service of these competitors. A *dimap* poll, conducted in August 2001, showed that 94 percent of all pre-selection customers and customers who uses all services of a competitor were completely satisfied with the changeover procedure, customer service and performance.

Another result of this poll shows that only 26 percent of the population knows that they can pre-select their long-distance carrier. The remarkable number of 7 million customers by the end of 2001 proves that this market segment still holds great potential.

» Statement

By Gerhard Schmid
Chairman of the Board, MobilCom AG

» After years of aggressive competition, customers tend to put more emphasis on quality and reliability rather than on "rock-bottom" prices. Consequently, the price war in the discount segment will decrease. However, independent of that development, the call-by-call business will continue to be important.

But the Regulatory Authority's collection decision is a problem. For the providers, this decision clearly means higher costs for fewer services from DTAG. That will most certainly affect competition. «

2) Local Loop

The never-ending story: Even four years after full deregulation, there is no competition in the local telephone networks. These numbers do not lie: according to the current market study by VATM / Dialog Consult, approximately 700,000 connections will be run entirely by competitive carriers. That still amounts to less than three percent of all German telephone lines.

This unsatisfactory situation is primarily due to the high leasing costs for subscriber lines (*Teilnehmeranschlussleitung* or TAL), and DTAG's continuing obstructionist and delay tactics. Regulators are still unable to solve these problems.

The new directive by the Regulatory Agency of March 31 of this year did not provide the competitive impulse that had been hoped for. The agency lowered the monthly lease rate for a copper pair by only one Mark: from DM 25.40 to DM 24.40. That means that the former monopolist still charges its competitors more than it charges its own customers for a simple analog connection. Alternative providers had submitted extensive studies which showed "costs for efficient provisioning of services" in the range of DM 15 to DM 17.80 per month. The Regulatory Authority reduced the one-time takeover charges for a line by, on average, a modest five percent. The agency does not take into consideration the fact that Telekom could easily handle such orders via electronic interfaces, and with the same systems with which it handles its own customers' orders. The directive missed an opportunity to create potential efficiency increases and possible cost reductions. However, these rates will expire in March of next year, and so there is some hope that the Regulatory Authority will take at least that opportunity to promote efficiency increases and cost reductions.

Attempts by the Regulatory Authority to get DTAG to voluntarily adopt acceptable provisioning practices have failed. Be it round table discussions, discussion rounds or private talks, there is nothing that will move DTAG to abandon its delay tactics. To date, the regulators have not imposed

contract penalties, which EU law has been mandating since the beginning of this year and which are intended to enforce competitive behavior. That means that EU law is constantly being violated.

Delays and excessive prices for the provisioning of collocation space to interconnect to the local loop turn the competitive carriers' business plans into nothing more than waste paper. Once the space is ready, the companies must often wait for more than a year for connections to be made to the premises, e.g., via a leased DTAG line. The statistics published by Telekom are especially misleading as they often show timely provisioning. However, DTAG knows that even a missing segment and fewer leased lines might mean that entire networks and loop circuits must be paid for, but cannot go live. Thus the competitive carriers lose urgently needed revenues.

There are also massive problems in switching customers over. DTAG often delays the technical requirements for the switchover, or if the requirements are in place, they are faulty. Again, there are no sanctions and thus there is no way to put pressure on Telekom to abstain from such obstructionist behavior.

Therefore, there is no agreement on the new TAL contract (which governs access to the subscriber line). DTAG did implement the "GTS decision" of June 2000 and finally included binding provisioning and implementation deadlines in the contract. However, the former monopolist did refuse to include sanctions for cases in which it does not adhere to the binding deadlines. Finally, DTAG gave notice of its intent to terminate these contracts as of September 30, 2001, and submitted a new contract proposal in June 2001. The new proposal still does not include the contract penalties for delayed deliveries, as mandated by EU law, nor does it provide access to DTAG's planning data and databases.

No agreement was reached in a total of six rounds of negotiations between DTAG and the associations of alternative providers. Provisional terms are currently in place until March 31, 2002. DTAG's strategy proves effective once again: create uncertainty in the market place, and prevent legal certainty and planning reliability. That makes it all the more important that the Regulatory Authority set an example by instituting market abuse proceedings in the matter of the TAL contract.

The Regulatory Authority did give one indication of its intention to promote competition when it passed its "Resale Decision" in March 2001. Pursuant to the Telecommunications Act and EU law, that decision obligates the

former monopolist to offer its competitors the opportunity to resell all products in the customer network (connections, local calls, city calls, DSL connections). DTAG tried – unsuccessfully – to overturn this requirement of the Regulatory Authority by initiating summary proceedings in the Cologne Administrative Court as well as in the Münster Appellate Administrative Court. But, by exhausting all legal means at its disposal, DTAG was once again able to effect a considerable delay in the implementation of the requirement. If experience is any indicator, the first offer from October of this year will also have to be amended, and it is likely that new market abuse proceedings by the Regulatory Authority will be required before a concrete contract is finally submitted.

The EU has set another requirement: carrier selection in the local telephone network. This is supposed to be similar to call-by-call in the long-distance market. But neither the Federal Government nor the Regulatory Authority has so far implemented this requirement. Just a few days ago, the Federal Government took everyone by surprise when it announced an early amendment to the Telecommunications Act in order to forestall so-called proceedings for failure to act by the EU. However, from what we hear, an immediate implementation is not being planned, phrases such as, “probably by December 2002 at the earliest” are being bandied about.

The Federal Government does admit that this – as does reselling – requires corrections of the regulatory framework in order to prevent risks to investments. The problem is that the competitive carriers have to pay more for the subscriber line (i.e. the bare wire, without any technology) than DTAG’s customers pay for their complete analog connection. And that brings us back to the beginning of our story: the prices for subscriber lines were set at too high a level even after the intervention of the Federal Government in 1998 and they are still too high after the March 31 directive (see above) ...

Let us add a note on Germany as a country bound by the rule of law – or should we say Germany as a banana republic? The competitive carriers wanted to start summary proceedings to force a review of the subscriber line prices (which had been set at too high a level). For more than two years, the Federal Government refused to hand the required documents over to the court, and the court was thus unable to rule on the matter. Finally, the question became moot: new subscriber line rates were set in March 2001 – again at much too high level. New summary proceedings have been initiated.

» Statement

By Karl-Heinz Mäver
HanseNet Telekommunikation GmbH
Member of the Executive Committee, VATM

» City and regional carriers in Germany have made considerable investments to build up their networks. These investments can only be successful if there is a fair competition with DTAG. Unfortunately, that can only be achieved with the aid of the Regulatory Authority. This is one of many reasons why regulation is still urgently necessary and will most likely continue to be necessary for quite some time to come. «

3)DSL Broadband Access

A new monopoly has been created: DTAG has been offering T-DSL, broadband access for end users, since the middle of 2000. In June 2000, it reduced the rates for T-DSL to a level below its own cost. This exclusionary conduct was labeled an “introductory offer.” As of January 1, 2001, DTAG raised its T-DSL rates by up to 50 percent. However, the higher rates still do not cover costs, and that constitutes a continuing violation of the Telecommunications Act. The Regulatory Authority has initiated price abuse proceedings.

The Regulatory Authority noted on March 30, 2001, that Telekom is offering T-DSL at a price that is below its own cost. Even though the agency does have some reservations, it recognizes these rates as “knock-on financing” and approves them, albeit with some provisos. In the agency’s estimation, price dumping does not restrain competition if the competitors are offered the corresponding advance provisioning products on a timely basis. It would soon turn out that this was a complete misjudgment, which, thanks to the “customer-friendly” low prices, was not corrected quickly enough.

The dumping prices had not only massive repercussions on all other providers of DSL technologies (a fact which constitutes a violation of the

Telecommunications Act), but also on the providers of alternative broadband technologies: their price and cost calculations are still affected by the T-DSL offer.

Worse yet: When it issued its directive, the Regulatory Agency required that improvements be made with respect to advance provisioning products and that provisioning problems in other central areas of competition (e.g., leased lines, collocation) be corrected. It assumed that these improvements would be implemented quickly. But not even these requirements were met in a timely fashion.

The issue with respect to advance provisioning products is, in particular, the so-called line sharing, i.e. leasing of the upper frequencies of the subscriber line for data transmission. As of January 1, 2001, EU law prescribes line sharing – and contractual penalties if the incumbent carrier does not implement line sharing on a timely basis. On March 30, 2001, the Regulatory Authority required DTAG to make line sharing available by May 30, and to start operations no later than August 30. That means that line sharing would be available nine months after the date mandated by law.

DTAG goes to court and refuses implementation. Even though it completely circumvents the concept of the Regulatory Authority, and even though the premise for the rate approval is no longer applicable, regulators do not withdraw their temporary approval of the T-DSL rates. At the same time, the Federal Government even boasts of the number of T-DSL customers. By summer, DTAG has acquired a market share of almost 97 percent. DTAG loses its court case, but, because there are still no sanctions in place, delays implementation of the directive until late August 2001. It presents an unacceptable offer and a price which is higher for a split solution than for the total solution. That means that further time-consuming negotiations are required, as are interventions by the regulators against which DTAG will most certainly fight again with any legal remedies at its disposal. The result: line sharing will not be available during the upcoming months, and the EU's binding requirements will continue to be violated. All the while, T-DSL rates will continue to be tolerated even though they are below DTAG's cost.

The consequences of this greatest regulatory failure – immediately after setting the subscriber line rates – are fatal not only for the competitive carriers, but also for the customers: not a single provider could offer DSL without losing money. Alternative broadband access technologies such as WLL, power lines or TV cable are also affected by DTAG's overly

aggressive pricing policy. Services are delayed or not offered at all. Companies lose their economic and planning base.

Ultimately the customers will have to foot the bill. DTAG's DSL rates have been rising for a year now, and DTAG will have to end its price dumping, either because it is losing millions or because the regulators are finally intervening. Either way – the short time of cutthroat, supposedly customer-friendly rates will end in 2002. DTAG will have achieved its objective; as it has more subscribers than the competition, it has a better costing basis and thus a permanent competitive advantage. And the customer has just what he's always been warned of: a market with a new monopoly, without efficient competition in terms of price and/or quality. The regulators, in taking this supposedly customer-friendly decision, ended up turning consumer protection on its head. It was shortsighted not to order an increase of these consumer-friendly prices. That is what the Regulatory Authority should have done – for the consumers, to permanently ensure good, competitive prices, and last, but not least, because the law says so, and with good reason.

VATM's demands are clear: the price abuse proceedings concerning T-DSL must be re-instituted immediately. Sanctions must be created so that directives, resolutions, and regulations will be implemented in a timely manner.

» Statement

By Gerd Eickers
Executive Board, QSC AG

» Broadband is coming – but where is the competition? 2001 was to be the year of broadband, that's what the pundits had hoped, and what the companies had planned. However, once again no one had reckoned with the giant from Bonn. Now the industry is putting its hopes into the coming year. Make no mistake about it: broadband is coming, but it will be slower than planned.

But we do see many positive signs: market researchers are still expecting the German and European broadband markets to grow quickly. The

EU Commission expects half of all households and small enterprises to have broadband access by 2005. But the fact is that bare broad wire at cutthroat prices will not be sufficient in the future. The business world wants customer- and sector-oriented solutions, that is, products that, as a matter of course, include not only fast Internet access, but also value-added services such as videoconferencing. «

4) Alternative Access Technologies

Wireless Local Loop

A technology of the future threatens to slowly disappear from the German market: wireless local loop via point-to-multipoint microwave (WLL-PMP). Even a year ago, wireless microwave access to the end user was considered the trump card for breaking up DTAG's monopoly in the local telephone markets. It was thought that the modern technology would appeal especially to small to medium-sized businesses outside metropolitan areas and would constitute an alternative to all sorts of broadband telecommunications services. Super fast videoconferences, virtual private networks (VPN), or access to software applications via the Internet (ASP) – bandwidths of up to 155 megabits per second provide innovative enterprises and startups with flexible access to the technologies of the future. In one of the most expensive and costly allocation procedures for the approximately 1,700 local licenses it had ever run, the Regulatory Authority attracted primarily foreign investors, beginning in 1998. After the final allocation round in December 2000, there were essentially seven companies in the market: Broadnet, Callino, Deutsche LandTel, Mannesmann/Arcor (Arctel), Firstmark, Star21, and BT Ingnite. The investments for creating the required infrastructure would reach into the nine figures for each of the providers. Several thousand new jobs were created.

Admittedly, there were some homemade problems such as technical delays in hardware development, or business models that were not always optimal. But from the outset, Deutsche Telekom AG attempted to slow down the pace of the competitors. It was able to do so especially in areas where companies such as Callino or Firstmark had to depend on DTAG as

the sole possible vendor to connect their base stations. Thus their entry into the market was delayed month after month. Planning reliability was out the window. And even though the Regulatory Authority was aware of the problems, it did not intervene. On the contrary: the approval of dumping prices for DTAG's fast internet access via DSL further damaged the WLL market and relegated it to the high-speed access "niche market" for business customers (2Mbit/s and higher).

The consequences were dire. Three renowned WLL providers filed for bankruptcy protection this year: first Callino in April 2001, then Firstmark and Deutsche LandTel. The other providers either significantly reduced their investments or discontinued them altogether. That in turn affects the vendors of the technical infrastructure. Be they Alcatel, Lucent, Siemens, or others – the problems of the network providers translate into billions of lost or cancelled orders and endanger other jobs.

Now there is a new monopoly in broadband Internet access (Telekom is expecting to dominate 98 percent of the DSL market by year's end) that constitutes a threat to the well-thought out business plans of the remaining WLL providers. An entire technology might disappear from the market. It would appear that even the Regulatory Authority itself is giving up on WLL. A spokesman, quoted in the Financial Times Deutschland, bemoaned the foreseeable end of this technology. But the VATM is demanding that the Regulatory Authority intervene at once and stop not only DTAG's obstructionist and delay tactics, but also its price dumping in the broadband internet access sector. A positive note: some thought is now being given to a relaxation of the licensing requirements for WLL providers in order to develop new market segments such as leased lines on the lower network levels ("leased links"). That would lead to significantly better utilization of the newly created infrastructure, and investments would be secure. And outside urban areas, this would also create a counterbalance to DTAG's leased line policy: a first step towards the broadband future of rural areas.

All this must be complemented by regulatory measures that will quickly lead to true competition.

» Statement

By John Stachowiak
CEO, STAR 21 NETWORKS AG

» WLL-PMP is the only alternative access technology in the local telephone network that does not utilize the former monopolist's infrastructure. Microwave radio relay is easy and elegant in its implementation, it can be deployed everywhere, it is truly "broad"-band, and it is secure. It was not entirely unexpected that the financial burdens of having to establish a complete network from scratch would lead to painful consolidations in this sector. STAR 21 NETWORKS will do everything in its power to fully utilize the enormous potential of WLL-PMP, especially where regulatory policies and frequencies are concerned. «

TV Broadband Cable

The planned and partially executed sale of parts of DTAG's broadband cable network to the US media companies Callahan and Liberty and to the German iesy (in Hesse) opened the way for another alternative access technology. The new owners are planning to invest billions, which will go towards digitalizing the currently analog networks and adding return channel capabilities. Millions of households will then not only have numerous new digital TV channels, but they will also be able to use their television cable for modern telecommunications services. As of early October of this year, "ish", a network operator formerly known as Kabel-NRW, has been offering a package with TV, telephony and Internet access. An initial 300,000 households in Düsseldorf and Neuss are already able to take advantage of this offer. The new provider has a total capability of 4.2 million households in North Rhine Westphalia. Another 2.2 million households in Baden-Württemberg are scheduled to go on line next year. Liberty's plans call for holding back investments in the telephone and Internet sectors as planning reliability is not sufficient. VATM believes that

these providers were also affected by DTAG's dumping prices when it introduced fast DSL access. German regulation runs the risk of turning into an investors' trap. DTAG's reward for the sale of its cable networks is a considerable head start in broadband customer access via DSL. This is a political tit-for-tat that we must not allow to succeed. The dominance of T-DSL puts further investments into TV broadband cable and other alternative access technologies at risk.

Power Lines

Internet via electrical outlets in your wall: after having been talked about for many years, it finally entered the market in mid-2001. But the availability of this alternative access technology is limited to a very few select regions. Bandwidths of up to 2 megabits/second are possible – that's three times as fast as T-DSL. Practically speaking, however, transmission rates slow down considerably when several users share electrical power lines to access the Internet. Because of technical limitations, the number of customers connected to a distribution node is much lower than in telephony. That translates to higher costs. The technology is more expensive, and there is no mass market as, e.g., in the DSL sector. One would have to wait and see if power lines can be developed into a mass market to compete against DSL and broadband cable. At the moment, that seems somewhat unlikely. Power provider Eon has just withdrawn from the market. Siemens, one of the hardware vendors, withdrew last year, leaving Ascom as the only vendor of the required hardware in all of Europe. But power lines might have an opportunity as a niche product or for in-house cabling.

Sky DSL

Internet via satellite is still a somewhat extravagant and expensive undertaking. Not only does it require a digital receiver and a PC card, but also "plain old internet access" via telephone. Data can be received at a bandwidth of up to 155 megabits per second, but communication is a one-way street. As there is no back channel, Internet surfing via satellite is not very attractive. Because of limitations in the current technology, there is a time delay of 0.25 to 0.5 seconds, which eliminates applications such as telephony or online gaming. The main advantages of the satellite dish, mobility and portability, will only come to bear after providers upgrade their transmission facilities to bi-directional data communication. The technology has yet to be developed, and it is questionable whether the development costs can be recouped in view of the market penetration of DSL and TV broadband cable.

5) Interconnection of Networks

The year 2001 did bring some improvements in this area, thanks to a number of administrative orders directed at Deutsche Telekom AG:

For instance, interconnection orders for GTS, Colt, and Arcor resulted in the long-standing demand for extensive “automated overflow routing” finally being implemented. This results in better service for the telephone customers of private providers. If a call is routed to an overloaded point of interconnection (POI), it is no longer rejected but automatically routed to another POI.

Based on an initiative by “01051 Telecom”, so-called “cascading ICAs” were implemented, which not only facilitated network expansion, but also resulted in cost savings. At the same time, the Regulatory Authority ordered DTAG to lease smaller collocation spaces to competitive carriers, allowing competitors to install their own technical equipment on Telekom’s premises. This order, which took effect on August 1, also realizes a cost saving. There is, however, one demand that has not yet been met: the so-called collocation space sharing, i.e. the possibility for several competitive carriers to share equipment and transmission lines.

And finally, the Regulatory Authority issued a truly forward-looking directive in its “GTS Order”. Within the mandate of that order, when DTAG introduces a new retail product or service on the market, it must offer a corresponding advance provisioning product to its interconnection partners, and that offer must be made at the time of market introduction at the very latest. If this order is consistently and uniformly implemented, the former monopolist’s constant delay tactics in the advance provisioning product sector can be countered effectively.

On the other hand, Talkline’s application concerning ATM interconnection did not meet with success. That application was intended to force DTAG to bring T-DSL customers to third-party Internet platforms. Some basic issues in the DSL arena have yet to be resolved as well and should provide plenty of material for debates and German administrative court judges in the year to come.

And the permanent tug-of-war continues: DTAG, competitive carriers and the Regulatory Authority have not yet been able to compromise on the implementation of a new fee structure for network interconnection (EBC – element based charging). The interconnection fees constitute a primary purchasing factor for private carriers and are thus extremely important if they are to be competitive. Unlike the old, distance-based fee structure,

EBC is intended to offer more favorable conditions to those companies who invest in the expansion of the network infrastructure. But what constitutes a network? That question has not been settled since December 1999. DTAG feels that the competitive carriers must have 936 so-called points of interconnection (POI) in order to be able to take advantage of favorable pricing conditions. The Regulatory Authority, however, thinks that 475 POIs are sufficient and issued an order to that effect in September 2000 – after almost an entire year’s worth of discussions with DTAG, VATM and experts. The former monopolist takes legal action against the order – successfully so. The delay tactics are effective: in December 2000, after summary proceedings, the Cologne Administrative Court suspends the Regulatory Authority’s model. The introduction of EBC is postponed until June 2001. In May of this year, the Münster Appellate Administrative Court upholds the decision by the Cologne court. EBC is delayed yet another six months. But the Regulatory Authority is not inactive. On October 12, the independent agency once again decides to implement EBC with 475 POIs, to be effective as of January 1, 2002. DTAG reacts in the usual manner and initiates summary proceedings. The Administrative Court justices are being asked to rule, and that takes time...

EBC is also the subject of internal VATM discussions. But the interests of the member companies in this regard are now somewhat divergent. Larger providers with an extensive national infrastructure, such as Colt, Arcor or GTS, urge adoption of the Regulatory Authority’s EBC model, but the city carriers, such as Netcologne or HanseNet, fear falling revenues and further disadvantages in the fragile competitive situation in the local telephone networks.

» Statement

By Horst Enzelmüller
Chairman of the Managing Board, COLT TELECOM GmbH,
Member of the Executive Committee, VATM

» From an economic point of view, it would have been total nonsense to have to emulate the former monopolist’s inefficient network just in order to get favorable interconnection fees. But with its decision in favor for the 475 model, the regulator has shown some real backbone and has set the

course for more balanced competition. The tariffs, too, are a step in the right direction, as they reduce interconnection fees and create additional incentives for expanding the network. «

» **Statement**

By Werner Hanf
Chief Operating Officer, NetCologne GmbH

» Local and regional telecommunications companies would suffer grave disadvantages if the current, distance-based interconnection fees were replaced by EBC.

These companies, which are already in an economically difficult situation because of the rates set by the Regulatory Authority for leasing subscriber lines (TAL), would have to make considerable additional investments and be faced with decreasing revenues from incoming traffic.

Currently there are plans to switch the entire IC system to IP-based processes in the medium term. The expenses involved in the accounting and invoicing for such an "interim solution" would be absolutely unreasonable for smaller companies.

The introduction of EBC would have positive effects only for large telecom providers with national networks. That means that a small number of large providers would have a competitive advantage, while the local and regional carriers, who are investing heavily into the expansion of high-performance access networks, would be at a disadvantage. These companies, with a market share of more than 75 percent in the area of alternative subscriber access, have already been at a disadvantage due to negative regulatory

directives. This would mean that they are once again being discriminated against in favor of DTAG and the large providers, and that their very existence is endangered. «

6) Internet Access

About one quarter of the German population use the Internet regularly for information, communication, and entertainment purposes. That means that there is still a large untapped potential. Ultimately, the Internet will be just as commonplace as telephone or television. Compared to the dynamic development in other countries, the USA in particular, there is much that still needs to be done, from user-friendly controls and contents to more Internet training courses in the schools to attractive fee structures.

Competition among the providers ensures quality and customer-friendly pricing models. Internet and data traffic were quite intentionally excluded from regulation. It was expected that competitive structures would develop in these areas. But the transfer of market power, package deals, and cross subsidization are making competition in this area, too, increasingly difficult.

DTAG is utilizing network access to protect its own online services from the competition and to force access offers from the competitors' networks to its own network. This has become especially clear in the debate over advance provisioning services which not only conform to international benchmarks, but which also allow so-called flat rates for direct customer access.

On December 14, 2000, DTAG implemented a flat rate offer for advance provisioning services in the online sector (Online-Vorleistungs-Flatrate – OVF). This offer was DTAG's response to the Regulatory Authority's so-called "flat rate directive" which had been issued approximately one month earlier. However, this offer called for interconnection at more than 1,600 DTAG nodes. The competitive carriers would have to make considerable additional investments and lease expensive lines from DTAG just in order to reach all these nodes. This "flat rate cheater package" was thus not acceptable, neither in terms of its price nor in terms of its structure.

But the offer was custom-made for DTAG subsidiary T-Online. During the entire year 2001, T-Online was able to realize a purchasing advantage of approximately 30% over all other ISPs that operate outside of DTAG-owned network platforms. As a result, T-Online, unlike all other

competitors, was able to announce third-quarter operating profits in Germany. The investments of competing ISPs were clearly lower due to a lack of operational efficiency.

At the same time, T-Online withdrew its flat rate for narrow-band direct access in April 2001. When this rate was first introduced in June 2000, a number of providers were pushed out of the market. By withdrawing it, T-Online provided the basis for the decision by the Münster Appellate Administrative Court to rescind the Regulatory Authority's flat rate directive from November 2000. Since then, DTAG has been marketing its T-Online/DSL flat rate with all its marketing might. And again without providing its competitors with the appropriate advance provisioning products. As a result, at the end of the year 2001, DTAG has DSL market shares of far above 90%, both in DSL access and in broadband ISP.

The Regulatory Authority waited until September 28, 2001, to open retroactive market abuse proceedings to review flat rate pricing for advance provisioning services in the online sector (OVF). A decision was to have been announced on November 28, 2001, but was suspended after several VATM members complained because the decision once again did not provide for a higher network level product attainable by the competitors. Now the Regulatory Authority has decided to commission an expert opinion on technical and economic issues. That means that not only the price, but also the anti-competitive structure of the current flat rate for advance provisioning services will be revisited. A mere tariff reduction would only provide DTAG and its subsidiary T-Online with additional competitive advantages.

The Regulatory Authority decided at the same time that the carrier flat rate for advance provisioning products (*Netzbetreiber-Flatratevorprodukt – OVF-N*) required rate approval and asked DTAG in writing to obtain advance approval for the so-called OVF-N and to submit cost documentation at once. DTAG not only ignored this demand, but went one step further: it terminated the existing contracts for this advance provisioning product as of September 25, 2001, which means that the large competitive advantage for ISPs on DTAG's platform (TICOC) will continue to exist.

Almost exactly one year after the Regulatory Authority's pioneering flat rate decision of November 15, 2000, and in spite of intense negotiations, there is still no non-discriminating advance provisioning product for flat rate services in the market place. At the same time, DTAG was able to establish an oppressive market dominance in the DSL sector.

Flat rate has meanwhile evolved to a standard pricing model throughout Europe. Problems and additional investment in “old network structures”, such as those in Great Britain, are unlikely to occur in Germany, as DSL products via data line are available for heavy users. A narrow-band flat rate would thus not result in a collapse of the voice telephone networks. And it would, at least for the time being, provide those Internet users who do not yet have DSL available (especially in the “new” *Länder*) with a politically advantageous minimum alternative.

As far as development of self-sustaining competition is concerned, the year 2001 was a lost year. Intensive talks and initial positive echoes give reason to hope that things might improve in 2002, especially for smaller competitors. Regulation plays a key role in this respect, and both policymakers and lawmakers must support it.

» **Statement**

By Uwe Heddendorp

General Manager, AOL, Member of the Executive Committee, VATM

» The technical innovations of the Internet have triggered a worldwide transition from an industrial society to an information society. That transition is in full swing. And sooner or later, it will be the decision about who is “in” and who is not that will determine the success or failure of each individual. The economic efficiency increases made possible by the Internet and its networking effects are clear: transport costs go down, markets grow closer together, and new business sectors develop. Those who miss the boat will soon be treading water.

Even individuals will not be able to avoid this development. The “information advantage” of Internet users will, in the long term, leave “internet objectors” by the wayside. Our objective is to create an information society for everyone. One obstacle that still hampers the quick spread of the Internet in Germany is the exclusively minute-based price structure of the telephone tariffs. But it

is not technology that decides whether or not the medium "Internet" can be successfully made accessible to the entire population, but the politicians. They must create the appropriate structures in which new developments can thrive. The Internet will only become a true mass medium in Germany if and when Germany adopts the internationally accepted rules of the game and thus flat rate Internet access tariffs. And that will ultimately benefit all Internet users. «

7) Mobile Communications / UMTS

Mobile communications in Germany is proof positive of what competition can do: during 2001, mobile communications was once again the most important success factor in the German telecommunications market. And for the first time since the inception of digital networks in 1992, sales in the mobile communication services sector exceeded those in the fixed network sector.

Private telecommunications companies, which account for 47.6% of total telecommunications sales, derived 86.6% of their sales from mobile communications. The new carriers in this segment are expecting sales of approximately Euro 25.8 billion, up 33% over the previous year. Sales in fixed network and data services are expected to amount to only Euro 4 billion, a comparatively measly 2.6% increase over the year 2000.

The large number of private providers in the mobile communications sector clearly shows that liberalization works and competition thrives in this sector. A sharp contrast to the fixed networks.

Providers such as Debitel, Mobilcom, Talkline, Hutchison or Victorvox play an important role. Based on the D1, D2, and E1 networks, they offer their own services to their own customers, whose number has meanwhile reached an impressive 17 million.

By comparison with the record year 2000, the increases in the number of mobile customers (overall market) are clearly lower in 2001. In the period from October 1, 2000, to October 1, 2001, providers saw an increase of "only" 37.5% to approximately 55 million customers. From 1999 to 2000, the number of new mobile customers more than doubled.

The time of explosive growth in the mobile market is past, but that was not entirely unexpected in view of the extremely high saturation level of almost 70%.

Experts feel that the market for classic mobile communications offers is generally exhausted. This is borne out by the fact that revenues on a per-customer basis have been falling for a number of years. One of the causes is a decrease in prices, which was, however, rather minor by comparison to previous years. Other, more important factors are changes in usage patterns and a constantly increasing number of prepaid customers. The number of non-users has meanwhile also reached significant orders of magnitude, causing carriers to update their customer files and numbers. Over the past few weeks, these corrections, as reflected in the statistics, give the appearance that the number of new customers is stagnating.

It is hoped that the introduction of number portability in the mobile networks will bring new impulses to the market. Customers would be able to change from one provider to another but keep their mobile phone number. In August of this year, the Regulatory Authority decided to postpone the introduction of number portability by an additional nine months to October 31, 2002, because providers encountered some technical difficulties in offering all the customary services while also supporting number porting.

The industry is also expecting more value from the so-called “m-commerce” services, but m-commerce requires considerable investments. Several companies have taken a few first steps with GPRS offers. GPRS (General Packet Radio Service) offers higher transmission rates and new, attractive services. It is considered a “bridge” solution until UMTS networks become available.

Great hopes are being placed in UMTS (universal mobile telecommunication system). To put it mildly, though, the new standard has taxed the capital resources of the six German licensees to the limit. Additional investments in the billions are still required for network expansion and development of services.

Future services play a central role. They are to entice customers to switch to a more expensive UMTS product. But as of yet, there is no “killer application” on the horizon. Fast data transmission will be available on a stationary basis at locations with high concentrations of foot traffic, such as airports or trade fairs. HSCSD (High Speed Circuit Switched Data) and GPRS on the current GSM basis provide for much higher transmission

speeds even today. These standards will not only facilitate the transition to UMTS, but also ensure better quality in locations where UMTS will not be immediately available, e.g., outside large urban areas. Many products will be offered in various quality grades, depending on the customer's location. Some companies are planning on going live with their first UMTS sub-networks in the fall of 2002, but at least some will initially operate with reduced transmission rates.

» **Statement**

By Uwe Bergheim
CEO; E-Plus Mobilfunk GmbH & Co. KG

» Mobile carriers are having a hard time since the licenses for third generation mobile communications (UMTS) were allocated. Before the auction, UMTS was considered a "must" for each carrier, but since the beginning of the year 2001, these very same market watchers have been questioning the purpose of UMTS. This change in expectations must be viewed in the context of new business models, putative competing technologies (wireless LAN), low usage of mobile data services (HSCSD, GPRS) and the expected bottlenecks in the availability of new telephones. The emotionally charged debate on the health effects of mobile phones, electromagnetic radiation, etc. is also a contributing factor.

This "seasonal" pessimism is not shared by the mobile carriers and can be overcome if not only the companies, but also the government cooperate to ensure the success of UMTS. The companies must take into consideration that only those providers will be successful who offer value-added products to their customers or who offer products that are just plain fun. Now that the licenses have been auctioned off, the government has to do its share, too, all the more so since the various allocation procedures in Europe will not allow fair competition in the internal market. Without an

appropriate, supporting structure, the UTM breakthrough and thus the success of UTM carriers in Germany will be slow. Germany would thus lose its chance to play a leading role in the creation of an information society in Europe. Approval of infrastructure sharing in the expansion of UMTS networks was a first milestone. In the upcoming year, we will need further, sustained improvements of the general conditions. «

» **Statement**

By Peter Wagner
Chairman of the Board, Debitel AG

» Experience in mobile communications has shown that inclusion of a resale claim in the carriers' licenses created an area of competition in which customers profit from additional innovative services as well as interesting package deals and price structures. It would be negligent to risk competition in the services sector by providing an inadequate legal structure for UMTS. Six providers – if that number remains at six – constitute a very narrow market. I fear that, due to the high cost of the licenses, the providers will be somewhat reluctant to cooperate, as they will be interested in amortizing the high costs of the licenses as quickly as possible. That's why I think that competition in the services sector will be an important factor in driving future innovation. «

8) Value-Added Services

Customers make more and more use of value-added telephone services. The number of attractive services being offered keeps growing. The providers of value-added services are among the winners in the liberalization of the German telecommunications market. Over the past four years, private providers were able to realize double-digit growth in their market shares.

But here, too, it became apparent how intensively DTAG is working towards re-monopolization, this year especially. DTAG, which is clearly the incumbent with a market share of more than 50 percent, is trying to keep innovative and profitable products from its competitors in all areas of value-added services. This is especially true of the new 0137 and 0900 numbers as well as of block rates and donation services.

Ever since transactional television was introduced two years ago, viewers can use the phone to interactively participate in the program. The production of such programs is partially financed via toll numbers. To replace the often notorious 0190 numbers, DTAG offered the TV networks, first among them RTL with "Big Brother", the 0137 prefix and made it a premium rate service. There were no rules for the allocation of 0137 numbers. True to its old monopolist habits, Telekom just used its inventory.

One of the competitive carriers, Talkline, initiated negotiations with Telekom on the 0137 numbers as early as summer 2000. It took until early summer 2001 – and massive interventions – before the Regulatory Authority allocated these numbers to the company. Telekom is refusing to sign an interconnection agreement for these numbers, and the former monopolist is refusing to this day to negotiate with Talkline. Resorting to its long-standing modus operandi, DTAG went to court, sued, and lost. But that did not discourage it. This suit is currently on the docket of the Münster Appellate Administrative Court. A decision will not likely be handed down before March 2002. Again, DTAG's obstructionist policies are effective: almost two years after their introduction on the market, alternative providers are still unable to offer 0137 numbers to their customers. This is how the former monopolist blocks its competitors from entering the lucrative TV market.

Another important product for value-added services is pay-by-call (also known as block rate). These are calls that are not charged on a per-minute basis, but at a fixed rate per call. This innovative tool can be used especially for the payment of small amounts for database queries in the Internet, for donations or for technical support services ("micro payments").

In order to make up for lost ground in this attractive market, DTAG was planning to terminate collection services for the competitive carriers. Individual members of VATM were able to utilize legal remedies and thwart this plan. However, this matter is still pending in summary proceedings in the Düsseldorf Intermediate Court of Appeals. The competitive carriers are hoping that the decision of the Cologne Regional Court will be upheld. Alternative providers must be able to offer block rates and donation services.

The alternative providers did, however, chalk up at least a partial success with the 0900 numbers. These numbers will not be available on the market until January 1, 2003. The familiar 0190 numbers will continue to be allocated until April 30, 2003, and can be used along with the 0900 number until December 31, 2005. Background info: the new 0900 numbers would have given Telekom yet another market worth billions, practically without any competition. Only the former monopolist has the technical wherewithal to bill these numbers for all carriers and among all the networks (“offline billing”).

But DTAG has also put the thumbscrews on the competition in the area of invoicing and collecting for such offline billing services (e.g., 0190-0). Now the competitive carriers are responsible for the first and second demands for payment. Whether or not this is even legal is currently being clarified in a court of law. Fact of the matter is that such demands for payment can only be sent at different time intervals than Telekom’s demands for payment. Many customers do not understand such apparent “double dunning notices” and do not react. This can assume alarming proportions for the providers of such services and indeed threaten their very existence. This is how the former monopolist tries to hamper its competition in the various sectors, and only consistent regulation will, in the long run, ensure the survival of private competition.

» **Statement**

By Renatus Zilles

Chairman of the Managing Board, Talkline *ID* GmbH

» As a matter of fact, the added-value service market was one of the few sectors where there was true competition from the very beginning. On the other hand, we saw very clearly in 2001 that Deutsche Telekom is trying with all its might to

bring about a re-monopolization of the value-added services. Out of pure monopolistic self-interest, they intentionally delay innovative and economically sensible services in the e-commerce area, to the detriment of an entire industry and to the disadvantage of consumers and Germany as a center of business and industry. «

III. Guest Commentary

Key Elements of the Telecommunications Market in Germany and in Europe

Karel van Miert, European Commissioner Responsible for Competition Policy (1993 – 1999)

1. The unfortunate facts: there is no complete competition in the entire European Union, and liberalization of the telecommunications markets stagnates in all member states.
2. Because there was no harmonization with respect to the UTMS licenses, all telecommunications companies got into a difficult situation. That in turn strengthened the former monopolists, and that apparently is the reason why the national control agencies tend to look the other way.
3. The incumbents also strengthen their market position because of their continued ownership of the networks and other technical facilities. This creates a potential for market abuse and discrimination that must not be underestimated.
4. Consolidation does not mean that all new providers will be able to prevail in the liberalized market; rather it means that fair competitive conditions are ensured. If that is not the case, the market will develop in a manner that is not favorable to either the consumers or the providers.
5. Apart from individual national developments, that is the reason why the EU Commission still has to deal with cases involving competition, mostly due to market abuse or obstructionist practices on the part of the former monopolists.
6. Unbundled access to subscriber lines has so far had only limited success and should be improved. And the process of establishing interconnection fees is taking much too long, resulting in competitive disadvantages.

7. The regulatory authorities must also see to it that new markets, such as fast internet access technologies like DSL, be developed under competitive aspects and make sure that they will not lead to the creation of new monopolies.
8. Without a doubt, there are considerable violations of competition rules in the German telecommunications market as well. The EU and the national regulatory authorities must insist on stricter enforcement.

Effects of Competition in the Telecommunications Sector on the German Economy

By Ludwig Georg Braun

President, Deutscher Industrie- und Handelskammertag (Federation of German Chambers of Industry and Commerce)

The telecommunications industry has the potential to overcome the current negative tendencies in the economy. That is the opinion expressed by the European Commissioner Responsible for the Information Society, Erkki Liikanen, in late November 2001, when he presented the 7th EU report on the liberalization of telecommunications in the member states. Even if one were to see its significance in a conservative light, Liikanen's words do underscore the significance of the telecom sector for the overall economy.

Unlike many other sectors of the economy, the telecommunications market is still growing at an above-average pace: in 2001, its overall growth in Europe was 9.5 percent. Telecommunications is thus a rather positive exception, especially when seen against a background of a generally bleak economic situation. Information and communication technologies continue to spread, and that might lead to greater productivity gains in the entire economy. Since its inception in 1998, liberalization has brought a high-performance, modern infrastructure and innovative services. At the same time, prices fell drastically. That gives Germany a favorable starting position in the global competition to attract business.

However, at the present time it seems that the enormous potential of the telecommunications sector will not be leveraged properly. Competition is stagnating. During the first half of 2001, alternative providers maintained a share of only 3.5 percent in the overall call volume, but there was

practically no growth in that segment. The current year shows that basic regulatory decisions (e.g., flat rate, line sharing, reform of the interconnection system) were not implemented. In the future, the Regulatory Authority will have to be more assertive if it wants to implement its decisions to promote competition.

The comprehensive, forward-looking reform of the European legislative framework for the telecommunications sector and the lack of assertiveness on the part of German regulators provided the impetus for an amendment to the German Telecommunications Act. Work on the amendment has already begun. New providers in the market are rightfully demanding fair conditions for their use of the incumbent carrier's advance provisioning products and services. The incumbent, on the other hand, would prefer that regulation be softened. Both the Monopolies Commission and the Regulatory Authority feel that sector-specific regulation will continue to be necessary in order to ensure fair competitive conditions. Neither does the German Economics Ministry see any reason to soften regulation.

The thicket of regulations surrounding telecommunications, radio, media, and information technology hampers the efficient utilization of the capabilities of the industry as a whole. Technical convergence, problems in channeling contents via various access paths, and differences in the degree of regulation in telecommunications, the media, and information technology all contribute to make the entire issue a very complex one. The current practice of separate regulation for the various segments can hardly be sustained in view of the convergent developments, which are already quite noticeable in the market. Therefore, the Federation of German Chambers of Industry and Commerce does not share the Federal Government's opinion, expressed in the spring of this year in the *Bundestag*, that the current regulatory structure is sufficiently competitive and forward-looking.

Technical innovation will continue to be an important driving force in the market place, and it will likely continue to level the differences between the various transmission paths and forms. Telecommunications, the media and information technologies have been at least partially digitalized, and the various services can be offered via different networks. Digitalization also increases the bandwidth, and business customers demand greater bandwidths in order to be able to fully utilize their business potentials, while private customers demand it in order to be able to better use the Internet. Meanwhile there is general agreement that broadband access is a key factor in keeping Germany competitive as a center of business and industry.

Government and regulators will have to meet a series of challenges in the coming year if they want to fully develop the potential of the telecommunications industry. Regulatory bottlenecks must be eliminated, and the debate on regulation must pay greater attention to convergence. That is a prerequisite for securing and promoting competition in the German telecommunications market.

Focus: Amendment to the Telecommunications Act

By Arne Börnsen, Director Telecom, A.T.Kearney GmbH

1. The Current Situation as of Fall 2001

The parliamentary elections in the fall of 2002 are not very far off any more, and after the elections, an amendment to the 1996 Telecommunications Act (TKG) may be expected. According to some reports, working groups in the Economics Ministry have already started assembling materials for the amendment.

The following will discuss the areas, which, in the author's opinion, should be emphasized. A broad-based debate of the new Telecommunications Act should start as early as possible, and it is hoped that this essay will help in reaching that goal.

2. In Which Areas Could the Telecommunications Act be Improved?

Dramatically lower rates for long-distance calls are indisputably a success. But almost all new competitors routed their traffic via the DTAG network. An alternative network was not created. In my opinion, that is not a satisfactory state of affairs and has, in fact, led to a passing fancy. Competitors did their utmost to underbid one another and ended up leaving the market. Only those carriers who invested in establishing their own infrastructure will, in the long term, be successful.

The market share of new carriers in the local telephone networks is much too small. Is this only the result of unbundled lines? Even if the price for unbundled network access were to be arbitrarily lowered, disregarding proven replacement costs, that would not create stable competitive

structures, but again only give rise to a passing fancy that could not be sustained.

What we need is a subscriber line, based on an alternative infrastructure, which complements the mobile subscriber line. From today's perspective, this could be accomplished via TV broadband cable. All parties should support the expansion of TV broadband cable to a network with back channel capability.

3. Points of Emphasis for the Amendment to the Telecommunications Act

In addition to a review of the ex-ante price regulation, I think that the Telecommunications Act will, in the future, not concentrate so much on regulating voice traffic, but rather it will concentrate on creating service competition on the basis of various broadband infrastructures: DSL on the narrow-band network, interactive TV broadband cable network and 3rd generation mobile communications, UMTS. It should be pointed out, however, that each of the above-mentioned submarkets should have competitive structures in place or at least mechanisms to create such competitive structures. This will not happen in the DSL market if the conditions at which DTAG offers pre-products to its competitors are not at least comparable to the conditions at which it offers these products to itself!

On one hand, the reseller concept must be anchored more strongly in the Telecommunications Act. The incumbent must fulfill its obligation of having resellers market its services. On the other hand, providers should be able to market their own services in the incumbent's network; in other words, they should be able to reach the end user via open network access.

It is also necessary that the alternative service providers share in the carrier's investments to an appropriate degree. This would apply, for example, to the UMTS license fees and the investments required for adding back channel capabilities to the TV network. Both the above-mentioned networks were established and/or acquired according to the principles of private enterprise. We cannot and should not create open network access for everyone, regulated by the government, with government-sanctioned prices – after all, these are not former state monopolies!

In other words, regulation in its current form must not continue to exist in the new markets. The tendency of creating competition for competition's sake and at the expense of the infrastructure provider must not be transferred to the new markets. On one hand, there are no dominant companies, like DTAG in the voice telephony market, but on the other

hand, we do not want a situation like 1998 where a monopoly is replaced by competitive structures.

For that reason, model based on negotiations according to the principles of a free market economy is preferable to administrative measures by the government. Regulation should be present to guide the process and, if there is market abuse, to promote and support competition and solve problems.

This is undoubtedly a construct that is much more difficult to implement than binding rate regulation. The various approaches will undoubtedly require intensive discussions. But better earlier than later!

» Press Commentary 2001

The telecommunications issues debated within the industry during the year 2001 are also reflected in the press. We would like to present excerpts from press reports on the most important events and decisions as well as some other interesting articles, which make reference to regulatory contributions by VATM. We selected a few representative samples to show the large number of issues and their significance to the public. And we also wanted show that VATM was often among the first to point out future problems and market developments.

January 16, 2001

From:

Rölnr Stadt-Anzeiger

**Competitors warn against a Change of Course
Strategist or Paper Tiger?**

Berlin – Berlin considers the position a political issue; Deutsche Telekom and Deutsche Post consider it a nuisance. The head of the Regulatory Authority for Telecommunications and Postal Matters holds the reigns when it comes to decisions on opening up the former monopoly's markets. Chief regulator Klaus-Dieter Scheurle, who left office in November, achieved significant increases in competition and lower costs for telephone customers. Now Matthias Kurth, a member of the Social Democratic Party, is scheduled to assume the office formerly held by Scheurle, who is a member of the Christian Socialist Union. The Regulatory Authority's advisory board unanimously nominated Kurth this past Monday. [...] The Association of Telecommunications and Value-Added Service Providers (VATM) reacted positively to Kurth's upcoming appointment. [...] But there was also some displeasure prior to Monday: over the weekend, VATM sent a memorandum to Economic Minister Werner Müller (Independent) in which it warned against softening regulatory policies, something that a number of SPD politicians had called for. Jürgen Grützner, VATM's executive director, "We hope that the good contacts which some SPD members might have with Kurth will not be used in such a way as to put him in a difficult situation."

February 22, 2001

From:

DIE WELT
UNABHÄNGIGE TAGESZEITUNG FÜR DEUTSCHLAND

Competitors: Telekom Deregulation is Unjustified

Berlin - The Association of Telecommunications and Value-Added Service Providers (VATM) took issue with what it considers a continuing obstruction of free competition in the German telecommunications market by Deutsche Telekom's dominating market position. On Wednesday, the association submitted two expert

opinions in Berlin, which, according to VATM, conclude that Deutsche Telekom “continues to hold a dominant” position in the telecommunications markets. Thus there is no “free competition”. [...] VATM further warns that if the Regulatory Authority were to discontinue regulating Telekom’s rates, it would “just open the doors” for price dumping, so-called cross subsidization, and obstructionist practices.

March 16, 2001

From:



Settlement in Dispute over Collection of Telephone Charges Deutsche Telekom and Competitors Accept Mediator’s Decision

Stü. Bonn – After almost a year and a half, the dispute between Deutsche Telekom and its competitors over the collection of telephone charges has been settled. [...] Jürgen Grützner, executive director of the Association of Telecommunications and Value-Added Service Providers (VATM), the organization of Telekom’s competitors, told this newspaper that the mediator’s decision was being accepted “with much bellyaching.” VATM maintains that the new providers will incur higher costs because Telekom will only be doing the billing. According to the Regulatory Authority, for an average invoice amount of DM 8.80 Telekom gets 10 percent more for only about half the services. Industry experts expect that providers who concentrate on the call-by-call business and who are already complaining about the small margins will try to increase rates.

March 31, 2001

From:



The Dispute over Local Telephone Networks Continues **Telekom and Its Competitors are Dissatisfied with Regulatory Decisions**

By Lutz Frühbrodt and Hans-Jürgen Mahnke

Bonn/Berlin – The Regulatory Authority for Telecommunications and Postal Matters has issued a bundle of decisions intended to promote competition in the local telephone networks. The fees which Deutsche Telekom may charge for provisioning twin copper wire to the customer (subscriber line) will be lowered. [...] The Regulatory Authority’s subscriber line decision will not help competition in the local telephone market. That is the view of the competitors who are organized in the Association of Telecommunications and Value-Added Service Providers (VATM). “The private customer will foot the bill,” says VATM president Joachim Dreyer. He added that there is hardly any competition in the local telephone networks, and that this would not do much to stimulate competition. [...] “These small rate reductions do not put enough pressure on Telekom to finally modernize

its old and, above all, expensive bureaucratic processes,” says Dreyer. VATM also voiced strong criticism that Telekom is allowed to keep its DSL rates. The association feels it flies in the face of all rules of fair competition to allow the dominant company to pursue dumping strategies. [...]

May 9, 2001

From:



Berliner Zeitung

Issue: How Telekom is Trying to Overpower the Competition

Joachim Dreyer

We used to hear about election results of more than 90 percent in Eastern Europe. We would then often shrug our shoulders, smile, and agree with Erich Honecker who said “Socialism will be halted in its course neither by ox, nor ass.” Today we refer to market shares of more than 90 percent as “competition”, and attempts are being made to brainwash us into believing that this is progress in a free market. At least for Deutsche Telekom AG (DTAG). But I see us only going backwards. I am afraid that we are well on the way towards a re-monopolization of the telephone market. The course will be set in the year 2001. Equal opportunities in the telephone market or re-monopolization. This is the task that the Regulatory Authority must tackle. The government must see to it that the Regulatory Authority can do so without being subjected to pressure and in conformity with market trends.

July 4, 2001

From:



Handelsblatt
WIRTSCHAFTS- UND FINANZZEITUNG

Companies to Assume Monitoring Costs – Telecommunication Supervisory Ordinance Will Cost Telecom Companies Billions

Donata Riedel Berlin – Telecommunications companies and online services fear additional costs in the billions if the Federal Government follows through on its plans for complete and thorough monitoring of Internet traffic. Fixed network carriers and ISPs who are organized in the Association of Telecommunications and Value-Added Service Providers (VATM) and who are Deutsche Telekom's competitors, would have to invest DM 500 million, says Jürgen Grützner, VATM's executive director. The current confidential draft, of which this paper has a copy, requires all carriers to be able to completely monitor all phone calls and all e-mail traffic for law enforcement agencies. [...] The companies and their associations, VATM and Bitkom, consider these requirements disproportionate and are planning to speak out against them tomorrow in a hearing before the New Media parliamentary subcommittee. [...]

July 5, 2001

From:



Telekom Competitors Sound the Alarm

Stü. Bonn, July 4. Deutsche Telekom's competitors sharply criticized the Regulatory Authority and the Federal Government. Unless there is an immediate corrective adjustment, more than 20,000 jobs in telecommunications, hardware and software productions will be at risk, writes Joachim Dreyer, president of the Association of Telecommunications and Value-Added Service Providers (VATM), in his cover letter for a White Paper on the Competitive Situation in the German Telecommunications Market. VATM executive director Jürgen Grützner, who discussed the White Paper with journalists in Bonn, pointed to the "critical situation" of the industry. All new providers have "great problems" in the market; almost all are operating in the red.

July 15, 2001

From:

Manager-magazin.de,

Association Criticizes: Market Consolidation in the Telecom Industry Too Early

Cologne – "[A]t the moment we are not separating the wheat from the chaff, but we're cutting it down with a scythe," said Jürgen Grützner, executive director of the Association of Telecommunications and Value-Added Service Providers (VATM). He feels that a market correction in the telecommunications sector is much too early and much too drastic. "Inadequate regulation keeps many investors from putting their monies into a company," says the VATM executive in explaining the reasons for this development. During the past few months, the decisions of the Regulatory Authority did not work in favor of the competitors. But it is not at all true that all business models of Telekom's competitors are not workable [...]

July 20, 2001

From:



Matthias Kurth Rejects Sanctions Against Deutsche Telekom Regulator under Increasing Criticism

According to regulator Matthias Kurth, competition in the local telephone networks is increasing. But the alternative providers are complaining about the obstructionist actions of Deutsche Telekom and the policies of the regulators.

Handelsblatt, 07/20/2001 dri/slo Berlin/Bonn. In the opinion of its chief, Matthias Kurth, the Regulatory Authority has done its homework. He stated that the regulatory and technical conditions for increased competition in the local telephone networks are in place, and that it is now up to the companies to make the most of

their opportunities. [...] The regulator feels that, compared to Europe as a whole, Germany's local telephone market is among the most competitive. Competitors have leased 477,000 subscriber lines from Deutsche Telekom, a number that is significantly higher than all other EU countries combined. [...] Meanwhile, increasing criticism is being directed at the Regulatory Authority's president. "The regulator's actions are a total catastrophe," said Horst Enzelmüller, head of Colt Telecom in Germany. [...] In a letter addressed to Kurth, Enzelmüller criticizes the fact that Deutsche Telekom only transfers 20% of all subscriber lines to Colt in accordance with contractual arrangements, all others are delayed. [...] "It's naïve to think that Telekom would voluntarily let its customers switch over to us," says Enzelmüller. It is thus urgent that Kurth implement contractual penalties. [...] According to Jürgen Grützner, executive director of the association of alternative telecom providers VATM, says that Kurth does not make use of his authority to impose sanctions, mentioning the example of Telekom's TDSL rates which cover costs only partially [...]

August 20, 2001

From:

Telekom Channel,

Telekom Bonus Program About to Start

The Regulatory Authority (RegTP) gave its approval for "Happy Digits", the bonus program introduced by Deutsche Telekom...

The program awards customers a certain number of points, so-called "digits" when they buy Telekom products (such as telephones or ISDN systems) and services (such as online services or telephone access) [...] [...] Private telephone providers expressed sharp criticism of the planned program. The industry association VATM warns of the risk of competitive distortion. "None of the competing companies has a broad enough basis to allow it to counter with a comparable program," says VATM spokeswoman Marion Krause. Ms. Krause also expressed fear that Telekom might use "Happy Digits" to circumvent regulatory requirements. "Telekom can couple telephone access, which is subject to regulation, with a mobile phone contract, which is not subject to regulation. This amounts to a de facto override of rate regulations." [...]

October 26, 2001

From:



Telekom Regains Fixed Net Market Shares

Competitors Warn of Re-Monopolization / Market Volume is Up, Sales are Down

jcw. Frankfurt, October 25. Germans phone more and pay less than even last year. For the current year, the number of telephone minutes will reach a record level of 521 million. Last year, customers spent 395 million minutes talking on the phone or surfing the Internet. The Association of Telecommunications and Value-Added Service Providers (VATM) [...], which bases its findings on a survey by market

researcher Dialog Consult and its own analyses, reported these numbers. [...] In his discussion of market anticipations in Berlin, VATM president Joachim Dreyer also criticized Telekom's "increasingly aggressive price strategy" and the many package products with which Telekom attempts to hinder competition in this market. [...]

October 26, 2001

From:



**Telekom Gains Market Share
Competitors' Association VATM warns of "Re-Monopolization"**

By Lutz Frühbrodt Berlin – For local calls, Deutsche Telekom continues to maintain its *de facto* monopoly, in the long-distance sector it was even able to re-gain market shares from its competitors. That is the primary result of a market analysis presented last Thursday in Berlin by the competitors' association VATM. Because of these findings, association president Joachim Dreyer warned of a "re-monopolization" of the telecom industry, which was opened up to competition nearly four years ago. [...]

November 22, 2001

From:



**Telekom Gains Market Share
Competitors Accuse the Company of Dumping Policies**

jtth Munich – Jürgen Grützner is sounding the alarm. The executive director of the industry association VATM, the organization of Telekom's competitors, warns of the risk of re-monopolization. "The figures from the market are proof positive that Deutsche Telekom has succeeded in essentially thwarting competition." Four years after liberalization, the Bonn corporate giant has re-gained market shares – even in the long-distance sector where alternative telecoms have the greatest presence. [...] Government and the Regulatory Authority (RegTP) must take measures to ensure that Telekom give back some of its market shares. Grützner, speaking at a conference, said that real competition would only be possible when the former state monopoly has a market share of 30 to 50 percent. He attributed the fact that Deutsche Telekom continues to maintain such a strong market position to its "delay tactics and price dumping policies." [...]

November 24, 2001

From:

Frankfurter Allgemeine
ZEITUNG FÜR DEUTSCHLAND

**Telekom Competitors Demand Sanctions
VATM Laments Delay Tactics**

Stü. BONN, November 23. Deutsche Telekom's competitors want to put political pressure on the Federal Government in order to make regulation more conducive to competition. Jürgen Grützner, executive director of the Association of Telecommunications and Value-Added Service Providers (VATM), complained that Telekom's strategy of fighting the competition in all segments of the market with all its might had achieved the desired effect. He pointed out that the market share of Telekom competitors in fixed networks without local service had fallen from 40.3 to 38 percent over the past year. [...] According to VATM, Telekom's strategy is to increase its competitors' costs, to provision required resources only after delays, and, as was the case with DSL, to undercut competitors' customer prices in order to push them out of the market. Grützner does see some indicators that the Regulatory Authority is trying to correct previous mistakes. The Regulatory Authority announced that it would re-institute anti-dumping proceedings against Telekom if it does not immediately submit acceptable offers on resale and the so-called line sharing. However, Grützner feels that this measure comes much too late. [...]

» Outlook for 2002

What Will the Year 2002 Bring for Competition?

Which Decisions are on the Agenda?

What Must be Done?

Companies will clearly have better chances next year to get onto a more solid footing. Regulators have seen that they must force DTAG to more compliant behavior. There are many indicators that regulators will act on this insight next year if they do not want to risk the success of liberalization entirely. Neither can the Federal Government continue to act according to the motto, "wash my back, but don't get me wet". The decision will be in favor of competition since the past shows that DTAG did not suffer from competition, but rather from its own massive and expensive strategies of exclusionary conduct (disregarding, for the moment, some forays abroad that were not exactly inexpensive or terribly successful).

Above all, the goal for next year must be to finally relieve Deutsche Telekom AG of some of its market share in the local telephone networks. We are becoming an international laughing stock if the government pronounces itself satisfied with the development of competition while market shares hover around the 3% mark. The upcoming directives will show whether liberalization will yet turn out to be a success, albeit a late one, or whether DTAG, like last year, will succeed in re-monopolizing.

Above all, the coming year can and must bring more planning reliability for the companies. However, it seems that this goal cannot be achieved before the end of 2002. Until then, important decisions will have to be made, which, like almost always, probably will have to be reviewed in a court of law. Things should be clearer then, especially with respect to subscriber lines, DSL, line sharing, reselling, but also with respect to interconnection and EBC. It is unlikely that other important issues, such as carrier selection in the local telephone network, and, above all, the amendment of the Telecommunications Act, will be resolved by the end of the coming year.

Some details of things to come: the one-time charges for connection to the subscriber line, especially for provisioning and switching by DTAG, will be set in March. These rates must be drastically reduced. Even if DTAG is still not offering competitors electronic interfaces for order processing, appropriately low prices must be set, as is the case in the USA. That is the only way to force DTAG to make corresponding offers and to increase its own efficiency. The antiquated method of handling orders via fax must finally come to an end.

A decision in the market abuse proceedings in the matter of the TAL contract (subscriber line contract) is also expected for March. Hopefully that decision will add binding rules and sanctions to the TAL contract.

Before then, in January to be exact, the T-DSL proceedings will have to be re-instated in order to ensure that below-cost ISN-T-DSL rates are finally removed from the market place.

The Regulatory Authority will also have to decide on the prices demanded by Telekom for the DSL line-sharing product. This must be done even if agreement can be reached on the contractual terms for the product. At DM28.65, DTAG is asking more for a shared line than for the entire line at the now-familiar rate of DM24.40. It is to be hoped that the regulators will live up to the promises they made in the T-DSL proceedings in March. But regardless, T-DSL rates must be corrected to a level at which costs are covered; else the investments of companies into the network infrastructure will be in acute danger.

It is to be expected that the reselling issue will reappear on the Regulatory Authority's agenda in March or April of 2002. One of the first steps will have to be a definition of the products to be offered via reselling. It remains to be seen if optional tariffs such as "XXL" will be offered via the reselling process. This was an express prerequisite for the Regulatory Authority's approval of the XXL tariffs. Along with that, the Regulatory Authority must also set the prices for reselling. It is likely that DTAG will take legal action against both decisions, and it will probably be late summer before the legal situation is clarified, but even then there will not be an actual offer in the marketplace. A "timely" implementation of decisions by Telekom will only take place if there are appropriate sanctions in place to force it to do so.

The Cologne Administrative Court should soon be handing down a decision in the summary proceedings that DTAG and some competitors filed in the matter of interconnection rates and EBC. This decision might still come this

year, as the Regulatory Authority wants EBC to be introduced as of January 1, 2002. That may well be followed by another round in the

Münster Appellate Administrative Court, which might hand down a decision by spring. That might almost give us some planning reliability – if one disregards the actual implementation and its concomitant pitfalls, and last but not least, the principal proceedings, which can take years.

A solution for error-free billing will have to be found by the time the delayed introduction of the new 0900 numbers rolls around. If that is not the case, and especially if DTAG continues to block this, another Regulatory Authority or court proceedings will be unavoidable in order to keep DTAG from gaining a new, major competitive advantage.

DTAG is still blocking the implementation of the important 0137 service numbers, and the matter is still held up in court. If the court's decision is positive – as is expected – the Regulatory Authority will have to see to it that it is quickly implemented, possibly as of March.

We expect that the Düsseldorf Intermediate Court of Appeals will hand down its decision on the so-called micro payments, which DTAG refuses to bill, by the middle of the first quarter 2002.

It is expected that by March, the Federal Government will submit an amendment to the Telecommunications Act to address the EU requirement of carrier selection in the local telephone network, which will bring call-by-call and pre-selection to the city networks. However, the actual implementation and introduction is not planned until December 2002. Even that seems to be overly optimistic. As interconnection fees for carrier selection in the local networks and for reselling are being set, the restructuring of tariffs for advance provisioning products in the local networks will be of central significance. The entire framework was structured incorrectly and must be re-worked in order to correct the basic mistakes from the years 1998 and 2001 (cost/price gap).

The amendment to the Telecommunications Act will be of considerable significance in the year 2002, as preparation of a set of guidelines must start early next year. As the Telecommunications Act is being amended, it will be important to lay the foundation for improving the competitive situation. The experience gained with Deutsche Telekom AG's delay and obstructionist tactics must be taken into consideration – in the form of stricter legal requirements and sanctions.

But what must not happen again next year: political horse-trading!

A bit for the competitors – at least nominally – a bit for DTAG – really – and the whole thing wrapped up as a package solution so that it looks like it's fair. At best, however, such a trade-off will give the government the impression that a fair and balanced decision was made. In its essence, such political horse-trading is quite dangerous; objectively correct and necessary decisions are not made, and the former monopolist always comes out on top. In the coming year, each and every decision must be well founded, must be made quickly, must be right, and must be implemented – without a packet solution in the spring. Else it might be summer, but not for the competition.