

Market Entry Barriers in the German Telecommunications Market (Abbreviated English-Language Version)

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I. Time Factor: Quoting, Ordering and Provisioning Delays

DTAG regularly exceeds its contractually agreed on Intervals for the quoting, ordering and provisioning of necessary pre-products (UNEs) for competitors. These delays result in a high degree of uncertainty and an effective inability to plan on the part of competitors, leading to delays in market entry or product offerings, as the case may be.

1. Availability and Quoting

DTAG requires inordinate amounts of time to determine the availability of collocation spaces for customer local loops, transport and interconnection services.

2. Provisioning Intervals

Relative to international standards, DTAG requires excessive lead times to actually provision collocation space, install carrier transport and interconnection interfaces. Of particular concerns are those delays occasioned by alleged lack of cooling capacity in collocation spaces as well as where collocation space in DTAG central offices would require expansion.

With respect to customer loops, DTAG appears incapable of timely confirming receipt of orders for customer switching, with the actual switch over times (for local as well as long-distance pre-selection) substantially in excess of international industry standards.

II. Lack of Required Unbundled Network Elements

Competitors are suffering from the lack of certain essential UNE pre-products required for certain service offerings. Reasons for such unavailability include both failures of DTAG to conform to regulatory decisions, a lengthy regulatory process, and RegTP decisions to permit DTAG to cease offering certain UNEs.

1. RegTP Decisions not Implemented by DTAG

- Line sharing UNE. Ordered to be available by decision of March 30, 2001;
- Resale-based local services to be made available to competitors by DTAG pursuant to RegTP decision of March 30, .2001;
- Overflow routing for interconnecting carriers is still only being offered on a local level.

2. Pending RegTP Decision Processes

- comprehensive sharing of transmission equipment among competitors in DTAG collocation spaces;
- Extent of information-sharing requirement of DTAG regarding availability of interconnection services;
- Access services for “012” numbers (innovative services);
- Availability of electronic access to Line Information Databases (“LIDB”) for loop pre-qualification characteristics;
- Electronic access to loop availability database (pre-ordering query).

3. Unavailable or Discontinued by RegTP Decision

- ATM-interconnection;
- Billing services for value-added offerings;
- Local carrier preselection;
- Guaranteed availability of interconnection (lack thereof necessarily leads to inability of competitors to offer any but the lowest service level guarantees)

4. Insufficiently Implemented RegTP Decisions

- Wholesale offer of DTAGs local flat rate to competitors (DTAG continues to discriminate against competitors requesting this product offered by DTAG as a retail offering).

III. Poor Quality of UNEs and Other Pre-Products Provided by DTAG to Competitors

- High error rates in customer cut over;
- Repair times for customer loops exceed the agreed-on intervals;
- Only low service level agreements for repairs are offered by DTAG;
- Construction defects in collocation spaces;
- Capacity limits in DTAGs network (for example lack of overflow routing);

- Billing service offered by DTAG show a high rate of errors;
- Electronic interface for long-distance PIC selection regularly out of service; no alternate access is being offered;
- Fax service orders for customer loops are being “lost” by DTAG;
- Failure to check customer loops prior to provisioning to competitors.

IV. Lack of Ability to Remedy Violations

- RegTP refuses to open cases for abusive behavior by DTAG in concrete instances;
- RegTP does not fine DTAG for violations; alternatively the fine amounts are inappropriately low, it is cheaper for DTAG to retain monopoly earnings despite fines than to comply with regulatory mandates; The regulator’s lack of stepped up enforcement creates incentives for DTAG obstinance;
- Competitors are unable to verify the extent or existence of parity provided by DTAG to itself versus the services and product provided to competitors, since it can hide behind claims of company secret. Unlike the United States, there is no obligation for DTAG to publish its provisioning standards and times as it provides to itself for various services. This lack of transparency undercuts the ability of competitors to monitor DTAGs compliance with the mandate for service provision at parity. The bringing of cases for each and every suspected instance of discrimination is not possible;
- DTAG agreements and contracts do not permit liquidated damages – the ability to make claims for damages through the courts is limited due to expense and effort required;
- Legal enforcement through the administrative court system is hampered by excessive trial durations due to personnel limitations of the court system and its lack of specialization in telecommunications matters;
- The ability to verify DTAGs compliance with RegTP mandates is limited by DTAGs encompassing claim to all of its records allegedly containing “business secrets.” The authorities have refused to alter their policy of blacking out all substantive information on documents released to the public.

V. Lack of Action by RegTP

- Wholesale pricing of certain UNEs exceed DTAG retail price and its costs. Local loop UNE is priced higher than DTAG retail price, precluding competition for analog-line residential customers;
- Toleration by the regulator of DTAG’s dumping price on its DSL service, allegedly for “reasons of economic policy.” Competition for residential DSL customers is thus

- impossible;
- DTAG's "48,8 Erlang-Rule" for limitation network utilization requires competitors to overbuild DTAGs existing network in order to comply with DTAG demands for additional points of interconnection where traffic exceeds low levels. Such overbuild requirements force the replication of expensive and inefficient legacy network structures. reducing the benefit of competition;
 - RegTP has failed to adjust its wholesale pricing rule-of-thumb for UNE pricing at DTA cost-plus-25-percent. The persistence of this pricing formula despite sinking costs for interconnection, coupled with fixed marketing and service costs weakens competitive margins while making it easier for DTAG to practice price dumping;
 - Abuse of market power proceedings are inordinately long. These do not have a set timeframe, such that these proceedings may take months or years to resolve complaints;
 - The maintenance of price-cap (rather than cost-based) regulation despite sinking prices due to competition, combined with DTAGs ability to co-mingle competitive and monopoly products in the basket of services used to compute the price cap makes it easy for DTAG to compete through price dumping;
 - -The price-reductions mandated through price-cap regulation are smaller than the cost-savings achieved by DTAG in the interconnection arena due to differential assumptions as to efficiency gains for end-customers versus UNE provisioning. Again, this emerging gap benefits DTAG to the detriment of competitors.
