

ETNO Reflection Document on principles for the 11th Implementation Report

Executive Summary:

- ETNO welcomes the Commission's yearly Implementation Report¹ as a comprehensive and valuable source of information on EU communications markets.
- ETNO believes that the forthcoming 11th Report should be drafted in a most transparent manner in order to generate an outcome which is as sound and reliable as possible. To this end, ETNO encourages the Commission to carry out a cross-check of relevant data with industry in the drafting process and to consult market players on the draft report.
- Wherever the report takes a position on national implementation issues, the Commission should give reasons for its assessment and weigh the arguments of all stakeholders.
- Wherever possible, the report should take into account broader market developments and trends which affect the competitive situation in Member States.

The European Commission's annual implementation report is a well-established tool for monitoring the development of markets and regulatory situations in EU Member States. The collected data on key parameters for electronic communications markets is a valuable source of information. More importantly, the report gives an orientation for regulators and market players regarding the Commission's opinion on the status of implementation of the EU legal framework for electronic communications in Member States. ETNO recognises the Commission's commitment in setting up the report and its comprehensive Annexes in the past years.

As a key reference for the implementation of the EU framework for electronic communications, the report and the way it will be drafted in the future merit close scrutiny by all stakeholders. A number of ETNO Members have observed certain inconsistencies in the facts and judgements on the competitive situation on national communications markets in past reports. Against this background, ETNO would like to contribute to making the

¹ 'Implementation Report' refers to both the main report and its Annexes

next, 11th, implementation report an even more accurate, sound and reliable source of information on EU electronic communications markets. To this end, we would like to submit a set of proposals for the drafting process to the next report. To illustrate, the document will refer to specific examples from the 10th implementation report² where appropriate.

Principles for drafting the 11th Implementation Report

Transparency

ETNO believes that the key to a sound and reliable report is a transparent process in the drafting phase of the report, involving all market parties as well as regulators and Member States. The Commission has made serious efforts in this respect. In particular, we welcome that interviews with market participants, associations and regulators are carried out by the responsible administrators before the drafting phase.

Nevertheless there is room for improvement in the way the interviews are prepared. It also clearly indicates that these meetings with industry should not be the only tool for involving market parties in a transparent drafting process.

- In preparation for the interviews, market parties at least in some Member States were presented an agenda of a very general nature mirroring the Directives and invited to comment on shortcomings in implementation from their perspective. This approach does not allow a proper discussion of specific cases, in which allegations e.g. concerning a firm's behaviour or regulatory shortcomings with regard to a certain company are raised by third parties like the regulator or other market parties. Where specific concerns on implementation issues are raised by third parties, they should be concretely named and discussed with all stakeholders concerned, in line with the principles of transparency and due process.
- Often, implementation concerns are brought to the Commission's attention after some or all of the interviews have taken place. The Commission also bases its judgements on the data given by regulators which is not available to market parties at the time of the interviews. ETNO therefore considers it essential that before a draft of the report is adopted, it is made available to all stakeholders for comments. Consultation of interested parties is a common procedure for Commission deliverables such as Recommendations and also Communications. Given the high relevance of the report not only for regulators and Member States but for all market parties, a consultation procedure should equally apply to the Implementation Report. This would improve the accuracy and, ultimately, the credibility and impact of the report. The procedural burden on the Commission arising from a consultation

² 10th report Commission Communication "European Electronic Communications Regulation and Markets 2004", 02.12.2005 (KOM(2004) 759 final, and Volume I Annex to KOM(2004) 759 final)

could be limited by splitting the written consultation according to national markets. ETNO is happy to enter into a dialogue with the Commission on how such a consultation of the draft report and its Country Annexes could be conceived.

Accuracy

Relevant data

A basic precondition for a sound implementation report is the availability of correct and timely data. ETNO agrees with the current procedure of data collection via NRAs as the principal source of data for the report.

- A crosscheck of relevant data early in the drafting process, e.g. under the auspices of industry organisations such as ETNO, could help to avoid incorrect numbers entering the report. E.g., the 10th implementation report cited the broadband penetration in Malta at 3,5% whereas at the beginning of Q4 of 2004 this was around 8%. Moreover, the actual number of cable broadband lines in Malta in the same period was more than 5 times the figure quoted in the implementation report.
- Also, industry could point to irrelevant or less relevant parameters used for Implementation Report data. An example could be the comparison of prices per minute for fixed line Interconnection in the Annex to the 10th Report with regard to Spain where more than 60% of the traffic is paid through capacity-based interconnection, not on a per-minute basis. As the price obtained through capacity-based charges is different from a per-minute price, the figures did not really reflect what market players are paying and receiving for the IC services. To be accurate, the report should in such a case reflect an equivalent price per minute, or at least include a footnote stating that most players pay on a capacity basis and do not pay per minute prices. Also in the 10th report, the leased line price in Slovenia was presented as one of the highest in the EU. The underlying figure was valid only for the first line rented by an operator. As soon as an operator rented several lines, however, the price decreased significantly (e.g. to less than one third in case of 8 lines). Such specificities could be better taken into account in the report.
- Finally, consultation in industry bodies could help to clarify the methodology used for arriving at specific types of data. E.g. the average monthly expenditure (composite basket) for Hungary for residential users is shown at €50.8 in the 10th implementation³ report. Calculated on the basis of OECD methodology with basic tariffs, this figure should be €44.99 including VAT. In case of business users the same type of discrepancy between the figures can be observed.
- To allow for a better comparison between national market chapters, the report should provide at least basic facts on the main regulatory categories under the NRF (Interconnection, Universal Service etc.) in all country Annexes. This has not always been the case in the 10th report.

³ Figure 87 on p. 83 of Annex 3 to the 10th Implementation report

- Generally, the data base for the report should be uniform and as current as possible. ETNO welcomes the Commission's efforts in this respect. In a fast moving market such as broadband access, information can soon be outdated. In the case of Slovakia, the number of broadband access lines had doubled between the reference date chosen in the 10th implementation report, the 1st of July, and the publication of the report. In the country chapter on Germany, the 10th Implementation Report referred to a report of the German regulator even dating back to February 2004 for important market data.⁴

Regulatory Assessment

The need for accuracy is equally high in the field of information on the regulatory situation.

- Several ETNO Members felt in the past that incomplete or disputable facts were presented on the situation in their home market. This appears to be the case especially where concerns of market parties are cited without a proper check with the other party concerned. For example, in one case an alleged anti-competitive practice of the incumbent operator is criticised in the 10th implementation report citing concerns of alternative operators, whereas the legality of the practice was already confirmed by an official NRA-investigation which is not mentioned in the report.⁵
- In another case, an NRA had decided that alternative operators violated national telecommunications law by making illegal use of numbering resources. The report nevertheless appears to endorse the behaviour of the operators concerned by stating that their 'business model' was "the only way in which fixed network operators can compete in the fixed retail market".⁶
- In some cases, the explanation for market developments given by the Commission appears to be inaccurate. E.g., the drop in IP bandwidth prices on the Maltese market was attributed to the opening of a second

⁴ p. 96 of Annex 2 concerning market shares of regional broadband operators.

⁵ In the Annex on Hungary to the 10th implementation report it says "*The issue of prohibited information flow between the wholesale and retail operations of the nationwide incumbent is reported by new entrants [...]. The NRA, however, seems to have no information and hence not taken any action to determine whether this requirement has been fulfilled by the relevant undertaking or not.*" However, the legality of the practice of Matáv [Magyar Telekom since May 6, 2005] was found in an official investigation by the NRA which started in June 2004 and closed in September 2004.

⁶ p. 208 of the Annex to the 10th implementation report says "*due to the virtual absence of wholesale level fixed to fixed interconnection with the incumbent's network, one of the only ways in which alternative operators can compete in the fixed retail market is by offering voice services using the incumbent's network for dial-up access to the internet. However, even this solution faces problems in practice and creates tensions between the fixed incumbent and new entrants. The incumbent announced its intention to implement certain changes in its pricing for access to the internet in this respect, which the new entrants consider unjustified. In July 2004 TÚSR made a preliminary decision prohibiting the incumbent from implementing these changes and a final decision on this case is still awaited. In the same month TÚSR fined three alternative operators for providing voice services via an access code reserved under the current numbering plan for dial-up access to internet services. An appeal against this decision is still pending.*"

underwater connection whereas the price had fallen steadily without coinciding with the installation of the second connection.⁷

While it is clear that not all statements in several hundred pages of work can be a 100% accurate, the measures for greater transparency we propose above would have helped to avoid these and other misconceptions entering the report.

Accountability

In this context, “accountability” describes the fact that assessments on the regulatory situation in Member States should be direct, clearly attributable to the Commission and well-founded, weighing the arguments of market parties and the regulator on the relevant issue.

On a number of occasions in the 10th Implementation Report, the Commission cites worries of market parties without providing its own assessment on the allegations and without presenting the view of the other parties concerned. While there are clearly time-pressures in the drafting process and restrictions on the length of the document, the Commission should nevertheless verify that the concerns of market players are included in the report only following an open procedure to fully clarify them beforehand with the stakeholders concerned.

ETNO therefore encourages the Commission to either openly express its position on implementation issues and give its reasons for doing so, or to merely cite the views of all parties and possibly public authorities concerned if it cannot reach a conclusion on an issue which it considers relevant.

Recognition of market trends

The review of implementation in Member States has to be closely aligned with the Directives and the work of EU institutions on the implementation of the regulatory framework. Wherever possible, we encourage the Commission to also take into account the mid-term market trends in its assessment of the competitive situation in Member States.

Concerning the description of the market situation at EU and at national level, ETNO feels that the number and performance of new entrants should not be presented as the single key element for the success of implementation. A parameter such as the rise or fall in the number of alternative operators can be of no value in a fixed market with 80 or more players already. The same goes for an overall number of competitors in a market with a mere 400.000 inhabitants. Also the fall of market share of the incumbent does not always correlate with the competitive dynamics on the wider communications markets. E.g., a static market share figure in the field of PSTN-based fixed voice services may not be an accurate measure for competition where entry barriers on retail voice markets are decreasing with technological development.

⁷ cf. p. 168 of the 10th implementation report

Without having to adopt positions on complex market definition issues, the Commission could add value to the report by recognising trends such as the emergence of new and innovative voice and data services and market developments resulting in competitive pressures on fixed operators from mobile services wherever they can be observed.



**ETNO members' comments on the 10th Implementation Report published
by the European Commission (data and regulatory situation)**

N.B. This document is the compilation of comments collected by various ETNO members regarding the data and information contained in the national chapters concerning their countries. ETNO individual members bear the responsibility for the information put forward.

GERMANY

Data:

- Overall, data has been accurate. Concerning the important figure of regional market shares of new entrants for telephone lines, the 10th Implementation Report of November 2004 uses data from RegTP's 2003 annual report. The report thereby failed to capture the considerable dynamics of market development in this area. In some regions of Germany, the competitors market share exceeded 40% already in December 2003 (cf. M. Cave, "Making the ladder of investment operational", paper presented to the Commission in May 2004). The report only states that "*there are regions in which the competitors' share exceeds 20%*". Also, the figure of overall market share of new entrants in the retail local access market has risen sharply throughout 2003 and 2004.

Regulatory Assessment:

- E.g., the 10th Report does not present a balanced picture of the regulatory situation for broadband in Germany. The relevant passage reads: "*Depending on the final sequence chosen by RegTP, the analysis of the important wholesale broadband access market may be delayed. In this context, it should be noted that, in 2003, the market share of the incumbent operator for retail broadband access in Germany was the highest in the EU 15. Irrespective of the fact that, up to 2003, the incumbent fixed telephone network operator applied a margin squeeze for access to its fixed telephony network and that it presumably also applied a margin squeeze for broadband access until 2004, this lack of competition also derives from the fact that there has been no bitstream access in Germany.*"
- 1) The Commission gives an overly short account of the procedure for margin squeeze under EU competition law against Deutsche Telekom. First, it should be noted that the German regulator had not found a margin squeeze in the local access market. Also, the findings of the EC concerning the local access market before European Courts have been challenged. The case is still pending.
- 2) The Commission does not take into account the specific market situation in Germany, which is characterised by a price-regulated wholesale product for ISPs ('ZISP') which does not exist in most EU Member States and which allows ISPs to offer their services directly to the end-customer. While this product does not technically change the market share in the access market, it affects the regulatory situation in the broadband market.
- 3) The final statement that the "lack of competition" derives from the fact that there has been no bitstream access in Germany is not supported by arguments, data or further analysis. As RegTP had not even carried out its analysis of the wholesale broadband access market, it appears premature that the Commission without the necessary data from retail and wholesale broadband access markets already determines the need for a specific additional wholesale remedy to be imposed on the German market.

HUNGARY

Examples of contestable or inaccurate finding in 10th Implementation Report

- „On the basis of revenues the incumbent companies collectively have in 2004 99.9% market share as far as the local market is concerned, with 98.7% and 93.1% shares respectively on the national and international calls markets.”

The text above does not indicate if these data refer only to the traffic on the PSTN platform and does not concern the fixed-mobile substitution effect which is very strong in the CEE region nor other substitution forms such as VoIP which are also emerging in the region, therefore the statement is not reflecting economic reality. The market share of the incumbents in reality is a lot lower.

- “There appears to have been also delay with implementing carrier selection and pre-selection in accordance with the Interconnection Directive. [...] The full functioning of carrier selection and pre-selection was also blocked by a practice introduced by the nationwide incumbent immediately after the date for full liberalization.”

The text does not indicate that carrier selection and pre-selection for domestic long distance, mobile and international calls were introduced already as of January 1, 2002. Only the carrier selection and pre-selection for local calls was introduced later, as of January 1, 2004 such as it is mentioned later in the text.

The statement is also inaccurate saying that the nationwide incumbent introduced a practice to block the carrier selection and pre-selection. The introduced practice complied with the then actual legislation and was introduced by all the incumbents not only by the nationwide incumbent.

- “The issue of prohibited information flow between the wholesale and retail operations of the nationwide incumbent is reported by new entrants, for instance in relation to leased lines disputes between competitive operators and the incumbent. The NRA, however, seems to have no information and hence not taken any action to determine whether this requirement has been fulfilled by the relevant undertaking or not.”

Matáv (the nationwide incumbent) assures not to have prohibited information flow between the wholesale and retail operations by applying the ‘Chinese Big Wall’ organization and administration practice. Therefore the separate flow of wholesale information is assured in the corporate personal and informatics systems. The legality of the practice was also underpinned by an official investigation by the NRA. The NRA started it regarding the wholesale and retail sales process of Matáv on June 10, 2004 and it was closed on September 2, 2004 stating that Matáv acted complying with the prevailing regulation.

- *In Annex 3 (Market Overview) there are some inaccurate data applied in the charts. E.g. the average monthly expenditure (composite basket) for residential*

users is €50.8 for Hungary in Figure 87 but in reality this figure should be €44.99 including VAT (calculated based on the OECD method with basic tariffs). In case of business users the average monthly expenditure (composite basket) is €114.1 in Figure 88 although it should be €82.46 excluding VAT (calculated based on the OECD method with basic tariffs). In Figures 24 and 25 the date of introduction of CS and CPS is not correct, stating that CS and CPS are available since 1.1.2004. CS and CPS for domestic long distance, mobile and international calls were introduced on 1.1.2002 and CS and CPS for local calls were introduced on 1.1.2004 (s. above).

MALTA

(Comments to be read in conjunction with the 10th implementation report extract on Malta)

“The only really competitive market in Malta seems to be the provision of retail Internet services, with more than a dozen ISPs active on the market.”

The above statement is incorrect and gives a wrong impression of market conditions in Malta. If one looks at the broadband market, this is characterised by robust facilities based competition, notably between ADSL and cable modem technology; the cable company passes 90%+ of Maltese households. Aside from this 3 BWA licences are expected to be awarded in the coming weeks and powerline communications will be introduced in the medium term. That would make for 6 broadband-capable networks in a market of 400,000 inhabitants. Broadband penetration levels in Malta are at the EU25 average.

In the international calls markets, at the end of 2004 VoIP had 50% market share of **all** international traffic [including minutes originating from fixed lines and from mobiles], up from the 32% it had at the end of 2003. Ironically this fact is alluded to in the paragraph just preceding this statement – clearly a case of conflicting statements.

Whereas there are 2 mobile operators in Malta, the market is still very competitive. In fact, since the introduction of the second [our] operator, mobile penetration levels have shot up and prices have gone down by double digit percentage points. For instance, Malta has among the cheapest SMS tariffs in Europe and the highest monthly SMS usage rate per subscriber.

“Regarding international leased lines (particularly important in Malta, due its geographic situation), ...”.

Demand in the international leased lines market in Malta has been stagnant for a number of years, and this is not due to prices which are quite reasonable. Whereas we are an island, there is a limited number of businesses who require IPLCs and those who do typically require smaller capacities. Here again they have a choice between Maltacom, SITA Equant and Vodafone, not to mention IP alternatives. If IPLCs are so important for Malta, one would expect dynamic demand for them, which is certainly not the case.

“This has resulted in a significant drop in international IP bandwidth tariffs.”

The wholesale prices for international bandwidth in Malta have been dropping for a number of years and not as a result of the recent building of a second underwater connection. In fact Vodafone, the owners of this second connection, have set prices which are very much at Maltacom’s levels and have also accused Maltacom of having ‘predatory’ prices in this field.

“Mainly due to the competition at the retail level between service providers, broadband is taking up in Malta, with 13 738 broadband lines (as of 1 July 2004; out of which 2 312 are by means of cable modem) that amounts to 3.5% broadband penetration (in terms of population).”

This must be the most mystifying statement of the chapter dealing with Malta. In the first instance, it is outdated, since as of Q3-Q4 2004, the cable company had roughly 40%+ of the Maltese retail broadband market.

Unfortunately, these types of statement serve only to belittle the work done by those who actually put their hands in their pockets, who risk and invest time and effort in order to help achieve targets set at European level. Attributing the growth in broadband penetration simply to competition at the retail level ignores the efforts made by government to generate demand as well as the major investments made by network providers [both fixed line and cable] and the innovation generated by competition at the facilities level.

The statement is also at odds with well-recognised facts, namely that service-level competition is simply not enough to drive broadband growth. In ‘Connecting Europe at High Speed: National Broadband Strategies’⁸ the Commission itself states that,

“4.4.1 Facility-based competition

The best performing countries in the Union and abroad are characterised by a significant degree of facility-based competition (Figure 8). Competition between alternative platforms improves customer choice and allows providers to control all aspects of their network, including costs and maintenance. In general, there is a positive relationship between facility-based competition and growth in penetration rates.”:

Ironically, the highlighted statement under discussion here is followed in the very next sentence by,

“It appears that recently a significant increase in the number of broadband lines has occurred as a result of the decision (in October 2004) of broadband providers to double the speeds of all ADSL and cable modem connections, free of charge.”

Doubling of connection speeds at no cost is the result of efforts made by the wholesale providers and not of the retailers - Another case of contradiction and apparently incoherent arguments.

⁸ **eEurope 2005** COMMUNICATION FROM THE COMMISSION TO THE COUNCIL, THE EUROPEAN PARLIAMENT, THE EUROPEAN ECONOMIC AND SOCIAL COMMITTEE AND THE COMMITTEE OF THE REGIONS; *Connecting Europe at High Speed: National Broadband Strategies*; Published May 26, 2004

Slovak Republic:

- General remarks

The methodology/procedure used by the Commission to construct the Report is questionable:

- In many Member States the local data and status have been provided by the Regulatory Authorities only. Although incumbents have been requested to provide their inputs and analysis, none or precious little of this material has been retained to construct the Report in a balanced manner. We see, that only the incumbent's view would not be sufficient, but so is the alternative operator's view. Our proposal is aimed on balanced complex research result. That can in our view be achieved only if also the incumbent's view is equally evaluated.
- Benchmark data was not all referring to the same date, so benchmarks were in some cases incomparable.
- Issues like F2M substitution, VoIP and rebalancing are not taken into account, as well as incomparably low purchasing power (in Slovakia 48 % of EU average). Pricing benchmarks are misleading, as they are based on purchasing power parity not on real prices and costs. Therefore also the conclusions including proposed regulatory remedies (i.e. rebalancing obligation) are inadequate in Central Europe.

- Slovak market

As far as regards Slovakia there are several questionable data and statements in the 10th Implementation Report:

1. Market Overview is missing complete appraisal of market situation as there is no information about wireless competition in data retail market, wholesale competition in the form of operators providing backbone services
2. The Report does not include uniform and actual data (some data is from July 2004, while other is from October 2004). E.g., data relating to ADSL penetration in Slovakia from July 2004 has been doubled (ca. 32 800 DSL accesses) which clearly is a positive message for Slovakia.
3. Information on ST DSL case (page 205) is not valid as the NRA itself stated in written that this duty is considered to be extinguished based on the change of rights and obligations stemming from the Licence
4. The statement on page 208 on voice offers of alternative operators via dial-up access is clearly biased towards the alternative operators view and classes the Slovak Republic among those countries where legal norms as not fulfilled. Otherwise it could not be there because as even the NRA proclaimed those alternative operators by decisions to violate the legal norms. In this sense, it is an unprecedented statement: the Slovak Republic vindicates illegal behaviour.
5. Prices stated for leased lines (p. 209) are questionable as the mentioned prices of ST are the retail prices and not prices based on which alternative operators built up their services.

6. Universal service provider may not apply for recovery of the net costs of provision of universal service immediately as there have to be fulfilled the legal conditions stemming from the act and will take quite a long time. This is not reflected in the report.
7. SMP obligations imposed pursuant to the previous Act before December 31, 2003 maintain effective until the decision on SMP pursuant to the current Act will come into force (Section 76 Subs. 8 of the Act). The Decision which designated ST as having SMP a which was issued prior to the new Act did not impose any obligations, it only certified that ST had a certain market share which the Telecommunications Office considered as significant. Hence, ST had no SMP obligations imposed at that moment – the report is inaccurate when it refers to SMP-obligations imposed on ST.
8. VoIP and F2M substitution were not included in the analysis. The Report tries to justify VoIP as „the only way out” for the AOs, as there is no IC. On the other hand, the market share of incumbent is stated as 100 per cent on all markets. It leaves out of focus that a market analysis based on technological neutrality cannot measure competition on the voice market purely on the basis of the market share of incumbent operators of the fixed voice market but also has to appropriately reflect current and future trends and market potentials.

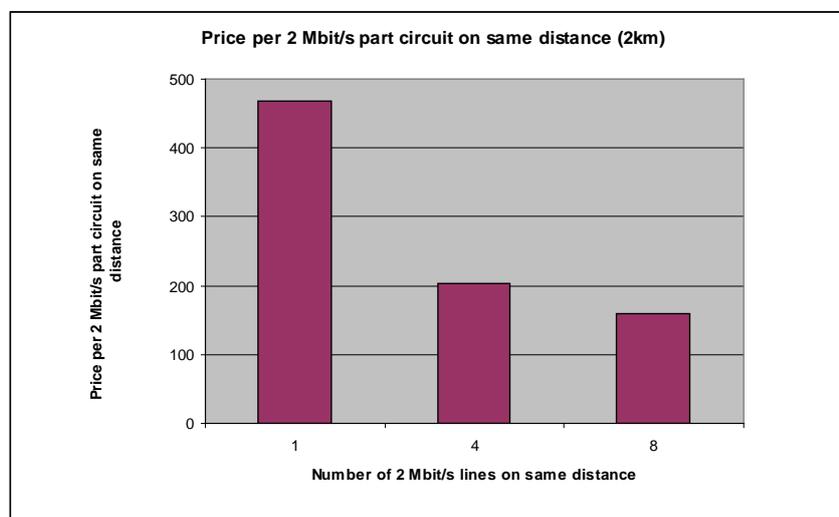
SLOVENIA

LEASED LINES INTERCONNECTION CHARGES

Commission: Figures of leased lines interconnection charges in Annex 3¹ show that Slovenia has one of the highest prices for part circuits.

Response: That is only correct if operator leases the first line, but when leasing multiple lines for the same distance, the price per unit decreases significantly. In the following Figure, it is shown how price per unit for 2 Mbit/s on 2 km part circuit 2 km decreases with increasing the number of lines on the same distance. This is one of the specific conditions, which should have been considered in the analysis.

Figure 1: Price per Unit for 2 Mbit/s part circuit (2km)



BROADBAND RETAIL LINES BY TECHNOLOGY

Commission: Figure of broadband retail lines by technology in Annex 3⁹ shows that 71% of broadband retail lines in Slovenia are through DSL technology.

Response: The data in the implementation report is not in line with the market situation that Telekom Slovenije presented to the European Commission on January 21st 2004 and on the December 9th 2004 (meeting with *DG Information Society Unit B.3 - Implementation of regulatory framework; relations with Member States (II)*). Telekom Slovenije has provided the Commission with several documents about the situation in Internet market in Slovenia ("*Some additional information about Internet in Slovenia.doc*").

Also the latest NRA announcement showed that in October 2004 only 61% of all broadband lines were through DSL technology, which is not in line with the data in

¹ Figures 36-41, p.40-44

⁹ Figure 68, p 76

the 10th report. The data was presented on NRA`s Press Confernece on 15th of December. The presentation can be found on NRA`s web site:

http://www.apek.si/2akt/dat/Tiskovna_konferenca_APEK_dec_2004_EKOM_objava.pdf

LEASED LINE RETAIL TARIFFS

Commission: Figures of leased lines retail tariffs in Annex 3¹⁰ show that Slovenia has one of the cheapest prices for national leased lines for 2 km.

Response: Data for 2 km circuits in Figures 112, 114, 116 and 118 in Annex 3 is not correct. If it were this would mean that wholesale prices for 2 km circuits are more expensive than retail prices, which is not the case. Official Telekom Slovenije`s tariffs for those circuits are shown in following figure.

Figure 2: National Leased Lines Tariffs for 2 km circuits in Slovenia

National Leased Lines Tariffs for 2 km Circuits in Slovenia		
Bandwidth	Tariffs in 10th Report	Official Telekom Slovenije`s Tariffs
64 kbit/s	825 €	1.674 €
2 Mbit/s	2.889 €	5.860 €
34 Mbit/s	13.562 €	27.509 €
155 Mbit/s	19.375 €	39.299 €

Exchange rate is the same as in the 10th Report: 1 EUR = 239,80815 SIT or 1 SIT = 0,00417 EUR

NUMBER OF BROADBAND USERS vs. BROADBAND LINES

Commission: Some alternative operators are using one DSL line and are providing DSL service to more than one user. That issue is also outlined in Annex 2¹¹ (*"in some cases the number of users is up to five times higher than the number of lines"*).

Response: This is only the case when alternative operator provides DSL service. This situation is possible due to very open ATM/ADSL model, where ISP itself can control the quality of broadband connection.

The penetration level and also proportion of market shares between new entrants and the incumbent can be quite different if number of users is considered instead of number of lines.

¹⁰ Figures 112, 114, 116 and 118; p 116-119

¹¹ P 200 - paragraph 4

SPAIN

In the case of Spain, an example for contestable data can be interconnection pricing: the annex includes a series of figures comparing prices per minute of fixed interconnection at local, single transit and double transit.

In Spain, more than 60% of the traffic is paid through capacity-based interconnection, not on a per-minute basis. The price obtained through capacity-based is different, so the prices reflected in the figures do not really reflect what market players are paying (and receiving) for the interconnection services. The report should reflect an equivalent price per minute, or at least include a footnote stating that most players pay on a capacity basis, and do not pay per minute prices.