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TOWARDS A COMPETITIVE COMMUNITY-WIDE

TELECOMMUNICATIONS MARKET IN 1992

IMPLEMENTING THE GREEN PAPER ON THE

DEVELOPMENT OF THE COMMON MARKET FOR

TELECOMMUNICATIONS SERVICES AND EQUIPMENT

State of Discussions and Proposals by the Commission

(Communication from the Commission)

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SUMMARY

On 30th June 1987, the Commission submitted its Green Paper on the future development of telecommunications sector, the major driving force for the entry of the Community's economy into the information age ["Towards a Dynamic Economy - Green Paper on the Development of the Common Market for Telecommunications Services and Equipment", (COM(87)290)].

As set out in the Green Paper, the current wave of technical innovation resulting from the convergence of telecommunications and computer technology has led to reviews in all Member States, and at world-level, of the future organisation of the telecommunications sector and its necessary regulatory adjustment. The strengthening of European telecommunications has become one of the major conditions for achieving the Community-wide market for goods and services in 1992.

The Green Paper was intended to initiate debate and attract comment from a broad spectrum of opinion : "the Council ; the European Parliament and the Economic and Social Committee ; the Telecommunications Administrations and Recognized Private Operating Agencies, referred to as 'Telecommunications Administrations' ; the European telecommunications, data processing, and services industry ; the users who must be the main beneficiaries of the new opportunities ; and the trade unions and other organisations which represent the social interest in this field.

In the meantime, the Commission has received a wide range of comments. The broad consensus apparent from these comments now seems to give a strong basis on which to define further a determined campaign to develop the Community's telecommunications market, with the overall objective of fully achieving a Community-wide open competitive market by 1992.

On this basis, and in order to facilitate the consideration of the Green Paper and future Community policy in the sector by the Council, the European Parliament and the Economic and Social Committee, this Communication sets out a programme of action, both as regards measures to be undertaken by the Commission under Community competition rules and its general mandate, and as regards future proposals to Council, in order to achieve progressive opening of the telecommunications market in the Community to competition. It reviews the proposals advanced in the Green Paper in the light of the comments received up to now, establishes priorities and proposes strict deadlines for implementation.

I) INTRODUCTION

The Commission published on 30th June 1987 a Green Paper on the future development of the telecommunications sector ["Towards a Dynamic Economy - Green Paper on the Development of the Common Market for Telecommunications Services and Equipment", (COM(87)290), hereinafter referred to as the Green Paper].

The Commission has set out its basic motivations in the opening statement to the Green Paper. It emphasised that "the strengthening of European telecommunications has become one of the major conditions for promoting a harmonious development of economic activities and a competitive market throughout the Community and for achieving the completion of the Community-wide market for goods and services by 1992".

The Commission further stated : "Information, exchange of knowledge, and communications are of vital importance in economic activity and in the balance of power in the world today. Telecommunications is the most critical area for influencing the 'nervous system' of modern society. To flourish, it has to have optimum environmental conditions.

In this respect, the convergence of telecommunications, computing and applications of electronics in general has now made possible the introduction of a wide variety of new services. The traditional form of organisation of the sector does not allow the full development of the potential of these new services. In order to create an open and dynamic market in this area it therefore seems necessary to introduce regulatory changes to improve the sector's environment.

These changes should allow the full development of the supply of services and equipment, thus making it possible for industry to take full advantage of this potential. In particular national frontiers should not be allowed to hamper the development of a consistent communications system within the European Community".

Telecommunications must now be seen as the major component of a conglomerate global sector comprising the management and transport of information which already represents more than ECU 500 billion world-wide. The world market for telecommunications equipment has reached ECU 90 billion by 1986, of which ECU 17.5 billion was accounted for by the Community. In 1985 world revenue from telecommunications services was almost ECU 300 billion, of which the Community represented ECU 62.5 billion.

It is estimated that by the end of the century, up to 7% of the gross domestic product of the Community will result from telecommunications and adjacent activities, as against 2% today. Via information technology, more than 60% of Community employment will depend, to an important degree, on telecommunications by the year 2000.

The situation in the Community is in flux. All Member States are envisaging or discussing necessary adjustments of regulatory conditions to the new requirements. Managing together this challenge will be essential for the Community to achieve the Internal Market ; improve the competitiveness of the European economy ; and strengthen Community cohesion.

As set out in detail in the Green Paper, the necessary definition of common regulatory goals can build on the achievements of Community telecommunications policy to date, on the programme set out by Council on 17th December 1984, and on previous positions taken by the European Parliament and the Economic and Social Committee. The adjustment of the Community's telecommunications market involves a complex process and should be undertaken on a broad basis.

The Green Paper emphasised that "regulatory changes in telecommunications must take account of the views of all parties concerned, in particular private and business users, Telecommunications Administrations, the Administrations' work force, competing enterprises, and the telecommunications and data-processing industry".

With this in mind, the Commission has undertaken, since June 1987, an extensive consultative process on the Green Paper. A broad range of reactions has been received from the wide spectrum of interests concerned. In parallel, substantial discussion has been carried on with the Senior Officials Group on Telecommunications (SOG-T), the Director-Generals of the Telecommunications Administrations and the European Committee of the Postal, Telegraph & Telephone Trade Unions.

At this stage, the Commission considers it appropriate to draw preliminary conclusions on the results of this process of broad consultation. This is the purpose of this Communication.

The Communication is intended to facilitate the further consideration of the Green Paper in Council, the European Parliament, and the Economic and Social Committee, by reviewing the proposals advanced in the Green Paper in the light of the reactions received up to now, establishing priorities and proposing strict deadlines for implementation.

The overriding objective, supported by all comments, must be to "develop the conditions for the market to provide European users with a greater variety of telecommunications services, of better quality and at lower cost, affording Europe the full internal and external benefits of a strong telecommunications sector" and "the development in the Community of a strong telecommunications infrastructure and efficient services" in order to achieve this goal.

It involves obtaining the full benefits of the opportunities deriving from the Treaty in this sector : the full implementation of the free movement of goods and the freedom to provide services ; the establishment of a competitive environment ; and the strengthening of Community cohesion.

II) THE GREEN PAPER APPROACH

The consultative process undertaken and the reactions received must be seen against the positions set out in the Green Paper.

The objectives set out in the Green Paper correspond to three major concerns which must be dealt with at the European level :

- technological change is penetrating irreversibly the European and world market and requires adjustment of market conditions. Over recent years, the speed of technological diversification (signal digitisation, optical cables, cellular telephony, satellites, etc.) has dramatically accelerated.

Digitisation - the transmission of information in the form of bits in computer language, and the best indicator of the convergence of telecommunications and computer technology - will be an economic fact in the Community by the end of this decade. By 1990, on average in the Community, approximately 70% of long distance transmission will be digitised, 50% of long-distance switching and 30% of local switching.

A major consequence in regulatory terms flowing from technological and market development will derive from the simple fact that those connected to the network will be able to carry out many more activities via this network. This poses the fundamental problem of how in the future current constraints on these new possibilities will be handled ;

- the current change of technological and market conditions is leading all Member States to undertake or envisage changes in regulatory conditions. As set out in the Green Paper, the Community must make sure that "the necessary European scale and dimension are introduced into the current phase of transformation ; no new barriers are created within the Community during the adjustment of regulatory conditions ; existing barriers are removed in the course of this adjustment" ;
- The Treaty obligation of achieving the completion of the Community Market by 1992 sets a strict deadline for full application of the Treaty to this sector. As a result of on-going changes, telecommunications will come to play a central role in the Community's technology and service markets. Even today, services account for nearly two thirds of Community output and employment.

The future importance of telecommunications for overall economic development and growth makes a Community-wide market in this sector indispensable for reaching the 1992 goal for the Community market as a whole. This implies full and speedy application of the opportunities and obligations deriving from the Treaty to the sector : the free movement of goods ; the freedom to provide services ; competition rules ; the common commercial policy.

In the Green Paper, the Commission :

- pleads strongly for recognising - and using the potential of - the new technological and market trends ;
- acknowledges fully the traditional public service tasks of the Telecommunications Administrations. It accepts safeguards in order to maintain their capability to develop networks and services and envisages their full participation in the newly emerging markets in both the services and terminal equipment fields ;
- emphasises, however, that any service monopoly which is maintained implies constraints on the activities of those connected to this network or using network facilities. The justification of continued exclusive provision where it still exists, must therefore be weighed carefully against the restrictions which this may impose on those connected to the network concerning present and future application for their own use, shared use or provision to third parties.

As a consequence, the Green Paper clearly considers that, with a view to 1992 and the full development of new economic activities with their potential for employment, a more liberal and flexible competitive environment for the telecommunications services and equipment market is indispensable for the overall development of the Community's technology and service markets. At the same time, it recognises the continuing central role of the Telecommunications Administrations in ensuring the long-term convergence and integrity of the network infrastructure and the supply of a broad range of services in the Community.

With the Green Paper, the Commission has tried to achieve a careful balance :

"The Green Paper acknowledges the differences in current situations and the variety of trends. It proposes essentially a hard core of proposals designed to ensure Community consistency in telecommunications. The proposed process is iterative ; it accepts the existence of a movement, not all aspects of which can be defined today.

The fundamental purpose of the measures is therefore to set off a dynamic process that will give the political, economic and social actors involved a better understanding of their own interests and to optimise their activities in the construction of the Community".

III) STATE OF DISCUSSIONS

The Green Paper translates the foregoing considerations into ten detailed "Proposed Positions" and a number of "Proposed Actions Lines" to support the transformation process. The comments received have concentrated on these Positions and Action Lines. They are therefore recalled in Figure I and Figure II for easy reference. More detailed explanation is given in the Green Paper.

As set out in the introduction to the Green Paper, the Green Paper was intended "to launch a debate and to attract comment from a broad spectrum of opinion". The Commission announced that it would draw preliminary conclusions at the end of 1987, in order to focus debate and to facilitate consideration in the Council, the European Parliament and the Economic and Social Committee (1)

Since June 1987, the Green Paper has stimulated a very broad response by the users, telecommunications and data-processing industry and other parties concerned. More than 45 organisations representing different interests in the field, both at Community and national level, have forwarded formal comments. The full text of the comments is available on request.

As already mentioned, in parallel, intensive discussion was carried on with the Senior Official Groups on Telecommunications (SOG-T), the Director Generals of the Telecommunications Administrations, and the Trade Unions in the field.

While for details reference should be made to the full text of the comments, summarising the following can be said :

- the consultation process has been a major success in itself. This is the very first time in the Community that an in-depth broadly based discussion between all actors involved in the future of the sector has taken place ;
- the process has proved that, while respecting different national situations and perceptions, a broad consensus in this field can be developed in the Community ;

(1) The Economic and Social Committee has given, at its meeting of 18th November 1987 an initial opinion on the Green Paper (OJ No C 356, 31.12.1987). It announced that it reserves the right to re-examine specific problems when the Commission presents its proposals for attaining the objectives of the Green Paper.

FIG. I For easy reference, the following "PROPOSED POSITIONS" are reproduced, in their original form from the Green Paper, COM(87)290.

PROPOSED POSITIONS

- A) *Acceptance of continued exclusive provision or special rights for the Telecommunications Administrations regarding provision and operation of the network infrastructure. Where a Member State chooses a more liberal regime, either for the whole or parts of the network, the short and long term integrity of the general network infrastructure should be safeguarded.*

Closely monitored competitive offering of two-way satellite communications systems will need further analysis. It should be allowed on a case-to-case basis, where this is necessary to develop European-wide services and where impact on the financial viability of the main provider(s) is not substantial.

Common understanding and definition regarding infrastructure provision should be worked out under E) below.

- B) *Acceptance of continued exclusive provision or special rights for the Telecommunications Administrations regarding provision of a limited number of basic services, where exclusive provision is considered essential at this stage for safeguarding public service goals.*

Exclusive provision must be narrowly construed and be subject to review within given time intervals, taking account of technological development and particularly the evolution towards a digital infrastructure. 'Reserved services' may not be defined so as to extend a Telecommunications Administration service monopoly in a way inconsistent with the Treaty. Currently, given general understanding in the Community, voice telephone service seems to be the only obvious candidate.

- C) *Free (unrestricted) provision of all other services ('competitive services', including in particular 'value-added services') within Member States and between Member States (in competition with the Telecommunications Administrations) for own use, shared use, or provision to third parties, subject to the conditions for use of the network infrastructure to be defined, under E).*

'Competitive services' would comprise all services except basic services explicitly reserved for the Telecommunications Administrations (see B).

D) *Strict requirements regarding standards for the network infrastructure and services provided by the Telecommunications Administrations or service providers of comparable importance, in order to maintain or create Community-wide inter-operability. These requirements must build in particular on Directives 83/189/EEC and 86/361/EEC, Decision 87/951/EEC and Recommendation 86/659/EEC.*

Member States and the Community should ensure and promote provision by the Telecommunications Administrations of efficient European-wide and worldwide communications, in particular regarding those services (be they reserved or competitive) recommended for Community-wide provision, such as according to Recommendation 86/659/EEC.

E) *Clear definition by Community Directive of general requirements imposed by Telecommunications Administrations on providers of competitive services for use of the network, including definitions regarding network infrastructure provision.*

This must include clear interconnect and access obligations by Telecommunications Administrations for trans-frontier service providers in order to prevent Treaty infringements.

Consensus must be achieved on standards, frequencies, and tariff principles, in order to agree on the general conditions imposed for service provision on the competitive sector. Details of this Directive on Open Network Provision (O N P) should be prepared in consultation with the Member States, the Telecommunications Administrations and the other parties concerned, in the framework of the Senior Officials Group on Telecommunications (SOG-T).

F) *Free (unrestricted) provision of terminal equipment within Member States and between Member States (in competition with Telecommunications Administrations), subject to type approval as compatible with Treaty obligations and existing Directives. Provision of the first (conventional) telephone set could be excluded from unrestricted provision on a temporary basis.*

Receive Only Earth Stations (ROES) for satellite down-links should be assimilated with terminal equipment and be subject to type approval only;

G) *Separation of regulatory and operational activities of Telecommunications Administrations. Regulatory activities concern in particular licensing, control of type approval and interface specifications, allocations of frequencies, and general surveillance of network usage conditions;*

H) *Strict continuous review of operational (commercial) activities of Telecommunications Administrations according to Articles 85, 86 and 90, EEC Treaty. This applies in particular to practices of cross-subsidisation of activities in the competitive services sector and of activities in manufacturing;*

- I) Strict continuous review of all private providers in the newly opened sectors according to Articles 85 and 86, in order to avoid the abuse of dominant positions;*

- J) Full application of the Community's common commercial policy to telecommunications. Notification by Telecommunications Administrations under Regulation 17162 of all arrangements between them or with Third Countries which may affect competition within the Community. Provision of information to the extent required for the Community, in order to build up a consistent Community position for GATT negotiations and relations with Third Countries.*

FIG. II

For easy reference, the following "PROPOSED ACTION LINES" are reproduced from the Green Paper, COM(87)290.

1 ACCELERATION OF EXISTING ACTION LINES

- ENSURING THE LONG-TERM CONVERGENCE AND INTEGRITY OF THE NETWORK INFRASTRUCTURE IN THE COMMUNITY
- RAPID ACHIEVEMENT OF FULL MUTUAL RECOGNITION OF TYPE APPROVAL FOR TERMINAL EQUIPMENT
- RAPID PROGRESS TOWARDS OPENING UP ACCESS TO PUBLIC TELECOMMUNICATIONS PROCUREMENT CONTRACTS

2 INITIATION OF NEW ACTION LINES

- I SUBSTANTIAL REINFORCEMENT OF THE DEVELOPMENT OF STANDARDS AND SPECIFICATIONS IN THE COMMUNITY / CREATION OF A EUROPEAN TELECOMMUNICATIONS STANDARDS INSTITUTE
- II COMMON DEFINITION OF AN AGREED SET OF CONDITIONS FOR OPEN NETWORK PROVISION ("O N P") TO SERVICE PROVIDERS AND USERS
- III COMMON DEVELOPMENT OF EUROPE-WIDE SERVICES
- IV COMMON DEFINITION OF A COHERENT EUROPEAN POSITION REGARDING THE FUTURE DEVELOPMENT OF SATELLITE COMMUNICATIONS IN THE COMMUNITY
- V COMMON DEFINITION OF A COHERENT CONCEPT ON TELECOMMUNICATIONS SERVICES AND EQUIPMENT WITH REGARD TO THE COMMUNITY'S RELATIONS WITH THIRD COUNTRIES
- VI COMMON ANALYSIS OF SOCIAL IMPACT AND CONDITIONS FOR A SMOOTH TRANSITION

- during the process of discussions and consultation, a clear will to arrive at common regulatory aims for the sector has emerged on the part of all major actors.

Regarding the reactions to the main proposals set out in Figures I and II, the situation seems to be that (while there are different qualifications with regard to the exact wording) there is :

- a broad consensus regarding the full liberalisation of the terminal equipment market, with a reasonable period for transition ;
- a broad consensus on the liberalisation of value-added services, the high-value end of the overall spectrum of telecommunications services which is proposed in Fig. I to be open to competitive provision ;
- full endorsement in principle of the separation of regulatory and operational responsibilities of the Telecommunications Administrations ;
- general recognition of the fact that tariffs should follow overall cost trends ;
- strong support, in principle, regarding standards, in order to maintain or create Community-wide and world-wide interoperability, while safe-guarding the capability for innovation. Strong support for a clear definition of general requirements imposed by Telecommunications Administrations on providers of competitive services and other users for use of the network (O N P - Open Network Provision) ;
- broad acceptance of the fact that Telecommunications Administrations should be able to participate in the newly open competitive sectors, on an equal footing ;

general acceptance of the need to apply the general rules of competition law to the operational (commercial) activities of both the Telecommunications Administrations and other private providers, in a symmetric way ;

Support for the line taken in the Green Paper, that, while this implies on the one hand clear requirements for transparency of operations, in particular with regard to cross-subsidisation and procurement of equipment, it should imply on the other hand relaxing of organisational and financial constraints imposed on Telecommunications Administrations which may inhibit their ability to compete ;

- general support for existing Community programmes, actions and proposals aimed at strengthening the long-term convergence and integrity of the network infrastructure in the Community. This concerns in particular the development of Integrated Broadband Communications (IBC) (the RACE programme) ; the Integrated Services Digital Network (ISDN) ; and the introduction of Digital Mobile Communications.

A second category of positions has also met with general support, while at the same time receiving criticism from both possible perspectives : of going too far in the opinion of some and of not going far enough in the opinion of others.

This concerns in particular :

- the acceptance of the continuation of exclusive provision for network infrastructure. This has met acceptance in most comments while receiving some criticism from both sides.
- the degree of competition in services other than value-added services. There is broad general support for accepting exclusive provision of voice telephony, as long as it is defined as switched voice telephony intended for the general public and as long as this is subject to review.

A number of comments hold that either special authorisation schemes or exclusive provision for other services, in particular telex and switched data communications intended for general public use, are required. Special authorisation schemes have been suggested as a possible option for movement towards market opening in this area.

Generally, comments hold that a broad provision of efficient Europe-wide and world-wide communications to the public must be ensured.

Regarding competition in satellite communications, a consensus still does not seem possible. On this issue, there seems only to be a general readiness to open competition for Receive-Only Equipment as long as not connected to the public network.

Regarding other major issues, further discussion and definition is needed. This concerns in particular :

- the development of a coherent European position on satellite communications in order to create or deepen consensus in this key technology ;

