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**Negotiating Group on Basic Telecommunications**

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COMMUNICATION FROM THE EUROPEAN COMMUNITY AND ITS MEMBER STATES

Response to Questionnaire on Basic Telecommunications

The attached communication is circulated at the request of the European Community and its Member States to Members of the Negotiating Group on Basic Telecommunications.

## PART I

### Definition and Market Structure

#### Definition

1. What are considered to be basic telecommunications under your regulatory regime? How are they defined? How does your regulatory regime define that which is not considered basic telecommunications?

No formal definition exists of "basic" services in the European Community, and this term is used in an indicative manner only. In an effort to avoid a fruitless debate about the distinction between "value-added" and "basic" services the European Community has defined only those services which may still be made subject in individual Member States to special and exclusive rights (sometimes referred to in our responses as "reserved services"), namely, public voice telephony. This is defined as "the commercial provision for the public of the direct transport and switching of speech in real time between public switched network termination points, enabling any user to use equipment connected to such a network termination point in order to communicate with another termination point"<sup>1</sup>. It should be noted that other service areas, such as, telegraph, telex, mobile radio telephony, paging and satellite services, and infrastructure, are not covered at Community level, although some of these areas may be addressed in further legislation in the near future (e.g. certain satellite and mobile services).

However, for the purpose of these negotiations the Community considers "basic" services to comprise, in addition to voice telephony - as defined above - packet and circuit switched data, mobile, paging, satellite services and voice telephony which is not provided to the public.

2. Does your regulatory regime distinguish between networks (facilities) and services in defining basic telecommunications? If so, how is this distinction made?

Action at a European Community level has focused on the liberalisation of telecommunications services, but has not so far addressed the issue of infrastructure competition. There are differences in the regulatory regimes of the individual Member States.

Networks and services, however, have been defined<sup>2</sup> at Community level as a means of clarifying the scope of the obligations ensuing from the introduction of competition in the markets for telecommunication services.

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<sup>1</sup> Commission Directive on competition in the markets for telecommunications services, 90/388/EEC, OJ L 192/10, 24.07.90

<sup>2</sup> Commission Directive referred to in Question 1

"Public telecommunications network" means the public telecommunications infrastructure which permits the conveyance of signals between defined network termination points by wire, by microwave, by optical means or by other electromagnetic means.

"Telecommunications services" means services whose provision consists wholly or partly in the transmission and routing of signals on the public telecommunications network by means of telecommunications processes, with the exception of radio broadcasting and television.

These basic definitions would have to be taken into account in assessing whether particular types of offerings are in fact services or infrastructure, for example, intelligent network functionalities.

3. Are there any networks or services which would be considered to be basic telecommunications within the scope of the GATS definition which would not be so considered by your national definition? If so, what are they?

See answer to question 1.

#### Market structure

4. List any basic telecommunications sub-sectors or categories which are reserved to supply by monopoly or exclusive supplier(s).

All services have been opened to competition in the European Community with the exception of public voice telephony, telegraph, telex, mobile, paging and satellite services. See question 1 for more detail.

A clear timetable was set at European Community level in July 1993<sup>3</sup> for the full liberalisation of telecommunications services by 1 January 1998, subject to possible transitional arrangements for certain Member States with less developed networks in order for them to achieve the necessary structural adjustments. This timetable also called for publication of a Green Paper on Infrastructure by the end of 1994 in order to address the future of infrastructure liberalisation in the Community, and the Council recently called for the publication of the first part of this Green Paper before 1 November 1994<sup>4</sup>.

The timetable, however, does not prevent Member States from liberalising more quickly, as shown by the table below, which gives additional details on the current situation in certain Member States.

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<sup>3</sup> Council Resolution 93//C213/01 of 22 in July 1993

<sup>4</sup> Joint Industry/Telecommunications Council, 28 September 1994: Council conclusions on the Information Society Action Plan, COM(94) 347 final

COUNTRY	
Belgium	Mobile communications will be open to a second operator at the latest in 1994.
Germany	Competition has been introduced for mobile communications, satellite communications and corporate network applications.
Denmark	<p>Public voice telephony services are to be liberalised before the end of 1994. A national, public voice telephone service, however, will still be covered by the concession held by Tele Danmark A/S, complete with certain rights and obligations. For example Tele Danmark A/S will continue to be the only Danish operator who will be granted a country code in the international numbering plan and who will, as the only one, have status as recognised Danish international carrier of telephone services.</p> <p>Competition has been introduced for GSM networks and services and ERMES networks and services.</p> <p>SNG satellite networks and services and small-scale receive-only satellite services have been opened to competition. The entire satellite field is expected to be liberalised before the end of 1994.</p> <p>Telepoint services based on DECT Technology are to be liberalised before the end of 1994.</p>
Spain	Competition has been introduced for mobile services (GSM network, paging and public trunking).
France	Competition exists for mobile voice telephony networks and services, paging and satellite services.
Greece	Mobile telephony is supplied by two privately owned companies.
Italy	A second operator will be introduced for mobile communications by the end of 1994.
Ireland	Tenders will soon be invited for the provision of a second GSM mobile service and the possibility for a third licensee will be considered in the light of experience of the competitive market.
The Netherlands	Competition has been introduced for mobile services and there is a licensing regime. In addition, satellite services will soon be liberalised.
Portugal	Competition has been introduced in telecommunications services categorised as complementary (fixed and mobile) whose exploitation involves the use of complementary telecommunications infrastructures, i.e. public telecommunications infrastructures which are not part of the basic telecommunications network.

United Kingdom	No area of telecommunications activity remains reserved to a single operator in the UK. The White Paper set out in 1991 on "Competition and Choice: Telecommunications Policy for the 1990s" announced the Government's commitment that it would consider on its merits any application for a license to offer telecommunications services in the UK, in line with the policies set out there. In the case of new international operators, it was concluded that the duopoly in this area should be ended, but that it would be premature to invite applications for such licenses in the light of continuing constraints on competition in the international market. This remains the position.
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5. Does your regime designate one or a limited number of monopoly/exclusive suppliers to supply any basic telecommunications nationally, on a geographical basis, or for particular market segments? How is it (or they) constituted (e.g. government ministry or agency, wholly government-owned corporate entity, company partly owned by the government, privately owned)?

and

6. Is foreign equity participation or ownership of monopoly or exclusive suppliers permitted? If so, what is the maximum percentage share allowed and what is the current level of identifiable foreign participation?

Member States of the European Community are required<sup>5</sup> to withdraw all special or exclusive rights for the supply of telecommunications services other than public voice telephony. All Member States have separated regulatory and operational functions in conformity with Community law. Member States may, if they so choose, maintain special and exclusive rights in the area of public voice telephony. These rights are assigned to telecommunications organisations (TOs) which may be private or publicly owned companies or public entities.

Telex, telegraph, mobile, paging and satellite services are not covered by this legislation, nor is telecommunications infrastructure. In the absence of Community legislation, the normal principles of Community competition law apply, which may set limits on the ability of Member States to maintain the monopoly provision of certain services.

The ownership structure and constitution for Telecommunications Organisations (TOs) in the various Member States varies, as described in the following table:

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<sup>5</sup>

Commission Directive 90/388/EEC (referred to in Question 1)

Country	Designation of Monopoly-Exclusive Suppliers and Status of TO	Ownership structure	Ownership structure
Belgium	<p>According to the law of 21 March 1991, BELGACOM has the exclusive monopoly on the provision of public voice telephony for the whole country</p> <p>Status: State owned</p>	<p>Belgian law does not prohibit foreign equity participation or ownership but there is a general limit: the participation in Belgacom of the "public authorities" must remain at 50 % or more at all times. Moreover, the shares held by public authorities must give the right to more than 75 % of the votes and mandates. For instance, Belgacom Mobile - Belgacom's subsidiary specialised in mobile telephony - is owned for 25 % by Air Touch Belgium</p>	<p>The draft of the Royal Decree for the second licence for mobile telephony limits the non-EC participation at 25 % of the shares.</p>
Germany	<p>Deutsche Bundespost Telekom is an organisation under public law.</p>	<p>DBP telekom is to lose its public status as of 1/1/95, when it will become a private shareholding company with 100% government-owned shares. Shares will be sold to the public in 1996.</p>	<p>There will be no foreign ownership restrictions on telecommunications firms in Germany.</p>

Denmark	To the extent that telecommunications services are covered by an exclusive right, cf. the reply to q. 4, this exclusive right has been granted to Tele Danmark A/S, cf. Executive Order no. 167 of 10 March 1994 on the concession granted to Tele Danmark A/S. Status: 51% state-owned.	Tele Danmark A/S is a private limited company which, as regards 51 % of its share capital, is owned by the Danish government, 49 % being owned by private investors.	The Danish legislation contains no restrictions regarding foreign equity participation.
Spain	Telefonica has the exclusive right for public voice telephony services covering the whole country.  Status: Public limited company	Telefonica is 33% state-owned	Participation of foreign-owned equity is restricted by law to a maximum of 25%, this limit can be increased under Government consideration.
France-	Public voice telephony between fixed points is provided by France Telecom, an autonomous public enterprise	- No national or foreign private capital participation is possible, as France Telecom has no capital for the moment	

Greece	All "reserved" telecommunications services, except mobile telephony, are supplied by the Hellenic Telecom Organisation ( O T E ) exclusively. The status of OTE is under consideration.	Currently state owned.	Concerning OTE, no foreign equity participation or ownership is allowed at present. That regime is under examination for modification.
Italy	Telecom Italia has an exclusive monopoly for public voice telephony and is a private company. OMNITEL-PRONTO Italia is a private company. Ente Post is involved only in national telex and telegraph services.	Telecom Italia is a public limited company, quoted on the stock market. The State has a majority holding (62%) in Telecom Italia through STET. STET is a holding company. 64% of its share capital is owned by the government.	There is foreign equity participation in OMNITEL-Pronto Italia. Minority foreign equity participation in STET and Telecom Italia is allowed.
Ireland	Telecom Eireann has exclusive rights in respect of public voice telephony, mobile, paging, telex and satellite services and national telecommunication infrastructure. Telecom Eireann is a government-owned corporate entity.	Telecom Eireann is 100% state-owned.	
Luxembourg		- state owned	



The Netherlands	The Netherlands KPN has the exclusive monopoly for the provision of mandatory services as mentioned under 1. KPN is a private shareholding company with a majority of government-owned shares.	Foreign equity participation/ownership is permitted. There is no maximum percentage share allowed for foreign participation. The current level of identifiable foreign participation of floated shares is estimated at 50 %.	
Portugal	<ul style="list-style-type: none"> <li>- Portugal Telecom, a public enterprise</li> <li>- Companhia Portuguesa Radio Marconi</li> </ul>	<ul style="list-style-type: none"> <li>- Portugal Telecom is entirely state-owned</li> <li>- Companhia Portuguesa Radio Marconi is 51% state-owned</li> </ul>	Participation of foreign-owned equity is restricted by law to a maximum of 25%.

U n i t e d Kingdom	<p>Licences issued for most telecoms systems contain no limitation of geographical area covered except where operator itself so requests. Cable TV companies have been granted exclusive franchises within specific local areas to provide both cable TV and cable telephony. In providing telephony they are in competition with BT and other licensed operators. Some licences e.g. BT, MCL, mobile and cable franchises have requirements to build and maintain service to a minimum area for the service in question. For BT, this obligation covers whole of UK except Kingston. Except Kingston, all are privately owned corporate entities.</p>		<p>There are no foreign ownership restrictions on operators in the UK telecoms market.</p>
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7. If your regime is generally characterised as not permitting competition, please indicate
- (a) if certain activities or categories of what could be considered basic telecommunications are not reserved to the monopoly, e.g. facsimile, telex, data transmission, mobile, satellite services;
  - (b) are there any other means through which foreign suppliers of basic telecommunications are or may participate in the supply of basic telecommunications, e.g. sub-contract or build-operate-transfer arrangements with the monopoly suppliers.

See answer to question 4.

8. Please list and briefly describe any intergovernmental agreements, bilateral or otherwise, that your government has entered into relating to the supply of basic telecommunications networks and services.

All EC Member States participate in international co-operation concerning international interconnection of basic telecommunications networks and services (eg within ITU and the international satellite organisations).

## PART II

### Competition

For the sub-sector and category headings in sections A and B, the five questions listed below should be addressed for each sub-sector and category that you describe. Recognising that sub-sectors and categories may overlap, please keep in mind that it is the introduction of competition and the way it has been introduced that should determine how to select which sub-sectors and categories covered in your responses.

- (i) Overview. What are the main government policies and regulations regarding the competition in this sub-sector or category? Can foreign suppliers participate in the supply of basic telecommunications in this sub-sector or category?

The subsectors listed at A on page 5 of the questionnaire, originally taken from the UN provisional central product classification of 1991, are not particularly helpful for explaining how the regulatory system works in the Community. Moreover, much of the Community's regulatory framework applies to a number of sectors, so that an overall explanation is given here rather than a description by category as listed at B. Clarifications relevant to particular categories are given where relevant.

The current state of de jure services liberalisation in the EC allows for Member States to reserve the provision of public voice telephony service and of telecommunications network infrastructure for TOs having exclusive rights. Individual Member States can liberalise further and more quickly than this.

All other services using the fixed network (i.e. excluding radio-based mobile and satellite-based services, where preparation of legislation for the removal of exclusive and special rights is underway) are open to competition, and service providers have a right to offer these over TO owned infrastructure, subject to any licensing requirements or declaration procedures by Member States.

Voice telephony services will be opened to competition by 1998, with transition periods for some Member States. Discussions on the use of "alternative" (i.e. non-TO-owned) infrastructure are expected to begin later this year followed by discussions on the future of infrastructure provision for all telecommunications services.<sup>6</sup>

For effective market access, service providers need fair and non-discriminatory access to the network and the availability of a basic set of services throughout the EU. A

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<sup>6</sup> In April 1994, the Commission published a Green Paper with policy proposals on mobile services, while a Communication on the use of alternative infrastructure is expected to be published during Autumn 1994. A new Green Paper with policy proposals regarding the future of infrastructure provision for all telecommunications services is expected to be published by the end of 1994.

regulatory framework known as Open Network Provision (ONP) is designed to address these issues.

1. Voice telephony

At Community level all services except public voice telephony<sup>7</sup> are opened to competition.

Services liberalised include not only value-added and data transmission services but also corporate communications and closed user group (CUG) communications. Thus, voice telephony not intended for the general public may be carried by service providers other than the TOs. These services are difficult to define clearly, of course, but for regulatory purposes in the Community the main point is whether or not the service is voice telephony provided to the general public.

Furthermore, as noted earlier, agreement was reached in the Council that public voice telephony services are to be liberalised by 1 January 1998<sup>8</sup> (with additional transition periods for certain countries) and discussion will take place in the near future on alternative infrastructure and the future of infrastructure provision for all services. (See Part II, i.)

In most Member States public voice telephony and the provision of infrastructure are still under monopoly.

The UK has gradually opened virtually all services to competition.

In Denmark, voice telephony services are to be liberalised in the course of 1994. In addition, in Denmark, it is exclusively a question of service liberalisation which means that no access is granted to establish own network infrastructure for such services. Liberalisation involves that existing restrictions on the use of permanent leased lines for voice telephony purposes are lifted. Similarly, switching functions will be liberalised. This means that in the future, voice telephony services may be provided by way of permanent leased lines exclusively based on the use of the public telecommunications network.

2. Value-added services

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<sup>7</sup> Voice telephony as defined in EC legislation, is "the commercial provision for the public of the direct transport and switching of speech in real-time between public switched network termination points", (Directive 90/388/EEC of 28.6.90). Similarly, Commission Directive 90/388/EEC of 28 June 1990 on competition in the markets for telecommunications services (90/388/EEC; OJ L192/10, 24.07.90). Telex, mobile telephony, paging and satellite services were excluded from the scope of this Directive.

Secondly, following on from this, the Commission finalised a Review in 1993 regarding, among other aspects, the remaining exclusive rights of the TOs.

<sup>8</sup> See European Council Resolution of 22 July 1993.

Value-added services (VAS) and data services are not in fact defined in Community legislation, since in order to reduce the debate on fitting services into categories Community rules focus on those services where competition has not yet been introduced, everything else having been liberalised.

These services have been opened to competition through the removal of exclusive rights subject to any licensing procedures Member States may establish. All licensing or authorisation procedures must aim only at compliance with essential requirements and the conditions for the grant of licences must be objective, non-discriminatory and transparent, and must include a procedure for appeals against any refusal.

A general framework for access to and use of the public telecommunications networks (Open Network Provision - ONP)<sup>9</sup> is in force, together with more detailed ONP provisions for leased lines<sup>10</sup>, ISDN<sup>11</sup>, data services<sup>12</sup> and legislative work is proceeding on ONP provisions for voice telephony<sup>13</sup>.

For many value-added and data services it may not be necessary to obtain an individual license. The issue of one-stop-shopping arrangements and the mutual recognition of licences is currently under discussion.<sup>14</sup>

### 3. Leased lines and "alternative" infrastructure

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<sup>9</sup> Council Directive of 28 June 1990 on the establishment of the internal market for telecommunications services through the implementation of open network provision (90/388/EEC; OJ L192/1, 24.07.90)

<sup>10</sup> Council Directive of 5 June 1992 on the application of open network provision to leased lines (92/44/EEC; OJ L165/27, 19.06.92)

<sup>11</sup> Council Recommendation of 5 June 1992 on the provision of harmonised ISDN access arrangements and a minimum set of ISDN offerings in accordance with open network provision (ONP) principles (92/383/EEC; OJ L200/1, 18.07.92)

<sup>12</sup> Council Recommendation on the harmonised provision of a minimum set of packet-switched data services (PSDS) in accordance with Open Network Provision (ONP) principles (OJ L 200; 18.7.92)

<sup>13</sup> Proposal for a Council Directive on the application of open network provision (ONP) to voice telephony, COM(92)247 final - Syn 437, 27.08.92

<sup>14</sup> Amended proposal for a European Parliament and Council Directive on the mutual recognition of licences and other national authorisations for telecommunications services, COM(94)41 final - COD 438, 22.03.94, and proposal for a European Parliament and Council Directive on a policy for the mutual recognition of licences and other national authorisations for the provision of satellite network services and/or satellite communications services (COM (93)653 final - COD 483, 4.1.94).

The availability of adequate leased circuits is a key condition for the supply of services which are open to competition. ONP conditions for leased lines<sup>15</sup> came into force in June 1993 and require a standard minimum set of leased lines to be available; these also address the question of access to leased circuits. They determine that circuits may be interconnected with each other and to the public network in the configuration of the user's or service provider's choice, and call for tariffs to be cost-oriented, and for verifiable cost accounting systems to be established by the TOs in each Member State. As already referred to, the use of 'alternative' infrastructure<sup>16</sup> for the provision of services already liberalised is being studied.

#### 4. Mobile services

Liberalisation of these services has not been included directly in Community legislation to date as it was felt that they would need further consideration.<sup>17</sup> The development of the sector is currently being discussed.

It should be noted that even in the absence of Community legislation on mobile telephone services there has been a significant opening of markets within a number of Member States, with GSM services being introduced during the course of this year in some countries, and with at least two GSM competitors in each mobile sector becoming the norm. In some Member States, this is also the case concerning DCS 1800 Services. A number of third country based TOs participate either directly or through joint ventures in these markets.

#### 5. Satellite services

A proposal to extend the application of agreed Community policy to the satellite sector has been discussed since 1990<sup>18</sup>. The Council has endorsed general principles of liberalisation of the earth segment, access to the space segment and commercial freedom for space segment providers. Legislation to promote the market for satellite earth-station equipment has been adopted<sup>19</sup>, and legislation to simplify the licensing process in this sector is being

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<sup>15</sup> Council Directive of 5 June 1992 on the application of open network provision to leased lines (92/44/EEC; OJL165/27, 19.06.92)

<sup>16</sup> This includes networks such as those operated by cable TV, electricity and water companies and railways.

<sup>17</sup> See Green Paper COM(94)145 final, 27.04.1994.

<sup>18</sup> Satellite Green Paper of 1990; A Commission Communication further elaborating policy for the space segment was published in June 1994 (COM (94) 210 final 10.6.94).

<sup>19</sup> Council Directive of 29 October 1993 supplementing Directive 91/263/EEC in respect of satellite earth station equipment (93/97/EEC; OJ L290/01, 24.11.93)

discussed <sup>20</sup>. Legislation addressing the opening of the market for provision of satellite services and equipment is in preparation.

A number of Member States currently allow competitive satellite communications services by private operators. Community legislation on liberalisation of these services is currently being discussed. Receive-only satellite terminals not connected to the public network were liberalised in 1988 <sup>21</sup>.

- (ii) **Modes of supply.** In your view, how do the GATS modes of supply (cross border, consumption abroad, commercial presence, and presence of natural persons) apply to this sub-sector or category? What kinds of requirements, conditions, or limitations are applied in this sub-sector or category which relate to each mode of supply?

In the view of the Community and its Member States, generally most services are currently supplied through the mode of commercial presence<sup>22</sup>. Companies providing domestic and international voice telephony, mobile and satellite services are established in the countries where the service consumer is located. Possible exceptions may include services based on the use of calling cards (consumption abroad) <sup>23</sup> and aspects of future global personal communications, for example. In some respects the jointly provided services such as international facilities-based voice telephony seem not to fit in any particular category; nevertheless, in practice the foreign service supplier provides the service to the service consumer of another country through establishment in that country.

Note : Responses on modes of supply should not necessarily be limited to measures which might relate to market access or national treatment as defined by the GATS. Information provided may help advance discussions on how the modes of supply, particularly cross border and consumption abroad, relate to basic telecommunications.

- (iii) **Market access.** What kind of limitations on market access are supplied, (i.e., Are there any quantitative limitations on, or economic needs tests applied to, the number of suppliers? Are there any limits on the total value of transactions, total number of operations, quantity of output, or the total number of persons that may supply basic telecommunications or be employed by a supplier? Are there any restrictions or requirements regarding type of legal entity that may

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<sup>20</sup> Proposal for a directive on a policy for the mutual recognition of licences and other national authorisations for the provision of satellite network services and/or satellite communications services, COM(93)652 final - COD 482, 04.01.94.

<sup>21</sup> Directive 88/301/EEC

<sup>22</sup> ie the supply of a service by a service supplier of one Member through commercial presence in the territory of any other Member

<sup>23</sup> ie the supply of a service in the territory of one Member into the territory of any other Member



supply basic telecommunications? Are there any limits on foreign ownership or equity participation?)

As far as services which have been opened to competition (i.e. for which all exclusive rights for supply have been withdrawn) are concerned, Member States which make the supply of such services subject to a licensing or declaration procedure<sup>24</sup> have to ensure that the conditions for the grant of licences are objective, non-discriminatory and transparent. There is no *ex ante* limitation of the number of suppliers, subject, of course, to the availability of the necessary physical resources.

Specific details on the situation in individual Member States specifically with regard to mobile communications are given in the table below:

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<sup>24</sup> aimed at compliance with essential requirements or other things for data services for the public - see Article 3 of Directive (90/388/EEC)

Country	
Belgium	Mobile telephony (GSM 900) will be open to a second operator at the latest in 1994 taking into account the respect of public-service specifications.
Germany	A licence from the Ministry of Post and Telecommunications is necessary for mobile operators. This will be granted provided certain performance requirements are met, although numbers are limited by frequency shortage.
Denmark	Access to the Danish market for liberalised services is restricted only insofar as suppliers of GSM networks and services, for technical reasons and reasons of frequency allocation, have been limited to two, whereas the number of suppliers of ERMES networks and services has been limited to three.
Spain	There is a 25% foreign ownership restriction to non-EC participation, for one mobile telephony GSM licence. There is another GSM licence granted to Telefonica.
France	There is a 20% foreign ownership restriction for mobile telephony. This limit can be waived in the case of bilateral or multilateral agreements. 2 licences have been granted to mobile telephony operators. A new licence has just been granted to a third mobile telephony operator.
Greece	Mobile telephony is exclusively supplied by two privately owned companies.
Italy	A second GSM mobile telephony operator is about to be authorised. There is a licensing regime for GSM. The GSM licensees for the First (Telecom Italia) and the second (Omnitel-Pronto Italia) will be issued by the end of 1994.
Ireland	It is proposed to issue a second mobile GSM licence in the near future. There will be no restrictions on foreign ownership.
Luxembourg	Mobile telephony is supplied by the national operator.
The Netherlands	There is a licensing regime for GSM, ERMES, DCS 1800 and analogue systems. For this last category a license will normally be granted if sufficient frequencies are available. The second GSM license will be issued (after the conclusion of an open tender procedure) before April 1995. No restrictions on foreign ownership.
Portugal	The principle of free access applies, except for mobile services, access to which is subject to restrictions on the frequency spectrum and to open tendering.
United Kingdom	Services provided over other licensed operators' infrastructure are liberalised in the UK and (with one exception) may be provided under the Telecommunications Services License (TSL). This is a generally-applicable class licence for which no form of registration or fee is required. There are no foreign ownership restrictions. There are no other limitations to market access. The one exception relates to "International Simple Resale" (ISR) i.e. provision of international leased circuits to third parties interconnected to the public switched network at both ends of the call. ISR can only be offered by companies which have applied for and been granted an individual licence to do so, and then only to those countries designated by the UK as having an equivalent telecoms regulatory regime to the UK's - currently Sweden, Canada and Australia. ISR of data can be provided to all EEA countries under the TSL, as can international resale with breakout at one end of the call only, and all domestic resale.

- (iv) National treatment. What kind of limitations on national treatment are in place extending to foreign suppliers treatment less favourable than that for domestic suppliers? (e.g. Are preferences given to domestic suppliers or restrictions or obligations imposed on foreign suppliers with respect to any procedures or regulations, including licensing? Are there any limitations on the nationality or residency of managers, directors, or board members? Are there any restrictions on foreign ownership of land or facilities?)

A fundamental principle of Community law is the prohibition on discrimination on the grounds of nationality against natural or legal persons who are nationals or who are established in another Member State of the European Union.

There are generally no limitations on national treatment. In the United Kingdom the Articles of Association of British Telecom require the chairman to be a British national.

- (v) Licensing. If licensing is required in this sub-sector or category, briefly describe the procedures concerned and explain the main requirements, criteria and fees applied. what are some of the principal terms and conditions on licensees, once a license is obtained?

See answer above to (iii) first paragraph.

Note : Licensing is intended to be understood in a broad sense, to include processes such as approval, authorisation, registration or certification, as applicable.

A. Sub-sectors

For any sub-sector in which competition is permitted in your regime (i.e., which are not reserved to monopoly or exclusive suppliers) answer questions (i) through (v) above, as applicable. The following list of sub-sectors is considered illustrative and should be supplemented with any other sub-sectors or sub-activities which you may wish to describe.

- a. Voice telephone services
- b. Packet-switched data transmission services
- c. Circuit switched data transmission services
- d. Telex services
- e. Telegraph services
- f. Facsimile services
- g. Private leased circuit services, and
- o. Other

See above.

The following are some additional examples of basic telecommunications networks or services not explicitly listed in (a) - (g) and (o), above, for which responses may be relevant: voice/non-voice services using domestic/international private leased circuits; cable TV-related voice telephone networks and services; domestic/international satellite services and satellite links/capacity;

analogue/digital cellular mobile networks and services; PCS networks and services; paging services; mobile data services; fixed line/wireless local access; local/long distance line links; local/long distance switching; international switching and other international gateway facilities. Whereas some of these might be considered to fall under (o), above, some might also be considered to be activities falling within sub-sectors (a) - (g).

See answer to question (i) above.

B. Categories

For each of the categories that follow in which competition is permitted, answer questions (i) through (v) above, as applicable, as well as the specific questions listed under a given category.

See above. Some additional comments provided here.

Local/long distance/International

1. How are local and domestic long distance distinguished or defined?

Not applicable.

2. Are there any regulatory or other distinctions between domestic (local and long distance) and international networks and services and between the suppliers of basic telecommunications in these market segments? If so, what are they? Wire-based, radio-based)

At Community level, no distinction is made between local and long-distance networks and services, nor between intra-Community domestic and international networks or services.

Note : Please address all types of relevant radio-based telecommunications including satellite links, access to satellite capacity, VSAT. mobile cellular communications, paging, mobile data services and other radio communication systems. Recognising that wire-based or "fixed" networks can be radio based in part, responses under this category should relate to any requirements specifically related to radio-based elements of networks or services.

3. Do your regulations permit international resale of private leased circuit capacity if connected to the public network. If so, at one end? At both ends? Under what conditions? Is resale of switched voice capacity permitted?

Intra-Community resale of leased circuit capacity connected to the public network, without interconnection restrictions, is permitted for all services which have been opened to competition. Any access and usage restriction may only be aimed at ensuring compliance with essential requirements, as defined in Community legislation, and are imposed by the national regulatory authorities through regulatory means. No technical restrictions can be introduced or maintained for the intercommunication of leased lines and public telecommunications networks.

4. Is resale of private leased circuit excess capacity permitted? If so, under what conditions? May basic telecommunications be resold to make them available to third parties? For which basic telecommunications is this permitted?

See answer to previous question.

As noted earlier, all telecommunications services (except mobile and satellite services) in the European Community, including public voice telephony, will be opened to competition by 1 January 1998 (subject to possible transition periods for some Member States).

Facilities-based

5. May basic telecommunications suppliers (foreign and domestic) construct and operate their own networks or invest in consortia to construct and operate such facilities? If not, what organisations are permitted to construct and operate basic telecommunications network infrastructures?

At the Community level, the question of infrastructure liberalisation (including alternative infrastructure) competition is under discussion as referred to under II(i). A decision is expected to be taken during 1995/96.

In the meantime, the situation in the Member States varies, in that in several Member States independent infrastructure (for own use) is exempted from monopoly regulations. Some Member States have liberalised the provision of network facilities as follows:

In the UK, individual licences are required to run telecommunications systems involving the construction of telecommunications infrastructure or the offering of a substantial service to the public. Individual licensees may be designated as Public Telephone Operators (PTO). PTO licences contain particular provisions, set out in Section 8 (1) of the Telecommunications Act 1984, which addresses: requirement to provide provision of specified services; prohibition on undue preference or undue discrimination; and publication of charges terms and conditions. Systems run under a licence containing such provisions may be designated as a PTO by the Secretary of State.

In the Netherlands, under current regulation, the provision of wireline infrastructure is reserved to KPN. There are exceptions for:

- alternative providers of infrastructure for GSM (these are KPN, a third party which has leased a line from KPN, licenceholders of fixed networks who have received an exemption from the Telecom and Post Department, licenceholders of CTV-networks which have received an exemption from the T&P Department);
- those who have a permit to install infrastructure because the incumbent operator is not willing to install the required infrastructure on reasonable conditions and within reasonable time;
- the companies which have their own networks which they use for their own usage or for a specific purpose (like broadcasting).

There are plans to issue a licence for a second national infrastructure supplier. The intention is to issue one licence with national coverage to a consortium of specific companies which already have national networks in operation, e.g. Dutch railways. There is no restriction on foreign participation in this consortium.

In France, a regulatory distinction is made between infrastructure which is open to the public and independent infrastructure. The latter category groups together a wide variety of networks, such as VSAT networks for private use or satellite reporting stations. Independent infrastructure is open to competition, subject to ministerial approval. This approval is intended only to confirm that the network falls within the independent category. Radio-based infrastructure is also open to competition even for mobile voice telephony open to the public. Authorisations may be limited due to frequency shortage.

In Germany, in the field of mobile radio, licences are granted - on the basis of the Telecommunications Installations Act - for the setting up and operation of mobile radio networks to be used for public traffic, and for the provision of the relevant mobile radio services.

In Denmark, the establishment of internal networks has been liberalised. Internal networks are defined as networks for telecommunications purposes (voice, text or data) located within the boundaries of a property and intended for connection to and communication via the public network.

In Spain, the mobile service providers (paging, telephony, trunking etc) can build and operate their own networks in the case where the authorised network provider is not able to fulfill the needed network resources. The infrastructure built and operated in such circumstances will need an administrative concession. This concession will be withdrawn subject to the availability of network resources, after a period of time allowing to recover the investment made on the system. This period will be fixed by the Administration. The foreign ownership restrictions for the exploitation of such services are similar to the ones indicated in Part I, Spanish answer to Questions 5 and 6.

In Portugal, under current regulation, there are exceptions for the provision of complementary telecommunications services: the licensed operators for the supply of such services are permitted to establish, manage and exploit their own infrastructures.

#### Public/non-public supply

6. Does your regime make distinctions between suppliers of public switched and non-public basic telecommunications? If so, how?

All non-public telecommunications services are open to competition in the European Community, whereas, as mentioned earlier, public voice telephony services remain reserved until 1 January 1998. Thus, the only distinction is between voice telephony and non-voice telephony services.

Voice telephony is defined as "the commercial provision for the public of the direct transport and switching of speech in real time between public switched network termination points, enabling any user to use equipment connected to such a network termination point in order to communicate with another termination point"<sup>25</sup>.

7. What basic telecommunications do your regulations require, explicitly or in effect, to be made available to the public generally?

In the context of the preparation of the liberalisation of voice telephony service by 1 January 1998, a consensus has been achieved on the need to maintain and develop a universal telecommunications service which will enable access throughout the Community "to a defined minimum service of specified quality to all users everywhere and, in the light of specific national conditions at an affordable price"<sup>26</sup>. That service includes provision of the basic public telecommunications network and defined elements of a voice telephony service. These principles should be supplemented through further legislation

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<sup>25</sup> Commission Directive on competition in the markets for telecommunications services, 90/388/EEC, OJ L192/10, 24.7.90

<sup>26</sup> Council Resolution 93/C48/2, 16.2.94

by 31 December 1995. Furthermore, a minimum set of leased lines is to be supplied in all Member States.<sup>27</sup>

8. What basic telecommunications do your regulations permit to be supplied on a non-public basis (i.e., not required to be made available to the public generally)?

See answer to question 6.

- 9 What obligations or responsibilities are incurred by status as a public basic telecommunications supplier and under what conditions? E.g., what kinds of "common carrier" like obligations are imposed (e.g. with regard to universal service), and on whom?

See answer to question 7.

10. What, if any, restrictions are there on organising and offering a private network by a telecommunications supplier?

See the overview of voice telephony at the beginning of Part II.

11. Is the operation of public pay-phones reserved to monopoly or exclusive suppliers?

According to Community legislation the provision of voice telephony services as outlined above can remain subject to exclusive rights. The actual physical provision of call box equipment has been opened to competition.<sup>28</sup>

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<sup>27</sup> Directive 92/44/EEC (OJ L165/27, 19.6.92)

<sup>28</sup> Directive 88/301/EEC (OJ L131/73, 27.5.88)

### Part III

#### Regulatory issues

In responding to the questions in this section, participants are asked to provide specific references to the source or status of the measures concerned (e.g., where possible, a citation of the law, regulation, rule, guideline, decision or decree).

#### Relationship between regulatory and operational functions

1. Do any basic telecommunications suppliers become involved, directly or indirectly, in making regulatory policy? enforcement of regulations? in formulating standards or enforcing standards?

Community legislation requires Member States to ensure that the granting of operating licences, the control of type approval and mandatory specifications, the allocation of frequencies and surveillance of usage conditions have to be carried out by a body independent of the TOs<sup>29</sup>.

Concerning telecommunications terminal equipment, suppliers do not become involved directly in making regulatory policy, although they influence the formation of policy in a number of indirect ways. An important mechanism for influencing policy arises from the obligation placed on the Commission to periodically consult manufacturers<sup>30</sup>.

See response to Question 9 for standards participation.

2. Is your regulatory authority (or authorities) also responsible for formulating standards? For enforcing standards?

See response to question 1.

As noted earlier, Member States must ensure that responsibility for drawing up the specifications for terminal equipment, monitoring their application and granting type-approval is entrusted to a body independent of public or private undertakings offering goods and or services in the telecom sector<sup>31</sup>.

The formal procedures for the provision of information in the standardisation field have been laid down in Community legislation, which has also nominated the European

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<sup>29</sup> Commission Directive 90/388/EEC

<sup>30</sup> Article 13 of Commission Directive 91/263/EEC and Article 15 of Commission Directive 93/97/EEC

<sup>31</sup> Commission Directive 88/301/EEC



Standardisation Bodies CEN, CENELEC and ETSI for the development of harmonised European Standards<sup>32</sup>.

In the terminal equipment field, these standardisation bodies have been called on to prepare harmonised standards which are transformed into common technical regulations, compliance with which is mandatory<sup>33</sup>. The regulatory authorities are responsible to ensure that these regulations are enforced.

In addition, ONP regulation provides for harmonised standards, which the regulatory authorities are responsible to enforce.

3. How many levels of government (e.g., national, regional, state, local) have responsibility for regulation affecting basic telecommunications? Please identify and describe relevant levels of government authority. Are there any procedures enabling suppliers to resolve questions of disputes they may have or to appeal a decision with the regulatory body concerned? If so, please describe.

Community law, in particular, rules on the single market, on commercial policy and on competition, set the framework in which Member States conduct their policy. Community legislation covers such areas as standardisation, market access and interconnection. Member States contribute effectively to the formulation of Community policy and are responsible for enforcement of obligations arising under Directives. The European Commission monitors the implementation of Community legislation by the Member States and may issue decisions based on Article 90 of the Treaty and introduces Court procedures with the European Court of Justice.

In addition, at Community level there is a conciliation procedure for leased lines which is set up by the ONP leased lines legislation and whereby there is a right to appeal to a National Regulatory Authority. In the case where no agreement is reached at national level, there is a right to appeal to a Working Group of the ONP Committee (conciliation procedure).

Details of national regulatory systems are set out below:

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<sup>32</sup> Council Directive 83/189/EEC

<sup>33</sup> Directives 91/263/EEC and 93/97/EEC

COUNTRY	
Belgium	<p>The federal state is responsible for the telecommunications policy. There is no dispute settlement procedure where the BIPT resolves questions suppliers may have. Against decisions of the BIPT, only appeal to the Minister or the Courts is possible.</p> <p>An ombudsman service is in charge of dispute settlement between Belgacom and its customers.</p>
Germany	<p>The Federal Minister of Post and Telecommunications is responsible for the regulation of basic telecommunications throughout the country. The Minister for P&amp;T must approve the tariffs proposed by DBP Telekom, in conjunction with the Ministers of Finance and Economics. The Federal Agency for Post and Telecommunications is responsible for the day to day regulation of the sector, within the guidelines set down by the Minister of P&amp;T.</p> <p>Complaints by other telecommunications providers and users about the conduct of DBP Telekom must be addressed to the Federal Ministry of Posts and Telecommunications.</p> <p>As of 1/1/95, independent units with the Ministry of P&amp;T will be responsible for the administration of certain regulations.</p>
Denmark	<p>The Ministry of Research and the National Telecom Agency are the authorities responsible for regulating the telecommunications field in Denmark. The National Telecom Agency is an agency under the Ministry and has been empowered by the Ministry to carry out a number of regulatory tasks.</p> <p>Telecommunications operators and service providers, like other citizens, have the possibility of submitting to the telecommunications authorities issues, including disputes, caused by questions connected with the telecommunications legislation. Normally the National Telecom Agency will in the first instance decide in such matters. The Agency's decision may be brought before the Ministry for reconsideration.</p> <p>A decision by the authorities may always be brought before a court of law.</p>

Spain	<p>The Ministry of Public Works, Transports and Environment, through the Directorate-General for Telecommunications, is responsible for the telecommunications policy throughout the country.</p> <p>There is a dispute settlement procedure whereby the Government's Delegation in Telefonica or special arbitrage bodies resolve disputes on telephony service.</p> <p>The Court for Defence of the Competence, is responsible for all other types of disputes. A decision by the administrative bodies may always be brought before a court of law.</p>
France	<p>There is one regulatory level at national level, which is the responsibility of Directorate-General for Post and Telecommunications under the Ministry for Industry, Post and Telecommunications and External Trade.</p> <p>Disputes may be dealt with by this Administration in its role of mediator or arbitrator between service providers, suppliers and users. There are further reconsideration procedures through this Administration and finally through the courts. In the specific case of administrative decisions resulting in the withdrawal of licences or authorisations, Advisory Committees for radiocommunications and telecommunications may be consulted.</p>
Greece	<p>Currently the Ministry of Transport and Communications exercises a general oversight over OTE, deals with spectrum management and frequency allocation, issues licences for radio networks, approves specifications and standards for equipment, takes measures for the development of international telecommunications relations and concludes relevant international agreements. Dispute settlement procedures are in the process of being developed.</p>
Italy	<p>The Ministry for Post and Telecommunications is the only body responsible for regulation of telecommunications throughout the country. Disputes among operators, service providers and users may be dealt with by the Ministry and all decisions may be brought before a court of law.</p>

Ireland	<p>The Department of Transport, Energy and Communications is responsible for developing and implementing national telecommunications policy. Pending the enactment of legislation, a separate division within the Department is responsible for regulating the market. No other level of government is involved other than for physical planning requirements.</p> <p>Formal procedures have not yet been developed for dealing with disputes. For the moment, therefore, appeal procedures are dealt with on a case-by-case basis. The Ombudsman also has certain powers in relation to telecommunications services provided by the TO. In the event of a supplier being dissatisfied with the decision of the regulator, he may appeal to the Minister or to the courts.</p>
Luxembourg	<p>The Ministry of Communications is the authority responsible for regulating the telecommunications field in Luxembourg.</p>
The Netherlands	<p>The only regulatory body for telecommunications is the Ministry of Transport, Public works and Water management, Telecommunications and Post Department.</p> <p>In addition to civil court, there is an independent commission of appeal for customers (small users) of PTT. Its decisions on complaints are binding for PTT or other telecommunications operators. Appeals to a decision of the <u>regulatory body</u> can be made at the administrative court of appeal.</p>
Portugal	<p>There is only one level of regulatory responsibility for communications and that is the Portuguese government assisted by the ICP (Portuguese Communications Institute). Telecommunications operators may apply to the member of the government responsible for communications on any matter or dispute which may arise in the course of their operations, firstly, under the administrative appeal procedure and, secondly, under the administrative dispute procedure.</p>
U n i t e d Kingdom	<p>The secretary of State for Trade and Industry, and the Director General of Telecommunications (the head of OFTel) have duties vested in them under the Telecommunications Act 1984, including the promotion of the interests of consumers of telecoms services, and the maintenance and promotion of effective competition in the industry. The DTI is responsible for the issuing of telecoms licences (both class and individual), while OFTel is responsible for their enforcement. There is no additional regional, state or local level regulatory body.</p>

Frequency allotment or assignment

4. What are the procedures, requirement and criteria applied for the allotment or assignment of radio frequencies?

The procedures, requirements and criteria applied for the allotment or assignment of radio frequencies may vary among the EC Member States.<sup>34</sup> Overall, the allocation of radio spectrum to a service takes into account a number of factors, such as, availability of spectrum, need for service and compliance with international frequency arrangements.

5. Do foreign telecommunications suppliers receive national treatment under these procedures and criteria?

Yes.

Numbering and identification codes

6. What are the procedures, requirements, and criteria used to assign numbering and identification codes?

As for frequencies, the procedures, requirements and criteria used to assign numbering and identification codes may vary among EC Member States.

However, generally at the national level the approach is based on considerations such as:

- a) the need for sufficient numbers to be made available to meet the anticipated growth in demand for telecommunications services, balanced with the need for good husbandry of the supply of numbers;
- b) the need to ensure compatibility with the numbering plans of other operators;
- c) the convenience and preferences of end-users;
- d) the requirements of effective competition for non-reserved services;
- e) any costs or inconvenience imposed on the applicant, other network operators, end-users and other interested parties;

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<sup>34</sup> Community legislation has been adopted on the frequency bands to be designated: on GSM (87/372/EEC), radio messaging - ERMES (90/544/EEC), and digital cordless telecommunications - DECT (91/287/EEC; 87/371/EEC, 90/543/EEC and 91/288/EEC respectively; At the same time Council Recommendations on the coordinated introduction of these services were adopted (COM(93)382 final. The Council of December 1993 concluded that the most important means of allocating spectrum is the European Radio communications Committee's decision. (COM(93)382 final).

- f) any relevant international agreements, recommendations or standards; and
  - g) the views of the applicant and other interested parties.
7. Do foreign telecommunications suppliers receive national treatment under these procedures and criteria?
- Yes.

Standards, type approval and equipment attachment

8. What types of mandatory standards are in place?

The following mandatory standards (Common Technical Regulations) for telecommunication terminal equipment have been published in the Official Journal of the European Communities:

CTR 5	- GSM Access <sup>35</sup>
CTR 9	- GSM Telephony <sup>36</sup>
CTR 12	- ONP 2 Mbit/s unstructured <sup>37</sup>
CTR 6	- DECT Access <sup>38</sup>
CTR 10	- DECT Telephony <sup>39</sup>

Several other mandatory standards are in the process of being adopted and will be subsequently published in the Official Journal. Where Common Technical Regulations are not available, national standards apply.

9. When a standard is under review or a new standard is being developed by your standards authority, is there an opportunity for public review and comment prior to its adoption? May foreigners participate in this process? May the private sector participate in the development of standards? If so, how?

Telecommunications standards developed by ETSI undergo a public enquiry phase, which gives all interested parties the opportunity to comment prior to adoption of each standard.

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<sup>35</sup> Commission Decision 94/11/EC

<sup>36</sup> Commission Decision 94/12/EC

<sup>37</sup> Commission Decision 94/470/EC

<sup>38</sup> Commission Decision 94/471/EC

<sup>39</sup> Commission Decision 94/472/EC

ETSI Associate Members and Observers, many of whom are based outside of Europe, participate fully in the process of developing standards. Observers do not, however, have the right to vote on the acceptance of standards.

The private sector does participate in the development of standards process by virtue of the fact that ETSI membership consists of network operators, which may be public or private, plus private manufacturing industry.

10. What equipment is subject to type approval? Is self-certification allowed? Has your government concluded mutual recognition agreements for telecommunications equipment certification? Are they required for foreign produced equipment?

Equipment<sup>40</sup> may be assessed in one of a number of ways; this includes either EC type examination, (coupled with a declaration of conformity to type or production quality assurance), or full quality assurance in accordance with EN 29001, or self-certification. At the present time self-certification is only possible for receive-only satellite earth station equipment.

The European Commission has been given a mandate by the Council to negotiate Mutual Recognition Agreements with third countries. Detailed negotiations have already taken place with four major trading partners, and agreements are expected to be finalised in the near future.

Foreign produced equipment already has access to the European market as long as it is produced to European technical requirements and is conformity assessed according to the legislation outlined in earlier responses.

11. How is the ability to attach terminal equipment to the network regulated? What restrictions are there on terminal equipment that may be attached to the network?

The European approach is based on the concept of placing on the market and putting into service. Equipment<sup>41</sup> which meets the legal criteria within a CTR may circulate freely on the European market and may be connected to the public network without further administrative involvement. The following definition of "terminal equipment" has been laid out:

"terminal equipment" means equipment intended to be connected to the public telecommunications network; i.e.

- a) to be connected directly to the termination of a public telecommunications network; or

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<sup>40</sup> Terminal equipment intended for connection to the public network, including satellite earth station equipment, falling under the scope of Directives 91/263/EEC and 93/97/EEC.

<sup>41</sup> falling within the ambit of Directive 91/263 and 93/97/EEC

- b) to interwork with a public telecommunications network being connected directly or indirectly to the termination of a public telecommunications network,

in order to send, process or receive information.

12. May basic telecommunications suppliers connected to the public network use their own switches?

The rules governing telecommunication service providers who use public network resources are governed by Open Network Provision concept (see response to Question 14).

Suppliers of private network equipment, including private switching equipment which is connected to the public network, are subject to their equipment being assessed for conformity in accordance with the legislation referred to in Question 10.

13. Does the government require network-based suppliers to permit the attachment of customer-supplied terminal equipment?

As noted earlier, Member States are obliged<sup>42</sup> to ensure that suppliers have the right to import, market, connect, bring into service and maintain terminal equipment.

#### Interconnection

14. In general, how is interconnection regulated in your regime? What are the regulations applied?

In the Community, there is not yet a general regulatory framework covering interconnection.<sup>43</sup> Some aspects of the regulatory framework for interconnection at Community level are laid down already in specific legislative acts in the framework of Open Network Provision. ONP concerns the harmonisation of conditions for open and efficient access to and use of public telecommunications networks and, where applicable, public telecommunications services.<sup>44</sup>

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<sup>42</sup> Commission Directive 88/301/EEC

<sup>43</sup> Where "interconnection" is referred to in this document, under Danish legislation, it should be understood to mean interconnection of networks in the reserved area, whereas access of the liberalised services to the public network is called "network access". In principle, "interconnection" is based on commercial agreements (though the principles/conditions for interconnection must be approved by the regulatory authorities), whereas conditions for "network access" are contained in the ordinary conditions for subscription.

<sup>44</sup> Commission Directive 90/387/EEC of 28 June 1990, and Directives and Recommendations as described below;



this legislation sets out the basic principles of Open Network Provision, describes the areas to which ONP applies, and identifies the networks/services for which specific ONP application Directives/Recommendations should be adopted.

ONP conditions must:

- be based on objective criteria
- be transparent and published in an appropriate manner
- guarantee equality of access and be non-discriminatory in accordance with Community law.

Beyond the general principles outlined above, areas for which the application of Open Network Provision should be further specified have been identified, and priorities as well as the appropriate type of regulatory measure for each area have been set out.<sup>45</sup> These measures concern the application of Open Network Provision principles to leased lines, the application of Open Network Provision to Packet Switched Data Services (PSDS)<sup>46</sup>, and the application of Open Network Provision to Integrated Services Digital Networks (ISDN)<sup>47</sup>.

With regard to the interconnection of leased lines, current legislation<sup>48</sup> provides that no technical restrictions shall be introduced or maintained for the interconnection of leased lines between them or for the interconnection between leased lines and public telecommunications networks.

Regulatory restrictions on the interconnection of leased lines and public telecommunications networks can be based only on the grounds that the provision of public voice telephony services is subject to special and exclusive rights, or on the grounds of essential requirements.

While some Member States have already developed specific rules for interconnection, general principles at the Community level, and specific rules at the national level in a number of Member States, are still in the process of being developed.

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<sup>45</sup> Directive 90/387/EEC

<sup>46</sup> Council Recommendation

<sup>47</sup> Council Recommendation

<sup>48</sup> Council Directive 92/44/EEC of 5 June 1992

Generally, the common trends emerging at both the Community and Member States levels include the following principles:

- both technical and commercial arrangements should be a matter for agreement between the parties involved, subject to intervention by the national regulatory authority (NRA);
- any access charges or compensation provisions should respect the principles of cost-orientation set out in the ONP framework directive, and should be non-discriminatory and fully justified;
- NRAs may intervene on their own initiative or at the request of either party in order to set conditions that are non-discriminatory, fair and reasonable;
- NRAs should ensure that telecom organisations abide by the principle of non-discrimination when they make use of their network for providing services which are also provided by their competitors;

Specific additional elements for certain Member States are included in the following table:

Country	
Belgium	For GSM, the general principles of interconnection agreements are described in a "cahier des charges".
Germany	Special interconnection regulations apply to licensed mobile radio networks in accordance with the respective licences. In this regard, Deutsche Bundespost Telekom, has undertaken to provide the interconnection of mobile radio networks with the telephone network/ISDN and the retransmission of the traffic originating in the mobile radio networks to the Deutsche Bundespost Telekom telephone network/ISDN and vice versa. The details of interconnection and the mutual use of services and networks must be agreed between the Deutsche Bundespost Telekom and the respective licensee. In this respect, the fixing of tariffs is subject to approval by the Federal Ministry of Posts and Telecommunications.
Denmark	Relevant legislation : section 6, subsection (2) of Executive Order on the Concession Granted to Tele Danmark A/S, no. 167 of 10 March 1994.
Spain	Interconnection provisions exist for specific services.
France	Interconnection between service providers or network operators with France Telecom is guaranteed by the "cahier des charges" of France Telecom, which is a legal document imposing obligations on France Telecom.

Ireland	The issue has arisen to date only in the context of interconnection between the proposed second GSM operator, the existing mobile operator and the fixed network. Interim arrangements to apply in this case will be announced in due course.
Italy	Interconnection to the public network is permitted for the provision of liberalised services and GSM mobile. The definition of specific rules for GSM network connection is foreseen in the short-term.
The Netherlands	As far as interconnection of infrastructure is concerned it is expected that in future all providers of (fixed) public infrastructure will both have the right and the obligation to interconnect -on request- their networks to other networks.
Portugal	The Portuguese Law contains provisions for interconnection between service providers and/or network operators and imposes pertinent obligations on the TO.
U n i t e d Kingdom	Interconnection is regulated through the licence of individual telecoms suppliers, as enforced by OFTEL.

15. Do your regulations require network-based suppliers to provide interconnection for other basic telecommunications network or services suppliers? If so, please describe?

It is assumed that "network-based suppliers" refers to operators of fixed networks.

Current Community legislation on ONP requires national regulators of the Member States to ensure that operators of public telecommunications networks which have exclusive or special rights do not restrict access to the network, except for reasons based on essential requirements, i.e. security of network operations, maintenance of network integrity, interoperability of services where justified, and data protection. Legislation on leased lines details the conditions and procedures governing access to the facilities used by the providers of liberalised services. It requires the elimination of technical restrictions for the interconnection between leased lines and public telecommunications networks.

Specific additional elements for certain Member States are included in the following table:

Country	
Germany	DBP is obliged to provide access in respect both of monopoly services and the network on non-discriminatory terms.
Denmark	Such requirements are made only in respect of operators of reserved services, i.e. in areas involving exclusive or special rights. Reference is otherwise made to the reply to q. 14.
Spain	According to Article 14 of the Telecommunications Law, the suppliers of bearer services are obliged to provide network interconnection. Interconnection provisions exist for services under specific regulations.
France	Only France Telecom has obligations (see reply to q. 14).
The Netherlands	See reply to q. 14
United Kingdom	In the case of all PTOs, their licences require the operator to interconnect the system with that of any other telecoms supplier to meet all reasonable demands for the conveyance of messages. In the case of a dominant supplier, the licence requires this interconnection to be established without discrimination, at agreed charges. If agreement is not reached, the Director General determines the charges and other conditions.

16. Is interconnection between leased circuits and public data networks permitted?

Yes (see question 15).

17. What are the rules and regulations regarding the pricing of interconnection? Are interconnection charges set in relation to any principles (e.g., cost-oriented)? Is there a requirement to submit interconnection charges to a regulatory body for approval? Are these charges in the public domain? Are the same interconnection charges applied to all suppliers requesting interconnection or are they negotiated on a case-by-case basis? What requirements or obligations exist to publish, make publicly available, or to supply details of interconnection agreements to regulatory authorities?

As for other areas of interconnection, general principles at the Community level, and specific rules at the national level in a number of Member States, are still in the process of being developed. According to existing Community legislation, tariffs, in general, must be based on objective criteria and especially in the case of services and areas subject to exclusive or special rights must in principle be cost-oriented. They must be transparent, properly published, and non-discriminatory.<sup>49</sup> Evolving regulation on the pricing of interconnection in all Member States is being developed in line with these principles.

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According to Annex II of Directive 90/387/EEC

The situation in France is that for most interconnection services, interconnection charges are set in commercial agreements between telecommunications suppliers and France Telecom.

When an agreement cannot be reached, the regulatory authority determines the charges. The determined charges are cost-orientated. All interconnection agreements are required to be communicated to the regulatory authority.

In the UK, for most interconnection services (especially for switched voice telephony), interconnection charges are set in contracts ("agreements") between telecoms suppliers and where an agreement cannot be reached, the Director General of OFTEL determines the charge. The determined charges are cost orientated, in the case of the dominant supplier the basis is set out in the Licence. Determined interconnect charges are in the public domain. For the dominant supplier, all interconnect charges (whether determined or not) should be applied without undue discrimination. All interconnect agreements are required to be available to the regulatory authorities. The dominant supplier is required to make its agreements publicly available (but non dominant are not).

#### Competitive safeguards

18. What kinds of safeguards does your regime have against anti-competitive practices of monopolies or dominant suppliers in situations where they may compete with other firms to supply certain basic telecommunications in the domestic market? In the international market?

Member States all have national competition rules which apply to restrictive practices with an effect in their territory. Where the effects of such practices have an appreciable effect on trade between Member States, Community competition rules would also apply to prohibit, *inter alia*, abuses of dominant positions.

In addition, ONP legislation<sup>50</sup> establishes the principles of equality, access, transparency and non-discrimination for offerings provided by TOs. the national regulatory authority shall ensure that telecommunications organisations adhere to the principle of non-discrimination when they make use of the public telecommunications network for providing services which are or may be provided also by other service providers. When telecommunications organisations use leased lines for the provision of services not covered by special and/or exclusive rights, the same type of leased lines must be provided to other users on request and under equal conditions.

19. Do your regulations distinguish between dominant and non-dominant suppliers? If so, what are the details and how are "dominant" and "non-dominant" defined? Are there

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<sup>50</sup> See ONP Framework Directive and Article 8.2 of ONP leased lines Directive (92/44/EEC of 5 June 1992)

any safeguards concerning suppliers who have monopoly or dominant control of access to certain market or network segments?

Current ONP legislation only applies to operators which have special or exclusive rights for the provision of a public telecommunications network and/or public telecommunications services. The abolition of exclusive and special rights for telecommunications services will require that criterion to be modified to take proper account of the market position of the actors.

Furthermore, there are factors that will have to be taken into account, i.e. care will need to be taken to ensure that obligations are reasonably equal and that public service responsibilities are shared to a reasonable extent. In addition, the principle of proportionality will need to be safeguarded to ensure that market entrants are not loaded disproportionately with regulation.

20. Is there an industry-wide antitrust policy and/or any telecommunications-specific antitrust policy? What are the rules and regulations regarding mergers and acquisitions?

See the reply to question 18. The concrete application of that policy to the telecoms sector has been set out in the individual cases, but also in Guidelines on the application of those rules to the telecoms sector <sup>51</sup>.

21. Are there any safeguards concerning basic telecommunication suppliers also engaged in the manufacturing of telecommunications equipments? If so, please describe the content and working of these safeguards.

In most Member States basic telecommunications suppliers are generally not engaged in manufacturing. In some Member States, the licences of certain suppliers with interests in manufacturing (including that of the dominant supplier) contain certain safeguards against anti-competitive behaviour in the procurement of telecoms equipment from within the licensee's group.

#### Pricing-related measures

22. What is the role of the government or any related agency with regard to establishing prices (e.g., tariffs, access charges, accounting rates) or pricing policy? E.g., does the government set prices or accounting rates, directly or indirectly (e.g. price caps or rate of return controls), or do basic telecommunications suppliers determine these themselves? What requirements or obligations does the government set regarding prices charged by monopoly/dominant suppliers? Or other suppliers?

Tariff principles for TOs with special and exclusive rights have been established at European level in the framework of ONP. The underlying pricing principle is one of cost orientation. At the same time the principle of flexibility in pricing is established

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<sup>51</sup>

OJ C352/2, 14.12.91 issued in September 1991

to reflect the requirements of particular groups of users (whilst respecting the general principle of non-discrimination) and the need for commercial pricing, particularly for the take-off of new services. It is, however, for member states to oversee and approve prices in practice.<sup>52</sup>

In addition, cost accounting principles have been established at European Community level for leased circuits<sup>53</sup>.

23. Does the government require tariff approval or notification and, if so, what are the procedures? What requirements regarding cost-accounting are put in place to ensure transparency?

Tariff approval and notification is dealt with by national regulators, and the situation in most Member States is that, while service providers themselves set tariffs, there is a requirement for the provider of "reserved services" to inform the regulator of tariff changes, and seek approval. In some cases the regulator may demand existing tariffs to be changed.

As regards cost accounting, arrangements for this are required to be put in place according to Community legislation for leased lines (see question 22).

24. To what extent is the principle of non-discrimination applied in pricing policy? E.g., is a tariff package such as a volume discount targeted for a specific group allowed and, if so, what are the terms and conditions applied? Are accounting rates applied on a non-discriminatory basis between countries? If accounting rates applied in different agreements are not the same, what are the criteria used to arrive at different accounting rates? Are some of these criteria required or defined by the government?

The principle of non-discrimination is established in ONP legislation. This permits, for example, volume discounts. The underlying related principle is transparency in pricing. The basic principle applied to accounting rates is cost orientation.

25. Do any basic telecommunications suppliers get involved in setting industry-wide tariffs?

No.

26. On what basis are prices (e.g. tariffs, access charges, accounting rates) determined? What concepts are applied regarding costs? Is there a general principle applied regarding

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<sup>52</sup> The Commission has set out general principles on pricing in the telecommunications sector in SEC(92)1050, 15th July 1992, "Towards cost orientation and the adjustment of pricing structures" and in 91/C 233/02, 6.9.1991, "Guidelines on the application of EEC competition rules in the Telecommunications sector".

<sup>53</sup> Council Directive 92/44/EEC of 5th June 1992 on "The application of open network provision to leased lines".

allocation of costs? Is cost-oriented pricing of basic telecommunications used or required by the government? If not, do basic telecommunications suppliers use cost-oriented pricing?

See answer to question 22.

27. Are there any rules specific to the pricing of a new service?

See answer to question 22.

Rights of way for the construction of infrastructure

28. Are basic telecommunications services suppliers permitted to build their own infrastructure or facilities? If so, what are the procedures and criteria for authorisation to build infrastructure or facilities? What are the procedures, criteria, limitations or qualifications applied with respect to the granting of or the availability of rights of way for the construction of infrastructure or facilities?

and

29. Is national treatment extended to foreign basic telecommunications suppliers under these procedures and criteria?

The issue of infrastructure competition is to be addressed in the near future at Community level in the forthcoming Green Paper on Infrastructure. Currently, in most Member States, the Telecommunications Operators (TOs) are responsible for the construction of infrastructure.

Specific additional elements for certain Member States are included in the following table:



Country	
The Netherlands	<p>According to the current regulation a right of way has been granted to KPN only for their wireline infrastructure (public network) in the Netherlands. Apart from the PTO, there are numerous rights of way for the local cable TV licensees (about 1000), whose territory is confined to the municipality. Each municipality can regulate the rights of way in its own "public" territory according to its own regulations. Also the GSM licensees (KPN and a second operator to be determined) and those who have a permit to install infrastructure by contract or who have a permit from the municipality, have rights of way to install their infrastructure. Under the future regulations, also all "alternative" infrastructure suppliers that have the obligation to provide leased lines will have rights of way.</p> <p>The Netherlands extend national treatment, provided a licence permit has been granted, as described above.</p>
Portugal	<p>The PTOs may, with no obligation for a municipal licence, carry out the necessary works to install and maintain the telecommunications infrastructures. In addition, they may require expropriations, constitute administrative servitudes, establish protection zones and require access to public and private land and buildings whenever necessary.</p> <p>In addition, the operators may occupy and use the streets, squares, roads, paths and waterways, as well as land along the railways and any other communication ways in the public domain without any taxes or additional charges, whenever deemed necessary.</p> <p>Under general law, complementary telecommunications providers, fixed and mobile, have the right to carry out the necessary works to install and maintain their telecommunications infrastructure. They also may require expropriations and constitute administrative servitudes.</p> <p>National treatment is extended to foreign operators which are established in countries of the EU.</p>
Spain	<p>TOs granted with licences to operate public telephony, telex, telegram, and bearer services have the right to build their own infrastructure. Works on public ways need the authorisation from the Ministry of Public Works, granted after the approval of the technical project and the favorable report of the involved body of the Administration responsible for the affected domain.</p> <p>The deployment of public networks must fulfill the guidelines of the National Plan for Telecommunications whose aim is the harmonised growth of networks and services.</p>

U n i t e d Kingdom	<p>All PTOs planning to install extensive infrastructure (145 to date) have been granted special rights under the Telecommunications Code (set out in Schedule 2 to the Act). These rights enable the operators to dig up the public highway without the need for a separate licence from the local authority in each case and to ask a court to grant them access to private land, on reasonable terms, where the landowner or occupier refuses to grant such a right.</p> <p>Procedures: Applications for rights under the Telecommunications Code are considered by the Secretary of State against criteria set out in section 10 of the Act. The grant of rights is subject to public compulsion in each case. PTOs also have the right to acquire compulsarily land and rights in land. No PTO has in fact exercised this right.</p> <p>UK does extend national treatment, provided a licence permit has been granted, as described above.</p>
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#### New telecommunications services

30. Please describe any general regulatory processes or procedures that apply to dealing with the introduction of "new" telecommunications services. Prior to any relevant regulatory procedure having been completed, it is not possible for such new services to be supplied?

and

31. When a new service becomes possible or available, who determines the status of the new service (whether it is basic or value-added) and under what procedure and time frame?

The status of a new service is determined by reference to the definitions given in the relevant legislation. In principle, under the current regulatory framework as long as a new service is not public voice telephony there are not likely to be restrictions placed on it.