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National IT and Telecom Agency

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in advance:

* via Fax: +45 35 45 00 10 (3 pages w/o enclosure)

Planegg-Martinsried, 3.1.2005

ERG-IRG: Work Programme 2004 and 2005 / Consultation

Dear Mr. Andersen,

thank you very much for the opportunity to provide input to the ERG/IRG work programme. We would like to refer to an earlier (verbal) contribution in the Q+A session at ECTA's Regulatory Forum (Brussels, Dec 8, 2004).

Please understand our input as both feedback for ERG/IRG in 2004 and consultation for the ERG/IRG work programme 2005. Furthermore, we would like to express our disappointment and concern regarding the scheduled work that has not been done and is not even mentioned in the draft work programme 2005.

Introduction:

telegate is a specialised provider of telephone directory enquiry (DQ) services. Founded in Germany in late 1996, telegate provides national and international DQ services in four EU member states: Germany, Austria, Spain and Italy. Currently, telegate is preparing its market entry in France due to latest regulatory developments (see below).

The EU-25 market for telephone DQ services provides jobs for more than 50,000 EU citizens, mainly in call centres.

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Despite a clear regulatory framework, DQ markets are not liberalised in most EU member states. Harmonisation of European DQ services has not even started although NRAs have recommended harmonisation. The CEPT/ECTRA Recommendation of 4th December 1997 on Numbering Access to Voice Directory Enquiry Services (cf. ECTRA/REC (97)01) recommended a European harmonisation of DQ services in the numbering range 118XY(Z).

telegate approached both the ERG and IRG in 2002 to facilitate the long overdue liberalisation of DQ services in combination with a harmonisation of the number ranges used (118XY(Z) as recommended by European NRAs themselves. Unfortunately, no activity has been started in the ERG/IRG yet.

Furthermore, the implementation issues in DQ markets deriving from

- Art. 10 Framework Directive: Non-discrimination of access to numbering resources, including access to fair DQ numbering codes (like 118XY and shut-down of legacy codes); as well as
- Art. 25 Universal Service Directive: Non-discrimination and cost-orientation at the provision of subscriber data to DQ providers

have led telegate to approach the ERG/IRG on a number of occasions. Therefore, we were glad that the ERG/IRG finally decided to deal with DQ services and their “pricing and supply conditions” in 2004 (IRG June plenary 2004).

In detail:

The ERG/IRG work programme 2004 notes:

Directory Enquiry Services (IRG)

An analysis of the supply and pricing conditions for the development of a competitive Directory Services Market will focus on the terms for the provision of information by operators and other associated issues such as the construction of comprehensive DQ information, service quality and data protection.

Deliverable: Report to IRG of DES pricing and supply conditions

Deadline: Plenary June 2004

To provide the ERG/IRG with detailed information on regulatory issues, telegate has sent a **56 pages cross country analysis on DQ regulatory issues** to the ERG/IRG, the EU Commission as well as to selected national regulators. As a matter of fact, **we have not received any answer on our comprehensive input until today**. On the contrary, when we asked several times whether the ERG/IRG discussed this agenda item, we received the feedback that the item was most likely postponed to an “unknown” date.

Therefore, please understand our disappointment and concern when we saw the draft of the work programme 2005. Many of the regulatory issues mentioned in our comprehensive analysis remain to exist although some progress has happened since May 2004:

- In France, the Conseil d'Etat has ruled against ART that France Telecom's DQ legacy code '12' must be withdrawn to allow fair competition as required by the European directives (June 2004).
- In Italy, AGCOM has published their final 'Delibera' which foresees a withdrawal of Telecom Italia's DQ legacy code '12' as well as operators' monopolistic DQ codes '412' (November 2004).
- The European Court of Justice in Luxembourg ruled in the case C-109/03 that **operators are only allowed to charge the marginal costs of making subscriber data available** vis-à-vis DQ providers. This decision confirmed OPTA's point of view in the Netherlands and is also a clear confirmation of telegate's opinions in many legal and regulatory battles against incumbent operators that are still ongoing (Germany, Austria, Belgium, etc.). Clearly, cost orientation for the provision of subscriber data as mentioned in Art. 25 (2) USD (earlier: Art. 6 ONP 98/10) should now become reality in all EU member states.

As in a competitive environment lower wholesale costs for subscriber data will lead to lower retail prices for the universal service DQ, the implementation of the ECJ concept is also a consumer issue. Thus, the ERG should discuss this as soon as possible. We will provide you with more information on cross-border access for subscriber data (to provide international DQ services) in a separate letter.


For all other topics meriting discussion, please refer to our comprehensive input from May 2004. Fair DQ numbering, fair access to subscriber data, price squeeze on internet DQ, inter-connection for DQ service providers and fair billing agreements still need to be implemented in many of the EU-25 member states to allow competition in DQ services with better quality and lower prices for the benefits of European consumers.

We would be more than grateful if you could refer to us with any feedback and please do not hesitate to contact us directly if you need any further information.

With kind regards



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Enclosure: - telegate Input for ERG: on regulatory issues in DQ services (May 2004)