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COMMUNICATION FROM THE COMMISSION
TO THE COUNCIL AND THE EUROPEAN PARLIAMENT

**FUTURE DEVELOPMENT OF THE MARKET IN
DIRECTORIES
AND OTHER TELECOMMUNICATIONS INFORMATION
SERVICES
IN
A COMPETITIVE ENVIRONMENT**

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RESUME

Following an examination by the Commission of the current state of the telecommunications sector, the Council, in its Resolution of 22 July 1993, adopted 1 January 1998 as the date for the liberalization of voice-telephony services for the public, with transitional periods for certain Member States. The directories services, making up as they do the most important means of access to telecommunications services, will play a central role with regard to the use of telecommunications services in a competitive environment.

The directories and associated information services sectors lie at the sharp end of telecommunications and publishing and, in consequence, their development is completely at the mercy of any changes that may occur in these two sectors. Directories account for a major proportion of the media and represent 7.5% of the advertising market in the European Union.

Drawing on the benefits of the new technologies and, in particular, of the interactivity made possible by the videotex services, this sector is currently making its debut in the world of multimedia. As one of the major elements in this new market, it should contribute significantly to the development of the latter.

Telecommunications directories are supplied in a variety of forms: printed, electronic ("on line" or CD ROM) or via a telephone hotline. In particular, these services include:

- "White Pages" (list of subscribers in alphabetical order);
- "Yellow Pages" (list of professionals under classified headings);
- specialized directories for professional use (selective lists of professionals).

The directories services (in particular the "White Pages" directories) and the telephone information services play a key role in providing access to the telephone service, so much so that, traditionally, this type of service has always been closely associated with the provision of a voice-telephony service and represents one of the basic elements in the universal service.

The introduction of a competitive environment in the telecommunications sector requires, on the one hand, an extension of Community telecommunications rules to include directories and information services and, on the other hand, the maintenance of a universal directory and an information service that is easily accessible to all users at an affordable price.

Accordingly, the Commission is proposing the following guidelines with a view to developing this sector:

1. **Retention of a universal directory and a telephone information service in a competitive environment.** In each Member State, users of the voice telephony services must have at their disposal at least one complete "White Pages" directory containing the telephone particulars of the subscribers to the fixed and mobile services, while at the same time having access to at least one information service at marginal cost.
2. **Abolition of exclusive and special rights in the telecommunications directories market** through the elimination of the exclusive or special rights which exist under certain national regulations. These liberalization measures seek to promote the dynamic development of supply, while at the same time respecting the rules of competition and taking account, on the one hand, of recent trends in the regulations applicable to telecommunications services, notably the complete liberalization of fixed voice telephony services and, on the other hand, of the anticipated development of the trans-European networks and mobile telephony services in the years to come.
3. **Conditions governing access and marketing.** To the extent that directories services and other information services for subscribers can no longer be regarded as reserved activities, access to raw subscriber data, pure and simple, should be provided on the basis of objective, transparent and non-discriminatory criteria and in accordance with the Community provisions in force, notably with regard to the rules of competition and the principles of Open Network Provision (ONP), and the protection of personal data and individual privacy.
4. **Promotion of new technologies (electronic directory, CD ROM and X500 service) and opening-up to multimedia.** By virtue of the facilities already offered by electronic directories (speed of interrogation on line, continuous updating of data, diversification of applications), steps should be taken to encourage the development of interconnections between the various existing services within the Union. Furthermore, the emergence of electronic media and the interactivity developed through videotex should facilitate the evolution of directories along multimedia lines.
5. **Precautionary measures**

Protection of individual privacy. In the context of the provision of directories services, the protection of personal data must be guaranteed at all times. The processing of personal data necessary for the implementation of directories services is governed by restrictions arising from existing national laws and will be subject to Community positions (general directive and separate directive intended to take account of the specific problems of telecommunications). In particular, subscribers must be informed of their rights to protection against all forms of intrusion into their private lives, i.e., the right not to be included in the directory, right of access and right to correction in respect of data which concern them, right to oppose the commercialization of data relating to them and right to limit the use of such data.

Protection of intellectual property rights. The benefits of the national and Community provisions governing copyright should be extended to include directories, pursuant to the criteria allowing for protection under the regulations currently in force.

In keeping with its desire to define these guidelines more explicitly, the Commission hereby presents this communication to the European Parliament and to the Council.

I. INTRODUCTION

The directories and information services sector lies at the sharp end of telecommunications and publishing. On the one hand, the directories services and the telephone information services represent the most important means of access to telecommunications services in a competitive environment. Accordingly, these services will play a crucial role in the context of the total liberalization of voice telephony services, as laid down by the Council on 1 January 1981¹ with a view to the creation of an information society in the European Union.²

On the other hand, directories make up an important section of the advertising market within the Community. Drawing simultaneously on the benefits of the new technologies and of the interactivity made possible by videotex in particular, this sector is currently making its debut in the world of multimedia. As one of the major elements in this new market, it should contribute significantly to the development of the latter.

Telecommunications directories are supplied in a variety of forms: printed, electronic ("on line" or CD ROM) or via a telephone hotline. In particular, these services include:³

- the "White Pages" (list of subscribers in alphabetical order);
- the "Yellow Pages" (list of professionals under classified headings);
- the specialized directories for professional use (selective lists of professionals).

The turnover associated with the sale of advertising in the telecommunications directories ("White Pages", "Yellow Pages" and electronic directories) in the Union is estimated at 3 700 million ecus.⁴

An examination of the market on the basis of the various products offered reveals notable differences. These differences are attributable, on the one hand, to the regulations currently in force and, on the other, to the very nature of the directories themselves. The following background information is significant in this connection:

- As regards "White Pages" directories in the strict sense (i.e., excluding fax and telex directories), a close correlation exists between the number of subscribers to the telephone service and the number of directories distributed, so much so that the degree of penetration at this market level will inevitably be much higher in countries with a high telephone

¹ Council Resolution of 22 July 1993 on the review of the situation in the telecommunications sector and the need for further development in that market (OJ No C 213, 6.8.93, p.1).

The Resolution provides for additional transitional periods of five years for Spain, Portugal, Greece and Ireland, and of two years for the Grand Duchy of Luxembourg. Spain has since announced that it will adopt 1 January 1998 as its target date.

² Europe and the Planetary Information Society, Group of Eminent Persons on the Information Society (Bangemann Report, 26.5.1994).

³ In terms of usage, the "White Pages" cover mainly communications between individuals, the "Yellow Pages" cover communications between individuals and the professional sector, and the specialized directories are devoted to communications between specialized professionals.

For more detailed definitions, see "Study on Regulatory and Commercial Aspects related to Telecommunications Directories and related Publications and Services", report to the European Commission drawn up by Coopers & Lybrand, Deloitte, 1992.

The study provides a detailed description of directories and associated services together with information on the regulatory conditions, markets and technologies applicable to the sector. The report will be made available on request.

⁴ Statistics 1992.

density than in countries with a much lower density. The "White Pages" directory market represents approximately 1 100 million ecus.

- As for the "Yellow Pages" directory market, this would amount, in aggregate, to some 2 200 million ecus.
- The international fax and telex directories represent a much weaker market (in the region of 50 million ecus).

As far as the "White Pages" and "Yellow Pages" directories are concerned, the market is still dominated largely by the public telecommunications operators or by the companies to which the production and management of these directories has been entrusted.⁵ Even in those Member States where the "White Pages" directory market has been opened up to competition, developments along competitive lines are still restricted to the "Yellow Pages" directory segment. As far as the private publishers are concerned, attention is still focused mainly on specialized directories for professional use.

A number of telecommunications organizations are already offering electronic directory services through videotex.⁶ However, leaving aside the regulatory obstacles still preventing private providers from entering such a market in several Member States, the development of directories on these new media is also being slowed down considerably, mainly at the intra-Community level, because of technical disparities from one Member State to another (differences in videotex standards). Consequently, the market in electronic directories is still awaiting development.

Nevertheless, the analyses conducted to date⁷ have shown that the growth in directory service markets should be sustainable, with the market in electronic directories emerging as the most promising. The market in printed directories should continue to grow, but at a slower rate. However, this rate of growth may continue to exceed that observed more recently in the United States.

Compared with the other media (press, TV, radio and cinema), expenditure at European Union level on the purchase of advertising space in the telecommunications directory market represents some 7.5% of the total revenue.

⁵ In several Member States, the production and management of the "White Pages" and "Yellow Pages" directories have been entrusted by the telecommunications organizations to specialized subsidiaries or specialized outside firms, such as ITT. In Belgium, the firm GTE was recently chosen by the operator.

⁶ Electronic directory: directory in the form of a database accessible using on-line retrieval techniques and/or available on CD ROM.

In the European Union, on-line access is possible in a number of Member States through the videotex services. By far the most important service of this type is the Minitel service in France. Originally launched with the intention of gradually replacing the printed directory, the French Minitel service has rapidly established its reputation, notably as a result of the success of the electronic directory - a service which, on average, handles more than 40 000 calls a day. Today, with more than 6 million Minitel terminals, the service has far exceeded initial predictions.

The facilities offered are considerable and defy comparison with other directory services: more than 28 million subscriber entries representing more than 28 000 million characters on a database, daily updates without any interruption to the service, handling of 20 000 calls simultaneously right round the clock, a response time of less than three seconds in 98% of cases, traffic revenue totalling 20 million ecus in 1991 (despite the fact that the first three minutes of consultation are free) and more than 54 million ecus in revenue from advertising.

⁷ Cf. Coopers & Lybrand study referred to above.

The evolution of the market over the short and medium term will depend largely on developments in the regulatory sector which will need, on the one hand, to ensure the retention of a universal directory in a liberalized environment, while, on the other, offering the possibility of exploiting the potential of the directory services market.

II. The current regulatory position

As regards the current treatment of directory services from a regulatory point of view, three major categories of country can be distinguished within the European Union:

- on the one hand, Member States where the regulations in force accord the network operators exclusive rights to provide "White Pages" and "Yellow Pages" directory services (Greece, Italy, Portugal and Spain);
- on the other hand, Member States where the regulations, while not stipulating in so many words that the supply of directories is a liberalized activity or whether access to raw subscriber data is open to third parties, do not impose exclusive conditions (Denmark, Ireland, Luxembourg, the Netherlands and the United Kingdom);
- lastly, countries which have explicitly opened up this activity to competition (Belgium, Germany and France).

Irrespective of the existence or otherwise of special or exclusive rights covering activities in the directories sector, most of the regulations in force impose an obligation to publish lists of subscribers. This obligation generally involves the publication of "White Pages" directories.⁸ Lastly, Denmark is the only country to have imposed an obligation on the public operator to publish a "Yellow Pages" directory. Table 1 summarizes the position with regard to each type of service concerned.

When supply is made compulsory under the regulations in force, such a stipulation is normally linked to special tariff conditions:

- apart from the subscribers who receive free of charge the appropriate "White Pages" directory in which they themselves figure, as well as a "Yellow Pages" directory corresponding to the geographical zone covered by their subscription, all subscribers can obtain the other directories for a catalogue price designed to ensure the widest possible distribution;
- the charge for using the telephone information services is generally calculated in the light of the basic charge for a local call.

Lastly, it should be noted that the national regulations in force in the majority of Member States do not stipulate whether the obligatory information contained in the "White Pages" directory should include, in addition to the telephone data proper, other information covering

⁸ Thus, in the United Kingdom, in the case of "White Pages" directories, BT and Mercury are required, in their relevant spheres of operation, not only to provide details at the request of the other operator of the latter's subscribers, subject to an indemnity calculated as a proportion of the additional costs incurred by such a request, but also to provide a telephone information service.

the other services for which the main station subscriber could also have taken out a subscription. Belgium and Greece, however, confer exclusive rights on the public operator to publish directories relating to services other than the basic voice telephony service (ISDN, telex, fax, messaging), and in Denmark, Luxembourg and the Netherlands the public operator is obliged to publish a directory which includes subscriber information relating to other services such as telex and which covers the various services concerned.

At the international level, pursuant to CCITT Recommendation E 114 (International Telecommunication Union - ITU), exchanges of information between operators in each State seeking to provide such an information service for their subscribers are usually conducted on a reciprocal basis.⁹

Recently - notably as a reaction to and in preparation for the creation of a competitive environment for the public telephone service and the expansion of mobile services - an in-depth debate on the future regulation of the directories market and other related markets, has been launched in a number of Member States.¹⁰

⁹ In the United Kingdom this reciprocity applies to BT and Mercury.

¹⁰ See in particular:

- Summary report on the public consultations involving the French telecommunications regulations, organized by Bruno Lassère, France, March 1994.
- OFTEL Enquiry into Directory Enquiry Services, United Kingdom, March 1994.
- In Germany a debate has begun on the tariffs applied to the telephone information services.
- In Belgium a debate has begun following BELGACOM's decision to entrust the production and management of directories to GTE (instead of the former contractor, IIT).

Table 1 Exclusive and special rights in the directory services sector

	Telephone information services	White Pages	Yellow Pages	Electronic directory
Germany				
Belgium				
Denmark				
Spain				1
France				
Greece				
Ireland				
Italy				
Luxembourg				
Netherlands				
Portugal				1
United Kingdom				

Source: Coopers & Lybrand study, Deloitte (1992)



Special or
exclusive right

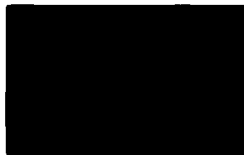
1

Undefined legal situation

Table 2 Obligations to provide directory services

	Telephone information services	White Pages	Yellow Pages	Electronic directory
Germany	[Redacted]	[Redacted]		
Belgium				
Denmark				
Spain			1	1
France				2
Greece				
Ireland				
Italy	[Redacted]	[Redacted]	1	1
Luxembourg				
Netherlands				
Portugal	1		1	1
United Kingdom	[Redacted]			

Source: Coopers & Lybrand study, Deloitte (1992)



Obligation to supply on the part of the public operator

1

Undefined legal situation

2

Supply of electronic directory/Minitel

III. Questions raised

1. Compliance with the rules of competition

A general framework for the future development of the sector is provided by the pertinent rules on competition laid down in the Treaty.

The articles in question are Articles 85 and 86 of the Treaty, in conjunction with Article 90 as the case may be, prohibiting any practices which might distort competition, whether involving concerted agreements between operators or publishers or whether constituting an abuse of dominant position.

2. Compliance with the rules on the internal market

The general framework for the future development of the sector is also provided by the rules on the internal market, particularly those on freedom to provide services (Articles 59 et seq.), freedom of establishment (Articles 52 et seq.) and the free movement of goods (Articles 30 et seq.).

3. Protection of individual privacy and of personal data

A distinction must be drawn between those Member States which have no specific legislation on the subject and those Member States which have introduced regulatory provisions designed specifically to protect privacy and personal data. As for the second group, significant differences can be observed among those countries that have introduced rules on protection.

These differences constitute an obstacle to the development of directories compiled on a pan-European basis owing to:

- on the one hand, the difficulties encountered when transmitting data to other Member States;
- on the other hand, the potential repercussions of these disparities on competition, whereby operators and directory publishers could be subject to widely differing constraints from one country to another.

The Community is creating a common framework for data protection and the protection of privacy in the Union in order to remove the abovementioned obstacles (see Section V.5).

4. Protection of intellectual property rights

In the matter of protection of intellectual property rights, significant differences in legal approach from one country to another make it impossible to provide the same kind of directory protection in all Member States.

In the absence to date of a common approach in the areas in question with a view to promoting the adoption by each of the Member States of equivalent rules on protection, such differences

have discouraged - or even hampered - the development of directories, particularly where the latter make use of the new media. However, on 10 July 1995, the Council has adopted a common position on the proposed directive on legal protection of data bases which is likely to make a difference in this area (see V.5)

5. Technological evolution: electronic directories/X500 services

In spite of the development of videotex access (particularly in France), the sum total of subscribers do not yet have at their disposal facilities capable of providing genuine electronic directory services on a pan-European basis.

At present, two factors appear to lie at the root of the absence of an electronic directory accessible to all subscribers throughout the European Union:

- continuing difficulties involving distribution and access to information sources;
- absence at present of a standard interface recognized by all operators for the facilitation of interconnections between services.

In order to comply with the requirements and specific characteristics of the networks, and taking into account the different protocols used in this sector, the CCITT has developed an internationally compatible standard to permit the development of several applications. Recommendation X 500, the outcome of close collaboration between the CCITT and the ISO, should make it possible to interrogate data bases on the existing electronic directories. This standard defines the structure and type of directory used as well as certain services offered to users together with the relevant protocols. Potentially, this standard could be used for X 400 and Electronic Data Interchange (EDI) applications and, above all, for the consultation of electronically accessible "White Pages" and "Yellow Pages" telecommunications directories, irrespective of whether the services were offered on a national or international basis.

At present, because of the different types of protocols used for the various networks and services, the CCITT has drawn up a number of recommendations.¹¹ A number of telecommunications organizations have adopted the T/Tph 28 specification.¹² A Memorandum of Understanding has been drawn up for signature by any European organization wishing to promote international information services based on access standard T/Tph 28 or on any other recognized access protocol.

¹¹ Among these Recommendations, particular mention may be made of the following:

- Recommendation E 163 applicable to telephone networks (numbering and addressing) using 12-digit numeric protocols;
- Recommendation X 121 applicable to data networks using 14-digit protocols;
- Recommendation X 400 applicable to messaging services using alphanumeric protocols.

¹² Specification drawn up by the CEPT (European Conference of Postal and Telecommunications Administrations) with a view to facilitating cooperation in the field of directories. Other specifications ("proprietary systems") are also in use in several Member States.

IV. OBJECTIVES

1. Provision of a universal service

This objective seeks to provide users with at least one complete list of subscribers¹³ in each Member State, thus giving them access to a minimum amount of information on subscribers throughout the Union.¹⁴

The Commission recognizes and endorses the aim of preserving the universal character ascribed to the "White Pages".¹⁵ As a minimum requirement, provision must be based on two types of criteria:

- criteria relating to content in respect of the information made available to users;
- criteria relating to geographical coverage in respect of the distribution and accessibility of the services provided.

For the initial compilation of the complete list, a minimum amount of information would be required.

Directories compiled on the basis of this list and intended for use by the public should also contain information of prime importance to users, notably details of the emergency services, including the single European emergency call number 112, as envisaged or already implemented.¹⁶ They should also contain useful instructions to facilitate the use of the service(s) provided by the telecommunications organizations.¹⁷

Lastly, other information could be included on an optional basis. If a telecommunications organization distributing a complete list chooses to include information on the various facilities or other services that it offers, e.g. in an introductory section, it must offer this facility to any competitor on terms which are transparent, non-discriminatory and based on objective criteria.¹⁸

¹³ Including all subscribers of all operators to the extent that they have not requested to remain unlisted in the public directory (see point V.5)

¹⁴ The Commission Statement (OJ No C 48, 16.2.94, p. 8) supplementing the Council Resolution of 7 February 1994 on universal service principles in the telecommunications sector (OJ No C 48, 16.2.94, p. 1) makes provision for users to be provided with directories covering the public telephone service.

¹⁵ See also the survey on the future regulatory framework in France: "A consensus has emerged acknowledging that a universal directory should contain details of all subscribers to the fixed telephone services, thus avoiding the need to consult a multiplicity of sources in order to track down a correspondent. While certain people may question the feasibility and advisability of including subscribers to the mobile services, the gradual growth in the numbers of such subscribers and the development of the use of personal communications fully justify their inclusion." Cf. Summary Report referred to above, France, 1994.

¹⁶ See Council Decision of 29 July 1991 on the introduction of a single European emergency call number (91/396/EEC; OJ No L 217/31, 6.8.1991).

¹⁷ The directories should also contain the following information:

- year of publication;
- name and address of the publisher;
- where appropriate, name and address of the publications manager.

¹⁸ Information on the various facilities or other services offered by a telecommunications organization distributing a complete list, subject to the proviso that all such information, generally set out in the form of an introductory section, could not be used for purposes other than the provision of information to the user and, under no circumstances, for the purposes of promoting - through the insertion of advertising material, for example -

Information on dedicated services or services connected to specific networks (e.g., telex) could be assigned to separate directories, as is already the case at present.

2. General distribution and ease of access

This objective should be realized as follows:

— first of all, within each Member State, through the production and distribution of complete and efficient "White Pages" directories of high quality, offering easy access and availability to all users and including subscribers to the switched public services, whether fixed or mobile, and supplied either on a monopoly or a competitive basis;

— secondly, within the entire European Union, through the provision of facilities offering users rapid access to complete and reliable information, wherever they happen to be in the Community. Thus, each producer of directories should have access to the complete lists of subscribers available in every Member State, so as to be in a position to offer a genuine pan-European "White Pages" directory service and provide the user with a tangible way of obtaining the information he requires:

- * either through the operator telephone inquiry service;
- * or through the existing electronic directories in the various Member States.

3. Services of quality

The objective should be to develop an efficient service to promote the development and improvement of the directory services for the benefit of users.

In particular, this means that every effort should be made to ensure an adequate level of quality in the directory services sector.¹⁹

Whatever form they take, directories will need to be updated regularly.

As regards costs and the determination of prices for the marketing of the subscriber lists, the tariff principles set out in Directive 90/387/EEC²⁰ should be applied (see Section V.3).

4. Diversified services with the potential to contribute to the launch of multimedia

equipment or unreserved services peculiar to the telecommunications organization providing the "White Pages" directory service.

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As far as quality is concerned, the publisher should make a particular effort to:

- verify the accuracy of the information reproduced;
- use only those fonts that are sufficiently legible;
- ensure that the information is set out as clearly as possible.

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Council Directive of 28 June 1990 on the establishment of the internal market for telecommunications services through the implementation of open network provision (90/387/EEC; OJ No L 192/1, 24.7.90) (ONP Framework Directive).

While ensuring the continued provision of a universal service based on the availability of a complete list of subscribers in each Member State, it is also desirable that steps be taken to promote the development of diversified services:

- which meet the needs of a fully developing telecommunications market;
- which are capable of developing in line with demand and are therefore adapted to the needs of the users;
- which fill existing gaps, notably with regard to pan-European and specialized directory services;
- which draw on the new technologies and electronic media.

In this way, the diversification of demand through the opening-up to competition should help not only to stimulate the development of new products capable of establishing their own separate identity *vis-à-vis* the traditional directories (both in terms of their presentation and the medium chosen for the dissemination of the information contained therein) but also, through the use of the new technologies and the introduction of interactivity, to stimulate the development of multimedia.

V. GUIDELINES ADOPTED

The general framework for the future development of the telecommunications sector in the Union has been set out in Resolution 93/C213/01 of 22 July 1993²¹ laying down a timetable for the total liberalization of the public telephone service by 1 January 1998 and in Resolution 94/C48/01 of 7 February 1994 on universal service principles in the telecommunications sector.²²

In the European context, the legal basis for the production and distribution of directories and associated services is laid down in the Treaty.

To the extent that a directory is both a product and a service, Articles 30 to 34 and Articles 36, 59 and 60 of the Treaty relating to the free movement of goods and the freedom to provide services, respectively, and Article 129a of the Treaty relating to consumer protection must be applied in full.

Also applicable are the provisions of the Treaty relating to competition and, in particular, Articles 85 and 86 of the Treaty relating to concerted agreements and the abuse of dominant position,²³ as well as Article 90.

Lastly, the regulatory framework at Community level is defined in the light of the principles and provisions set out in Directive 90/387/EEC²⁴ (ONP Framework Directive), to the extent

21 Council Resolution of 22 July 1993 on the review of the situation in the telecommunications sector and the need for further development in that market (OJ No C 213, 6.8.93, p. 1).

22 Council Resolution of 7 February 1994 on universal service principles in the telecommunications sector (94/C48/01), (OJ No C 48, 16.2.94, p. 1).

23 Commission Statement concerning the Council Resolution on universal service principles in the telecommunications sector (94/C48/06), (OJ No C 48, 16.2.94).

23 Cf. Guidelines on the application of EEC competition rules in the telecommunications sector (OJ No C 233, 6.9.91).

24 Council Directive of 28 June 1990 on the establishment of the internal market for telecommunications services through the implementation of open network provision (90/387/EEC, OJ No L 192, 24.7.90, p. 1).

that this Directive applies to voice telephony and associated services, as well as to data transmission services, Integrated Services Digital Network (ISDN) services, mobile services and telex services.²⁵

In particular, this concerns the application of the basic principles underlying Directive 90/387/EEC, viz.

— that the conditions governing access to the services in question must be based on objective criteria, must be transparent and published in the appropriate manner and must guarantee equal access on a non-discriminatory basis, in accordance with Community law;
— that the tariffs must be based on objective criteria and must, in principle, be cost-oriented.

Lastly, account must be taken of other directives having major implications for the future development of directories. This applies, in particular, to directives or proposals for directives relating to data protection, distance selling, the protection of computer programs and the legal protection of data bases.²⁶

Taking account of this prescribed framework, of the principal objectives of Union policy in the telecommunications sector as defined, in particular, in Resolution 93/C213/01 and Resolution 94/C48/01 and of the developments that have occurred in the field of telecommunications, the Commission proposes the following guidelines for Community policy in this sector:

1. Retention of a universal directory in a competitive environment, i.e., complete list of subscribers to the fixed and mobile telephone services

This guideline is based on the Union's general objectives as regards the provision of a universal service in the telecommunications sector, as defined in Resolution 93/C213/01.

The "White Pages" directory service is traditionally "linked" to the provision of a universal service, as emphasized in the Commission statement on Resolution 94/C48/01.

In particular, users of the voice-telephony service in each Member State should have at their disposal at least one complete "White Pages" directory listing the telephone particulars of the

²⁵ See the Commission communication to the European Parliament and to the Council on the current position and future approach with regard to open access to telecommunications networks and services (Open Network Provision).

²⁶ See:

- Directive of the European Parliament and the Council of 24 July 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data.
- Amended proposal for a Directive concerning the protection of personal data and privacy in the context of digital telecommunications networks, in particular the Integrated Services Digital Network (ISDN) and the digital mobile network, COM(94) 128 *final*, 13.6.1994.
- Amended proposal for a Council Directive on the protection of consumers in respect of contracts negotiated at a distance, COM(93)396 *final*, 7.10.93.
- Council Directive of 14 May 1991 on the legal protection of computer programs (91/250/EEC, OJ No L 122, 17.5.91, p. 42).
- Proposal for a Council Directive on the legal protection of data bases COM(92)24 *final*, OJ NOC 156 of 23.6.1992, P.4, modified proposal (COM 93) 464 *final*, OJ NOC 308 of 15.11.1993, P.1, common position of the Council of 10.07.1995.

subscribers to the fixed and mobile services, while at the same time having access to at least one information service at affordable prices.

Steps must be taken to ensure that telecommunications services subscribers and users have access to the minimum amounts of information needed by them in the context of these services. Accordingly, while extending to all Member States the principles of opening up the directories market to competition, the national regulatory authority in each Member State will also be responsible for ensuring the availability of at least one universal directory containing a complete list of subscribers to the voice-telephony services, including subscribers to the mobile services.²⁷

2. Abolition of exclusive and special rights

Resolution 93/C213/01 provides for the complete liberalization of the telephone service for the public by 1 January 1998. At present, at the regulatory level, the exclusive and special rights still accorded to the telecommunications organizations with regard to the public voice-telephony service between fixed points have been extended in several Member States to subscriber lists produced and distributed by these telecommunications organizations.

The Commission is of the opinion that, even before that date (1 January 1998) - to the extent that Member States currently maintain exclusive and special rights in the field of directory services -, such special and exclusive rights are contrary to the rules of competition, given that they involve unjustified extensions of exclusive or special rights recognized only in the case of the public telephone service, as defined in Directive 90/388/EEC.²⁸

Even if one takes the view that, in the current state of the development of the telecommunications sector, the provision of a universal voice-telephony network and service could constitute a service of general economic interest within the meaning of Article 90(2) of the Treaty justifying the granting of exclusive and special rights both now and - pursuant to Resolution 93/C213/EEC of 22 July 1993 - until 1 January 1998, the extension of such rights to the directories services nevertheless cannot be justified.²⁹

²⁷ Procedures to be decided by the national regulatory authority, subject to compliance with Community rules, pending the proposals which the Commission is required to draw up before 1 January 1996 pursuant to Resolution 93/C213/01 with a view to achieving the total liberalization of the public voice-telephony services by 1 January 1998.

²⁸ Commission Directive of 28 June 1990 on competition in the markets for telecommunications services (90/388/EEC; OJ No L 192/10, 24.7.1990).

The Directive defines the "voice telephony service" 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."

²⁹ Under the consistent case-law of the Court of Justice, an undertaking enjoying a legal monopoly must be regarded as occupying a dominant position within the meaning of Article 86 of the Treaty, and the territory of the Member State to which such a monopoly is extended is likely to constitute a substantial part of the common market (Judgments of 23 April 1991, Klaus Höfner and Fritz Elsnher/Macrotron GmbH, C-141/90, Reports p. I-1979, point 28, of 18 June 1991, ERT, C-260/89, Reports p. I-2925, point 31 and of 13 December 1991, RTT/GB-Inno-BM C-18/88, Reports p. I-5941, point 17).

According to the case-law of the Court in the RTT/GB-Inno-BM case, the extension - without objective need and in the form of State measures - of a legal monopoly, on the grounds that it is a public service of general economic interest, to ancillary activities or neighbouring markets constitutes a violation of Article 90 in conjunction with Article 86 of the Treaty (Judgment of 3 October 1985, CBEM, 311/84, Reports p. 3261, point 27, RTT/GB-Inno-BM case, points 18 to 24).

There is no objective justification whatsoever for the retention of special or exclusive rights in the directories sector, given that such a service can be provided by any undertaking, without prejudice to the provision of a universal telecommunications network and without posing any threat to the financial equilibrium of the telecommunications organizations charged with providing such a network. It follows from this that special or exclusive rights in the field of directories services are incompatible with Article 86, in conjunction with Article 90, and should therefore be abolished. The Commission therefore reserves the right to initiate henceforth measures appropriate to that end.

3. Conditions governing access and marketing

As regards the conditions governing access to raw data held by the operators, the rules of competition and the general principles laid down in Directive 90/387/EEC shall apply, to the extent that such raw data derive from, and are closely linked to, the activities covered by the principles set out in this Directive. In particular, this applies to the raw data held by the operators in their capacity as providers of a voice-telephony service.

Above all, the conditions of access must be based on objective criteria, must be transparent and published in the appropriate manner and must guarantee equal access on a non-discriminatory basis. The tariff conditions under which this information is made available by the owners and the transfer or marketing of subscriber lists must comply with the rules of competition³⁰ and with the tariff principles set out in Directive 90/387/EEC. In particular, the following principles shall apply:

- the conditions of sale will have to be fair and will have to be applied in a non-discriminatory manner;
- the tariffs will need to be based on objective criteria and must be cost-oriented;
- tariffs will need to be transparent, which in turn implies the application of an appropriate and transparent system of cost accounting.

In cases where the production, management and/or marketing of directories or associated services form part of the overall activities of the operators of the networks and the public telephone system or other related services, adequate transparency must be assured, notably in the area of accounting, so as to guarantee that the competing providers of directories or associated services can operate under objective, transparent and non-discriminatory conditions.

³⁰ Cf. abovementioned guidelines on the application of Community competition rules in the telecommunications sector.

As possible examples of contraventions of Treaty rules, and hence abuse of dominant position, attention should be drawn to instances of refusal by a telecommunications organization to provide access to raw data held by them on subscribers, refusal to insert advertising literature for competitive telecommunications products or services, or imposition of inequitable conditions on such advertisements so as to create a situation of discrimination or competitive disadvantage.

In addition, the conclusion of a contract of sale must not involve the acceptance of additional services that are not linked to the actual object of the contract.

In certain cases, a separation of activities in the directories sector (i.e., through the creation of a subsidiary) may prove necessary, in order to provide the requisite degree of transparency in relation to the other activities of the telecommunications organization.

4. Promotion of electronic directories and other forms of electronic support

Occupying as they do a position at the forefront of publishing and telecommunications, the directories must be afforded the benefits of technological advances achieved to date, and conditions must be created to facilitate the development of these services on new forms of electronic support.

To cite an example, the Minitel service in France has demonstrated the potential of such a development.

The promotion of electronic support systems will be greatly facilitated by the opening-up of the market to competition, whereby new entrants will have an opportunity to propose innovatory directory services, particularly in areas where gaps currently exist in the pan-European services, specialized services and on-line research services (electronic directory and CD ROM), thus diversifying and galvanizing the traditional directories market in its entirety.

The use of the new information and communications technologies should contribute significantly to the evolution of the directories market in the direction of the multimedia market, thus facilitating user access to the plethora of services which will be coming on stream.

This transformation will depend, in particular, on how the new technologies and electronic media are used in order to promote:

- ease of access;
- simplification and harmonization of the modes for interrogating the directory databases;
- diversification of supply, providing users with access to new functions and electronic media, notably interactivity (on-line research) and new forms of support such as CD ROM).

With a view to developing the provision of such services, the promotion of new forms of support must be encouraged by reinforcing the measures already undertaken under the Community programmes in the field of information and communications services, e.g., programmes concerning videotex, electronic data exchange and the promotion of databases and on-line services.

The main framework for these activities is the programme for the implementation of the information services market (IMPACT programme).³¹

In the context of the implementation of open access to the network (Directive 90/387/EEC), the Commission will also look at the question of issuing specific standardization mandates to the competent organizations (ETSI and/or CEN-CENELEC) with a view to facilitating the interconnection of new services as well as access to such services.

³¹ IMPACT programme II, OJ No L 377, 31.12.1991.

5. Necessary safeguards : protection of individual privacy and intellectual property rights

The essential safeguards to be upheld during the transition of the directories and associated information services market to a competitive environment concern the protection of personal data and individual privacy and also copyright protection.

Protection of individual privacy

The Directive and the proposal on data protection and the protection of individual privacy seek to establish a high level of protection for data and individual privacy throughout the Union and lay down a coherent framework to promote the achievement of this objective.³²

Thus, Article 11 of the proposal for a Directive on the protection of data of a private nature and the protection of privacy in the context of public digital telecommunications networks stipulates that:

- data of a personal nature contained in a directory must be kept to the minimum amount strictly necessary to identify an individual subscriber, save where the latter expressly requests the publication of additional data of a personal nature;
- subscribers are entitled, without charge, to request non-disclosure of their sex;
- subscribers have the right to request, without charge, that their details should not be included in public directories.

Moreover, these provisions give the persons concerned the right to access and correct data, as well as the right to oppose the transfer of use of data, such as contained in directories, for promotional purposes of any kind.

Protection of intellectual property rights

Steps must be taken to ensure that the principles set out in the Directives or proposals for Directives on the protection of programs and databases in the directories sector are properly applied and, where appropriate, extended.

This applies, in particular, to:³³

- the protection of computer programs through the application of the Council Directive of 14 May 1991;
- the legal protection of databases through the application of the principles inherent in the proposal for a Council Directive of 15 April 1992 (common position of the Council of 10.07.1995);

In its action plan³⁴ of 19 July 1994 on the implementation of the information society in Europe, the Commission also announced the publication in 1995 of a Green Paper on intellectual

³² Directive of the European Parliament and the Council of 24 July 1995 and proposal for a Directive COM(94)128, as referred to above.

³³ Directive 91/250/EEC and proposal for a Directive COM(92)24, COM (93) 464, as referred to above.

property rights. The Green Paper on intellectual property rights in the Information Society has been adopted on 19 July 1995³⁵

VI. CONCLUSION

Following an examination by the Commission of the current state of the telecommunications sector, the Council adopted 1 January 1998 as the date for the liberalization of public telephony services in the European Union, with additional transitional periods for certain Member States.

Directories will be the obligatory gateway for users wishing to gain access to the services opening up in the telecommunications and multimedia services sector. The aim of the proposed guidelines is to ensure, on the one hand, the retention of a universal directory in a competitive environment and to promote, on the other, directory and associated information services which are better adapted to the needs of users, more easily accessible and of a higher quality.

The Commission will pursue the implementation of the guidelines outlined above, incorporating them, where appropriate, in proposals to be presented to the European Parliament and to the Council by 1 January 1996 in accordance with Resolution 93/213/01, in order to prepare for the 1998 deadline.

Against this background, the Commission hereby presents this communication to the European Parliament and to the Council.

34 Europe's way to the information society - An action plan, COM(94)347 final, 19.7.1994.
35 COM (95) 382 final.

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