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Christine Borrmann\*

# The Liberalization in the EC's Telecommunications Sector and its Effects

*The telecommunications sector is a powerfully growing market which is expected to play a key role in the EC of the future. This article offers a survey of the liberalization measures envisaged in this formerly heavily protected sector followed by an analysis of their economic effects on both EC member states and third countries.*

While the telecommunications sector only accounted for 3% of the EC's gross national product in 1988, by the year 2000 its share is expected to have increased to approximately 7%. Telecommunications is on the way towards becoming an industry as significant as the automobile industry,<sup>1</sup> with more than half of the jobs throughout the Community depending directly or indirectly upon it by the turn of the century.<sup>2</sup>

As regards the market's structure, the fundamental distinction can be drawn between the market for telecommunications equipment on the one hand and the market for telecommunications services on the other, offering an ever-growing range of facilities for transmitting voice communications, data, text or graphics, visual images, and what are known as value-added network services. These value-added network services (VANS) consist of a combination of basic services and additional functions – particularly the processing of information to meet the specific needs of certain user groups – and are regarded as a particularly dynamic field in the telecommunications services sector.

Both the telecommunications equipment and service markets have been reserved areas in the EC in the past, with operators protected from competition whether it came from other member states or from third countries. The service sector has traditionally been in the hands of public monopoly corporations with the status and organizational structure of civil service departments, or at least of monopolistic enterprises under state supervision, in combination with bilateral and multilateral agreements with their counterparts in other countries. As far as the equipment market is concerned, the main competitive shortcomings there are the result of restrictive type

approval policies, incompatible standards, and product specifications geared to a particular purchaser.

The conceptual basis for harmonization in the telecommunications sector, regarded as a core element of the EC's single market, is provided by the EC Commission's "Green Paper on the development of the common market for telecommunications services and equipment" (COM (87) 290) dated 30th June 1987. The EC's concept has not gone as far as to propose privatization along British lines, but envisages a *dual system* incorporating public responsibility and private-sector markets. It calls for public-sector responsibility for establishing and operating the telecommunications *network* to be maintained, and – for the time being – also for basic services to remain a reserved area. The conditions and requirements according to which this public responsibility is fulfilled by telecommunications organizations will be harmonized, in order to prevent vestiges of protectionism from distorting competition and causing a loss of efficiency. It is proposed that all remaining services, particularly value-added network services, and also the terminal equipment market, should be opened up to Europe-wide competition, with state and semi-state enterprises also actively participating in that competition.

The EC's directives and resolutions on liberalization and harmonization in the telecommunications sector are also appropriately divided among the fields of telecommunications terminal equipment, telecommunications services, and infrastructure (telecommunications networks). Additional instruments it is proposed to use in order to accelerate and intensify the harmonization

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<sup>1</sup> See H. Fangmann: Der Stand des EG-Kommunikationsrechts, in: Europäische Zeitschrift für Wirtschaftsrecht, 1990, No. 2, pp. 48-52.

<sup>2</sup> See B. Amory: Telecommunications in the European Communities, in: Europäische Zeitschrift für Wirtschaftsrecht, 1992, No. 3, pp. 75-85.

process include harmonization of technical specifications, research and development, and more open procedures for public procurement.

### Terminal Equipment Market Liberalization

The liberalization proposed for that particular market by the Terminal Equipment Directive<sup>3</sup> effectively terminated the national telecommunications organizations' (or "PTTs") monopoly rights on terminal equipment. Before these changes, in West Germany for example, the vertically integrated supply of terminal equipment and restrictive type approval procedures used by the *Deutsche Bundespost* had limited the range of products available and impeded technical progress. After liberalization, it was still possible for the postal service to obstruct competition by delaying conformity tests or by specifying unduly strict requirements. To allow optimum exploitation of the trading potential offered by the liberalization of the terminal equipment market, the basic requirements for type approval in individual member countries are now to be laid down, and the mutual recognition of such requirements and accompanying test procedures to be demanded. That eliminates the substantial legal obstacles facing the free availability in all EC member countries of equipment which has been issued with approval in any one country. However, the harmonization of standards which is needed to allow a genuine opening of EC markets has not been progressing as quickly as necessary, and the fundamental *Normes européennes de télécommunication* (NETs) are for the most part still not yet in place. Even at this early stage, though, it is clear that the new EC measures can be expected to generate substantial changes and restructuring for the manufacturers in the field, particularly benefiting Far Eastern suppliers, and having detrimental effects for small and medium-sized companies.<sup>4</sup>

### Services and Infrastructure

The starting point for liberalization in the field of telecommunications services was Commission Directive 90/388.<sup>5</sup> Even though the European Court declared the treatment of special rights invalid in its judgment on 17th November 1992, this directive nevertheless paves the way for the elimination of all exclusive and special rights relating to any other services<sup>6</sup> apart from voice telephony. Thus state monopolies will only be retained for the provision of telephone services, the most significant source of income for telecommunications organizations. Any suppliers who wish will be permitted to provide all other existing or future services on an open market, and Art. 2 of the directive does not exclude third-country suppliers from those freedoms.

Closely related to the Service Liberalization Directive is

the directive on the introduction of open network provisions (the ONP Directive), outlining the future regulatory framework for telecommunications infrastructure.<sup>7</sup> Since the public-sector telecommunications organizations, at the discretion of national authorities, may continue to be authorized to develop and operate the telecommunications network, the freedom to offer services can only be assured if access to that network is provided to private-sector suppliers, on an equal, non-discriminatory basis properly related to costs. The ONP Directive, which is classed as a Framework Directive, sets out harmonized conditions for the use of the public network by private suppliers of telecommunications services. Its main foci are technical interfaces, conditions of use, and basic tariff rules.

The directive is to be supplemented by specific "implementational directives" defining the conditions for using the most important network functions on a more concrete basis. One such directive has already been issued, on the application of ONP to leased lines.<sup>8</sup> This is especially significant for market liberalization, since it constitutes the basis on which private operators may supply value-added network services. As regards the other implementational directives, only Commission drafts have so far been prepared.

Measures have been proposed in a number of fields with a view to expanding and improving the quality of telecommunications networks, as follows:

□ In addition to the harmonization (or "approximation") of existing national regulations, the EC generally sets greater store – and more frequently than in other sectors – by the Community-wide development and implementation of technological innovations such as the introduction of integrated service digital networks (ISDN), uniform availability of digital cordless telecommunications (DECT), or the pan-European public radio-paging system (ERMES).

<sup>3</sup> Commission Directive of 16th May 1988 on: Competition in markets in telecommunications terminal equipment (88/301/EEC), in: O.J. L 131, 27/5/88.

<sup>4</sup> For more details, see J. Müller: Strukturwandel im europäischen Fernmeldewesen: Auf dem Wege zu einer europäischen Telekommunikationsordnung, in: Vierteljahresberichte, No. 130, December 1992, pp. 383-399, esp. p. 385.

<sup>5</sup> Commission Directive of 28th June 1990, on competition in the markets for telecommunications services (90/388/EEC), in: O.J. L 192, 24/7/90.

<sup>6</sup> However, the directive does not cover telex services, mobile radio telephony, radio paging or satellite services, to which the usual EC competition rules will apply in the first instance.

<sup>7</sup> Council Directive of 28th June 1990, on the establishment of the international market for telecommunications services through the implementation of open network provision (90/387/EEC), in: O.J. L 192, 24/7/90.

<sup>8</sup> Council Directive of 5th June 1992, on the implementation of open network provision for leased lines (92/44/EEC), in: O.J. L 165, 19/6/92.

□ A similar stance is adopted by the EC's R&D programmes in the field of "telematics", a portion of which relates to the telecommunications sector in a narrower sense while other portions also relate to information systems on a broader basis. It is only appropriate to mention a few out of the wealth of EC initiatives here: the programmes RACE, TEDIS, STAR, CADDIA, and ESPRIT.<sup>9</sup>

## Satellite Communications

In the *satellite communications* field, following a further review by the Commission the 1987 Green Paper's proposals were specified in a new Green Paper (COM (90) 490) exclusively addressing this area. Given the wide variation among the regulatory stances of different member states involving varying levels of ambition in the move to greater liberalization, the Commission has proposed the following framework for satellite communications in the future internal market:

□ Liberalization of the "earth segment", including both receive-only and transmit/receive terminals, though in the latter case this will be subject to appropriate type approval and licensing procedures designed to ensure that the use of satellite (t/r) equipment will not impinge upon remaining special and exclusive rights enjoyed by national telecommunications organizations.

□ Restrictions on signal transmission to and from satellites intended to protect special rights of telecommunications organizations may only be applied to such satellite communications services which are equivalent to the "reserved" public services in the two-way traffic they provide. Thus even very large two-way satellite communications systems will not generally be affected by such restrictions if they are not connected to the public terrestrial network.

□ As a fundamental principle, suppliers of satellite capacity (the "space segment") should be guaranteed full commercial freedoms, including the right to market directly both to service providers and to users. In effect, the consortia are often players and referees at the same time when it comes to marketing space facilities. The Commission has made the following demands in order to deal with the potential conflict of interests: open and efficient access to satellite transmission capacity; separation of the telecommunications organizations' control functions from their operating ones; adherence to the EEC Treaty's rules on competition.

<sup>9</sup> Cf. the survey in L. Krickau-Richter and O. von Schwerin: Forschungs- und Technologieförderung der EG, Brussels 1991.

<sup>10</sup> See H. Ungerer and N. Costello: Telekommunikation in Europa, Commission of the European Communities, Brussels, Luxembourg, 1989, p. 132.

□ Harmonization measures as required to promote the availability of Europe-wide services.

No concrete directives have yet been issued for this field, except in as far as regulations governing telecommunications in general also take in satellite communications.

## Radio Telephony

In the field of *mobile radio telephony*, the trade-inhibiting consequences of inadequate cooperation among member states on telecommunications matters have been particularly obvious: in 1986, there were five different, mutually incompatible systems in use around the EC. The markets for terminal equipment were similarly fragmented, while two-way radio telephony and one-way radio-paging services each had three different frequency bands allotted to them.<sup>10</sup>

In 1987, the EC endeavoured to use the technological change then under way from conventional analogue systems to digital, cellular mobile telephone services to coordinate the implementation of a new digital radio telephone service on a Europe-wide basis and to reserve frequency bands accordingly.

The system developed as the common standard on behalf of CEPT by a working party entitled *Groupe Spécial Mobile* (and therefore referred to as the "GSM" system) is also compatible with the ISDN standard. The intention within the EC is that the system should be available in all member states by 1995 at the latest.

In a number of EC countries (the United Kingdom, France and Germany) mobile radio telephone services are not only provided by traditional telecommunications organizations but other companies have also been permitted to enter the market. By invoking general Community competition law, the Commission in Brussels has been taking steps to combat the persistence of the national telecommunications organizations' service monopolies. The demand made to the Belgian government that it should allow market entry to a second company shows its determination to put the instruments of competition law into effect.

## Effects on Market Access

Although liberalization and harmonization in the telecommunications sector has its main emphasis on opening up the markets for the EC's member states and that is the prime objective, there will nevertheless also be a substantial improvement in sales opportunities for companies from third countries with the single market rules in force, in several respects:

□ According to Art. 58 of the EEC Treaty, liberalization of

the equipment market will also apply to any companies from third countries which have an operational base in one or more EC member states.<sup>11</sup>

□ The service liberalization directive (90/388/EEC) also aims, once account has been taken of the reserved areas where telecommunications organizations retain monopoly rights, to guarantee that *all interested operators* have the right to provide telecommunications services.

□ No attempt is made in any area – including promising future businesses such as mobile radio telephony and satellite communications – to press for a comparable opening of third-country markets by making explicit demands for reciprocal treatment. The EC has preferred instead to rely upon multilateral negotiations within the GATT framework, supplemented where appropriate by bilateral discussions.

### Intentions and Reality of Liberalization

Any analysis of the economic effects of new arrangements in the telecommunications field has to take account of the fact that the stated intentions of harmonization and liberalization may not completely agree with what eventually happens in the real world of economic policy. However, space only permits a number of examples of such discrepancies to be cited here, and the list cannot claim to be exhaustive.

Whereas experience to date does provide ample evidence that the market in terminal equipment has been effectively opened up to private-sector competition both from other EC member states and from third countries as a result of the Terminal Equipment Directive, as far as the services markets are concerned the monopoly telecommunications organizations of the past have been all the better able to fight their rearguard actions thanks to the reserved operational rights over the telephone network to which they remain entitled. The jungle of different

service charge rates, user regulations and standards allows national telecommunications organizations to exploit their monopoly positions in network operations; a prime example is the fact that long waiting periods and excessive charges for leased lines act as an obstacle to private-sector competition.<sup>12</sup> The discrimination generally applies to other would-be EC suppliers just as it does to those from third countries; however, there are some exceptional cases, such as the approval procedures for setting up and operating radio equipment in France, in which entry barriers or other forms of discrimination are aimed specifically at third-country companies.<sup>13</sup> Indeed, it will still need to be shown in EC single-market practice how far the implementational directives following on from the ONP Directive are capable of maintaining the balancing act attempted in the latter between market liberalization and the partial reservation of monopoly privileges.

Similarly, a number of questions are raised, from the competition-policy viewpoint, by the “administratively decreed”, government-influenced involvement of second, competing organizations in the mobile telephone market. The criteria according to which licences are granted to second and third operators will not necessarily produce the same results as true market forces would do, and that applies all the more in as far as auction procedures, which would come closest to simulating market conditions, are not generally being used.

In spite of these deficiencies in the EC’s deregulation and harmonization measures to date, the sheer dynamism

<sup>11</sup> See *ibid.*, p. 157.

<sup>12</sup> The rates charged for leased lines by British Telecom (subject to limited network competition) are twice as high as the cost it incurs by making such lines available, whereas German Telekom’s charges are 25 times the costs incurred. See B. Adam: *Angst vor dem Wettbewerb*, in: *Top Business*, December 1991, pp. 42–48, esp. p. 46.

<sup>13</sup> See T. Mayrhofer and L. Rapp: *Deregulierung der Netz- und Dienstleistungsmonopole in Frankreich*, in: *Europäische Zeitschrift für Wirtschaftsrecht*, 1992, No. 17, pp. 533–538, esp. p. 535.

Peter Behrens (Ed.)

### EEC Competition Rules in National Courts

### Les règles de concurrence de la CEE devant les tribunaux nationaux

Part One: United Kingdom and Italy / Première Partie: Royaume Uni et l'Italie

The competition rules of the EEC are directly applicable in the Member States. Therefore, the national courts play an important role in the implementation of European competition law. The editor of this volume has initiated a research project which will analyse the national case law. This volume contains the national reports from the United Kingdom and Italy. Further national reports will follow.

The project is designed to make the national case law accessible to lawyers practicing in the field of European competition law. The Community organs get an overview over the implementation of Community law in Member States. Those interested in research find the materials for further comparative studies.

The authors are competition law experts from the different Member States. The editor is Professor of Law at the University of Hamburg and Member of the Board of Directors of the Institut für Integrationsforschung of the Stiftung EUROPA-KOLLEG Hamburg.

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of technology in this field can itself be expected to encourage further market liberalization. As technology advances, for example, monopoly control of existing networks becomes a steadily less relevant issue. A particularly good illustration is provided by the mobile radiotelephony market which, following the introduction of new, digital technology in Western Europe and also in view of market expansion in Asia, Eastern Europe and South America, is now becoming a serious competitor to conventional, hard-wired telephony. Likewise, the telecommunications organizations' monopoly on voice telephony is being steadily undermined by the increasing amount of overlap between voice, data and video services.

### Consequences for Competitiveness

In the past, Continental European companies have complained that they were at a locational disadvantage relative to competitors in the USA and Japan because they were not able to exploit telecommunications as a competitive factor to the same extent, and particularly so because of the high factor mobility occurring in information-intensive industries.<sup>14</sup> The expansion of production which has now been facilitated can be expected to enhance the competitiveness of European companies, or to allow them to attain it for the first time in areas where they first needed to cross the profitability threshold. An example of such development opportunities is provided by satellite communications, the earth segment having previously been such a fragmented market in the EC that Community-based manufacturers of transmitting and receiving equipment had little chance of becoming established.<sup>15</sup>

Harmonization of technical standards and acceptance of conformity are another key element in the single market for the telecommunications field. In principle, the advantages emerging from harmonization in the form of lower-cost production and improved market access also apply to third countries. However, firms in EC member

states can be expected to draw relatively greater benefit, since the new EC standards will also apply in their own home markets. However, the importance of this distinction is somewhat put into perspective by the fact that ETSI and CEPT (*Conférence Européenne des Administrations des Postes et des Télécommunications*) count 26 more European countries among their members in addition to those already in the EC; all EFTA countries are represented, for example. However, formal rights of participation ought not to be used as the sole criterion for judging the amount of clout national industries can carry: the USA's National Bureau of Standards, for example, is regarded along with its affiliated organizations as being particularly effective in influencing industry standards, to the ultimate benefit of US manufacturers.<sup>16</sup>

Of course, not all aspects of the harmonization of telecommunications standards are positive, for there are some harmonization plans – such as the decision to coordinate the introduction of ISDN or the establishment of a European HD-MAC standard for high resolution television – which have a deeply penetrating influence on fundamental corporate investment decisions vital to future developments. Because the standard-setting procedures are so cumbersome and long-drawn-out, by the time a standard has been laid down in an industry in which technological progress is as swift as it is in telecommunications, it may already be out of date. The result is that it is more difficult for companies to adopt other, non-European standards and thus to make use of state-of-the-art production knowledge; the market becomes less dynamic and export opportunities to the world markets diminish. Conversely, third-country companies are largely able to enjoy the benefits of industry standards while circumventing the disadvantages in areas which are particularly dynamic in a technological sense.

A similar set of problems applies to the EC Commission's R&D programmes.<sup>17</sup> The declared aim in promoting basic research in pre-competitive spheres is to strengthen European industry's international competitiveness in sectors which have a high technological input, especially against the United States and Japan.<sup>18</sup> An additional purpose of providing support which is not specific to individual firms is to avoid the additional costs generated by different companies doing the same research twice or several times over. Yet from the efficiency viewpoint, R&D programmes cannot be seen in an unconditionally positive light. Companies tend to be led into fields of activity which, even if the Commission makes its best efforts to obtain expert advice, initially hold only the hope that they will be key fields in the future. No crystal-clear reference system exists for dirigistic measures of this kind which could function as a substitute for the innovative

<sup>14</sup> See C. Fuest: Weltweiter Privatisierungstrend in der Telekommunikation, Institut der Deutschen Wirtschaft in Cologne, Beiträge zur Wirtschafts- und Sozialpolitik, Cologne 1992, p. 8.

<sup>15</sup> See Commission of the European Communities: Towards Europe-wide systems and services, Green Paper on a common approach in the field of satellite communications in the European Community, COM (90) 490 final, Brussels, 20th November 1990, p. 65.

<sup>16</sup> See P. MacConnail: Europas Industrie setzt auf offene Kommunikation, in: Siemens Zeitschrift, May/June 1988.

<sup>17</sup> For a critical view of R&D programmes see e.g. J. Starbatty: Die ordnungspolitische Dimension der EG-Technologiepolitik, in: Ordo, Vol. 38, 1987, pp. 154-181; and for a very critical view, V. Curzon Price: The Threat of "Fortress Europe" from the Development of Social and Industrial Policies at a European Level, in: Außenwirtschaft, Vol. 46, 1991, No. 11, pp. 119-139.

<sup>18</sup> See L. Krickau-Richter and O. von Schwerin, op.cit., p. 5.

competition of the marketplace. If any technological course which has been set later proves inappropriate – a problem which is effectively a parallel to that of before-the-fact standardization – the danger is, especially when large sums are being invested, that experiments will not be discontinued but will be maintained in only slightly altered form for political reasons. To be fair, however, it should be said that the research projects in the programme only run for limited time periods, and only provide a portion of the necessary funding.

The promotion of a European HDTV standard – a combination of setting harmonized standards and subsidizing technologies of the future – serves to illustrate the practical difficulties with which such an initiative at EC-level can meet. The HDTV promotion finally resulted in a fiasco: the analogue D2-MAC standard was technologically outdated before its introduction, the intended world-wide recognition of a European HDTV standard and thus domination of the world market is less likely than ever before, and the two big electronics concerns (Philips and Thomsen) that had been largely involved in the development of a European standard belong to one of the three syndicates in the "Grand Alliance" perfecting the future digital US-HDTV standard.

Third-country companies are placed at a relative disadvantage by R&D programmes and the associated subsidy to EC companies they imply. The pre-competitive nature of the implicit subsidy tends to conceal rather than eliminate such disadvantages. Without making a detailed examination of all the issues, it is impossible to determine to what extent such measures really do represent compensatory actions to redress the disadvantages suffered by European firms in the face of what is claimed to be large-scale industrial promotion in the USA (via the Pentagon) and in Japan (by means of industrial targeting). However, one ought not to overlook the fact that EC subsidiaries of foreign-based multinational corporations can also benefit from R&D projects, as borne out, for example, by IBM Deutschland's participation in several projects forming part of the RACE programme.

### Who Benefits from Liberalization?

Taking a general view, it is virtually impossible to distinguish clearly where national, EC or third-country companies are at an advantage or disadvantage in the telecommunications sector. The reason for this is that the global market is now encouraging the trend towards international mergers and acquisitions.

The telecommunications *equipment* market still comes closest to being the domain of EC companies. Here too, though, the competitive position of domestic suppliers is

now crumbling away, with strong competitive threats coming from Japan and North America in the terminal equipment market. Even today, a major portion of terminal equipment components, particularly semiconductors and integrated circuits, have to be imported. Directly or indirectly, therefore, the liberalization of the EC market in this product group will also be of pronounced benefit to third countries.

In other specific telecommunications equipment markets (exchange and connecting equipment, transmission equipment and materials), there is an unmistakable trend towards a more international market and towards greater concentration: of the eleven leading equipment suppliers in the market in the early 1980s, only six now remain; but Ericsson of Sweden is the only non-EC supplier among these.<sup>19</sup> It is unlikely that the concentration process has yet come to an end: the extremely high levels of development investment required in exchange or other connecting facilities and in network infrastructure call for a world market share of anything up to 15% before it can be fully amortized.

Here too, the past dominance of European companies is now under threat. The world's second largest telecommunications equipment manufacturer, the US corporation AT&T, is now in the process of establishing itself more firmly in the European market by collaborating with Italian and Spanish companies, and Japanese companies, too, are muscling in on the market. There are a number of areas which show just how supranational that market has now become: the digital mobile telephone systems have led to the establishment of truly international consortia. The first case in point in the German market is the participating interest taken by the US group Pacific Telesis in the D2 licensee Mannesmann Mobilfunk. Similarly, both contenders for the E1 licence awarded in February 1993 included third-country companies: the E-Star consortium led by BMW included two US companies which each had a 16% share, while the successful bidding consortium known as E-Plus includes BellSouth Enterprises of the USA (with 21%) alongside the British participant, Vodafone (16%). In other EC countries, too, a rapid acceleration in the internationalization of markets is apparent as foreign companies – specially from the USA – participate in the new digital GSM networks.<sup>20</sup> In satellite communications, companies from the USA and Japan have had the opportunity since the opening up of the single market to exploit the technological superiority they were

<sup>19</sup> The leading suppliers today are Alcatel, Siemens, Ericsson, Bosch, Philips and Italtel.

<sup>20</sup> See T. Schnöring: Entwicklungstrends auf den europäischen Telekommunikationsmärkten, Wissenschaftliches Institut für Kommunikationsdienste, Diskussion Papers, No. 102, Nov. 1992, p. 9, Fig. 3.5.

each able to build up thanks to the early liberalization of their own home markets.

As far as telecommunications *services* are concerned, with the important exception of voice telephony it is already fair to say that the market is an international one; indeed, it has to be so in order for operators to be able to serve major, internationally active customers in their worldwide operations. Business success often depends upon developing an optimum mixture of national and international licences of various types.<sup>21</sup> However, European service suppliers have been rather hesitant in accepting this challenge, and the vast majority of them have so far continued to operate on a purely national level and preferred to leave the international business to US operators such as GEIS and IBM. Only recently have European companies made some attempt to close that gap, e.g. by participating in Infonet, the largest value-added network service supplier in the USA.

As the above remarks will have shown, the discrimination against foreign suppliers, whether from other EC or from third countries, which still persisted in the mid-1980s had already diminished substantially even before the comprehensive realization of the single market, and it can be expected to decline still further in future in view of the additional liberalization initiatives taken by the Commission in Brussels. Although there is likely to be some delay before markets really open up in practice, apart from the reserved areas which have been mentioned the EC market in telecommunications is now a relatively open one even for third countries. In contrast to this, the EC complains of severe problems in gaining market access in the two largest competitor countries, namely the USA and Japan.

### Barriers to Access in the USA and Japan

There are not actually any direct legal restrictions upon access for EC-based manufacturers in the US telecommunications equipment market; however, strong traditional ties between the regional operating companies (RBOCS) and AT&T on the one hand, and between AT&T and domestic companies (including at least one of its own subsidiaries) on the other do not leave much leeway for competing firms from the EC. Nevertheless, in view of the fact that Japanese, Canadian and South-East Asian companies have had a great deal more success in the USA one has to assume that their own relative lack of competitiveness is also responsible for the Europeans' poor performance in the American market.<sup>22</sup> In the services market, legal obstacles do indeed exist:

participating interests by foreign companies of 15% or over in US corporations are enough to be considered dominant (25% in the case of satellite earth stations).

The situation is a similar one in Japan. In strictly formal terms, there are no immediate barriers against imports from EC countries. Yet here again, the dominant Japanese telecommunications corporation, NTT, traditionally maintains close relationships with domestic equipment manufacturers. As a result, even companies from the USA, with which Japan has signed a number of bilateral agreements to facilitate market access, have not been able to gain any appreciable market share.

In both countries, then, the main problem stems from structural impediments facing EC-suppliers in these competitors' own markets. As already mentioned, however, the EC has chosen not to attach any reciprocity requirements to the participation of third countries in the benefits of liberalization in the EC market, even if those countries are competitors on the world stage. Instead, it is initially endeavouring to eliminate disparities in market access within the context of the Uruguay Round, going on to bilateral negotiations subsequently if necessary. The draft of the GATT outcome as it currently stands – in what is known as the Dunkel Paper<sup>23</sup> – contains very liberal provisions on telecommunications, with the exception of a number of special arrangements for developing countries, and has proved controversial right up to the last. The USA, in particular, was the strongest proponent of liberalization in telecommunications services when negotiations began, yet is now showing reluctance to include all substantial service areas in the terms of the agreement or to accept the automatic application of most-favoured-nation status. Evidently, its fear is that it will lose an important potential bargaining counter against protectionist countries at too early a stage of the game. As such, it now occupies a position which contradicts its own original demand for a "right of establishment" (i.e. the right of foreign companies to set up subsidiaries or the systems they need to provide services) coupled with a "right of non-establishment" (the right to operate in another country without having a formal corporate presence there if so desired). If no common agreement is attained as a result of the Uruguay Round, it remains to be seen whether the EC will resolve to take measures which could exert pressure on third countries to open up their telecommunications markets not only in formal but also in substantial terms.

<sup>21</sup> See P. F. Cowhey: Telecommunications, in: G. C. Hufbauer: Europe 1992. An American Perspective, Washington 1990, pp. 159-224, esp. p. 171.

<sup>22</sup> On this, see K.-H. Neumann: Europe 1992: Implications for Canada and the USA. A European Perspective, Wissenschaftliches Institut für Kommunikationsdienste, Discussion Papers No. 55, Bad Honnef 1990, p. 6.

<sup>23</sup> Draft Final Act Embodying the Results of the Uruguay Round of Multilateral Trade Negotiations, MTN.TNC/W/FA, 20th December 1991, GATT Secretariat, UR-91-0185.