

3.13 FINLAND

1. REGULATORY FRAMEWORK

1.1. National Regulatory Authority

As highlighted in previous Implementation Reports, Finland has a light regulatory regime as compared with other Member States, and the Finnish authorities have traditionally relied more upon market forces than detailed regulation.

The large number of SMP operators, some of which are very small, represents a particular challenge in terms of workload to the FICORA, which has yet to ascertain that all SMP operators comply with the regulation relating to open network provision, in particular regarding the cost orientation of interconnection charges. The staff of FICORA increased by twelve posts in 2001, but not all of these resources were devoted to the supervision of cost orientation and cost accounting systems. At present, there are nine experts in the Economic Supervision Unit, of which two to three are working on cost accounting systems.

Concerns expressed by the new entrants in the past regarding the hands-off approach of the authorities and the absence of ex-ante detailed regulation and efficient implementation of existing rules remain, even though they welcome the efforts made by the NRA in the last year to verify the cost accounting systems of eighteen SMP operators.

The NRA has also investigated the interconnection charges of some of the biggest SMP operators. However, in many cases, its investigations have been protracted. In several cases, its decisions have been appealed by the incumbent operators. Also, the fact that the NRA's and the appeal bodies' decisions do not have retroactive effect is detrimental for the new entrants.

In these investigations, the NRA has concluded that in many cases, the interconnection charges of SMP operators were not cost-oriented (and sometimes by tens of percentage points above the so-called "reasonable" level referred to in national legislation) and that the operators' cost accounts were not in compliance with the telecommunications legislation. These findings suggest that the concerns repeatedly expressed by new entrants regarding the lack of accountability on the part of incumbent operators are not unfounded. They also cast more light on the new entrants' long-standing demand that the NRA act resolutely and swiftly to prevent and remedy the problems identified, and monitor compliance with its decisions.

The draft Communications Market Act strengthens the remedies at the NRA's disposal: it establishes an economic fine in case of non-compliance with the obligations imposed on the operators. Also, to remedy the problems encountered in the past regarding lengthy appeal procedures, the draft Act provides that some of the NRA's decisions (e.g. those relating to market definition and analysis, as well as to the imposition of obligations on operators) may be appealed directly to the Supreme Administrative Court. As provided for in the Framework Directive 2000/21/EC, the decision of the NRA will stand pending

the outcome of the appeal; the draft Act however requires that the NRA specifically order that the operator concerned complies with its decision.

The new entrants welcome these future remedies at the NRA's disposal, but stress that, as is the case today, effective implementation of regulation requires that they are used to their full extent.

In the summer of 2002, following Sonera's decision to write-off the 3G licence that it acquired in Germany, a debate took place in the Finnish Parliament on the Government's role in the purchase of the German 3G licence. Even though the conclusion (supported by the State prosecutor) of the associated investigations (including a Communication of the Government on the State's ownership policy vis à vis Sonera) was that the Government could not be held responsible for this investment decision, a majority view (supported by the Government) emerged that the State's holding in Sonera and other companies be exercised by one dedicated entity rather than sectoral Ministries.

2. INTERCONNECTION AND ACCESS REGIME

2.1. Interconnection

2.1.1. Level and cost orientation of interconnection charges

According to data collected during the preparation of this Report, the charges levied by Finnish SMP operators for terminating calls on their fixed networks are among the most expensive in the EU for all levels (local level, single transit and double transit).

In this context it should be noted that while operators are obliged by law to offer interconnection to their network at any technically feasible point requested (including local level interconnection), the price lists of the operators belonging to the Elisa Consortium duly include local level interconnection charges following an instruction addressed to Elisa by the NRA, but this is not the case with the price lists of other SMP operators.

New entrants continue to express concern that interconnection prices are high as compared with retail tariffs, and that there is a price squeeze, in particular for local level interconnection internet traffic. To determine whether there is such a price squeeze, the cost orientation of the SMP operators' interconnection charges should be established. In the last eighteen months, several investigations by FICORA have indicated that non-cost oriented interconnection charges are levied by SMP operators, some of which have been supported by court decisions.

The decision of the NRA of April 2001 that established that Sonera's mobile interconnection charges (the termination fees were scrutinised following a submission from a new entrant, and the origination fees were scrutinised at FICORA's own initiative) were not cost-oriented led the company to reduce its access charges by 12% and its termination charges by 20% on average (with effect from 1 September 2001). Sonera appealed the decision to the Helsinki Administrative Court. The court proceedings lasted a whole year, and a ruling was given on 27 September 2002, which dismissed Sonera's claims. Sonera has announced that it will further appeal to the Supreme Administrative Court, which means that FICORA's decision cannot be enforced until this appeal

proceeding has been concluded. The matter has been pending since November 1998, i.e. the date on which Telia submitted its complaint to the NRA.

FICORA considers that the ruling of the Helsinki Administrative Court establishes an important precedent in that it confirmed its authority to investigate mobile interconnection charges and to force operators to set these charges at a cost-oriented level. This authority had been challenged by some operators. The ruling is of substantial value for the NRA's on-going investigation of Radiolinja's mobile interconnection charges. During the course of this investigation, Radiolinja has effected structural separation of its network and service operators and decreased its termination charges from €0.2052 (peak) to €0.1312 (peak and off-peak).

In January 2002, FICORA closed the investigation of the cost orientation of Elisa's interconnection charges¹ after the company had lowered its charges by 20% on average (price list applicable as from July 2001). This proceeding lasted two years and three months.

This decision regarding Elisa's interconnection charges prompted the NRA to ask, in January 2001, all the local telephone companies with SMP to submit their cost accounts for a similar verification of cost orientation. Thirty-seven operators submitted information to the NRA in the spring of 2001, but many submissions were imprecise or did not respond adequately to the NRA's request. In September 2001 the NRA closed the general investigation and announced that it would proceed with more in-depth investigations of certain operators.

In June 2001, an investigation was launched concerning the cost orientation of the interconnection charges of Soon Communication Oyj (now Soon Net Oy, part of the Elisa Group). In the course of the investigation, Soon reduced its interconnection charges by approximately 10 to 19 % and published a new price list valid as from 1 February 2002. On 13 May 2002, FICORA adopted a decision establishing that the reduced charges were cost-oriented and closed the investigation. This proceeding lasted eleven months.

In 2001, FICORA also started an investigation of the charges levied by 49 local SMP operators for opening subscriber number digits and operator prefixes. Due to the large number of local networks and local operators in Finland, the cumulative amount of the charges levied by these operators creates a substantial entry barrier for new entrants. Approximately half of the SMP companies investigated reduced their charges during the investigation process. In one case (the Telephone Company of Vaasa), a decision of FICORA (dated 1 February 2002) establishing that the operator's charges were not cost-oriented was required before the company reduced its prices. As a result of the investigation, the fees charged for the opening of digits have dropped considerably, in certain cases by more than 70%.

New entrants consider that FICORA's investigations have contributed very little to the transparency of interconnection charges. They claim that in many cases, operators have reduced their charges during the investigation and FICORA has closed the proceedings,

¹ In January 2001, FICORA adopted a decision that established that Elisa's interconnection charges were not cost-oriented.

with the result that the new entrants do not know how the interconnection charges are calculated.

2.1.2. Non-discrimination

The new entrants maintain their claim that interconnection charges are imposed upon them without any evidence of cost orientation being provided to justify their level. Moreover, they claim that the termination fees that SMP operators have been willing to pay to them are discriminatory as compared with the interconnection charges that SMP operators pay each other. As mentioned in the 7th Report, in June 2001, the Competition Authority adopted a decision that confirmed the existence of such discrimination.

However, FICORA has abstained from dealing with similar disputes relating to alleged discrimination against the new entrants on the grounds that the termination fees levied by new entrants (i.e. non-SMP operators) fall outside the scope of the telecommunications legislation. For example, in the context of the above-mentioned investigation of the interconnection charges of Soon, which was started following a submission by a new entrant (Tele2), the latter claimed that Soon had required Tele2 to offer to it services at a price (for the same service) different from what it (i.e. Soon) pays to other operators in the same numbering zone. In its decision, FICORA did not address this matter on the grounds that it has no competence over it.

2.1.3. Fixed-to-mobile charges

According to data collected during the preparation of this Report, the EU average charge for call termination on mobile networks (peak) is €0.1894 for all operators, €0.1849 for operators having SMP in the national interconnection market and €0.1875 for operators having SMP in the national interconnection market and the national mobile market.

There is no wholesale interconnection market for certain types of communications in Finland. For example, fixed operators cannot purchase termination from mobile operators. Instead, the latter levy an end-user charge. End-user charges vary as a function of the type of subscription.

In the case of calls originating on fixed networks, the (peak) end-user charges levied by Sonera and Radiolinja for terminating these calls are €0.27/min and €0.26/min respectively. In comparison, the interconnection charges levied by Sonera and Radiolinja for (peak) calls originating on mobile networks (peak) are €0.1278/min and €0.1312/min respectively.

Three mobile operators have been designated as having SMP in their relevant markets (the Finnish authorities do not use the typology provided for in the Directives; for example, there is no designation of SMP operators in the national market for interconnection): Sonera, Radiolinja and Alands Mobiltelefon. According to Finnish telecommunications law, the interconnection charges of SMP operators must be cost-oriented, but end-user charges are not regulated. This means that in FICORA's investigation of Sonera's mobile termination charges, the scope of the investigation only concerned traffic originating in other mobile networks and abroad.

The provision in the current Interconnection Regulation² that codified, in 1999, the existing practice of levying end-user prices in certain circumstances has been carried over unchanged into the new draft Communications Market Act. This has been criticised by Finnet, which would like fixed operators to keep control of the pricing of end-to-end communications and argues that under the current system, mobile operators are supported at the expense of fixed operators. The new entrants call for a wholesale interconnection market so as to promote competition between service providers and in particular to enable them to better compete with the service providers of vertically integrated operators. This requires that they be able to buy origination and termination services from fixed and mobile network operators. The appropriateness of the system in a converged market environment has also been questioned.

The Finnish authorities consider that the system of end-user charges is sound, because each operator only prices that part of the service that it actually provides and that consumers benefit from this transparency. If mobile operators reduce their charges, the effect is immediately felt by the end-user, since fixed operators cannot use these reductions to increase their margins without passing them on in the end-users prices.

2.1.4. Flat-rate internet access call origination

FRIACO is not offered by SMP operators in Finland, even though some of them have flat-rate internet retail products. The NRA has not mandated it. New entrants have previously called on the NRA to promote FRIACO. Some of them still maintain this request, while others consider FRIACO less interesting than bitstream offers (which are not systematically available either; for further details, see Section “Bitstream” below).

2.2. Interconnection leased lines/partial circuits

Interconnection leased lines are generally not included in the reference interconnection offer of SMP operators. According to data collected in the context of the preparation of this Report, the charges for interconnection leased lines in Finland, where they are available, are among the cheapest in the EU.

2.3. Unbundling

Full unbundling of the local loop has been mandated since June 1997. There are some 35 000 fully unbundled loops in Finland and some 7500 loops in shared use (estimates of 1 August 2002). These figures contrast with the 30 000 loops that were fully unbundled and the 500 loops that were in shared use one year earlier³.

2.3.1. Pricing

In the summer of 2001, the Competition Council fined three companies for abusing their dominant position and engaging in excessive and discriminatory pricing of the local loop. In the case of the Turku Telephone Company and the Telephone Company of the Salo

² Article 15a of Regulation 1393/1997, incorporation 1999/220.

³ In this regard, it should be noted that the figure of 40 000 fully unbundled lines mentioned in the 7th Report also included leased lines.

Region (who appealed the decision), these sanctions were maintained by the Supreme Administrative Court in 2002.

As concerns Elisa, in August 2001, the Supreme Administrative Court ruled on Elisa's appeal against an earlier decision by FICORA regarding excessive pricing of the local loop. This ruling was largely in line with FICORA's decision, but the Court considered that some of the methods used to evaluate the capital base (to determine a reasonable return on capital) lacked clarity, and returned the case in its entirety to FICORA. In November 2001, Elisa submitted new cost calculations as well as a proposal for the revised local loop prices, which would apply from 1 January 2002. These prices provided for an average reduction of 20 % as compared with the previous prices. In a decision issued later in November 2001, FICORA concluded that Elisa's new prices were cost-oriented.

FICORA considers that the decision of the Supreme Administrative Court constitutes a significant preliminary ruling with respect to its investigations of other incumbent operators' local loop prices. The Court stated that FICORA has the competence to investigate whether the prices set by the company are in accordance with the law (cost-oriented) and to oblige operators to bring the prices down to a reasonable level, but that it cannot set the exact level of these prices.

During the last few months, FICORA has investigated operators' local loop prices, and some operators have reduced their prices during the investigation. The prices levied by some operators are currently under further investigation.

2.3.2. *Provisioning and collocation*

New entrants state that there are problems with discriminatory provisioning deadlines. On 23 September 2002 FICORA issued a decision following a complaint relating *inter alia* to differences in the provisioning deadlines of the upper band for competitors by Elisa as compared with the provision of ADSL connections by companies belonging to the Elisa Consortium. One of the key issues that have an impact on provisioning deadlines is access to information and operational support systems. During the investigation launched by FICORA, differences in provisioning deadlines were identified, but the NRA declared that they were unintentional, and was satisfied with Elisa Network's commitment to create a special access regime to its databases for competitors by 30 June 2003. As the other allegations in this complaint were also considered unfounded (for further details, see "Bitstream" below), FICORA closed the case.

No case law exists for the interpretation of the very open-ended provision in the Telecommunications Market Act that allows the incumbent to refuse access on the grounds that it requires the transmission capacity or collocation room requested for its own use or its reasonably foreseeable future needs. New entrants claim that problems have emerged relating to refusals of access on the grounds that the copper pair has been reserved for the network operator's service provider, but no complaints have been submitted to the NRA in this regard .

2.3.3. *Shared access and subloops*

Even though the figures provided by the NRA indicate that there has been an increase in the number of local loops in shared use as compared with last year, there are big differences in the price lists of incumbent operators: some do not provide for operational

provisions on access to the upper band, with the result that the latter are defined on an “ad hoc” basis and in an unstructured way in commercial negotiations.

Shared use of the local loop is not only being exploited by the new entrants, but also by the major operators. For example, Sonera is making intensive use of this facility to increase its presence in the major cities of Finland, two of which (Helsinki, Tampere) are in the hands of the Elisa Consortium.

During the preparation of the draft Communications Market Act the issue of subloops was raised by several new entrants, because problems have arisen due to the fact that when modernising their networks, many fixed network operators have replaced exchanges with concentrators. Since the incumbent operators have interpreted the notion of “local loop” as meaning the connection between the concentrator and the end-users’ premises, the local loops leased to new entrants have been very short and the system has required that they extend their own networks to each single concentrator of the incumbent operator. This problem has been solved to the new entrants’ satisfaction in the draft Communications Market Act.

2.4. Bitstream access

Some 2000 ADSL-lines are operated by new entrants under bitstream offers, which contrasts with the figure of 1000 announced at the time of the preparation of the 7th Report.

Three major problems were identified during the hearing on the status of the Finnish telecommunications market that was held in Brussels on 11 October 2002. Firstly, some operators, including Sonera, have retail ADSL offers, but no wholesale offer to new entrants. Secondly, in some cases, there is a wholesale offer that can be negotiated, but it is not included in the public price list. Finally, there are price squeeze problems.

These findings are convergent with the results of a recent study by the National Competition Authority (NCA) concerning obstacles to competition in the broadband market (published in June 2002), which indicates that pricing is the main problem in the wholesale ADSL market: some operators do not include wholesale offers to competitors in their public price list, and/or price their products at an unreasonable level or in a discriminatory manner (which results in price squeezes). The study also showed that in some cases, provisioning terms include restrictive provisions that prejudice competitors (in this context, it is noted that in the context of the preparation of this 8th Report, all new entrants have drawn attention to problems with provisioning deadlines). Retail markets were considered to be generally competitive, even though tying (e.g. of the prices for the internet service, the access service and for equipment) and the lack of alternative operators in some sparsely populated areas were identified as particular problems.

There is no sector-specific legislation mandating bitstream access in Finland. In their response to the Commission’s administrative letter of 29 January 2002 regarding bitstream access, the Finnish authorities indicated that in implementing the national legislation, they required network operators with SMP that provide a DSL connection to a service operator (e.g. its own service operator) to offer the same service to other service operators. This means that if, for example, Elisa Networks provides a DSL connection to the ElisaCom OY service operator (that operates the DSL service offered to end-users), it must also provide such connection to competing service operators.

Following the above-mentioned study (which is being followed up by company-specific investigations) the NCA issued an opinion according to which operators should have separate prices for retail and wholesale ADSL products and services, and their price lists should be public, precise and transparent. Moreover, SMP operators' wholesale prices and service level should be reasonable. Provisioning terms should be reasonable, fair and non-discriminatory.

The above-mentioned FICORA decision of 23 September 2002 also addressed allegations by the complainant regarding the subsidisation of Elisa's ADSL retail subscription and equipment and regarding the tying of these two products. In this regard, FICORA indicated that it had no competence to deal with these matters, because the pricing of ADSL subscriptions and services falls outside the scope of national telecommunications legislation since the latter does not cover switched data communications. This restriction will be removed in the new Communications Market Act.

2.5. Situation of the (broadband) local access market

2.5.1. Status of the DSL market, position of the incumbent

According to the Finnish authorities' estimates, there are some 180 000 broadband connections in Finland. The number of broadband subscriptions increased tenfold in 2001-2002⁴.

Some 112 000 xDSL lines were provided to end users by the incumbent operators, their subsidiaries or partners on 1 August 2002. This number was 59 000 on 1 January 2002. In addition, the incumbent operators have 16 000 internet broadband connections by means of cable modem access.

The number of DSL lines operated by new entrants is 19 500 on the basis of full local loop unbundling (10 000 lines), shared access (7 500 lines) and bitstream (2000 lines). In addition, they have some 25 000 internet broadband connections by means of cable modem access.

2.5.2. Development of alternative means of access

From January 2002 to August 2002 the number of cable modems in use increased from 32 000 to 41 000. In some areas cable operators have been able to substantially increase their market share due to attractive prices (e.g. Welho in the Helsinki area). Many cable operators are owned by the local telephone companies, a fact that may cause competition problems.

There are fifteen local broadband wireless local loop (WLL) operators in Finland, and the number of new entrants actually operating wireless local loops is five. So far, WLL operators have had a limited impact on local access competition.

⁴ (Finnish) Telecommunications Statistics 2001, publication of the Ministry of Transport and Communications

2.6. Leased lines

No concerns have been expressed by operators regarding the prices of leased lines in Finland. As data is unavailable, it is impossible to compare the prices of national leased lines in Finland with those applicable in other Member States. International leased line prices compare favourably with other Member States, and have decreased over the previous reporting period, in particular as concerns distant EU lines.

Delivery periods for leased lines also compare favourably with other Member States as concerns certain capacities and lengths of leased lines.

2.7. Numbering

Numbering is, in addition to interconnection and local loop unbundling, the area where Finnish new entrants have repeatedly called for more proactive measures on the part of the NRA to ensure competitive market conditions.

2.7.1. Carrier selection and pre-selection

Some 11% of fixed telephony customers have concluded carrier pre-selection agreements with alternative operators. In practice, there is no implementation of carrier pre-selection for local calls, which was mandated in March 2001. Thus the facility is not contributing to competition in the local voice telephony market, and in particular in dial up internet.

The limited take-up of carrier pre-selection is due to the prices applicable. One-off charges have varied as widely as between €10 and €60. The new entrants welcome the provisions in the draft Communications Market Act that stipulate that the one-off fee may not be so high as to deter the use of the facility and that FICORA may in individual cases determine its maximum amount. However, the interconnection (call origination) charges added to the one-off fee are depicted by new entrants as even more problematic than the one-off charges.

New entrants have also criticised the fact that there are no third party agreements available, which means that they cannot use alternative operators to carry traffic, and carrier pre-selection has to be arranged for bilaterally with each of the SMP operators.

2.7.2. Number portability

The take-up of number portability remains low. Only some 15 000 numbers have been ported, which is the same number as the one mentioned in the 7th Report. New entrants claim that the same pricing related obstacles as those regarding carrier pre-selection hinder the take-up of number portability. The way in which calls are routed through the incumbents' networks increases costs. New entrants have therefore called for the creation of a DNS Master Database.

The explanatory memorandum, which accompanied the draft Communications Market Act (version of May 2002), stated that the pricing of number portability has so far prevented its implementation in practice, and referred to the "unreasonable pricing" of the facility. The memorandum also foresaw the creation of a master database so as to ensure that the technical implementation of number portability does not give rise to excessive costs. It provided that FICORA could lay down rules concerning the timetable for transition to the master database. It also specified that where an operator did not wish to participate in the

database, it would have to bear itself the additional costs arising from any uneconomical technical implementation of number portability.

However, these provisions have been removed from the final version of the draft Act that was submitted to the Finnish Parliament on 13 September 2002. The draft Act now stipulates that the per call costs incurred will be shared equally (50%-50%) by the donor operator and the receiving operator.

As a result of the removal of the above-mentioned provisions from the draft Act the creation of a master database will depend on the willingness of operators to implement this technical solution. Sonera has indicated its reluctance to participate in such a database in so far as the costs involved are not proportional to the quantity of numbers ported. The NRA's role remains a coordinating one (as has been the case so far), as specifications for the database intended for mobile number portability (and at a later stage for fixed number portability) are being discussed in an industry working group. This working group was set up three years ago already to facilitate the technical implementation of fixed number portability, but it has not been able to make progress as regards the creation of a master database.

The 6th and 7th Implementation Reports noted that the Finnish NRA was investigating the cost-orientation of number portability charges. This investigation was closed in September 2001 without any conclusive results. The NRA noted that few numbers had been ported (in some networks the number was nil) and that the distribution of costs could only be based on estimates.

While the NRA acknowledges that there is very limited take-up of fixed number portability, it notes that for several years, it has been possible for business customers to connect to two local networks (which both have their own numbering), and direct their outgoing and incoming traffic through either of these operators' networks (i.e. using the old or the current number). Some 400 exchanges provide for this facility.

2.8. Cost accounting and accounting separation

Until the end of 2001, no systematic independent verification of compliance with the cost accounting system of SMP operators had been conducted by the NRA and no annual certificate concerning compliance had been published.

In 2001, the Commission launched an infringement proceeding against Finland on account of lack of verification of the cost accounts of SMP operators and publication of an annual statement concerning compliance. In the second half of 2001 and in 2002, FICORA investigated the 2000 cost accounts of eighteen SMP operators as concerns local call tariffs and interconnection charges (as required by Directives 98/10/EC and 97/33/EC). The authorities have also committed to undertake verifications of SMP operators' 2001 accounts.

Under the Finnish legislation, SMP operators are free to determine for themselves the accounting methodology they wish to use. In practice, SMP operators use different cost accounting systems, many of which are still based on historic costs.

The above-mentioned investigations by FICORA of SMP operators' cost accounting systems have been carried out at a general level: FICORA scrutinised, in particular, the system environment, procedures of entries into the cost accounting systems, the

connections between the cost accounting systems and other systems of financial management, the rules of distribution of the costs and allocation methods, as well as the connection between the cost accounting system and the pricing of operators. It did not address volumes and figures relating to individual products and services.

After having verified the cost accounts of ten SMP operators in the second half of 2001, FICORA published in December 2001 a statement concerning compliance in which it did not provide any company-specific information and concluded that on average, any verifiable link between the cost accounting systems and the pricing systems applied was weak and that the cost accounting systems were generally not adequate in terms of the aims of the Telecommunications Market Act. This is understood as meaning that these cost accounting systems do not comply with the principles of transparency, cost orientation and unbundling.

The key question is the regulatory measures that will be undertaken to remedy the problems identified. As mentioned above, no public information is available concerning the outcome of the verifications as concerns each individual company audited. The justification given is that the audit reports contain business secrets. Disparate information was collected during the preparation of this 8th Report: one large operator stated that after the verification, FICORA had indicated a series of changes to be made in the operator's cost accounting system. The requested changes were considered reasonable by the operator who had subsequently implemented them. Another large operator indicated that it was still waiting for the results of the verification and that these results were long overdue.

FICORA has indicated that it has discussed the findings of the audits with all companies concerned and that it trusts that these companies will proceed with the necessary modifications of their cost accounting systems. However, the question arises as to whether and how FICORA will ascertain this and which remedies or sanctions it will impose on companies that may continue to breach their regulatory obligations.

One possibility of remedying the identified problems would be for FICORA to establish the minimum standard that the cost accounting systems of all SMP operators would have to comply with. However, FICORA considers that this is not practicable due to the substantial differences in size of the SMP operators. Some operators employ only a handful of people and serve only a thousand customers. Instead, FICORA is drawing up a general, non-binding guideline to assist the operators, in particular the smallest ones, to develop their cost accounting systems. This is in line with the draft Communications Market Act, in which FICORA's powers to regulate cost accounting systems are limited to issuing general, non-binding guidelines and providing guidance to operators.

One operator has expressed concern about the fact that the statement concerning compliance published by the authorities at the end of 2001 created a general suspicion vis-à-vis all the companies audited, because it did not distinguish between operators. This had forced this operator to provide clarifications to the public and shareholders.

2.9. National roaming and access to mobile networks

The Telecommunications Market Act was amended in 2001 with a view to obliging 2G licensees with SMP to negotiate roaming with 3G network operators. The new draft

Communications Market Act does not change the current situation: the statutory obligation for national roaming is restricted to 3G-2G networks.

Access to the networks of 2G operators with national coverage has been organised on the basis of service provider agreements. This has been criticised and challenged by the new entrants, who argue that these agreements do not provide for genuine full capacity agreements and that the authorities should mandate 2G-2G roaming as a pro-competitive tool and, more generally, further develop mobile access regulation as is possible under the special access provisions of the current Directives and under the new framework.

In the spring of 2002 Telia, which had previously served its mobile customers through a service provider agreement with Radiolinja, concluded a roaming agreement with Suomen 2G and carried out a customer migration operation. Radiolinja undertook measures, some of which were considered to breach the law by the authorities. For example, FICORA ordered the company to immediately re-open Telia's subscriptions (IMSI space) that the company had closed. Also, in July 2002, the Consumer Authority issued a conditional fine of €80 000 to Radiolinja, but the case is currently pending before the Market Court.

The draft Communications Market Act introduces a provision allowing the NRA to impose access to SMP-operators' mobile networks by mobile service operators and mobile virtual network operators. It also provides that the NRA may impose an obligation on mobile operators with SMP to allow access to their SIM-card capacity by alternative operators. During the consultation period, Sonera and Radiolinja expressed concern about this provision, because they considered that such access should be based solely on commercial negotiations, as is already the case with access to Radiolinja's SIM-card.

In December 2001, the Finnish Competition Council adopted a decision regarding a complaint by Telia concerning alleged restriction of competition by Sonera in the pricing of access to its mobile network. The Competition Council ruled that Sonera is neither alone, nor jointly with Radiolinja, dominant in the national market of access to mobile networks. The Council however overruled the decision of the Competition Authority that Sonera's pricing policy had not caused prejudice to its competitors and returned the case to the NCA, which was ordered to study the extent to which Sonera's access pricing had deterred market entry.

Telia appealed this decision to the Supreme Administrative Court, which has not yet ruled on the case. The NCA has indicated that it would not tackle the pricing issue as long as the Supreme Administrative Court has not given its ruling on the issue of dominance

3. AUTHORISATIONS

Under the light Finnish licensing regime, individual licences are only required for the provision of network services on public mobile networks. Operators maintain that this regime has promoted a competitive environment, in which operators are free to operate and test new services and applications. They consider that the policy of minimal regulatory intervention has contributed to the emergence of new technologies.

3.1. Rights of way

Under Finnish law digging rights should be granted free of charge. However, some local authorities have levied charges for digging, e.g. on the basis of €/meter. In two recent cases of September 2001 and December 2002, local administrative courts have declared that the charges levied by the local authorities in the context of the exercise of rights of way breached the law. One of these rulings (concerning charges levied by the City of Lahti) has been appealed to the Supreme Administrative Court. In those cases where the local administrative courts have issued rulings declaring such charges to be illegal, this has contributed to cooperation agreements between the operators and the local authorities, and the latter have cancelled the charges.

In March 2002, a proposal was submitted by the territorial planning committee to modify the current Construction Law (which is under review) with a view to incorporate a provision regarding charges for the installation of lines and equipment. The proposal was however rejected at political level.

The new entrants state that mast sharing occurs frequently, but that prices are high and as a result, they face the dilemma of whether to share masts or build their own. It is reported that obtaining permits for constructing new masts is not unproblematic, but the situation is not nearly as bad as in some other Member States.

4. UNIVERSAL SERVICE/CONSUMERS/ USERS

4.1. Retail tariffs

Due to the segmentation of the Finnish market between local and long distance/international operators, tariff rebalancing may be less of an issue in Finland than in other Member States. However, the cost orientation of retail tariffs (for local calls) remains to be demonstrated due to the lack of transparency of the SMP operators' cost accounts and the absence of systematic verification of compliance. Also, the Finnish authorities do not require the SMP operators' line rental charge or individual retail products to be cost oriented; this requirement of cost orientation must be met by the retail charges for fixed local telephony as a total. Furthermore, some line rental charges have been artificially low due to the (prohibited) reductions offered by some local operators to their owner-customers.

Consumer price regulation is not applied by the authorities in Finland, with the exception of the requirement of cost orientation of end-user tariffs for local telecommunications services provided via fixed public networks of less than 2 Mb/s. The specific cost orientation requirements of Article 17 of the New Voice Telephony Directive are not applied by national legislation as regards the activities of SMP operators in the markets for international and long-distance voice telephony, on the grounds that effective competition exists on those markets.

Following its decision, which concluded that the interconnection charges of Elisa were not cost oriented, FICORA initiated, in January 2001, an investigation of Elisa's local telephone tariffs. This investigation was closed in December 2001. In its decision, the NRA concluded that the distortions at wholesale level (identified in the investigation of the company's interconnection charges) needed to be corrected before it would be

possible, based on the company's cost accounts, to establish whether the retail tariffs of the operator are cost-oriented.

According to the study "The level of telecommunications tariffs in Finland in 2001", the retail tariffs decreased by 0.5% over 2000. The decrease in prices has slowed down in 2000 and 2001 as compared with the years 1995-1999 when the prices decreased by an average of 3.7% per year. In 2001, the prices of international communications decreased by 2.2% and the prices of mobile calls by 2.9%. Prices for long distance calls increased by almost 4% (these prices consist of the local network (interconnection) charges and of the price for the long-distance call). Local call tariffs increased by 2.4%, while the monthly line rental charges increased by 7.1%. This latter increase reflects the fact that more than half of the local telephone operators have stopped granting rebates on the line rental charge to their owner-customers.

The study also indicates that the prices for ADSL subscriptions have decreased considerably: on 1 January 2002, the standard ADSL service of 256Kbit/s provided by local operators was priced at €57 per month on average, which corresponds to a decrease of 21% as compared to the price applicable on 1 January 2001.

4.2. Funding schemes

No universal funding mechanism has been set up, because the provision of universal service is not considered as giving rise to net costs. However, some operators have indicated that if the principle of cost orientation were applied to each single element of fixed local telephony, in particular the line rental, a net cost might arise in some cases.

4.3. Itemised bills

Finnish operators do not provide bills that show, for each call, the partial or full number called, the date, the duration and the price of the call. The basic bill shows the total amount of calls (total minutes and prices) divided into local, long-distance, mobile, international and premium rate calls. Generally, the partial or full number and the date of each individual call are itemised upon request at an extra charge that varies between operators. Some operators also provide itemised bills free of charge upon request to their subscribers.

5. DATA PROTECTION

5.1. Traffic data retention

Traffic data must be erased upon termination of the call and only certain data may be processed for the purpose of subscriber billing and interconnection payments. Such data may be stored for three months after the maturity of the bill (as a minimum) and three years after the bill has been paid in full (as a maximum).

5.2. Unsolicited calls and e-mails

For natural persons, an "opt-in" regime has been mandated by the Data Protection Act as regards automated systems (e-mail, SMS, fax and "speech machines"). For conventional telemarketing (unsolicited phone calls), an "opt-out" regime is applied, and the Direct Marketing Association of Finland maintains a voluntary register to this effect.

Legal persons are subject to an “opt-out” regime in all of the above categories (unsolicited phone calls, faxes, e-mails, SMS).

6. MOBILE ISSUES

A new service operator “DNA Finland”, which uses the network of Suomen 2G, started commercial operations at the beginning of February 2001, and has attracted a relatively large customer base in a short time. The market shares in terms of subscriptions of the Finnish mobile operators in 2001 were as follows: Sonera 59%, Radiolinja 29%, Telia Mobile 6% and DNA 5%.

The merger between Telia of Sweden and Sonera has been the major development in the mobile market in recent months. According to the notification submitted to the Commission in May 2002, the merger will be effected by means of a share exchange offer by Telia to Sonera’s shareholders. In order to address the Commission’s concerns about direct horizontal overlaps in certain markets, in particular mobile communications services to retail customers, Telia undertook to divest its mobile communications business in Finland. To address the Commission’s concerns regarding the likelihood of foreclosure of certain markets (in particular mobile communications services), Telia and Sonera offered to legally separate their fixed and mobile networks and services in Finland and in Sweden. They also undertook to grant non-discriminatory access to their networks.

6.1. UMTS and 2,5 G roll-out

The licence conditions provide that the 3G networks be in place by 1 January 2002. As mentioned in the 7th Report, given the market situation, the authorities required the 3G networks to be in place on 1 January 2002 “to a certain extent”, and this requirement has been considered to be fulfilled since all four 3G operators had operating test networks in certain parts of the country at that time.

FICORA monitors market developments, including the construction of the networks, on a six-monthly basis. Its latest report on this issue is dated 14 June 2002. The authorities follow a pragmatic approach in as much as the roll-out of the networks will be based on market conditions (availability of terminals etc), and the licensees will not be penalised for delays for which they are not responsible. Mobile operators are satisfied with this policy.

All three GSM operators with nation-wide licences have upgraded their mobile networks to meet the requirements of the GPRS technology and started to provide GPRS services in the course of 2001. Major take-up has yet to occur (with the exception of some large corporate customers), although it is estimated that possibly up to 50% of the handsets currently sold are GPRS compatible. Operators consider that there is scope for new applications in GPRS and that it may prove so successful that the introduction of UMTS may be delayed. The quality increase of UMTS as compared with GPRS does not, as of today, appear to compensate for the customers’ (financial and other) switch-over costs. The Ministry broadly agrees with this assessment and stresses that early launch of UMTS services will not be imposed on the operators, if the market is not there.

The new entrants consider that access to mobile networks and interconnection between GPRS and internet-based data networks are important challenges for the market and for the NRA. Vertically integrated operators that have both a fixed and a mobile arm are in a privileged position to develop these services, and pro-competitive measures are needed to

avoid a foreclosure of this market as far as the new entrants are concerned. The NRA has indicated that it shares this concern.

6.2. Network infrastructure sharing

According to the Finnish legislation, free antennae space on masts must be leased to competitors who are prevented from constructing their own masts for environmental or town planning reasons. Approximately 60% of new antennae are placed on masts that are in shared use. The prices for the leasing of antennae space levied by Unibase, a 100% Sonera owned company, are considered extremely high by the new entrants.

No network infrastructure agreements have been notified to the NRA or concluded between the operators. The Ministry has not taken any formal position on this issue, but has stated that its approach to such agreements would in principle be positive, as long as competitive conditions and consumer interests are respected and in so far as such agreements contribute to wider coverage of networks rather than to slowing down infrastructure development.

7. PREPARATION FOR THE TRANSITION TO THE NEW FRAMEWORK

The transposition into national law of the new framework has already started. A new draft Communications Market Act was submitted to the Finnish Parliament on 13 September 2002. Consultations were held with more than 260 stakeholders whose statements were posted on the Ministry's website. A hearing was also arranged on the topic, although some operators have expressed the view that this was more of a formality than a real forum for debate, while others praise the transparency of this legislative process.

Only one extra post has been budgeted for 2003 for (and currently only one person has been specifically charged with) the market reviews to be carried out in the coming months. Additional FICORA staff will assist in this work as necessary.

As mentioned in the 7th Report, some new entrants have expressed doubts as to whether the Finnish market has reached such a degree of effective competition that regulation can be rolled back (as has already been done for example in the case of long distance and international call tariffs). They also regret the fact that the NRA has not produced comprehensive market analyses that would be publicly available to justify its decisions to remove some regulatory obligations on SMP operators. Against this background, they put a lot of faith in the market analyses that the NRA will carry out in the context of the transition to the new regulatory framework. The Finnish authorities acknowledge that so far, there has not been any systematic collection of market data, but have announced that specifications for a database are currently being developed for this purpose.

In fact, the Finnish Telecommunications Market Act is being reviewed in a two-staged process to align it with the new EC regulatory framework. On 1 July 2002, a first series of amendments to the Act entered into force, which also changed the name of the previous Act to Communications Market Act. The aim of this first amendment was to bring regulation of television and radio networks under the same umbrella as regulation of telecommunications. It also provided for the conversion of existing licences into separate network licences and programme licences.

The new Act is also intended to provide for an enhancement of the operating conditions of commercial channels as the fees that they have to pay to the Finnish public broadcaster Yleisradio Oy have been reduced. The licence fee for analogue TV broadcasters has been halved and the licence fee for digital TV broadcasters has been abolished for their first term of operation. These fees are paid to the Television and Radio Fund, which mainly finances the Finnish public broadcaster Yleisradio Oy. The new Act also enables competing internet service providers to use duplex cable television networks to offer their services.

Pursuant to the entry into force of the new Communications Market Act, the Finnish authorities have included some broadcasters in their annual notification to the Commission of operators which have been designated as having significant market power.