



January 10, 2000

Gloria Blue, Executive Secretary
Trade Policy Staff Committee
Office of the United States Trade Representative's Office
600 17th Street, N.W.
Washington, DC 20508
Attn: William Corbett, Esq.

Re: Germany 1377 Review

Dear Mr. Corbett,

CompTel writes to express our members' concern about a recent development in the German market that restores a serious barrier to entry bearing directly on your 1377 review of Germany's trade commitments under the WTO Basic Telecommunications Agreement reference paper.

On October 28th, the Superior Administrative Court in Muenster reinstated Germany's national telecommunications license scheme, overturning a preliminary injunction issued by the Administrative Court in Cologne. We understand that RegTP is now under considerable pressure to begin collecting national license fees from competitors in the German market, and will likely do so soon.

In March of this year, we filed comments in this review process regarding Germany's extraordinary policy of extracting a 3 million DM (approximately \$1.7 million) fee for a Class 4 national license to deploy and operate transmission lines from new entrants who wish to provide service nationwide at regulated interconnection rates. Germany's fee for a Class 3 national infrastructure license to deploy and operate transmission lines is even higher – a remarkable 10.6 million DM fee (nearly \$6 million).

These exorbitant fees are premised upon an up-front payment of administrative costs *projected over a 30 year period*, without possibility of a refund if a carrier ceases doing business in Germany or RegTP's administrative costs decrease over time. They work to the obvious

advantage of well-entrenched German carriers, most notably DTAG, who already derive substantial revenue from the German market. No other country in Europe or North America charges license fees this onerous. The fees not only far exceed licensing costs in the U.S., but also dwarf similar costs in the rest of the European Community ("EC"), as the EC's 5th Report on implementation of the Telecommunications Regulatory Package (the "5th Report") demonstrates. As a result, the total administrative fees for a carrier in its first year of operation are nearly six times higher in Germany than in the next most expensive EC member state. See 5th Report, at 170.

Nor should this barrier to entry be viewed in isolation. As we explained in our March comments, its anti-competitive effect is compounded by DTAG's up to one year delays provisioning interconnection, major uncertainty regarding rates and interconnection conditions, and effective termination of DTAG billing and collection services for call-by-call service in Germany.

The license fee barrier is a problem that calls out for intervention with the European Commission and German government, and failing satisfactory results, for a WTO Dispute Settlement Action concerning these and other barriers to competition in the German market. We understand that the Commission's position thus far has been to leave the issue to the German courts. However, there is little prospect that German courts will delay enforcement of the license fee system. It is highly unlikely that the German Constitutional Court – the only other avenue of appeal at this stage of the proceedings – will agree to review the Muenster court's decision.

It will take a minimum of two to three years for the case to be resolved after remand to the Cologne court. Because of very significant backlog in the lower court in Cologne, which hears all appeals from RegTP decisions, a final decision in that court on the merits of the challenge to the licensing scheme is unlikely in less than two years. It would then likely take the Muenster appeals court more than a year to review that decision. Similarly, referral of the issue to the European Court of Justice by either the Cologne court, the Muenster appeals court, or (at a later stage of the proceedings) by the German Federal Administrative Court or Constitutional Court would likely take two more years.

Furthermore, it is doubtful that the German proceedings will produce a pro-competitive ruling on the license issue. The Muenster appeals court's decision has already set forth a negative view of the merits of the challenge to the license fee system, stating that "there is no substantial probability that the complaint will be successful on the merits." This suggests that the court would reverse any pro-competitive decision that might emerge from the Cologne court. In light of this statement, it is possible that the plaintiff, a small German carrier, will choose simply to drop its case.

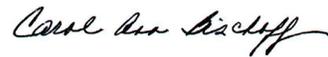
We very much appreciate your important efforts over the past year to encourage Germany to open its long distance and international telecommunications markets to competition in a manner consistent with Germany's WTO commitments. We also understand the interest in bringing the 1377 review of Germany's compliance with its commitments to a close in this

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calendar year. However, we believe that this development is sufficiently serious to merit continuing the 1377 review, U.S. engagement with both the German government and the European Commission in order to eliminate these anti-competitive fees and secure refunds to carriers who have already paid these inflated fees, and if necessary a WTO dispute settlement action addressing this and other barriers to entry into the German market.

We would be happy to discuss this matter further with you at your convenience.

Sincerely,



Carol Ann Bischoff
General Counsel &
Executive Vice President

cc: Greg Rohde
Don Abelson
Rebecca Arbogast
Becky Burr
Richard Beaird