Press Conference of Professor Nikitas Alexandridis, President of EETT, to adslgr.com (16-4-2008)

Before I reply to each question separately, I want to thank the adslgr forum for the opportunity it gives me to inform its public about certain issues which are probably not fully clear to many interested people. Because some questions touch on certain legal issues and/or definitions and because I wanted to provide an informational and educational tone to the interview, some of my replies are more detailed than usual. I hope your readers will not be unduly burdened.

1) Last November, the European Commission, after a wide public consultation with the national regulatory communications authorities and competition authorities, decided to modify its Recommendation, by leaving out a large number of retail markets, among them the national / international telephone services for home or business use. The Commission decided that for those markets there was no need for ex ante regulation and, in the future, they will be regulated ex post by the national competition authorities. Practically, what does this mean for the Greek situation? How prepared is the market to implement these changes now and mainly the withdrawal of ex ante regulation of fixed telephony?

At the start, let me mention the following:

1) When we refer to "**regulation**" of a market we always mean the imposition of **"ex ante" regulatory remedies to the company which is determined by "market analysis" to have SMP** or Significant Market Power in the relevant market. In electronic communications markets which are regulated by EETT, there were 18 markets (see: http://www.eett.gr/export/sites/default/sites/EETT/Electronic_Communications/Telecoms/MarketAnalysis/Markets_EC.pdf).
2) A company is said to have SMP in a market when it is determined that in that market there exists no effective competition (that is to say, the market is "non-competitive"). A market is deemed to be "non-competitive" (and therefore subject to ex ante regulation) when the "three competition criteria" are cumulatively met: (1) the presence of high and non-transitory barriers to entry. These may be of a structural, legal or regulatory nature; (2) a market structure which does not tend towards effective competition within the relevant time horizon. The application of this criterion involves examining the state of competition behind the barriers to entry; (3) the insufficiency of competition law alone to adequately address the market failure(s).
3) Our analyses of the markets have determined that **OTE is a company with SMP in 12 of the 18 markets, and therefore is subject to "ex ante" regulation. OTE is not subject to "ex ante" regulation in the remaining 6 ("older") markets**: market 4 (Publicly available international telephone services provided at a fixed location for residential customers), market 15 (Access and call origination on public mobile telephone networks), market 16 (Voice call termination on individual mobile networks, in which COSMOTE has SMP together with the other two companies of mobile communications), market 17 (The wholesale national market for international roaming on public mobile networks), and market 18 (Broadcasting transmission services, to deliver broadcast content to end users).

In December 17, 2007, the Recommendation of the European Commission was published in the Official Journal of the European Union which refers to markets of

products and services in the communications sector, which are subject to "ex ante" regulation and, therefore, the National Regulatory Authorities (NRAs) are obligated to continue their analysis every two years (or more frequently if the NRA decides that the conditions of a market were modified to such an extent that a new analysis is necessary). With this Recommendation, the number of markets is decreased from 18 to 7 (one retail and six wholesale markets). The objective is to simplify the regulatory framework and to decrease the burden on the National Regulatory Authorities and on the operators. It must however be emphasized that the Recommendation does not change either the definitions of the markets or the previous results of the analyses of the 18 markets or the relevant **remedies** which every National Regulatory Authority has imposed **on the companies with SMP (in our case, on the OTE)**.

Although the markets are decreased from 18 to 7, the Recommendation of the European Commission does not preclude any NRA to continue "ex ante" regulation of one or more of the "older" (withdrawn from the Recommendation) markets, under the condition that the new analysis by the NRA of a withdrawn market has determined that there is not yet effective competition in that market (that is to say, it remains "non-competitive").

For Greece, this in practice means three things:

(a) **The 7 markets** which **remain** in the Recommendation (previous markets 1 and 2 combined into one market and previous markets 8, 9, 11, 12, 13, 16) must be newly analyzed, in accordance with the provisions of Law 3431/2006. We plan to begin this as soon as the two-year period from the previous analysis expires for a market. Because for some of the markets, this period expires in 2008, the new analysis will commence soon.

(b) From the **remaining 10 markets,** which have **not been included in the new Recommendation**, those that were determined **non-competitive** by the recent market analysis – i.e., previous markets 3, 5, 7, 10, 14 – we are obligated to conduct a new analysis on them, taking into account not only the provisions of Law 3431/2006 but also the provisions of the Recommendation concerning the criteria to be applied. Therefore, as in (a) above, as soon as for any of these five markets the two-year period expires, we will proceed immediately with the new analysis. Whichever of these markets is determined by the analysis that it remains non-competitive, it will continue to be subject to "ex ante" regulation by EETT. However, **until the new analysis is completed, the current remedies to OTE for the specific markets continue to be in effect.**

(c) Finally, from the markets not included in the new Recommendation, those for which the recent market analysis did not determine an SMP (there are four such cases: previous markets 4, 6, 15 and 18) will not be included in the new market analyses, except in cases where an indication exists of changes in the conditions of competition in these markets. Finally, market 17 has been withdrawn and therefore no new market analysis will be done for it.

EETT (as well as the other 26 NRAs in the EU) is obligated to notify all the results of the new analyses to the European Commission for its positive opinion. Until the procedures mentioned are completed, **nothing changes in the way we conduct the "ex ante" regulation.**

Regarding the last part of your question, for whichever markets the analysis leads to their exemption from "ex ante" regulation, this will mean practically for the Greek reality that OTE will not be obligated to request EETT's approval each time it wants to offer a discounted product on any of these markets. However, in the case where a **company with SMP like OTE** wishes to offer **bundled products**,

in which one of the products of the bundle remains in a market which is under "ex ante" obligation, OTE will continue to be under obligation to request EETT's approval, since EETT is obligated to regulate the possible creation by OTE of unfair competition (which in the medium- and long-term leads to customers' burden), because OTE could probably implement non-competitive practices, such as, margin squeeze, predatory pricing, cross subsidization, non replicability of the bundle by alternative operators, etc.

Despite all the above, as is now done, so and after the analyses have been completed, EETT will continue to regulate "**ex post**" all the previous markets (even those which are withdrawn) and all the practices or decisions of all companies (and not only of OTE) – since **EETT is authorized by law to exercise the duties of Competition Authority** (and implement competition Law 703/1977) in all markets of Electronic Communications – and to take remedial action if it determines that a practice, agreement or decision of a company creates restrictions or interference to competition.

My personal belief is that the Greek market is not yet ready to implement all these changes and especially the withdrawal of "ex ante" regulation in all 10 markets which are outside of the Recommendation, mainly because we are far from effective competition in these markets. However, we will be in a better position to determine this when we have all the results from the new analyses of markets, which we will commence very soon.

2) We observe in statements by staff from various companies and in publications which concern the telecommunications market, some obscurity and misconception as to what consists a "public network" and what exactly has been granted to OTE for management and maintenance. Could you help us "clear up" this "misunderstanding"? Would functional separation of the company with SMP solve, together with this "misunderstanding", some of the problems in the market?

Because it is true that there has been some misunderstanding, I asked for the authoritative view of EETT's Legal Division, which provided the following:

A. The notion of "public network"

In accordance with present law (Law 3431/2006, article 2, par. f'), a "**public communications network**" is defined as the network which is used in total or mainly for the provision of available electronic communications services **to the public.**

In the notion of a "public network" the status of ownership by the company of the public network does not enter. That is to say, irrespective of whether the electronic communications network is established, operated, controlled, disposed by the Public Sector (or an agent of the wider Public Sector) or by a private company, finally it is defined as "public" when it is being used for the provision of services **to the public**. Therefore, under this notion, **OTE's network is a "public communications network".**

B. The notion of "state network"

The notion of "public network" must not be confused with the notion of "**state network**". According to Law 3431/2006 (article 2, par.κη'), as "state networks" – which in fact do not come under this Law – are defined the closed electronic communications networks and the isolated radio communications stations, which are established and used exclusively by specified entities, such as Ministries, Educational Institutions, Prefectures, for the needs of their services only and which are not used for the provision of commercial services to the public". That is to say, the definition of the notion of a state network

does not include the "ownership (i.e., by the State or by a person)" of the network and who provides the network, but only "how and to whom" the network is provided. Taking into consideration the above, we conclude that **OTE's network is not a "state network for electronic communications".**

C. OTE's ownership of the network

Concerning the question of whether the public electronic communications network, which OTE has established, operated and managed, is owned by the State, we note the following:

1) The public electronic communications network which is used by OTE for the provision of electronic communications services to the public **belongs to OTE**. This holds irrespective of the fact that, during the initial provision by the Greek State of the Special License to OTE, there were given special and exclusive rights of installation, use and operation of the network, on the basis of the monopolistic status that was in effect, as state-aid was also given to OTE in order to assist in the attainment of its objectives. With the Special License given to OTE in 1995 (Presidential Decree 437/1995, Official Journal 250/A/1995), which was amended in 2001 (Ref. EETT 229/26/2001, Official Journal 1303/B/2001) **all exclusive rights of OTE were revoked**, making clear at the same time OTE is **obligated to conform** with the current laws as is every other telecommunications company.
2) In article 8, par. 2 of the OTE's Special License it is stated, inter alia, that "With the reservations of the provisions of the Civil Code, all telecommunications infrastructures which have been constructed or bought by the Holder of the License with the objective to provide the Licensed Services under the conditions of the present license are and remain in the ownership of the Licensee, irrespective of the expiration, modification, nonrenewal or revocation of the present License. The Licensee is the principal or the exclusively sole, in the case of equipment leasing , holder of the equipment of the Licensed Services. The present article does not in any way restrict whatever obligations or rights the Licensee has concerning **collocation, joint use of equipment or obligations to provide access to the local loop".**

In the present case, the past monopoly continues to hold a **structurally dominant position in the market**, which springs from the fact that it holds the sole network of the country (which initially was built using mainly taxholders money), a fact which creates impediments to sound competition. The network constitutes what is called an "essential facility" as it is extremely difficult for others to build a second national access network that reaches the home of every consumer in the country. The result is **not to have network infrastructure competition** – and thus OTE today has 75% of fixed telephony (when the average in the EU is 65.8%); therefore, the consumer is at a disadvantage since he has no choice to select another network and another provider.

In addition - even if the network belongs to OTE – because it constitutes a "basic facility" of the country, European Union and Greek laws have imposed on OTE **special obligations on its network,** such as for example, maintenance, quality, security, costing and development of the network, compliance with the provisions of the telecommunications laws and the laws on **"safeguarding competition"** and satisfaction of the conditions of "access to the Network and use of the Licensed Services". That is to say, the law obliges OTE to "**ensure access by the other telecommunications providers**, without discrimination, without violation of the principle of equal access, but with same conditions to those used for access by the companies that belong to the OTE Group", so that the alternative providers

can have access (on payment) to the equipment, the real estate, the rights of way and OTE's network, in order to allow competition to develop. Throughout the world, among the benefits that healthy competition provides to consumers, is that it leads to more investments (which in turn creates more jobs) and to the development of new innovative products at lower prices. In addition, it benefits the consumers because it allows them to have a choice of provider, of network and of services. The regulatory actions of EETT play a significant role in the development of a healthy competition and in the protection of customers, as they define precisely (as do the other 26 Regulatory Authorities in the EU) the conditions of access by the other actors in the market to the sole network infrastructure of the former monopoly.

Until, however, competition in our country also reaches a level which will permit the development of new infrastructures in access networks, or at least it meets conditions of full transparency to and equal access by all players to the sole country-wide public network, the customer will not reap the maximum benefits. And this – in an important way – since many customers are not able to switch easily from one provider to another, as this procedure is implemented through the **unwieldy OTE, which puts impediments to the development of the market, refusing to comply with its special regulatory obligations and refusing to cooperate with the Regulatory Authority and with the providers, its wholesale "customers":** for example, OTE refuses to provide to EETT the data which will permit it to practice its regulatory role and the necessary information to its providers-customers, it delays delivering local loops to the retail customers of the alternative providers, it does not service the providers the same way as its own retail arm, etc. This resulted to all recent reported problems with respect to servicing the customer when he decides to leave OTE and go to another provider. This is true in the telephony market as well as in the broadband market. EETT, by injunction measures against OTE and with fines it imposes on OTE, tries to compel OTE to comply with its regulatory obligations of transparency, non-discrimination and abstain form its non-competitive practices.

And this brings me to the last part of your question, on whether the tool of **functional separation** of the company with Significant Market Power in the Market would solve, together with the "misunderstanding", some of the problems in the market. My reply – and at the same time reply of the European Commission, of the rest 26 Regulatory Agencies of the EU, as well as all the countries which have already implemented it or are in the process of implementing it (UK, Sweden, Ireland, Italy, Poland) – is an **unreserved yes**.

Functional separation demands that the former monopoly (incumbent) separates its network infrastructure from its divisions which use this infrastructure to provide retail services. Even though functionally separate business units are created, the general ownership status is not modified.

Several **advantages and benefits of functional separation for the consumer** are the following:

(1) Functional separation will have a positive contribution to the further development of the Greek telecommunications market and will permit quicker bridging of the digital divide which continues to exist between Greece and the other competitive countries in the EU (despite the progress that was attained during 2007).

(2) With functional separation, access to the (in Greece, the sole) network infrastructure (mainly, the "last mile" of the network) will be provided with the same conditions to the other operators as to the retail divisions or companies of OTE. This means a dynamic intervention by the National Regulator to the practices of OTE with the following results: (a) the same

wholesale products and services to "OTE-retail" as to the alternative providers, (b) the same time frames to all, same conditions of service, including the same wholesale prices, (c) the same credibility and functionality of services and (d) the same information and transparency to all. Therefore, all providers will be able to compete on equal terms in accessing the sole country-wide public network of OTE, providing better quality and lower prices, to the benefit of the consumer.

(3) OTE will not be able anymore to discriminate unjustly against the alternative operators, a fact which will give further promotion to competition.

(4) It has been proven that in similar circumstances of increased competition, the organization with significant market power as well as the alternative operators invest more in new network infrastructures and in new services, with the consumer enjoying a host of innovative services from which he can choose according to his liking.

(5) When competition reaches acceptable levels, the National Regulator will be able to reduce the regulatory obligations of OTE.

(6) The investments in network infrastructures will further lead to fiber networks which support more innovative services. Therefore, the breadth of services provided to consumers increases and new services, such as triple-play, quad-play, HDTV, etc., will be available in competitive prices and high quality.

Finally, now is the proper opportunity for the Greek State which is still the basic owner of the company – and especially in view of the recent interest of international investment funds and foreign telecommunications companies – to think seriously about functional or structural separation of OTE, separating mainly the access network – whose replicability is very difficult – from the services, as well as about the status under which they will operate, before the State takes its final decisions. The question of separation is an issue which is examined with great care by EETT and is high on our agenda for 2008. Perhaps, EETT may end up deciding on some form of separation, if OTE continues to set significant impediments in the development of competition and we judge that separation will result to benefits for customers, of the market and for competition. The issues are many and whichever decision is not easy.

It is certain, however, that any particular ownership or management status of OTE will not influence or modify either the special obligations of OTE or the work of the National Regulator (EETT), which is the independent mechanism of the State that exercises its regulatory role and monitors the strict adherence to the law by all companies of the electronic communications sector, irrespective of their ownership status.

3) During the EETT conference last December, you put a proposal to examine the probable inclusion of broadband services in the Universal Service. Would you like to analyse the reason for your proposal? Should we expect soon an announcement of your initiative?

It is a fact that there exists an ongoing discussion among the member states of the EU for the redefinition of Universal Service. The European Commission has also studied the issue and has announced a "Green Paper for Universal Service" which will be put in wide public consultation. EETT will participate in the consultation and will decide, on the basis of the situation of the market and the international practices, the content of Universal Service. The breadth and financing of the Universal Service must be examined fully. In some cases, it may be proper to have co-financing by the State, especially when there is a combination with services, such as in education (e.g., broadband access for schools, libraries), in

health (e.g., broadband access to hospitals), etc.

The main proposals of the European commission for the amendment to the Universal Access Directive, which is now being discussed in the European Parliament and Council can be summarized as follows:

- Improvement of transparency and publication of information for the final users,
- Facilitation of the use of electronic communications and access to them by handicapped users,
- Facilitation of consumers so that they can change provider through, among others, strengthening the regulation for number portability,
- Improvement of obligations for emergency services,
- Ensuring basic accessibility and quality of service, and
- Modernization of special clauses of the Directive so that they follow the technological developments and developments in the market, including the deletion of certain obsolete or unnecessary clauses.

EETT follows all developments and the common practices of other member states of the EU, as they develop with the new proposals of the European Commission for the amendments to the Universal Services Directive and participates in the consultations in international fora and will define its policy taking into account the situation in the Greek market and the practices in other countries and in the EU.

Finally, I wish to emphasize that, **the proper and full development of broadband in the rural areas of the country, the provision to the citizens of these areas the proper incentives to use broadband services, as well as the development of Greek content and useful services and applications for the citizen, must be given very high priority by the State when developing its policies**.

4) Many users of our forum believe that a binding regulation of behaviour to customers by the alternative providers is missing, especially now that the providers have increased substantially their customer base and are very active in the retail markets. Will there be in the near future such a regulation?

Placing critical importance on the recorded irregularities in the market and the problems in the provision of quality of service to the citizen-customer, we designated the **year 2008 as Year of Quality Broadband**, so that we may focus our interest on actions, measures and the strict supervision of the telecommunications companies, in order to improve the services offered to the consumer. Towards that, EETT has already refined the basic regulations for the service to and protection of consumers, by introducing **amendments to the general license –** which is given to alternative operators – which include the requirement to establish telephone centers for customer service. Other additional amendments include the following: introducing procedures for measuring faults, calls for faulty operations to be handled free of charge, the availability of telephone call centers 12 hours per day, the codification of customers' problems for their quicker handling, measuring and recording the percentage of answered calls, etc.

In addition to actions already taken, EETT is considering two new actions. The first concerns the completion by the end of April of the regulation that defines **Quality Indices** for fixed and mobile telephony as well as for the access to broadband Internet. With this action, EETT will provide the best information to consumers

and especially allow them to have full access to comparative information about the quality of services offered by the various telecommunications service providers. The correctly informed customer will then be able to compare, decide on the quality of service and select the provider of his choice. **The Regulation on "Quality Indices for the Provision of Electronic Services"** will be submitted for approval to the Board of EETT within this month.

The second action concerns the introduction of a **Code of Ethics for Providers**, which, among others, will guide the behaviour of providers to customers and will include the imposition of new remedies to providers having to do with the protection of, and provision of information and service to, the consumer. In addition, within the framework of the Code of Ethics and the content of the Contracts, EETT is examining the possibility of imposing to telecommunications providers the obligation to pay damages to consumers when there is a violation of their contractual obligations, in accordance with existing laws. The proposed Code of Ethics for Providers will be put for public consultation in about one month.

5) In accordance with the proposal by EETT for the amendments to the new RUO, the time for activation of an LLU is increased from 13 to 25 working days. This increase may probably indicate the inability of OTE to satisfy the requirements of the present RUO, yet it may create problems to competition: If someone chooses to buy connection from OTE he can wait for about 10 days while if he wishes to obtain LLU ADSL from an OTE's competitor, he has to wait 25 working days. Is it possible that the competition rules are not applied equally to all?

At the beginning, I must mention that in order for the LLU process to work well and not mishandle the consumer, the technical staff of OTE and of the alternative operators need to cooperate smoothly. Unfortunately, neither OTE (which, as I mentioned before constitutes the basic bottleneck in the process of unbundling the local loop and allowing the consumer to switch providers, since OTE sees no benefit in assisting to this process) nor the alternative operators were ready to handle successfully the "big bang" that took place during 2007 with respect to the demand for broadband connections through unbundled local loops. (For the "unbundled local loop", see http://www.eett.gr/export/sites/default/sites/EETT/CostumerInformation/Useful_Info_LLU.pdf).

You correctly mention at the beginning of your question, that the proposal to amend the time of activation of a loop concerns only the **inactive loops,** that is to say loops which at the time of the request either do not exist (they had never been installed) or are not used by any subscriber. The amendment we introduce will correct a practical problem, since the activation of an inactive loop requires additional work by technicians outside the exchange centers. More specifically, the work that is required for installing and delivering an inactive loop differs in important ways from that of an active loop, since – in addition to same work required in both cases inside the Exchange Center – in the case of an inactive loop a group of OTE technicians need to also go to the customer's location and furthermore work at the outdoor switch in the street cabinet to which the customer's line is connected.

Therefore, we cannot say that the provision of an active loop must be made within **13 working days** (from the date OTE receives the customer's application from the alternative operator and provided the latter has enough space in the Exchange Center) and the provision of an inactive loop (which requires the additional outdoor work mentioned above) to be required to also be completed

within 13 working days. We decided to increase the delivery time of an inactive loop from 13 to 18 working days (and not to 25, as was proposed by OTE), as EETT, on the one hand -- taking into account all the above -- deemed it reasonable to accept OTE's proposal to increase the time of delivery of inactive loops, while at the same time took into consideration the strong opposition by alternative operators which were asking to decrease the delivery time (proposed in the public consultation), from twenty five (25) to eighteen (18) working days. That is, we did increase the delivery time for inactive loops, but only by five (5) working days.

Finally, we must be careful when we compare the purchase of an ARYS type of connection form OTE with the purchase of services from another provider through a local loop (LLU) type of connection.

A subscriber, who wishes to purchase broadband connection of the ARYS type and **already has a telephone line**, must wait about 10 working days, when he procures the service either from OTE or from an alternative operator. However, if he wishes to purchase a broadband connection from an alternative operator through a local loop, then – as we said earlier – he will have to wait 13 working days. Thus, here there is no competitive advantage for anyone. (We note that the ARYS type of service from OTE can be compared only with the provider's service which is given through an **active loop**, since in both cases there already exists a telephone line).

On the other hand, a subscriber who wishes to purchase a broadband connection which requires a **new telephone line,** has the choice to purchase that connection either from an alternative operator using an inactive loop (in which case as we said he will need 18 working days) or to purchase that connection from OTE (in which case a new telephone line must be first activated and then an ARYS connection will be given to the subscriber). The time for activation of the new telephone line is whatever time OTE requires and this time is not regulated by EETT; the only thing that is mentioned in the framework on the quality of Universal Service is that 80% of such new connections must be delivered within one week. In this second case, the waiting time is the sum of the waiting time for activation by OTE of the new telephone line (at least 7 days) plus the waiting time for delivery of an ARYS type of broadband connection (10 days).

In other words, the amendment (from 13 to 18 working days) is intended to negate a possible discrimination against OTE and to ensure that, in this case too, the competition is again on equal terms.

6. EETT has submitted its proposals for the Evaluation of the Operators and already these proposals are in the phase of public consultation. However, there are points in EETT's proposals that raise questions: for instance, LLU activation times will be reflected in the operator's "reliability" ranking. Therefore, could we say that OTE becomes a factor in the assessment of the operators?

First of all, I would like to make a correction in order to avoid possible misunderstandings. The issue is not to evaluate the operators, but rather to **equip the consumers** with the appropriate tools that will enable them, when called to choose among different products, to take into consideration not only the price and the speed but also other qualitative characteristics.

For this purpose, we have set up a working group, which has studied the quality of service in fixed and mobile telephony, as well as in broadband access. The group had submitted a complete proposal for public consultation and the decoding and analysis of the received remarks and proposals are nearing completion. Based on these data, we have made a selection, as I've already mentioned, of the most appropriate indices to help the consumer select the package of services which best

suits his needs.

One of these indices is the general index "Initial Connection Provision Time", which – in general – relates to the connection provision times for the *95% and 99%* of the **most rapidly** satisfied orders during the supervision period (for example, over an one-month supervision period, we assume that in the 100 most rapidly satisfied LLU orders, 99% of them are completed in 4 workdays.)

It is evident that until the relevant market has matured, the said index might not measure the reliability of the provider in an absolute way. Still, it leaves to the consumers the margins to evaluate a telecommunications package, without disorientating them, given the fact that there is a great number of telecommunications packages provided by more than one providers.

At the end of the day, our objective is to have a website, where the consumers will have the opportunity to be informed about the quality indices for all the products, so that, with all the information at hand, they can come up with the best decision after they weigh how each product and each provider meet their specific needs.

7. A few days ago, the Minister of Transport and Communications announced the Strategy for the Communications for the period 2008-2013. In general, the Strategy will include the development of FTTH infrastructure in every region, most probably through the assignment to companies, which at the phase of networks operation, will have the role of SMPs and will sell FTTH at the wholesale market. Although it is very premature to discuss the details of the plan, what is, in your opinion, the role of EETT in this new environment? Which of the shortcomings that you have detected in the regulation of the copper LLU should be avoided in the FTTH?

EETT, in its capacity as the national regulator of the electronic communications market, has the responsibility to **guarantee the smooth operation of competition** within the electronic communications market. This will be our main role both in the new environment and during the transition phase. We have to make sure that the Ministry's initiatives, which are indispensable and extremely important, will contribute to the opening of the market and the development of competition without creating any distortions in the competitive environment.

In this context, whenever we establish patterns with Significant Market Power (SMP) in a specific market, we intervene by enforcing regulatory measures. These interventions are to ensure that providers without SMP will have access at all times to all the required technical solutions and choices in order to be able to develop the products they want and at the same time encourage new investments. Also, we are constantly ready to monitor and intervene, in order to deter violating behaviours, no matter where they come from.

Furthermore, by closely monitoring the electronic communications market, EETT has the additional role to pinpoint the deficiencies and suggest to the Government institutional regulations that will improve market functioning. EETT has already submitted months ago several proposals and amendments, the most important of which is the draft of the Joint Ministerial Decision for the "rights of way". It is a pressing need that the **State develops quicker reflexes** in order to incorporate immediately these institutional improvements, so that the digital future of the country is not jeopardized. In certain cases, the necessary procedures are particularly complex; however the Government should realize the urgent nature of the matter at hand and move quickly and decisively towards their simplification.

EETT's activities will continue independently and in parallel with any Communications Strategy of the State.

Now, as to the specific strategy of the Ministry of Communications for the development of an FTTH infrastructure, EETT has repeatedly said that the development of optical access networks can contribute decisively to the convergence with the other advanced European countries. Therefore, EETT applauds and supports the strategic approach that the Ministry has adopted for the FTTH, which is expected to have a particularly positive impact. At the moment, EETT is contributing to the whole endeavour by providing part of its staff to the joint working group made up of people who are working in various related organizations.

In the new environment to be created, EETT will be called upon to play a significant role, in order to make sure that the new created infrastructure will be used in such a way as to boost competition and bring to the citizens-consumers, new, innovative and useful services and applications. To this direction, what will be equally important, is the experience we have acquired over the past two years during our effort to efficiently unbundle the local loop. The model of the "special LLU working group" that EETT had set up to closely monitor and intervene dynamically during the procedure of collocation and provision of loops, was proven successful and has contributed effectively to the steep increase in the number of unbundled local loops. It has also given to consumers the possibility to choose among providers and new innovative services. A similar working group model could also be used for the implementation of FTTH. (Of course, for this to be effective, it might be necessary to do the analysis of the relevant markets first and to define one or more SMPs using geographic or other criteria).

Up until now, **the weak point** we have spotted during the regulation of the copper loop (and which we'll have to avoid in the case of FTTH) has to do with the very poor service that OTE and the alternative providers have so far provided to consumer when the latter wants to switch providers or submit a new LLU application . The main reason for this is that OTE is a vertical organization, which **has not been able to find ways of good cooperation with the alternative providers (its wholesale clients)**, and whose staff and wholesale products unit have every reason to show preference for providing service to OTE's retail unit, instead of to the alternative providers. In order to avoid, right from the beginning, such problems during the wholesale provision of fiber loops to the retail telecommunications providers by the contractor/contractors of the Ministry's programme, we suggest to the Ministry that, each company/contractor who will install and administer the fiber network on a wholesale basis, **should be forbidden to be at the same time an alternative provider** that uses the network to provide retail services to the public. If, however, a company/contractor is allowed to be a retail provider at the same time, then it should be **obliged to proceed to the structural separation** of its activities, namely those of selling FTTH in the wholesale market (i.e. to the providers) from those of providing retail services to the public.

And because the success of the Ministry's project depends, among other things, on the possibility of uninterrupted access to the fiber optics network by any tenant of a building, EETT is thinking of setting up a working group, which, after it studies the regulations and obligations in force in other European countries and takes into consideration the Greek legislation, it will determine the obligations of the owners and tenants of privately owned buildings, and those of the providers, in order that access to the FTTH network be provided in an uninterrupted and non-discriminated fashion, via the existing cable infrastructure inside the building.

Finally, the general Strategy for the Electronic Communications of the Ministry should see to it that – somehow – the rural areas of the country are covered in an equally satisfactory manner. If the technol-economic models and the alternative scenarios show that the FTTH is economically viable in a few densely populated

cities (at least this is what the international experience shows), then the overall strategy drawn by the Ministry should include alternative ways and motives which will at the same time provide high broadband speeds and services to the inhabitants of the less densely populated cities (until FTTH reaches them too).

8. A question that has been asked many times relates to the penalties policy, for which we don't have a clear picture: Are penalties paid after all? If the answer is yes, after how long – an average time estimate? Are they paid entirely or are they often reduced following an appeal to the court? And, in the latter case, what percentage of the initial penalty should be paid until the hearing date of the case?

In principle, penalties are paid normally. The companies are obliged to pay the penalties and in case they don't, there are legal procedures, such as the separate enforcement against their assets. Let me note at this point that the proper authorities for the collection of the penalties are the public fiscal services after the relevant EETT decisions are notified to them.

However, the law gives the companies the right to protect their interests by appealing to the courts for the annulment or suspension of the imposed penalty. In case the **court decides to suspend the execution**, something which occurs quite often, the collection of the penalty is suspended until the court issues its decision on the appeal against EETT's decision to impose the penalty. It is noted that in several cases the **court can order the partial suspension of execution**. In this case, EETT can collect that part of the penalty which has not been suspended by the court. If, for example, for a penalty of 100,000€ the Court orders the suspension for the amount of 60,000€, EETT can immediately collect the remaining 40.000€ without having to wait the issue of the decision on the appeal. The period for which the collection of a penalty may be suspended cannot be predicted, not even approximately. It depends on the response of the Court and the gravity of each case. It can be one year from the time the penalty is imposed, or it can be two years or more in some cases.

Based on recent case law of the Administrative Court of Appeals **a tendency of reducing the penalties imposed by EETT** is noted. In such cases, it is evident that EETT collects only the amount which has been finally decided by the Court. In case EETT had in the past collected the whole amount of the penalty (this would have occurred if the company against which the penalty was imposed did not request suspension or did so but was rejected) it has the obligation to return the part of the penalty that has not been adjudicated by the Court back to the operator.

Lastly, I would like to mention the remark made in the 13th Report of the European Commission, which was issued a few weeks ago. Although it applauds the work carried out by EETT, describing it as successful and including Greece in the 6 European countries "where the **effective regulatory policy** (better regulation) has improved the market conditions", at the same time it points out that the **effectiveness of the regulatory measures imposed by the National Regulator on the organization with SMP (i.e. OTE) is significantly weakened due to the shortcomings that still exist in the appeals procedure, which is characterized by big delays and inefficiency.**

In order to increase the effectiveness of EETT's work, we have long ago proposed to the Ministry of Telecommunications an **amendment** which introduces the condition that the company pays an amount equal to 20% of the imposed penalty before it goes for discussion to the court of appeals against EETT's decision. The

amount will be paid right away, can be capped at a maximum amount of 500,000€, according to the principal of proportionality.

9. Progress in broadband penetration is a given fact and the statistical numbers, as shown in EETT's news releases, have an eloquence of their own. But, whereas remarkable strides have been made in wireline broadband, wireless broadband internet access seems to be at a standstill, and of course we are referring to WiMax. At a time when rapid developments are taking place worldwide in WiMax networks, in Greece, the 4 licenses seem to remain unexploited. Are you satisfied with their implementation so far? Are you considering the possibility of re-auctioning some of them? What can be done at the same time in order to ensure the best possible utilization of licenses that will be assigned in the future?

First of all, let me explain how the situation is with the 4 licenses you're referring to. The licenses have been assigned for the use of radio spectrum at 3.5 GHz, for the installation, operation and exploitation of public telecommunications fixed wireless access network, **without defining the technological means** (technology neutrality) of developing the networks.

More specifically, following the auction that was carried out in December 2000, **3 special licenses** were awarded to the successful tenderers in January 2001. The owners of the licenses assumed the duty to be able to provide radio coverage to at least 20% of the country's population, within 2 years counting from the date of the assignment of the licenses. In addition, they assumed the responsibility to be active in at least 4 administrative regions of their choice.

The **fourth license** was awarded in August 2006 following an auction that took place in July of the same year, for the assignment of the right to use fixed wireless access spectrum and provide electronic communications services to the public, in the 3.5 GHz band (in the following range: 3459-3473 & 3559-3573 MHz). The company that was awarded the license undertook the obligation to deploy the necessary infrastructure for the provision of broadband services to at least 20% of the population in seven geographical zones of the country within four years after the assignment of the license.

Wireless broadband was expected – at least in the initial stages – to serve as a complement to wireline broadband in order to allow mobility. Also, it is known that wireless broadband is not provided only through WiMax, but also through a great number of technologies, among which 3G & WiFi that have started to be used to a considerable extent in our country.

I'd like to make clear that in the context of the European regulatory framework, special importance is attached to the competition not only amongst companies but also amongst technologies, so that the most effective ones prevail and finally survive. That is to say, the Regulator does not choose technologies; this role is left up to the market. For that reason, the licenses that you have mentioned in your question are technologically neutral and do not impose the technology to be used. The only imposed requirement is that the licenses be used for the provision of fixed wireless access.

Based on the data submitted by the licensed companies, it is established that they meet the minimum requirements set by the licenses granted to them. Therefore, there is no question of re-auctioning those licenses. However, if we take a look at the statistical figures that refer to the course of the Greek market, we will see that the alternative networks in general and the Fixed Wireless Access Networks (FWA) in particular have contributed up to now very little to the broadband development. As a conclusion, I would say that I am **totally disappointed** by the utilization of

those licenses so far. This problem is not observed only in Greece and it relates, on the one hand, to the technological advancements (let me remind you that during the period of the first auctioning of licenses, analysts had forecasted a sharp drop in the prices of terminal equipment, which never occurred) and, on the other hand, to the entrepreneurial choices made by the providers who acquire those licenses.

Anyway, EETT is determined to exercise strict control and make sure that the terms of the license that have to do with the development of the networks are met. **These licenses also include certain terms of radio coverage. In case those terms are not abided by, then legal penalties can be imposed, the ultimate being the revocation of the license.** Moreover, the new regulatory framework gives the **possibility to transfer the licenses** with flexible procedures so that the license yields the maximum value ending up to the provider who can use it more effectively.

On the other hand, it should be noted that, apart from what has been said with reference to competition, **the development of wireless networks is obstructed by strong reactions against the installation of antennas**. In addition, the complex and long licensing procedures increase the difficulties, as well as the costs and risks of any business venture.

10. With reference to the respective licenses for mobile telephony, after the full merger of Q Telecom with Wind, the question that arises is what would be the purpose of a telecommunications group to have two licenses for mobile telephony. Does EETT intend to ask the return of the license in the name of Q Telecom now owned by Wind? In that case, would this particular license be re-auctioned, possibly with a clause of return of the granted spectrum in case of buyout of the company that uses this license, so that the existing oligopoly is reduced?

The merger between Q-Telecom and Wind was concluded only after EETT has given all the necessary approvals. During the merger procedure, EETT examined the compatibility with the terms that apply to the Special Licenses, which were owned by the two companies, and in particular with the licenses for 2nd generation mobile telephony. After examining all the facts and figures, EETT (a) approved the merger between TIM HELLAS and Q-Telecom, through the absorption of the latter and (b) readjusted its decision, pursuant to which the license for 2nd generation mobile telephony was granted to Info-quest, on the basis of which Q-Telecom operated.

According to the said decision and the terms that accompany it, **there is no restriction of the rights of use per provider**. After the merger with Q-Telecom, the spectrum owned by Wind does not exceed the spectrum owned by Vodafone or Cosmote. To put it in more practical terms, what matters is not so much the mobile telephony license, but the radiofrequency spectrum band that accompanies the license, which is the essential resource for the provision of mobile telephony services. The license for the use of this particular band that was granted to Q-Telecom is a property asset, which has obviously been taken into account during the company's buyout.

11. In view of the liberation of a significant amount of frequency spectrum due to the transition to the digital terrestrial television, there is considerable deliberation worldwide with regard to new uses that might ensue. Our country is waiting for the decisions of the European Commission, which is orientated towards the use of

the 700MHz spectrum for the mobile TV, whereas other regulatory authorities, like the British Ofcom, have already announced the auctioning of the same spectrum, the use of which will be chosen by the contractor. In your opinion, which is the optimal solution for the future of the 700 MHz? Do you believe that the 700MHz could turn out to be a piece of spectrum adequate for the wireless broadband access?

It is known that, all around Europe, the transition to the digital terrestrial television is expected to liberate part of the spectrum, which is planned to be allotted to uses other than television. Today, television occupies part of the best spectrum, which had been allotted to television use many years ago, when there was no need for other alternative spectrum uses. However, today, the rapid development of wireless technologies has brought about a huge increase in the demand of spectrum. The **"digital dividend"** that will result in Greece (since 6-8 digital channels can fit in one analog channel), **depends also on the number of digital channels that the State will allocate for television broadcasting**. The dispositions of Law 3592/2007 describe in general the procedure for the transition to digital television in our country. EETT, in accordance with its jurisdiction, wishes to contribute to the acceleration of the transition to digital television within the time frame determined by the EU, as it is important for our country not to lag behind.

At the ITU World Radiocommunication Conference (WRC-07) held in Geneva between 22 October and 16 November 2007, the majority of the CEPT countries voted that the 790-862 MHz frequency band be allocated to mobile service, for the development of IMT systems (International Mobile Communications) – something similar to 3G – and services, providing protection to broadcasting services (so that they don't interfere with the digital TV receptors that will use neighbouring spectrum). These services will take effect after the end of 2011.

We propose that **the resulting digital dividend in Greece be of a width equivalent** to that of the other European countries, thus giving the possibility to **develop networks that will contribute to the promotion of high-speed wireless broadband internet access and of innovative services**, as for instance, wireless access to broadband services (especially for the rural areas of Greece and for the islands), mobile broadband, new mobile multimedia services, interactive digital TV, etc. Which specific application or technology will be the best solution for the digital dividend is something that should result from the market mechanisms as well.

12. Certain mobile telephony companies in various countries have expressed their interest to use part of the 900 MHz spectrum for UMTS network; also, during the last few months, a 3G network at this frequency has been operating in Finland. However, the 900 MHz spectrum has been allocated to the providers exclusively for GSM networks, which means that before doing so, the provider should obtain the regulator's authorization. Has any Greek mobile telephony company expressed such an interest? In that case, will EETT give the green light? If so, will it ask something in exchange, like, for instance, the return of part of the vast spectrum that some Greek providers in mobile telephony own?

According to the existing radiofrequency usage rights that have been issued by EETT, the 900 MHz spectrum can be used by the owners only for the development of GSM networks. However, in the context of the general tendency that takes shape in Europe and involves the use of 900 MHz spectrum for both GSM and UMTS networks, **there is an interest** in this direction by the Greek mobile

telephony market as well.

For the time being, the EU Directive 87/372/EEC, known as the "Directive for the development of GSM technology" (GSM Directive) is still in force. According to this Directive, the 900 MHz frequency band has been distributed for the development of 2nd generation mobile telephony systems, on the basis of the GSM standard of the European Telecommunications Standards Institute (ETSI).

The European Commission has drafted a new Directive – which is at the final phase of approval by the European Council – according to which the above "GSM Directive" is withdrawn. The aim is to offer a wider range of choice of services and to guarantee, through technology neutrality, the competition of technologies. To this purpose, the ECC (Electronic Communication Committee) has drafted technical instructions on the use of 3G at the 900MHz band and on the coexistence with other technologies.

EETT, keeping up with the international developments and taking into consideration the Greek reality with respect to the existing usage rights at 900MHz, is currently examining the above issue.

Before any decision is made, there will be an extensive **Public Consultation**, which will take into utmost consideration the optimal utilization of the spectrum and the benefit for the consumers, with no detriment, of course, to competition. After the Consultation, EETT will elaborate the received proposals and comments and will decide on the necessary changes for the allocation of the use of spectrum at 900 MHz for 3rd generation services.

13. Do the providers of fixed and mobile telephony price calls differently, depending on the network on which the calls terminate, or are specific providers included in free calls packages?

How the provider prices the calls, with respect to the network on which the calls are terminating, is a **commercial decision** made by the provider, which we cannot forsee. One can make the following remarks, but for evident reasons I will not mention any names of providers: The price lists for calls to fixed-line numbers are in principle uniform and independent of termination networks. However, there are cases where free call packages are only limited to calls within the provider's network. In mobile telephony, on the other hand, sometimes we see the opposite happening. Namely, free calls are offered regardless of the network, but the charges of the (non-free) calls to mobile phones can be for certain providers lower for calls within their network. Other mobile telephony providers maintain a uniform pricelist for (non-free) calls, regardless of the termination network.

Let me, nevertheless, point out that what I've said above is not so important. Each provider in fixed and mobile telephony creates their packages in a manner that they believe will contribute to the increase on the number of their subscribers without jeopardizing their viability.

The important thing is that, now, fixed telephony providers have the possibility, due to the actual unbundling of the local loop, to create packages that are particularly attractive to the consumers, thus enhancing competition not only in telephony services but also in broadband services through the access to the "last mile" of public telephony network. This is extremely important for the consumers – who now have new choices that they didn't have a year ago – as well as for the development of broadband.