

Marousi, 30 December 2002

Protocol No.: 271/30

DECISION

Prices

**of the “Hellenic Telecommunications Organisation S.A.” for the provision of Leased
Lines**

The Hellenic Telecommunications & Post Commission,

Having Regard to:

- a. Law 2867/2000 “Organisation and Operation of Telecommunications and other Provisions” (Hellenic Government Gazette 273/A/2000),
- b. Presidential Decree 40/1996 “Provision of Open Network for Leased Lines, in adaptation to Council Directive 92/44/EEC, as this has been amended by 94/439/EU Directive” (Hellenic Government Gazette 27/A/1996), as this has been amended by Presidential Decree 156/1999 “Amendment of Law 2246/1994 and of Presidential Decree 40/1996 in compliance with Directive 97/51/EC of the European Parliament and of the Council amending Council Directives 90/387/EEC and 92/44/EEC for the purpose of adaptation to a competitive environment in telecommunications” (Hellenic Government Gazette 153/A/1999),
- c. Decision under Protocol No. 211/3/16-3-2001 “Regulations on Costing and Pricing Principles (Hellenic Government Gazette 466/B/2001),
- d. Decision under Protocol No. 241/47/9-1-2002 “New Prices of the Hellenic Telecommunications Organisation regarding Leased Lines”,
- e. Decision under Protocol No. 243/29/22-1-2002 “Amendment of Decision under Protocol No. 210/10/28-2-2001 of the Hellenic Telecommunications & Post Commission regarding the Approval of the Operational Cost Accounting System of the Hellenic Telecommunications Organisation (Adoption of ameliorative interventions and/or changes to the Operational Cost Accounting System)”,

- f. Decision under Protocol No. 251/77/24-4-2002 “Determining of Telecommunications Organisations that have a Significant Position in the Market for the provision of Leased Lines”, (Hellenic Government Gazette 527/B/2002),
- g. Decision under Protocol No. 255/84/14-6-2002 “Regulating matters regarding the provision of Leased Lines” (Hellenic Government Gazette 810/B/2002),
- h. Confidential letter under Protocol No. 215/Δ.ΕΜΠ.36/28-6-2002 (protocol No. ΕΕΤΤ Εμπ. Υπηρ. 129/28-6-2002) of the Hellenic Telecommunications Organisation to the Hellenic Telecommunications & Post Commission,
- i. Confidential Letter under Protocol No. 215/Δ.ΕΜΠ.06/11-11-2002 (protocol No. ΕΕΤΤ Εμπ. Υπηρ. 171/12-11-2002) of the Hellenic Telecommunications Organisation to the Hellenic Telecommunications & Post Commission,
- j. Letter under Protocol No. 350/489885/11-12-2002 (Protocol No. ΕΕΤΤ 23474/11-12-2002) of the Hellenic Telecommunications Organisation to the Hellenic Telecommunications & Post Commission,
- k. Document No. 2561/Φ.600/27-12-2002 of the competent Service of the Hellenic Telecommunications & Post Commission.

Whereas:

1. The Hellenic Telecommunications Organisation, as a Telecommunications Organisation with a Significant Position in the Market for the provision of Leased Lines, must fulfil all the relative obligations that are stipulated by the relative domestic and European legislation.
2. With respect to pricing of Leased Lines, Presidential Decree 40/1996 regarding the “Provision of Open Network for Leased Lines, in adaptation to 92/44/EU Directive”, as this has been amended by Presidential Decree 156/1999, stipulates, among other things, that:

“Prices are determined pursuant to the provisions that are in force and according to the form provided in Appendix I of the present.” [article 3(1)]

“Leased lines prices are determined based on the principle of cost orientation and on the rules of transparency. With the reservation of maintaining the principle of discretion avoidance, on behalf of the Hellenic Telecommunications & Post Commission, by the

notified organisation, leased lines prices are independent of the type of application that users of leased lines use and include under ordinary conditions:

- An one-off connection fee*
- An Annual fee (Fixed and Variable per Km)*

If other fees also apply, these must be transparent and must be based on objective criteria.”

“The Hellenic Telecommunications & Post Commission must take all necessary actions so that the telecommunications organisation adheres to the principle of discretion avoidance, in the case in which this organisation provides services through the Public Telecommunications Network, which may also be provided by other organisations. When the telecommunications organisation acts as a user and uses leased lines in order to provide competitive services then this same leased line category must also be provided to all other users, following an application that they must first submit, with the same terms.” (Article 9)

Appendix I, B: “Prices shall be determined pursuant to the provisions that are in force and shall include the initial connection fees and all terms regarding initial connection, the monthly (fixed) fees and any additional fees, provided the application thereof is justified. When prices are differentiated, in cases for example of provision of different level of quality or the number of leased lines that are provided to a user, then these must include a relative indication.”

3. Pursuant to article 9 of Decision under Protocol No. 211/3/16-3-2001 of the Hellenic Telecommunications & Post Commission “Regulations on Costing and Pricing Principles” (Hellenic Government Gazette 466/B/2001):

“2. Leased lines prices include under ordinary conditions: (a) one-off connection fees, (b) Annual fees and (c) any other fees, which must be clear, substantiated and based on objective criteria.”

“3. In the event of different pricing on the basis of the quantity of services provided, this must be justified to the Hellenic Telecommunications & Post Commission.”

“6. The Hellenic Telecommunications & Post Commission reserves the right to intervene if it deems that the Interconnection Leased Lines prices unjustifiably deviate from the “best current practice” prices of the European Commission [Commission

Recommendation C(1999)3863 of 24 November 1999 on Interconnection Leased Lines].”

4. Pursuant to Decision under Protocol No. 241/47/9-1-2002 “New Prices of the Hellenic Telecommunications Organisation regarding Leased Lines”, the Hellenic Telecommunications & Post Commission decided that the Hellenic Telecommunications Organisation did not provide sufficient justification of the cost orientation of the proposed Leased Lines prices and that it must provide, by 30 June 2002, all necessary information that justifies the cost orientation of the individual prices that it proposes and immediately proceed in determining the cost orientation of wholesale Leased Lines prices (prices for Organisations that provide telecommunication services to third parties).
5. With its letter of 11 November 2002 [under point (i) above], the Hellenic Telecommunications Organisation submitted to the Hellenic Telecommunications & Post Commission new Leased Lines connection fees, while with its letter of 11 December 2002 [under point (j) above], it proceeded in submitting an “overall Leased Lines pricing proposal”.
6. The Hellenic Telecommunications Organisation did not submit, as it was obliged to do so, to the Hellenic Telecommunications & Post Commission information so that the latter could audit the cost orientation of Leased Lines prices, as these were submitted with the former’s letter of 11 December 2002 [under point (j) above]. Specifically, and in terms solely of the connection fees per Leased Lines category, the Hellenic Telecommunications Organisation, with its letter of 11 November 2002 [under point (i) above], submitted information that does not prove the cost orientation of the proposed fees.
7. The proposed Leased Lines prices differ among themselves in terms that, while other fees are consistent with the total approved cost of Leased Lines, the connection fees, which are added to the total approved cost, also present an unjustified increase without sufficient evidence justifying their cost orientation.
8. Consequently, the Hellenic Telecommunications & Post Commission cannot accept the application of new connection fees. The Hellenic Telecommunications Organisation shall decide whether or not it shall apply the proposed Leased Lines prices (apart from the connection fees), under, however, the clear position of the Hellenic Telecommunications & Post Commission that the Hellenic Telecommunications Organisation:

- a. has not proved their cost orientation thereof,
- b. is obliged, whenever it is requested by any third party, to prove the said cost orientation, and
- c. bears all civil liability that may arise from the absence of cost orientation.

Decides:

1. The new Leased Lines prices, as these were submitted with the letter of the Hellenic Telecommunications Organisation of 11 December 2002 [under point (j) above], are not approved by the Hellenic Telecommunications & Post Commission, due to the fact that the Hellenic Telecommunications Organisation did not prove their cost orientation thereof. Moreover, in order to promote competition within the market, given the fact that the said fees (apart from connection fees) are lower than those that are presently applied in the market, and until the Hellenic Telecommunications Organisation determines and until the Hellenic Telecommunications & Post Commission approves cost-oriented Leased Lines prices, the Hellenic Telecommunications & Post Commission allows the Hellenic Telecommunications Organisation to proceed in applying the proposed Leased Lines prices (apart from connection fees).
2. The submitted Leased Lines connection fees cannot be applied by the Hellenic Telecommunications Organisation due to fact that they are unjustifiably higher than the fees now applied in the market.
3.
 - 3.1 The Hellenic Telecommunications Organisation is obliged to prove the cost orientation of the Leased Line prices that it applies following a request that may be submitted by any third party who disputes the cost orientation.
 - 3.2 Possible application of the new Leased Line prices submitted by the Hellenic Telecommunications Organisation does not constitute, under any circumstance, fulfilment of the obligation regarding cost orientation of Leased Lines pricing on behalf of the Hellenic Telecommunications Organisation's and the Hellenic Telecommunications Organisation bears all relative obligations stipulated by the relative domestic and European legislation.
 - 3.3 Acceptance of these prices neither constitutes a waiver of nor restricts, in any manner whatsoever, the relative rights of third parties against the Hellenic Telecommunications Organisation from the application of the relative legislation.

4. In relation to the discounting policy proposed by the Hellenic Telecommunications Organisation, the Hellenic Telecommunications & Post Commission reserves the right to examine the aforementioned policy's compatibility with the provisions relating to free competition.

The present Decision must be communicated to the "Hellenic Telecommunications Organisation S.A."

THE PRESIDENT

EMM. A. GIAKOUMAKIS