

indigo networks GmbH – Ronsdorfer Str. 74 – 40233 Düsseldorf

Ms. Gloria Blue
Executive Secretary, Trade Policy Staff Committee
ATTN: Section 1377 Comments
Office of the United States Trade Representative
1724 F Street, NW
Washington, DC 20508

RE: Germany, WTO General Agreement on Trade in Services

Düsseldorf, den 17.12.2004

Dear Ms. Blue,

Pursuant to Section 1377 of the Omnibus Trade and Competitiveness Act of 1998, 19 U.S.C. PAR 3106, the Office of the United States Trade Representative has invited comments regarding compliance with U.S. telecommunications trade agreements. Indigo Networks GmbH and Netzquadrat GmbH respectfully respond to this request based on its experience in German telecommunications markets and regulatory processes.

Netzquadrat GmbH has provided IP based services since 1998. Its text messaging service has since attracted more than 2.5 million consumers. Netzquadrat GmbH operates an IP backbone stretching over more than 5,000 km, mostly in Germany.

Indigo Networks GmbH has been offering telecommunication services in Austria, Germany and the UK since 2001. Among the products offered have been narrowband internet access and voice conferencing solutions. Indigo Networks GmbH has signed on more than 60,000 consumers for its VoIP services since starting out in January 2004.

The German Government is severely in breach with U.S. telecommunications trade agreements in a number of fields, specifically,

LACK OF AN INDEPENDENT REGULATOR:

Netzquadrat GmbH and Indigo Networks GmbH have noticed notice an increased political pressure on RegTP.

With regards to the emerging VoIP market RegTP has been delaying decisions on a number of key issues, a move which resembles the lengthy process of unbundling the local loop which effectively stifled competition and led to today's market share of 90% of Deutsche Telekom ("DTAG") in the broadband access market.

A majority of German lawmakers have opposed initial drafts of the new telecommunications act ("new TKG") and forced a number of severe restrictions regarding the treatment of players with significant market presence into the law - not the least of which granting DTAG the express right to bundle some parts of their wholesale products until July 1st, 2008.

Given that Germany still holds a significant percentage of shares in DTAG a conflict of interest must be assumed. The above-mentioned actions by RegTP and

German lawmakers do support this view.

UNREASONABLE LICENSING FEES:

Licensing fees have been consistently disputed in Germany. The latest in this long series of disputes are fees for so called "geographic" phone numbers which are valuable for CLECs and VoIP services alike as they are the only numbering resources to allow access for DTAG subscriber at reasonable retail costs.

The issue at hand is whether or not the handling of fees for phone numbers, which are significantly higher than occurring administrative costs, are in compliance with the directive 97/13/EC. In the light that they do pose a market entry barrier for competing carriers while Deutsche Telekom has never been ordered to pay those fees for their existing 400 million numbers. This is discriminatory - a view supported by the Advocate General in cases C-327/03 and C-328/03 at the Court of Justice of the European Communities.

PROVISION OF BROADBAND SERVICES:

RegTP's lack or delay of action in almost all areas affecting wholesale broadband access has led to a monopoly of DTAG without any significant sustainable competition. Not only has RegTP not acted to implement ATM-based network interconnection, commonly referred to as "bitstream access". Today neither wholesale nor retail broadband products separate from DTAG's switching service are available and still RegTP has not started the required market analysis proceedings to regulate these markets.

RegTP's approach of not acting is particular of concern as it de-facto grants DTAG a future monopoly in the VoIP market.

CONCLUSION:

Netzquadrat GmbH and Indigo Networks GmbH seek, and urge the USTR to seek, compliance with U.S. telecommunications trade agreements. Both corporations therefore respectfully suggest that USTR strives for finally implementing an independent regulator and open market in Germany.

Sincerely,



Thilo Salmon / Geschäftsführer (Managing Director)