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Communications Regulation
Commission (CRC)

6 Gurko str
1000 Sofia
Bulgaria

For the attention of:
Mr Veselin Bozhkov
Chairman

Fax: +359 2 986 76 13

Dear Mr Bozhkov,

Subject: Commission decision concerning Case BG/2012/1318: Voice call termination on individual mobile networks in Bulgaria

Comments pursuant to Article 7(3) of Directive 2002/21/EC

I. PROCEDURE

The notification was received from the Bulgarian Regulatory Authority, Communications Regulation Commission (CRC)[1], on 18 April 2012 and became effective on that day. It concerns the second review of the market for wholesale voice call termination on individual mobile networks in Bulgaria[2].

Three national consultations[3] were held. The first national consultation was held from 7

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[1] In accordance with Article 7 of Directive 2002/21/EC of the European Parliament and of the Council of 7 March 2002 on a common regulatory framework for electronic communications networks and services (Framework Directive), OJ L 108, 24.4.2002, p. 33, as amended by Directive 2009/140/EC, OJ L 337, 18.12.2009, p. 37, and Regulation (EC) No 544/2009, OJ L 167, 29.6.2009, p. 12.

[2] Corresponding to market 7 in Commission Recommendation 2007/879/EC of 17 December 2007 on relevant product and service markets within the electronic communications sector susceptible to ex ante regulation in accordance with Directive 2002/21/EC of the European Parliament and of the Council on a common regulatory framework for electronic communications networks and services (Recommendation on Relevant Markets), OJ L 344, 28.12.2007, p. 65.

[3] In accordance with Article 6 of the Directive 2002/21/EC of the European Parliament and of the Council of 7 March 2002 on a common regulatory framework for electronic communications

September 2011 until 7 October 2011, the second was held from 2 December 2011 until 4 January 2012 and the third was held from 5 March 2012 until 4 April 2012. The deadline for the EU consultation under Article 7 of the Framework Directive is 21 May 2012.

On 26 April 2012 a request for information (RFI)[4] was sent to the CRC and a response was received on 3 May 2012.

Pursuant to Article 7(3) of the Framework Directive national regulatory authorities (NRAs), the Body of European Regulators for Electronic Communications (BEREC), and the Commission may make comments on notified draft measures to the NRA concerned.

II. DESCRIPTION OF THE DRAFT MEASURE

II.1. Previous notifications

In its first notification[5] of the market for voice call termination on individual mobile networks the CRC defined four separate markets for voice call termination on individual mobile networks. Mobiltel plc (Mobiltel), Cosmo Bulgaria Mobile plc (Cosmo Bulgaria Mobile), and Bulgaria Telecommunications Company Ltd (BTC) were designated with SMP on their networks according to GSM and UMTS standards, and BTC on its mobile network according to NMT and/or CDMA standards.

The CRC proposed to impose regulatory obligations of access, transparency, and non-discrimination. Price control, cost orientation, cost accounting and accounting separation were only applicable to the two largest operators Mobiltel and Cosmo Bulgaria Mobile. CRC proposed to impose an obligation on BTC to apply reciprocal rates. CRC proposed to initialize the price control obligation by setting a glide path based on an international benchmark and then further specify these cost-oriented rates over the medium term.

In its comments, the Commission expressed concerns that the proposed price regulation was not sufficiently precise to address the identified competition problem and urged the CRC to specify a cost-orientation obligation and relevant supporting measures for all operators at the earliest possible opportunity. The Commission further urged the CRC to re-consider its glide path and, in applying the principle of forward-looking efficiency, to implement a steeper reduction which would more closely approximate the average values which the CRC itself has forecast for the reference countries for the corresponding period.

However, the CRC did not implement a specific costing methodology to determine the wholesale rates for mobile termination.

The second market review was first notified in January 2012 under case BG/2012/1287. The CRC proposed to price regulate traffic originating on networks outside the territory of Bulgaria (EU and non-EU) exclusively on the basis of peak traffic rates. Following discussions with the Commission services during Phase I of the EU consultation, the

networks and services, OJ L 108, 24.4.2002, p. 33, as amended by Directive 2009/140/EC (Better Regulation Directive), OJ L 337, 18.12.2009, p. 37, and Regulation (EC) No 544/2009, OJ L 167, 29.6.2009, p. 12 (Framework Directive).

4 In accordance with Article 5(2) of the Framework Directive.

5 BG/2009/0866, SG-Greffe (2009) D/271.

CRC decided to withdraw its draft measure.

II.2. The notified draft measure

The present notification concerns the second review of the market for voice call termination on individual mobile networks in Bulgaria.

II. 2.1. Market definition

The market definition includes all calls terminated on individual mobile networks, irrespective of the technology used[6].

Based on the geographic coverage of each operator's network and the licensing conditions, the CRC considers that the relevant geographic markets coincide with the territory of Bulgaria.

II. 2.2. Finding of significant market power

Currently, there are three mobile network operators in Bulgaria: Mobiltel, Cosmo Bulgaria Mobile and BTC.

On the basis of its market analysis, the CRC proposes to designate all mobile network operators as having SMP on their individual networks. The main criteria considered by the CRC in reaching its conclusion are: i) 100% market share of each operator on its individual mobile network; ii) barriers to entry and expansion on the relevant market; iii) absence of or low countervailing buying power; and iv) price developments and pricing policy.

II.2.3. Regulatory remedies

The CRC proposes imposing the following obligations on the three SMP operators: (i) access to and use of specific network facilities; (ii) transparency; (iii) non-discrimination, and (iv) price control.

Additionally, the CRC intends to impose on Mobiltel and Cosmo Bulgaria Mobile the obligation of accounting separation. This obligation is not imposed on BTC, as the CRC considers it sufficient that this obligation is imposed on BTC on the market for call origination on the public telephone network provided at a fixed location[7] and also on the market for call termination on individual public telephone networks provided at a fixed location.[8]

As regards price control, the CRC intends to introduce a two staged glide-path for MTRs based on international benchmarks for all three mobile network operators.

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6 I.e., 2G, 3G and 4G networks, the NMT/CDMA network of BTC does not exist anymore.

7 BG/2009/0864, SG-Greffe (2009) D/273.

8 BG/2009/0865, SG-Greffe (2009) D/272.

Implementation date	*Mobile termination rates per minute in €cents/min*[9]	
	Peak	*Off-peak*[10]
July 1, 2012	*2.79*	*2.37*
January 1, 2013	*2.34*	*1.99*

The CRC calculates its benchmark based on average MTRs (4.71 €cents/min as of 1 January 2011) in Belgium, France, Italy, the Netherlands, Slovenia, and the UK[11]. The glide path proposed by the CRC is based on a semi-annual price decrease of 16% starting from 1 January 2011. CRC is of the view that market situation in Bulgaria does not require a steeper decline in MTRs.

MTRs based on average calculated by CRC as of	*MTRs, eurocents/min.*	*Price reduction*
January 1, 2011	*4.71*	
July 1, 2011	*3.96*	*- 16%*
January 1, 2012	*3.32*	*- 16%*
July 1, 2012	*2.79*	*- 16%*
January 1, 2013	*2.34*	*- 16%*

CRC foresees in its draft measure to apply cost-oriented MTRs from 1 July 2013, without a difference between peak and off-peak rates, based on the costs incurred by an efficient operator and determined under a pure BU-LRIC model to be developed by the CRC[12].

III. COMMENTS

The Commission has examined the notification and additional information and has the

9 Exchange rate of ECB valid on 3 May 2012 (1€ = 1.956BGN).

10 The off-peak wholesale termination rates are set by the CRC at the ratio of approximately 85% of the peak prices.

11 CRC argues that the benchmark based on average MTRs in Belgium, France, Italy, the Netherlands and the UK (i.e. without Slovenia) would lead to the same results and conclusions. CRC also argues that the benchmark based on average MTRs in Belgium, France, Italy, the Netherlands, Spain and the UK (i.e. without Slovenia however including Spain) would lead to the same results and conclusions as well.

12 CRC intends to notify the pure BU-LRIC model under Article 7 by the end of 2012 or in the beginning of 2013.

following comments:[13]

Need for an appropriate price control ensuring that customers derive maximum benefits in terms of efficient cost-based termination rates

The Commission notes that for the period from 1 July 2012 until 30 June 2013 the CRC proposes to set termination rates on the basis of a benchmarking method.

The Commission notes that the purpose of Recital 22 and of Recommend 12 of the Termination Rates Recommendation is to enable NRAs, in case of limited resources, to come to a cost efficient rate without having to finalise a pure BU-LRIC model in a timely manner. Therefore, as indicated by the Commission in similar cases[14], if the alternative methodology chosen is benchmarking, it should be performed by taking into account average MTRs only of those Member States which have implemented the recommended cost methodology as of 1 January 2013, which is pure BU-LRIC and not BU-LRIC plus[15]. Further to that, rates used for benchmarking should represent the cost efficient target rates at the end of the respective glide paths[16]. Such an approach has also been recently endorsed by BEREC[17].

In the present case, the Commission observes, however, that at least until 30 June 2013 the proposed benchmarking method does not seem to be consistent with the Termination Rates Recommendation. Although CRC proposes to use as sample only EU countries using LRIC, one of them is not using pure BU-LRIC but a BU-LRIC plus cost methodology[18]. Further to that, the Commission notes that the rates used for benchmarking purposes are historic rates applicable as of 1 January 2011 to which the CRC applies a semi-annual price decrease of 16%. However, the proposed benchmarking method and prospective percentage reduction do not appear to reflect the cost efficient target rates at the end of the respective glide paths. The resulting rates as of 1 January 2013 appear to be approximately twice as high as the average of the target rates of those countries implementing pure BU-LRIC[19].

13 In accordance with Article 7(3) of the Framework Directive.

14 See Commission comments in cases IE/2008/0746, IT/2008/0779 and SK/2012/1313.

15 BU-LRIC plus method includes not only the avoidable costs of termination but also a contribution to the costs that are common to termination and other services.

16 See case EE/2012/1305.

17 See BEREC's opinion in Phase II investigation in cases NL/2012/1284 and NL/2012/1285 on fixed and mobile termination markets in the Netherlands.

18 Slovenia does not use pure BU-LRIC but BU-LRIC plus.

19 The following countries have, so far, notified a pure BU-LRIC cost model to set MTRs:

The Commission takes note of CRC's assurance to implement its pure BU-LRIC model as from 1 July 2013.[20]

Against this background, in order both to bring more quickly the benefits of lower MTRs to the consumers and avoid excessively steep drops in MTRs at the end of the transition, the Commission asks the CRC to modify its benchmarking method in such a way that it would lead already in the period preceding 1 July 2013 to a reduction of MTRs in line with the Termination Rates Recommendation.

The Commission reminds the CRC that if it were to propose a price remedy for the period following 1 July 2013, that deviated from EU law and the principles of the Termination Rates Recommendation, the Commission could proceed to opening a phase II investigation pursuant to Article 7a of the Framework Directive.

Pursuant to Article 7(7) of the Framework Directive, the CRC shall take the utmost account of the comments of other NRAs, BEREC and the Commission and may adopt the resulting draft measure; where it does so, shall communicate it to the Commission.

The Commission's position on this particular notification is without prejudice to any position it may take *vis-à-vis* other notified draft measures.

Pursuant to Point 15 of Recommendation 2008/850/EC[21] the Commission will publish this document on its website. The Commission does not consider the information contained herein to be confidential. You are invited to inform the Commission[22] within three working days following receipt whether you consider that, in accordance with EU and national rules on business confidentiality, this document contains confidential information which you wish to have deleted prior to such publication.[23] You should give

Country	Target Rate (€ct/min)	Deadline
NL*	1.2	01/09/2012
BE	1.08	01/01/2013
FR	0.8	01/01/2013
PT	1.27	01/01/2013
IT	0.98	01/07/2013
ES	1.09	01/07/2013
UK**	0.81	01/04/2014

* OPTA renotified MTR remedies following National Court's judgment which required to set MTRs according to a different cost model, resulting in a target rate of 2.4 €ct/min.

** Adopted rate. UK's Competition Commission, with decision of 9 February 2012, endorsed Ofcom's use of a BU-LRIC cost model but asked Ofcom to shorten the glide-path by one year (with a new target date of 1/04/2013).

20 See case BE/2012/1279 and SK/2012/1313.

21 Commission Recommendation 2008/850/EC of 15 October 2008 on notifications, time limits and consultations provided for in Article 7 of Directive 2002/21/EC of the European Parliament and of the Council on a common regulatory framework for electronic communications networks and services, OJ L 301, 12.11.2008, p. 23.

22 Your request should be sent either by email: INFSO-COMP-ARTICLE7@ec.europa.eu or by fax: +32 2 298 87 82.

23 The Commission may inform the public of the result of its assessment before the end of this three-day period.

reasons for any such request.

Yours sincerely,
For the Commission,
Robert Madelin
Director-General