



NOTIFICATION OF DRAFT MEASURES PURSUANT TO ARTICLE 7(3) OF DIRECTIVE 2002/21/EC FOR VOICE CALL TERMINATION ON INDIVIDUAL MOBILE NETWORKS.

Under the obligation in article 16 of the Directive 2002/21/EC, CMT has conducted an analysis of the markets for voice call termination on individual mobile networks.

On 2nd February 2012, the CMT has reached its preliminary conclusions on market definition, the extent of competition in those markets, the designation of undertakings having significant market power and the regulatory obligations needed to be imposed.

CMT hereby notifies the Commission of its proposed remedies and obligations consistent with article 7(3) of Directive 2002/21/EC. These remedies and obligations are set out in the attached summary notification form.

Under Article 6 of the Directive 2002/21/EC and according to national procedures, CMT conducted a national consultation which started on 5th December 2011 and ended on 5th December 2012.

CMT has also requested the opinion of the National Competition Authority –*Comisión Nacional de la Competencia*–, concerning the definition and the SMP assessment on this market.

This draft measure has taken into account the comments received during the public consultation and the opinion of the National Competition Authority.



Standard Form relating to Notifications of Draft Measures Pursuant to Article 7 of Directive 2002/21/EC

Section 1

Market definition

Please state where applicable:

1.1 The relevant product/service market. Is this market mentioned in the Recommendation on relevant markets?

Voice call termination on individual mobile networks, including both MNOs and full MVNOs.

The defined relevant market is the same to that listed in the Recommendation.

1.2 The relevant geographic market.

Spain.

1.3 A brief summary of the opinion of the national competition authority, where provided.

NCA agrees with the market definition but suggests that CMT should take into account the finalization service that MNOs provide to their MVNOs in order for these to terminate calls in their final users (part of the access service provided by MNOs as hosts).

Also, agreeing with the conclusion reached at the draft measure, NCA suggests that the CMT should conduct a further analysis about the impact of the convergence of fixed and mobile services and other services such as mobile data services and voice calls made through VoiP techniques.

1.4 A brief overview of the results of the public consultation to date on the proposed market definition (e.g. how many comments were received, which respondents agreed with the proposed market definition, which respondents disagreed with it).

Thirteen operators submitted observations to the public consultation (Telefónica Móviles, Vodafone, France Telecom, Xfera Móviles, Euskaltel, R Cable y Telecomunicaciones Galicia, R Cable y Telecomunicaciones Coruña, Telecable de Asturias, Cableuropa, Verizon, BT, Jazztel y Digi Spain).

Respondents agree with the proposed product and geographic market definition. One respondent pointed out that further analysis should be made on the technological evolution of certain services (VoIP applications, messaging services).

1.5 Where the relevant market is different from those listed in the Recommendation on relevant markets, a summary of the main reasons justifying the proposed market definition by reference to Section 2 of the Commission guidelines on market analysis and the assessment of significant market power under the Community regulatory framework for



electronic communications and services¹, and the three main criteria mentioned in recitals 5 to 13 of the Recommendation on relevant markets and Section 2.2 of the accompanying Explanatory Note.²

Not applicable.

Section 2

Designation of undertakings with significant market power

Please state where applicable:

2.1 The name of the undertakings designated as having, individually or jointly, significant market power.

▪ **MNOs**

- Telefónica Móviles España, S.A.U. (TME)
- Vodafone España, S.A. (Vodafone)
- France Telecom España, S.A. (Orange)
- Xfera Móviles, S.A. (Xfera)

▪ **Full MVNOs**

- Euskaltel, S.A. (Euskaltel)
- Cableuropa S.A.U. y Tenaria, S.A. (ONO)
- R Cable y Telecomunicaciones Galicia, S.A. y R Cable y Telecomunicaciones Coruña, S.A. (R Cable)
- KPN Spain, S.L.U. (Simyo)
- Telecable de Asturias S.A.U. (Telecable)
- Jazz Telecom S.A.U. (Jazztel)
- Fonyou Telecom, S.L. (Fonyou)
- Digi Spain Telecom, S.L. (Digi.mobil)
- Lycamobile, S.L. (Lycamobile)
- SCN Truphone, S.L. (Truphone)

Where applicable, the name of the undertakings considered no longer to have significant market power.

BT España, Compañía de Servicios Globales de Telecomunicaciones, S.A.U. (BT) and Best Spain Telecom, S.L. (Best Telecom), declared to have SMP in the previous round (2008) are no longer MVNOs and are not included in the draft measure.

¹ OJ C 165, 11.7.2002, p. 6.

² Explanatory Note accompanying the Commission Recommendation of 17.12.2007 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 communication networks and services, C (2007)5406 published at:

http://ec.europa.eu/information_society/policy/ecomms/doc/implementation_enforcement/article_7/sec_2007_1483_2.pdf



2.2 The criteria used to designate an undertaking as having significant market power, individually or jointly, or not.

- Market share.
- Absolute barriers to entry.
- Lack of countervailing buyer power.

2.3 The name of the main undertakings (competitors) active in the relevant market.

MNOs and full MVNOs do not face any competitor in the provision of voice call termination services on their networks.

2.4 The market shares of the undertakings mentioned above and the basis for calculation of market share (e.g. turnover, number of subscribers).

100% each – each MNO/full MVNO is a monopoly.

Please provide a brief summary of:

2.5 The opinion of the national competition, authority where provided.

The NCA agrees with the analysis of the three criteria mentioned above. However, the NCA suggests the CMT to conduct a further analysis on the evolution of market shares, the current situation of the barriers to entry –having into account the impact of the recent frequencies' allocation to some of the undertakings and, as a result, their market position-, the access services provided by the MNOs to the MVNOs –particularly the termination or finalization service- and the net balance of traffic and income on the termination services.

2.6 The results of the public consultation to date on the proposed designation(s) as undertakings having significant market power (e.g. total number of comments received, numbers agreeing/disagreeing).

The entities that submitted observations agree on the results of designating MNOs and MVNOs as undertakings having SMP. The main observations made by the MNOs relate to the application of the Recommendation of 7 May 2009, on the Regulatory Treatment of Fixed and Mobile Termination Rates in the EU, the implementation of the bottom-up model, the glide-path proposed by the CMT and, with regards to Xfera Móviles, the asymmetry of its MTRs.

As regards the MVNOs, they focus on the MTRs and the glide-path proposed in the draft measure.

Section 3

Regulatory obligations

Please state where applicable:

3.1 The legal basis for the obligations to be imposed, maintained, amended or withdrawn (Articles 9 to 13 of Directive 2002/19/EC).

CMT proposes three sets of remedies:



- **Incumbent MNOs**
 - Access obligation (Art. 12 AD), that consists of the obligation to meet reasonable requests for interconnection.
 - Price control and cost accounting obligation (Art. 13 AD), which requires mobile operators to set cost-oriented termination prices according to a new glide-path that implements a bottom-up model defined by the CMT, where the MTRs will be symmetric.
 - Accounting separation obligation (Art. 11 AD) with respect to access and interconnection operation.
 - Non-discrimination obligation (Art. 10 AD).
 - Transparency obligation (Art. 9 AD), which requires mobile operators to submit the contracts to the CMT in ten days after its signature.
- **Xfera**
 - Access obligation (Art. 12 AD), that consists of the obligation to meet reasonable requests for interconnection.
 - Price control obligation (Art 13. AD), which requires Xfera to set cost-oriented termination prices according to a new glide-path where the MTRs will be asymmetric until 16th October 2013.
 - Non-discrimination obligation (Art. 10 AD).
 - Transparency obligation (Art. 9 AD), which requires Xfera to submit the contracts to the CMT in ten days after its signature.
- **Full MVNOs**
 - Access obligation (Art. 12 AD), that consists of the obligation to meet reasonable requests for interconnection.
 - Price control (Art. 13 AD), which requires them to set cost-oriented termination prices; MTRs must be equal to host MNOs' ones.
 - Non-discrimination obligation (Art. 10 AD).
 - Transparency obligation (Art. 9 AD), which requires Xfera to submit the contracts to the CMT in ten days after its signature.

The glide path proposed is the following:

Glide path for Movistar, Vodafone and Orange:

(all figures in c€/min)

From 16/04/12 to 15/10/12	From 16/10/12 to 29/02/13	From 01/03/13 to 30/06/13	From 01/07/13
3,42	3,16	2,76	1,09

Glide path for Yoigo:

(precios en c€/min)

De 16/04/12 a 15/10/12	De 16/10/12 a 29/02/13	De 01/03/13 a 30/06/13	A partir de 01/07/13
4,07	3,36	2,86	1,09

MVNOs: same MTRs as host MNO operator



- 3.2 The reasons for which the imposition, maintenance or amendment of obligations on undertakings is considered proportional and justified in the light of the objectives laid down in Article 8 of Directive 2002/21/EC. Alternatively, indicate the paragraphs, sections or pages of the draft measure where such information is to be found.**

See chapter III.4 of the notification.

- 3.3 Where the remedies proposed are other than those set out in Articles 9 to 13 of Directive 2002/19/EC, please indicate what "exceptional circumstances" within the meaning of Article 8 (3) of that directive justify the imposition of such remedies. Alternatively, indicate the paragraphs, sections or pages of the draft measure where such information is to be found.**

Not applicable.

Section 4

Compliance with international obligations

In relation to the third intend of the first subparagraph of Article 8(3) of Directive 2002/19/EC, please state where applicable:

- 4.1 Whether the proposed draft measure intends to impose, amend or withdraw obligations on market players as provided for in Article 8(5) of Directive 2002/19/EC.**

Not applicable.

- 4.2 The name of the undertakings concerned.**

Not applicable.

- 4.3 What international commitments entered into by the Community and the Member States are to be met.**

Not applicable.