



EUROPEAN COMMISSION

Brussels, 12/12/2011  
C(2011) 9464

**SG-Greffe (2011) D/22974**

Autoritatea Națională pentru  
Administrare și Reglementare în  
Comunicații (ANCOM)

Delea Noua, 2  
030925 Bucharest  
Romania

For the attention of: Mr. Marius  
Catalin Marinescu  
President

Fax: +40 372 845 402

Dear Mr Marinescu,

**Subject: Commission decision concerning Case RO/2011/1271: Call termination on individual public telephone networks provided at a fixed location in Romania**

**Comments pursuant to Article 7(3) of Directive 2002/21/EC<sup>1</sup>**

## **I. PROCEDURE**

On 10 November 2011, the Commission registered a notification received from the Romanian regulatory authority, Autoritatea Națională pentru Administrare și Reglementare în Comunicații (ANCOM), concerning a draft measure relating to the market for voice call termination on individual public telephone networks provided at a fixed location in Romania.

The national consultation<sup>2</sup> ran from 4 August 2011 to 7 October 2011.

On 22 November 2011 a request for information<sup>3</sup> was sent to ANCOM and a response

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<sup>1</sup> 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, 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).

<sup>2</sup> In accordance with Article 6 of the Framework Directive.

<sup>3</sup> In accordance with Article 5(2) of the Framework Directive.

was received on 25 November 2011.

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

## **II. DESCRIPTION OF THE DRAFT MEASURES**

### **II.1. Background**

The first review of this market was carried out in 2008<sup>4</sup> and the Romanian regulatory authority designated 38 undertakings as individually having SMP on their relevant markets and imposed on them obligations of access, transparency, non-discrimination as well as price control. Romtelecom was made subject to an additional accounting separation obligation.<sup>5</sup>

The Commission questioned the inclusion of conveyance services in the definition of the call termination network segment and invited the NRA to revisit its market definition and SMP analysis and to adjust the market definition appropriately if necessary. As for the costing methodologies used to set the termination rates, the Commission asked the NRA to revisit its analysis in light of the agreed common European approach as soon as this would be established.

### **II.2. Market definition**

Similarly to the first review of the market, ANCOM defines the relevant market as comprising call termination services provided at fixed locations to geographic numbers, to national short numbers for services of public interest<sup>6</sup> and to numbers independent of location (e.g., call termination to mobile networks at fixed locations). The market definition also refers to termination on each public telephone network of 52 operators in Romania, irrespective of the national or international origin of the call or of the technology used, including calls provided using VoIP technology<sup>7</sup>.

ANCOM excludes from the market, *inter alia*, call termination services to numbers used for value-added services, call termination services to fixed locations by operators of public mobile telephone networks and calls to the single national call emergency number 112.

ANCOM has defined the relevant network segment for call termination as the network which runs from the point of interconnection with the wholesale customer's network to the end user's premises, including the call conveyance from the interconnection point to the last switch in the network if the interconnection point is located at a higher level. According to ANCOM, given that the alternative operators in the market are not interconnected with Romtelecom at all switches corresponding to the respective

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<sup>4</sup> RO/2008/0774 (SG-Greffe (2008) D/203723).

<sup>5</sup> ANCOM later notified details of remedies (case RO/2009/1003, SG-Greffe (2009) D/10916).

<sup>6</sup> ANACOM states that these public interest services include citizen safety services (e.g., police, gendarmerie), medical assistance services, public utilities' faults complaint services, citizen assistance (consumer protection) services, information services (e.g. railway, airline assistance) for subscribers of electronic communications services (customer relations, service guides, etc).

<sup>7</sup> Managed and unmanaged VoIP services with numbering.

hierarchical levels (local, regional and national) there are no alternatives to such conveyance services supporting call termination.<sup>8</sup>

### **II.3. Finding of significant market power**

ANCOM proposes to designate 52 undertakings (all of which were operational on 27 September 2011) as individually having SMP on their relevant markets<sup>9</sup>.

The main criteria considered by ANCOM when reaching this conclusion on SMP designation include: the market shares and their stability (each provider has a 100% market share on its respective network), barriers to entry and potential competition (including the technical inability to terminate a call to another fixed termination point), and an absence of, or low, countervailing buyer power from the other fixed or mobile operators.

### **II.4. Regulatory Remedies**

ANCOM proposes to impose the following obligations on Romtelecom:

- Obligation to provide access to, and use of, certain network elements and associated infrastructure;
- Obligation of transparency (including publication of a reference interconnection offer);
- Obligation of non-discrimination<sup>10</sup>;
- Obligation of price control<sup>11</sup>;

ANCOM is developing a pure LRIC model that is expected to be ready for implementation at the end of 2012. In the interim period, ANCOM proposes to set price caps on the basis of a glide path targeted at an international benchmark rate that takes into account the tariffs imposed in other European Union Member States applying a pure LRIC model.<sup>12</sup> Until ANCOM determines the new tariffs based on its own pure LRIC

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<sup>8</sup> Romtelecom is the only provider of double transit and its market share for single transit services is still very high. Despite having extended interconnection at local level since the previous market analysis, neither UPC Romania nor RCS&RDS are offering national transit services. Further, they do not appear to be willing to enter the market given the current lack of demand. The share of traffic terminated at local level in Romtelecom's networks is decreasing and most of the termination traffic (76% of the overall minutes terminated in year 2010) is carried at regional level.

<sup>9</sup> A1 Telecom Network ISP, Adisam Telecom, Advanced Business Solutions International, Aeroglobal, Alizee Telecom Network, Aqualogic, Atlas Telecom Network Romania, Canal S, Ccelebral, Cobalt IT, Combridge, Connet-RO, Contact Telecom, Cosmote Romanian Mobile Telecommunications, Dial Telecom, Digicom Systems, Digital Cable Systems, Dotro Telecom, Euroweb Romania, GBA Network Group, GTS Telecom, Idilis, Ines Group, Internet Telecom, Interpoint, Intersat, Iristel Romania, Media Sat, Necc Telecom Romania, Net-Connect Internet, Nextgen Communications, Nobel Romania, Orange România, Prime Telecom, Rartel, RCS & RDS, Real Network and Telecommunications, Romtelecom, Telcor Communications, Telefonet Comm Tech, Telemax, Telemobil, Trans Tel Services, UPC Romania, Vialtex Prodcom, Vitanic RO, Vodafone Romania, Volio Communications, Voxility, Voxline Communication, World Telecom Network, National Radio communications Company.

<sup>10</sup> The non-discrimination obligation will be withdrawn for self-supplied termination services when the termination rates will reach pure LRIC levels.

<sup>11</sup> The obligation is also applicable to ancillary interconnection services.

<sup>12</sup> ANCOM sets an "efficient" target rate at 0.22 eurocents/min in 2014 on the basis of an average of the

model mentioned above, the following termination price caps will apply:

	From 1 <sup>st</sup> of January 2012 (eurocents/min.)	From 1 <sup>st</sup> of July 2012 (eurocents/min.)
Local interconnection	0.71	0.58
Regional interconnection	0.82	0.67
National interconnection	0.90	0.73

Furthermore, ANCOM proposes to withdraw the obligation of accounting separation when the termination rates will reach pure LRIC levels.

ANCOM proposes to impose the following obligations on alternative network operators (ANOs):

- Obligation to provide access to, and use of, certain network elements and associated infrastructure;<sup>13</sup>
- Obligation of transparency;
- Obligation of non-discrimination; and
- Obligation of price control<sup>14</sup>.

Until ANCOM determines the new tariffs based on the pure LRIC model described above, all ANOs must observe the price caps below (symmetric with Romtelecom's termination tariffs for the regional interconnection level)<sup>15</sup>:

- a) 0.82 eurocents/min., starting from 1<sup>st</sup> of January 2012;
- b) 0.67 eurocents/min., from 1<sup>st</sup> of July 2012.

### III. COMMENTS

On the basis of the present notification and the additional information provided by ANCOM, the Commission has the following comments<sup>16</sup>:

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target tariffs resulting from the application of the pure LRIC models available. The three layers (local, regional, national) of Romtelecom's network will be replaced by an efficient NGN/IP network resulting in a unique rate for interconnection.

<sup>13</sup> For S.C. RCS & RDS S.A. and S.C. UPC Romania S.R.L. this also includes maximum negotiation and implementation time limits for interconnection agreements and the obligation of interconnection at an intermediary point, if there is a physical link between the operator and that point.

<sup>14</sup> The obligation is applicable to ancillary interconnection services.

<sup>15</sup> ANCOM explains that setting the interconnection charges of the alternative operators symmetrically with Romtelecom's regional rates is the most appropriate way to implement the temporary glide-path given the specific national circumstances, i.e. that most of the termination traffic is carried at regional level and Romtelcom's IP network is available only at regional level. The three layers (local, regional, national) of Romtelecom's network will eventually be replaced by an efficient NGN/IP network. Therefore the new LRIC model will set a unique rate for interconnection.

<sup>16</sup> In accordance with Article 7(3) of the Framework Directive.

## **Implementation of cost-efficient symmetrical rates**

The Commission notes that ANCOM will finalise the development of its pure LRIC model by the end of 2012. In the interim period price caps are set by reference to a glide path targeted at an international benchmark rate that takes into account the tariffs calculated on the basis of a pure LRIC model in other European Union Member States. ANCOM foresees in its glide path that the benchmarked cost efficient target rate would only be reached in 2014. However, ANCOM states that it will switch to rates based on the pure LRIC cost model when the results of that model become available.

The Commission calls on ANCOM to end the transition phase at the end of 2012 and to implement the identified cost-efficient symmetrical rates already for the year 2013 in order to comply with the Termination Rates Recommendation.

The Commission points out, however, that this may result in a considerable drop in FTRs from the current glide path to the cost-efficient BU-LRIC rate. In view of this the Commission invites ANCOM to reconsider the slope of its current glide path and aim for a cost-efficient target rate to be reached already at the beginning of 2013.

Pursuant to Article 7(7) of the Framework Directive, ANCOM shall take the utmost account of comments of other NRAs, BEREC and the Commission and may adopt the resulting draft measures and, where it does so, shall communicate them 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<sup>17</sup> 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<sup>18</sup> 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<sup>19</sup>. You should give reasons for any such request.

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

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<sup>17</sup> 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.

<sup>18</sup> Your request should be sent either by email: [INFSO-COMP-ARTICLE7@ec.europa.eu](mailto:INFSO-COMP-ARTICLE7@ec.europa.eu) or by fax: +32 2 298 87 82.

<sup>19</sup> The Commission may inform the public of the result of its assessment before the end of this three-day period.



EUROPEAN COMMISSION

Brussels, 19/12/2011  
C(2011) 9933

**SG-Greffe (2011) D/24197**

Autoritatea Națională pentru  
Administrare și Reglementare în  
Comunicații (ANCOM)

Delea Noua, 2  
030925 Bucharest  
Romania

For the attention of: Mr. Marius  
Catalin Marinescu  
President

Fax: +40 372 845 402

Dear Mr. Marinescu,

**Subject: Corrigendum of the Commission decision C(2011) 9464 of 12/12/2011 related to case RO/2011/1271: Call termination on individual public telephone networks provided at a fixed location in Romania**  
**Comments pursuant to Article 7(3) of Directive 2002/21/EC<sup>20</sup>**

Please note that:

- Footnote 6 shall read "ANCOM (...)." instead of "ANACOM (...)".
- II.2. second paragraph shall read "(...) mobile call termination services by operators of public mobile telephone networks (...)" instead of "(...) call termination services to fixed locations by operators of public mobile telephone networks (...)".

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<sup>20</sup> 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, 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).

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