



EUROPEAN COMMISSION

Brussels, 02/12/2011
C(2011) 9158

SG-Greffe (2011) D/22038

Den danske telemyndighed
Holsteingade 63
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Denmark

For the attention of:
Ms Tina Aaen Jensen

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Dear Ms Jensen

Subject: Commission decision concerning Case DK/2011/1264: Further details of price control remedies - review of the LRAIC model

Comments pursuant to Article 7(3) of Directive 2002/21/EC¹

I. PROCEDURE

On 2 November 2011, the Commission registered a notification from the Danish Telecommunication Authority concerning the modification of remedies on (i) call origination on the public telephone network provided at a fixed location; (ii) call termination on TDC's individual telephone network provided at a fixed location; (iii) wholesale (physical) network infrastructure access and (iv) wholesale broadband access and also related ancillary/supplementary services in Denmark². In particular, the Danish Telecommunications Authority proposes to set the regulated prices of these services for the year 2012 on the basis of the updated Long Run Average Incremental Cost (LRAIC) model.

The national consultation³ took place in September 2011.

On 16 November 2011 a request for information⁴ was sent to the Danish Telecommunication

¹ 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).

² Corresponding to markets 2, 3, 4 and 5, respectively, of Commission Recommendation 2007/879/EC of 17 December 2007 on relevant product and services 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 (the Recommendation), OJ L 344, 28.12.2007, p. 65.

³ In accordance with Article 6 of the Framework Directive.

Authority and a response was received on 21 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 last reviews of the wholesale markets for (i) fixed call origination, (ii) fixed call termination (iii) physical network infrastructure access and (iv) wholesale broadband access were respectively notified to and assessed by the Commission under case numbers DK/2010/1149⁵, DK/2010/1150⁶, DK/2008/0860⁷ and DK/200/0862⁸.

Following the market analyses NITA imposed on TDC, the SMP operator, a number of regulatory obligations including price control based on a LRAIC methodology. The 2011 charges for (i) call origination, call termination, copper local loop (and sub-loop) unbundling (LLU), bitstream services, collocation and other accessory services and (ii) the fibre and cable bitstream services and the multicast functionality were notified to and assessed by the Commission under cases DK/2010/1129⁹ and DK/2010/1180¹⁰, respectively.

II.2. The notified draft measure

The current notification concerns the price control remedy imposed on the incumbent operator TDC in view of its significant market power in the fixed wholesale services markets in Denmark and sets TDC's regulated wholesale prices for the year 2012.

The Danish Telecommunication Authority, pursuant NITA's previous decisions, updates the LRAIC model and proposes to set the respective maximum wholesale charges for (i) fixed call origination (Market 2); (ii) fixed call termination (Market 3); (iii) unbundled access to the copper local loops and sub-loops (Market 4); (iv) bitstream service on copper, fibre and cable networks (market 5)¹¹; (v) co-location (market 3, 4 and 5) and other related accessory services.

The update of the LRAIC model concerns particularly (i) the equipment prices, (ii) the salary expenses, (iii) the productivity trend and (iv) the traffic and volume forecasts. A new weighted average cost of capital (WACC) is also calculated¹².

As it is shown in the table below¹³ the LRIC model update results in an overall slight increase

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

⁵ SG-Greffe (2010) D/19683

⁶ SG-Greffe (2010) D/19827

⁷ SG-Greffe (2008) D/568

⁸ SG-Greffe (2008) D/1391

⁹ SG-Greffe (2010) D/15874

¹⁰ SG-Greffe (2011) D/3616

¹¹ Following the decision assessed under the case DK/2011/1180, SG-Greffe (2011) D/3616 the LRAIC model includes the fibre network and the cable TV network.

¹² The weighted average cost of capital has been reduced from 6.90% to 6.45%.

¹³ For sake of simplicity the prices for the cable bitstream service are not depicted as they are not directly

of the costs and the corresponding maximum prices of the above mentioned wholesale services. The resulting increase in costs is partly off-set by the decrease of the weighted average cost of capital. According to the Danish Telecommunication Authority, this increase is mainly due to the reduction in the number of both copper connections and call volumes.

	2011	Proposed for 2012	Annual variation (%)
Call origination (DDK per minute)			
Peak	1.64	1.74	6.10
Off peak	0.84	0.92	9.52
Call termination (DDK per minute)			
Peak	1.40	1.49	6.43
Off peak	0.74	0.79	6.76
LLU (DDK per line and year)			
Full	820	825	0.61
Shared	410	412	0.49
Local Sub-loop unbundling (DDK per line and year)			
Full	721	725	0.55
Shared	361	363	0.55
Copper Bitstream (DDK per line and year)			
Layer 1 (DSLAM)	757	752	-0.66
Layer 2	889	932	4.84
Layer 3	958	1009	5.32
Fibre Bitstream (DDK per line and year)			
DONG area	1,689.12	1,712.40	1.38
Rest of the country	2,294.04	2,334.12	1.75

comparable because, contrary to copper and fibre networks, the cable network is a shared medium and the costs are not calculated on the basis of individual lines. Compared to the prices for copper and fibre bitstream service the Danish Communications Authority proposes a higher price increase for the cable bitstream service (around 25%).

However, in the proposed draft measure the price for the bitstream services varies very significantly depending on whether the underlying access technology is copper or fibre. In the response to the request for information (RFI) the Danish Telecommunication Authority argues that fibre can not yet be considered modern equivalent asset (MEA) and, therefore, copper, cable TV and fibre are modelled separately. It further explains that the fibre costs are still higher than the copper cost despite the use of economic depreciation for the fibre bitstream service. According to its response to the RFI, the Danish Telecom Authority will assess in the next review of the model whether fibre can be considered as MEA and whether the existing price difference can still be justified.

As to the fixed termination rates (FTRs) the Danish Telecommunications Authority does not find inputs that should be adjusted in order to ensure a steady transition towards a pure LRIC model as it was the case for mobile termination rates (MTRs). In the response to the RFI the Danish Telecommunication Authority also considers that it is necessary to further investigate the issue of unrecovered costs before the implementation of such a model. Finally the Danish Telecommunications Authority confirms that it is to set FTRs in line with to the Termination Rates Recommendation as from 1 January 2013.

As to the price regulation of the multicasting functionality the Danish Telecommunications Authority is currently assessing it as part of the review of wholesale market for broadband access¹⁴.

III. COMMENTS

On the basis of the present notification and the additional information provided by Danish Telecommunications Authority, the Commission has the following comments¹⁵:

Consistency of prices

Wholesale charges should normally be set at a level that gives operators the correct signals to invest and promote infrastructure based competition where it is feasible. In the present case the Commission observes that: (i) wholesale charges for LLU proposed by the Danish Telecommunications Authority are higher than those for copper bitstream at the layer 1 (at the DSLAM), (ii) the differences between the prices for copper and fibre bitstream services are very high. For example, by considering only the line-related costs (i.e. excluding the capacity-related costs) the costs of fibre bitstream corresponding to the DONG area and the rest of the country are 70% and 130%, respectively, higher than the copper bitstream at the highest network level (i.e. layer 3).

As far as the price differential between copper LLU and bitstream services is concerned the Commission points out that a consistent application of the cost model should normally result in higher charges for services with higher costs and, moreover a sufficient economic space should exist between the two services so that alternative operators are incentivised to invest in further network roll-out and profitably unbundle the local loop.

As far as the price differential between copper and fibre bitstream is concerned the Commission acknowledges that the low level of penetration at the early stages of fibre roll-out could yield higher unit costs and NRAs should normally take into

¹⁴ The multicasting functionality is currently only used to a very limited extent. In the first half year 2011 the number of IPTV customers was 225,346 IPTV while it was 203,000 by the end of 2010 (9,6% penetration).

¹⁵ In accordance with Article 7(3) of the Framework Directive.

account the additional and quantifiable investment risk incurred by the operator investing in fibre NGA networks. At the same time costing models could be devised which help to avoid such short term volume effects and help to stabilise next generation access prices over a longer time period (on the basis of prudent projections) and consequently promote uptake of fibre based broadband products at retail level.

Given the importance of regulating key wholesale access products in the transition period to NGA networks in an effective and consistent manner across the EU the Commission launched a public consultation on costing methodologies for such products. In the light of this, the Commission invites the Danish Telecommunications Authority to review its analysis upon entry into force of any relevant recommendations.

Pursuant to Article 7(7) of the Framework Directive, Danish Telecommunications Authority 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/EC¹⁶ 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 Commission¹⁷ 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 publication¹⁸. You should give reasons for any such request.

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

¹⁶ 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.

¹⁷ Your request should be sent either by email: INFSO-COMP-ARTICLE7@ec.europa.eu or by fax: +32 2 298 87 82.

¹⁸ The Commission may inform the public of the result of its assessment before the end of this three-day period.