



EUROPEAN COMMISSION

Brussels, 18/06/2012
C(2012)4278

Český telekomunikační úřad (ČTÚ)

P. O. Box 02
CZ 22502 Praha 025
Czech Republic

For the attention of:
Mr. Pavel Dvořák
Chairman of the Council

Fax: +420 224 004 811

Dear Mr Dvořák,

Subject: Commission decision concerning Case CZ/2012/1327: voice call termination on individual mobile networks - modification of remedies

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

I. PROCEDURE

On 17 May 2012, the Commission registered a notification from the Czech national regulatory authority, Český telekomunikační úřad (ČTÚ)¹, concerning the details of the price control remedy on the market for voice call termination on individual mobile networks² in the Czech Republic.

The national consultation³ ran from 30 March 2012 to 30 April 2012.

On 25 May a request for information⁴ was sent to ČTÚ and a response was received on 4 June 2012.

¹ Under 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 the 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 Framework Directive.

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

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. Background

II.1.1. Second round market review

The market for voice call termination on individual mobile networks in the Czech Republic was previously notified to and assessed by the Commission under case CZ/2009/0959⁵. In its second round market review ČTÚ designated the four mobile network operators (MNOs) as having significant market power (SMP) in their respective mobile networks. A full set of remedies was imposed on the three larger operators, T-Mobile Czech Republic a.s., Vodafone Czech Republic a.s., and Telefónica O2 Czech Republic a.s, while the fourth operator, MobilKom a.s, which entered the market in 2008, was only subject to obligations of transparency and non-discrimination.

According to the price control obligation, a new price cap was set as from 1 July 2010. The case was notified and assessed by the Commission under case CZ/2010/1057⁶. This new price cap was calculated on the basis of a fully allocated historic cost (FAC) model. The costs of SIM cards, retail costs, spectrum costs and common costs were excluded from the relevant cost base.

In its comments, the Commission invited ČTÚ to impose on MobilKom a price control obligation and effective access obligations underlining that an asymmetry of termination rates between the three price regulated operators and MobilKom may arise with the implementation of the proposed glide path. Moreover, in line with the Commission's comments made in the previous cases, the Commission reminded ČTÚ that NRAs should ensure that termination rates are effectively set at a cost-efficient and symmetric level, hence the recommended BU-LRIC model should be implemented.

II.2. The notified draft measure

In the current notification ČTÚ proposes to set a glide path for the three SMP mobile operators, which are subject to a price control obligation, as follows⁷:

	As of 1 July 2012	As of 1 January 2013
Call termination fee per minute	CZK 1.66/mn (~ €ct 2,8)	CZK 1.08/mn (~ €ct 2,14)

The termination rates are set by applying a fully allocated historic cost (FAC) methodology. ČTÚ specified that only the costs associated with wholesale termination

⁵ SG-Greffe(2009)D/5396.

⁶ SG-Greffe(2010)D/5111.

⁷ The current price of CZK 1.08/mn (€ct 4.2), was set in the decision of the 2010, already mentioned in the footnote 6.

are considered, while other categories of costs such as the cost regarding SIM cards, the costs of the use of radiofrequencies, and the costs associated with providing retail services would not be included in the calculation. As regard the implementation of the recommended model, ČTÚ explains, in the answer to the request for information, that it has already develop a BU-LRIC model in line with the Recommendation but that, the new model still needs to be filled with adequate cost inputs in order to set the new LRIC prices. To that purpose, ČTÚ is currently carrying out some inspections on the three mobile operators in order to gather and verify the cost data. As a result, ČTÚ is planning, considering all the administrative procedures, including the national consultation, to notify the prices set on the basis of the BU-LRIC model at the beginning of 2013. The new prices would enter into force during the first quarter of 2013.

ČTÚ continues not imposing a price control obligation on the fourth operator Mobilkom, which, as specified in the response to the request for information, is however applying termination rates that are symmetrical to the regulated rates applied by the others mobile operators⁸.

III. COMMENTS

The Commission has examined the notification and the additional information provided by the ČTÚ and has the following comments:⁹

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

The Commission acknowledges that as from the 1 January 2013, possibly for another three months, ČTÚ proposes to set termination rates on the basis of a FAC method.

The Commission points out that the purpose of Recital 22 and of Recommend 12 of the Termination Rates Recommendation is to enable NRAs with 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 cases¹⁰, when an alternative methodology is chosen, it should generate efficient outcomes consistent with the Recommendation and with a competitive market. Outcomes resulting from the application of an alternative methodology should not exceed the average of the termination rates set by those Member States which have implemented the recommended cost methodology as of 1 January 2013.

However, the Commission underlines that by using a FAC method, even if the cost considered are only those directly related to the termination service, operators which are compensated for the actual costs incurred for termination have few incentives to increase efficiency. Therefore, the resulting tariffs do not represent the cost efficient target rates as would be the case under a pure BU-

⁸ ČTÚ explains in the response to the request for information that only as a result of a new market analysis a price control remedy could be imposed on Mobilkom. It underlines as well that there is no evidence of asymmetry in the termination rates applied by Mobilkom.

⁹ In accordance with Article 7(3) of the Framework Directive.

¹⁰ See Commission comments in cases IE/2008/0746, IT/2008/0779 and SK/2012/1313

LRIC model. As a consequence, the proposed MTRs will be set, also after the 1 January 2013, significantly above the average of MTRs set in Member States already implementing the pure BU-LRIC model¹¹.

The Commission also takes note of ČTÚ 's assurance to implement its pure BU-LRIC model as from the beginning of 2013 and to implement the new tariffs by the first quarter of 2013.

Against this background, and in order to bring more quickly the benefits of lower MTRs to consumers and avoid excessively steep drops in MTRs at the end of the transition, the Commission urges ČTÚ to accelerate the process of implementation of the BU-LRIC model in a way that it would lead to cost efficient MTRs already as from 1 January 2013, in line with the Termination Rates Recommendation.

The Commission reminds ČTÚ that if it were to propose a new price remedy, which would deviate 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.

Need of a price control obligation on the fourth mobile operator

The Commission observes that the proposed regulation concerns only three mobile operators operating in the Czech Republic, and ČTÚ intends not to impose a price control obligation on Mobilkom, the fourth operator.

The Commission stresses that that even if Mobilkom's termination rates have so far followed the three larger operators' regulated prices and that there are currently no asymmetries between operators, an asymmetry of termination rates may still arise with the implementation of the currently proposed new rates, or with the application of the BU-LRIC model currently in preparation.

The Commission points out the need to bring all mobile termination rates towards an efficient level in a transparent and predictable manner and would therefore like to invite ČTÚ to impose a price regulation in line with that imposed on the other three operators and the Termination Rates Recommendation also on MobilKom.

¹¹ The following countries have, so far, notified a pure BU-LRIC cost model to set MTRs:

Country	Target Rate (€/min)	Deadline
NL*	1.2	01/09/2012
BE	1.08	01/01/2013
FR	0.8	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 a National Court's judgment, which required to set MTRs according to a different cost model, resulting in a target rate of 2.4 €/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).

Pursuant to Article 7(7) of the Framework Directive, ČTÚ 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/EC¹² 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 Commission¹³ 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.¹⁴ You should give reasons for any such request.

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

¹² 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.

¹³ Your request should be sent either by email: INFSO-COMP-ARTICLE7@ec.europa.eu or by fax: +32 2 298 87 82.

¹⁴ The Commission may inform the public of the result of its assessment before the end of this three-day period.



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Czech Republic

For the attention of:
Mr. Pavel Dvořák
Chairman of the Council

Fax: +420 224 004 811

Dear Mr Dvořák,

Subject: Corrigendum of the Commission decision C(2012) 4278 of 18/06/2012 related to Case CZ/2012/1327: voice call termination on individual mobile networks - modification of remedies

Please note that the table at page 3 of the decision reads:

	As of 1 July 2012	As of 1 January 2013
Call termination fee per minute	CZK 1.66/mn (~ €ct 2.8)	CZK 1.08/mn (~ €ct 2.14)

It shall be replaced with the following table:

	Until the 30 June 2012	As of 1 July 2012	As of 1 January 2013
Call termination fee per minute	CZK 1.08/mn (~ €ct 4.2)	CZK 0.72/mn (~ €ct 2.8)	CZK 0.55/mn (~ €ct 2.14)

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