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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/2011/1272: Voice call termination on individual mobile networks in Romania

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

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 mobile networks in Romania.

The national consultation² ran from 4 August 2011 to 16 September 2011.

On 22 November 2011 a request for information³ was sent to ANCOM and a response 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

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 In accordance with Article 6 of the Framework Directive.

³ In accordance with Article 5(2) of the Framework Directive.

the NRA concerned.

II. DESCRIPTION OF THE DRAFT MEASURES

II.1. Background

The first review of this market was carried out in 2009⁴ and the Romanian regulatory authority designated five mobile network operators (MNOs) - Cosmote Romanian Mobile Telecommunications (Cosmote RMT), Orange România, RCS & RDS, Telemobil and Vodafone Romania - as having SMP for wholesale voice call termination on their respective mobile networks. The obligations of access, transparency, non-discrimination and price control were imposed on all MNOs. A glide-path to achieve symmetrical rates from 1 July 2010 onwards was imposed, except for the new entrant RCS & RDS for which asymmetric rates were maintained. The Commission stressed in its comments the importance of introducing cost orientation of mobile termination rates for all operators as soon as possible.

II.2. Market definition

The relevant market includes voice call termination services to non-geographic mobile numbers regardless of the technology used (2G, 3G or mix of technologies) and regardless of the national or international origin of the call. Call termination for value-added services are excluded from the relevant market definition.

The geographic scope of each market is national and corresponds to the coverage of each individual network (i.e. Cosmote RMT, Orange România, RCS & RDS, Romtelecom, Telemobil and Vodafone Romania).

II.3. Finding of significant market power

ANCOM intends to designate the six above-mentioned mobile operators as having SMP for wholesale voice call termination on their respective mobile networks.

The main criteria considered by ANCOM when reaching this conclusion are: (i) market shares (each of the six MNOs has a 100% share of voice call termination services provided on its individual network); (ii) barriers to entry and potential competition; and (iii) insufficient countervailing buyer power.

II.4. Regulatory Remedies

ANCOM proposes to impose the following regulatory obligations on all MNOs:

- access to and use of specific network facilities and associated infrastructure;
- transparency, including obligations to publish a reference interconnection offer (except for Romtelecom, which is a new entrant on the mobile market)⁵ and a standard interconnection agreement;
- non-discrimination; and
- price control.

⁴ Case RO/2009/0878 (SG-Greffe (2009) D/1275).

⁵ ANCOM explains that Romtelecom's market share is less than 0.01% on the retail mobile telephony services market both in terms of revenues and subscribers. Furthermore, Romtelecom must publish information relating to the access points and the tariffs for ancillary interconnection services[...].

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 resulting from the development of pure LRIC models in other European Union Member States.⁶

Until ANCOM determines the new tariffs based on the model mentioned above, the following symmetrical termination price caps apply:

- a) 4.05 eurocents per minute from 1st of January 2012;
- b) 3.07 eurocents per minute from 1st of September 2012.

Furthermore, ANCOM imposes cost-oriented tariffs for the provision of ancillary interconnection services.⁷

III. COMMENTS

On the basis of the present notification and the additional information provided by ANCOM, the Commission has the following comments⁸:

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 MTRs 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.

⁶ ANCOM sets an "efficient" target rate at 1.10 eurocents/min in 2014 on the basis of an average of the target tariffs resulting from the application of the pure LRIC models available. The target is established for the purposes of determining the glide-path and is without prejudice to the results of the cost model under development.

⁷ Until the LRIC model is completed, ANCOM maintains the current rates as set by the SMP operators in their interconnection agreements, provided they are not excessive.

⁸ In accordance with Article 7(3) of the Framework Directive.

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/EC⁹ 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 Commission¹⁰ 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 publication¹¹. You should give reasons for any such request.

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

⁹ 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.

¹⁰ Your request should be sent either by email: INFSO-COMP-ARTICLE7@ec.europa.eu or by fax: +32 2 298 87 82.

¹¹ The Commission may inform the public of the result of its assessment before the end of this three-day period.