EUROPEAN COMMISSION

Brussels, 24/10/2012
C(2012) 7695

Telekomunikačný úrad Slovenskej republiky (TÚSR)

Tovarenska 7, P.O. BOX 40
828 55 Bratislava 24
Slovakia

For the attention of:
Mr. Ladislav Mikus
Chairman

Fax: +421 2 5293 2096

Dear Mr. Mikus,

Subject: Commission Decision concerning Case SK/2012/1366: Remedies on the market for call origination on the public telephone network provided at a fixed location in Slovakia

Commission Decision concerning Case SK/2012/1367: Remedies on the markets for call termination on individual public telephone networks provided at a fixed location in Slovakia

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

I. PROCEDURE

The notifications were received from the Slovak national regulatory authority, *Telekomunikačný úrad Slovenskej republiky* (TÚSR), on 24 September 2012 and became effective on that day. The two notifications concern price control remedies on the wholesale markets for fixed call origination and fixed call termination in Slovakia[1].

[1] Corresponding respectively to markets 2 and 3 in 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.

The national consultation[2] ran from 25 July 2012 to 24 August 2012. The deadline for the EU consultation under Article 7 of the Framework Directive is 24 October 2012.

On 3 October 2012, a request for information (RFI)[3] was sent to the TÚSR, and a response was received on 8 October 2012.

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

In its third review[4] of the market for wholesale call origination on the public telephone network provided at a fixed location the TÚSR designated Slovak Telekom with significant market power (SMP) and proposed to impose on Slovak Telekom the obligations of access, including wholesale line rental (WLR), non-discrimination, transparency, accounting separation, and price control. A bottom-up long run incremental cost (BU-LRIC) model was intended to be used to calculate the prices of fixed call origination services. The same BU-LRIC model was supposed to be used for fixed call termination, which would result in identical prices.

As regards the price control remedy, the Commission (i) commented on the risk of a significant decrease in the call origination charges (due to the use of the pure BU-LRIC model), (ii) noted the variety of costing methods for call origination services in other Member States, (iii) called upon TÚSR to further motivate its proposed approach, and (iv) asked TÚSR to liaise with BEREC and other NRAs in order to ensure the development of a consistent regulatory approach for wholesale call origination services in the internal market.

In its second review[5] of the market for wholesale fixed call termination the TÚSR designated 10 network operators as having SMP. The TÚSR imposed on all SMP operators the obligations of (i) access to specific network facilities, (ii) transparency and (iii) non-discrimination. In terms of price control TÚSR put forward a cost orientation obligation for Slovak Telekom on the basis of a bottom-up forward looking long run average incremental cost (FL-LRAIC) model, and for the ANOs an obligation to charge termination rates not exceeding Slovak Telekom's regulated price levels. Accounting separation was imposed only on Slovak Telekom.

In its comment, the Commission noted that fixed termination rates (FTRs) applicable in Slovakia in 2010 were among the highest in the EU. The Commission invited the TÚSR to align, as soon as possible, its cost accounting methodology with the recommended cost

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2 In accordance with Article 6 of the 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).

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

4 SK/2012/1288, C(2012)1396.

5 SK/2010/1111 and SK/2010/1112, C(2010) 5911.

accounting principles of the Termination Rates Recommendation[6] and to propose already in its forthcoming regulatory decision, which would set FTRs for the current review period, a reduction of price levels resulting in rates that are closer to the EU average.

A modification of the reference interconnection offer (RIO) of Slovak Telekom on the fixed call origination and termination markets was notified to the Commission on 16 May 2012[7].

II.2. The notified draft measure

The purpose of the current notifications is to define a costing methodology to be used for the implementation of the price control obligation imposed on the respective SMP operators in the fixed call origination and fixed call termination markets. TÚSR proposes to use the same BU-LRIC model when setting prices for the fixed call origination and termination fees. While FTRs will be based on pure BU-LRIC, there will be a mark-up based on overheads and OPEX joint (non-network) wholesale costs for call origination tariffs[8].

The TÚSR expects the price level for call termination on the fixed networks calculated with the notified model to lie in the range of 0.12 eur-cent/min and 0.17 eur-cent/min[9]. The price for fixed call origination services is expected to be 20% to 30% higher than the price for call termination[10].

The TÚSR intends to carry out a re-evaluation of prices for call origination and for call termination services on an annual basis.

Slovak Telekom is supposed to carry-out a valuation of costs, profits and capital invested based on the current cost accounting method. Slovak Telekom is required to submit input data for the model with a price calculation to the TÚSR. The TÚSR shall subsequently either approve or adjust the price calculated by the SMP undertaking by a separate price decision. The TÚSR plans to notify such decision in relation to the wholesale call origination market by April or May 2013 and to impose it on the SMP undertaking by May or June of the same year. The TÚSR does not seem to have a specific time schedule as regards the notification and imposition of the final calculated prices applicable to wholesale fixed call termination services[11].

Slovak Telekom is the only SMP operator who has the obligation to keep separate accounts and to provide the TÚSR with input data for the pure BU-LRIC model. ANOs active on the relevant termination markets are not subject to the obligation of accounting separation.

6 Commission Recommendation 2009/396/EC of 7 May 2009 on the Regulatory Treatment of Fixed and Mobile Termination Rates in the EU (Termination Rates Recommendation), OJ L 124, 20.5.2009, p. 67.

7 SK/2012/1324 and SK/2012/1325, C(2012) 4277.

8 Overheads include, for example, costs for accounting, salaries, the legal department, regulation department, internal audits, etc. OPEX wholesale common (non-network) costs represent operating costs associated with wholesale activities of the undertaking which could not be directly allocated to individual network elements associated with providing interconnection services.

9 The currently applied prices for call origination services are 0.7 eur-cent/min at local level and 1.01 eur-cent/min at single transit level.

10 The currently applied prices for call termination services are 0.50 eur-cent/min at local level, 0.72 eur-cent/min at single transit level and 1.51 eur-cent/min at double transit level.

11 In that context the TÚSR informed the Commission that the national consultations related to analysis of the markets for fixed termination were launched on 1 October 2012.

The TÚSR confirms in the reply to the RFI that the notified LRIC modelling follows a bottom-up approach based on a combination of the Scorched Node and Scorched Earth method[12]. In particular, the model uses the location of network nodes corresponding to Slovak Telekom's network, where this information was available. All operators active on the relevant markets were involved in the creation of the model. The TÚSR used all available data, configuring optimised elements for the model and specifying benchmarks. They will also be used for the comparison of prices of individual network elements or a control calculation by the TÚSR. Network elements are priced using current costs.

The TÚSR defines the network of a hypothetical efficient operator as a combination of PSTN/NGN technologies, the core network being based on NGN while the access part of the network is NGA- and PSTN-based.

III. COMMENTS

The Commission has examined the notification and the additional information provided by the TÚSR and has the following comments:[13]

Need to ensure timely price control remedies for wholesale call termination services

The Commission notes that the TÚSR does not seem to have established a specific time schedule as regards the notification and imposition of the actual wholesale fixed call termination rates coming out of the presently notified model.

Against this background and in order to bring the benefits of lower termination rates more quickly to consumers the Commission invites the TÚSR to notify the new prices for wholesale fixed call termination as soon as possible in 2012, so that these new prices could be applied already from 1 January 2013 as required by the Termination Rates Recommendation.

Failure to implement pure BU-LRIC rates by the deadline foreseen in the Termination Rates Recommendation would call for the application of rates in the interim, i.e. as of 1 January 2013 until the application of pure BU-LRIC, in line with the provisions of the Termination Rates Recommendation (e.g. benchmarking). The Commission would, however, like to remind the TÚSR that should its interim price control remedies deviate from EU law and the principles of the Termination Rates Recommendation, the Commission could open a phase II investigation pursuant to Article 7a of the Framework Directive.

Need for transparent and consistent cost modelling

The Commission acknowledges that the TÚSR explains in some detail how the hypothetical network has been modelled. It is, however, not entirely clear whether TÚSR's use of Slovak Telekom's data goes beyond reconciliation with or cross-checking of the bottom up (engineering) model or whether TÚSR's approach could in fact amount to top-down modelling.

[12] The "scorched earth approach" assumes that the network is constructed entirely from scratch, i.e. nothing is fixed, not even the location of the nodes. The scorched earth network is what an entrant would build if no network existed, based on the location of customers and forecasts of demand for services. The "scorched node approach" assumes that the location of network nodes is fixed where they currently exist, and the operator can choose the best technology to configure the network around these nodes.

[13] In accordance with Article 7(3) of the Framework Directive.

The Commission has already expressed[14] the view that top-down models do not promote efficiency, since they normally allow for the recovery of costs incurred as a result of operator's inefficiencies. The Commission's Termination Rates Recommendation suggests therefore an evaluation of efficient costs based on the use of a bottom-up modelling approach, which could be reconciled with a top-down approach (recital 11 of the Termination Rates Recommendation).

In view of the uncertainties surrounding the use of Slovak Telekom's data in the modelling process the Commission invites the TÚSR to provide evidence in its final measure that the proposed LRIC model is a pure bottom-up model as foreseen in the Termination Rates Recommendation.

Pursuant to Article 7(7) of the Framework Directive, the TÚSR 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/EC[15] 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[16] 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.[17] You should give reasons for any such request.

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

14 Case ES/2010/1088, C(2010) 4935.

15 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.

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

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