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Communications Regulation
Commission (CRC)

6 Gurko str
1000 Sofia
Bulgaria

For the attention of:
Mr Veselin Bozhkov
Chairman

Fax: +359 2 986 76 13

Dear Mr Bozhkov,

Subject: Commission decision concerning Case BG/2012/1316: Call origination on the public telephone networks provided at a fixed location in Bulgaria

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

I. PROCEDURE

On 18 April 2012 the Commission registered a notification from the Bulgarian regulatory authority, Communications Regulatory Commission (CRC)¹, concerning the second review of the market for call origination on the public telephone network provided at a fixed location in Bulgaria². CRC conducted 3 separate national consultations³, the first between 7 September and 7 October 2011, the second between 8

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 Market 2 of 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 (the Recommendation on relevant markets), OJ L 344, 28.12.2007, p. 65.

³ In accordance with Article 6 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 Commission européenne/Europese Commissie, 1049 Bruxelles/Brussel, BELGIQUE/BELGIË - Tel. +32 22991111

December 2011 and 9 January 2012, and the third between 5 March and 4 April 2012. The deadline for the Community consultation under Article 7 of the Framework Directive is 21 May 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

The first round market analysis of the Bulgarian market for call origination on the public telephone network provided at a fixed location was previously notified to and assessed by the Commission in 2008⁴. CRC notified its proposal for market definition, SMP and remedies regarding call origination in the network of the incumbent Bulgarian Telecommunications Company (BTC). The Commission made no comments.

On 27 January 2012 CRC notified its draft measures concerning the second review of the market for call origination. CRC withdrew that notification on 20 February 2012.

II.2. Market definition

The notified draft measure concerns the second review of the market in question.

The wholesale market of call origination on public telephone networks provided at a fixed location includes the services for call conveyance from a fixed location on the network of the undertaking of the calling subscriber through the infrastructure of the same undertaking to a point of interconnection where the call is transferred into the network of another undertaking for transit and/or termination.

The market covers call origination services at each fixed location (both residential and non-residential customers) to every destination (both on-net and off-net calls), which in practice includes all calls originated at a fixed location.

The relevant market includes the networks of the incumbent Bulgarian Telecommunications Company (BTC) and nineteen alternative operators⁵.

The relevant geographic market is defined as national in scope.

II.3. Finding of significant market power

As regards the SMP assessment, the CRC intends to designate BTC as having SMP on the market for call origination on the public telephone networks provided at a fixed

services (Framework Directive), OJ L 108, 24.4.2002, p. 33; as amended by Directive 2009/140/EC of the European Parliament and of the Council of 25 November 2009 (Better Regulation Directive), OJ L 337, 18.12.2009, p.37.

⁴ Case BG/2009/0864, SG-Greffe (2009) D/273.

⁵ "ITD Network" AD, "Blizoo Media and Broadband" EAD, "Varna Net" OOD, "Vestitel BG" AD, VOXBONE S.A./N.V, "Globul Communication Net" AD, "Gold Telecom Bulgaria" AD, "Eastern Telecommunication Company" AD, "Interbild" OOD, "Interoute Bulgaria" EAD, "Cosmo Bulgaria Mobile" EAD, "Mobitel" EAD, "Nexcom Bulgaria" EAD, "NET IS SAT" OOD, "Netfiniti" EOOD, "Orbitel" EAD, "Skat TV" OOD, "Spectrum Net" EAD, "Telecom 1" OOD.

location in Bulgaria.

The CRC considered the following criteria to assess SMP: (i) market shares, (ii) barriers to entry and to expansion, namely control of infrastructure not easily duplicated, economies of scale and scope and vertical integration, and (iii) countervailing buyer power.

BTC is the only undertaking which provides wholesale call origination services to third parties in Bulgaria. BTC holds a high and stable market share of 93.3% in terms of generated traffic (including self-supply), which decreased insignificantly over the last three years (only 1.5% per year on average). Competing alternative operators hold together 6.7% of the market in terms of outgoing minutes.

II.4. Regulatory Remedies

The CRC proposes to impose on BTC the obligations of (i) access, (ii) transparency, (iii) non-discrimination⁶, (iv) publication of a reference interconnection offer, (v) price control and cost accounting.

With regard to access and interconnection CRC considers that, in view of recent developments and the upgrade of BTC's network towards an all-IP network, it is no longer appropriate to mandate interconnection at 3 traditional hierarchical levels (local, single and double segments). Interconnection levels are therefore reduced to two, local and national. In addition, CRC imposes specific obligations concerning IP interconnection, requiring BTC to provide detailed technical information about its systems.

With regard to the price control CRC proposes to set the prices for call origination at the same level as those applicable to fixed voice call termination in the network of BTC. Therefore the prices for call origination will be set by way of benchmarking⁷, in the transitional period until July 2013, by when CRC will adopt and implement the pure Bottom Up Long Run Incremental Costs model (BU-LRIC). In the past the call origination rates were established on the basis of the fully allocated costing ("FAC") methodology.

In addition, CRC proposes to withdraw certain existing remedies, namely the obligation to publish financial statements, balance sheet, and to provide on request of the regulator the statements on changes in equity, cash flow and other financial documents.

III. COMMENTS

The Commission has examined the notification and has the following comments:⁸

Need for a common approach to price control of call origination services

The Commission notes that CRC proposes to use the same price control

⁶ This includes providing interconnection under equal conditions in equivalent circumstances and providing services and information related to interconnection under the same conditions and of the same quality as BTC provides for its services.

⁷ CRC set the rates by reference to the pure BU-LRIC rate as calculated by OPTA in its July 2010 FTR regulatory decision (0.36 €cents), which was later overturned in court.

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

methodology for the SMP operator on the one-sided market for call origination services in the fixed network as for call termination, on which decreases in wholesale charges are offset by lower payments for interconnection. The call origination rates will be calculated according to a pure BU-LRIC costing model. It can therefore be expected that the call origination prices would decrease because the host access network operator will be compensated only for the traffic-related avoidable costs of providing call origination services to carrier select and pre-select operators, but not for the non-traffic related costs.

The Commission observes that NRAs apply a variety of costing methods for call origination services, some of which appear to be based on fully allocated costs⁹. Other NRAs are considering increasing the prices for wholesale call origination by including certain costs from other regulated services, notably from fixed termination¹⁰.

The CRC approach may lead to a significant decrease of origination charges. The Commission therefore calls upon CRC to further motivate, in its final measure, its decision to adopt the proposed costing methodology for wholesale call origination in the fixed network.

Against this background, the Commission notes that under Article 7 of the Framework Directive NRAs have to contribute to the development of the internal market by working with each other and with the Commission and BEREC in a transparent manner so as to ensure the consistent application, in all Member States, of the provision of this Directive and Specific Directives. In particular, NRAs shall work with the Commission and BEREC to identify the types of instruments and remedies best suited to address particular types of situations in the marketplace.

In this regard, the Commission would like CRC to provide further explanations and relevant data on wholesale call origination charges to the Commission, BEREC and other NRAs with a view to ensure the development of a consistent regulatory approach in the internal market.

Pursuant to Article 7(7) of the Framework Directive, CRC 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/EC¹¹ the Commission will publish this

⁹ E.g. the Polish regulator UKE proposed to change the cost calculation methodology from LRIC to "cost incurred", subsequently verified by the NRA by different means, i.e. benchmarking, margin squeeze (see PL/2010/1152); the Cypriot NRA imposed prices based on Top Down LRIC model (see CY/2011/1169); the Greek NRA imposed a Forward Looking Long Run Average Incremental Cost Methodology (FL-LRAIC) (case EL/2010/1072); in Estonia a Top-Down Historical Cost based on Fully Distributed Costs (Top-Down HC FDC) method is imposed (case EE/2010/1038).

¹⁰ See the Commission's comment in case FR/2011/1235.

¹¹ 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.

document on its website. The Commission does not consider the information contained herein to be confidential. You are invited to inform the Commission¹² 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.¹³ You should give reasons for any such request.

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

¹² Your request should be sent either by email: INFSO-COMP-ARTICLE7@ec.europa.eu or by fax: +32 2 298 87 82.

¹³ The Commission may inform the public of the result of its assessment before the end of this three-day period.