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**SG-Greffe (2012) D/7186**

Urząd Komunikacji Elektronicznej  
(UKE)

18-20 Kasprzaka Street  
01-211 Warsaw  
Poland

For the attention of:  
Ms. Magdalena Gaj  
President

Fax: +48 22 53 49 253

Dear Ms Gaj,

**Subject: Commission decision concerning case PL/2012/1310: Access to the public telephone network at a fixed location for residential and non-residential customers in Poland**

**Article 7(3) of Directive 2002/21/EC: No comments**

## **I. PROCEDURE**

The notification was received from the Urząd Komunikacji Elektronicznej (“UKE”) on 23 March 2012 and became effective on that day. The notification covers two distinct markets for access to the public telephone network at a fixed location for a) residential, and b) non-residential customers.<sup>1</sup>

The national consultation<sup>2</sup> ran from 16 January 2012 to 16 February 2012.

On 29 March 2012, a request for information<sup>3</sup> was sent to UKE and a response was

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<sup>1</sup> UKE considers it appropriate to maintain the distinction between (separate) markets for residential and non-residential customers, as was defined in previous (2003) Recommendation on Relevant Markets (markets 1 and 2). The notified markets correspond to market 1 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.

<sup>2</sup> In accordance with Article 6 of the Framework Directive.

received on 3 April 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 previous review of the relevant markets was notified to and assessed by the Commission under cases PL/2007/0593 and PL/2007/0647<sup>4</sup>. With regard to the market for access for non-residential customers the Commission made no comments, while for the market for access for residential customers the Commission initiated a Phase II investigation. Following the amendment of the market definition by UKE during Phase II the Commission withdrew its serious doubts.

### **II.2. Market definition**

The notified draft measures cover the markets for access to the public telephone network at a fixed location for residential and non-residential customers. According to UKE, the distinction between the two markets for residential and non-residential customers is made on the basis of the different products offered, particularly in terms of range of services to different groups of customers, i.e. individual consumers and undertakings.

UKE considers that access to the fixed public telephone network for the purpose of providing telecommunication services is ensured by analogue (POTS lines), digital (ISDN BRA, ISDN PRA)<sup>5</sup> and TV cable connections as well as wireless local loop. UKE excludes from the relevant markets the connections provided by means of mobile networks<sup>6</sup> and by unmanaged VoIP.<sup>7</sup>

UKE concludes that the relevant geographic market is the territory of Poland.

### **II.3. Finding of significant market power**

The criteria considered by UKE in its market analysis are *inter alia*: i) market shares<sup>8</sup>, ii) infrastructure difficult to duplicate, (iii) technological advantages, (iv) lack of

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<sup>3</sup> In accordance with Article 5(2) of the Framework Directive.

<sup>4</sup> SG-Greffe(2007)D/204263 and D/202826.

<sup>5</sup> ISDN BRA enables digital connection 64 kbit/s to 128 kbit/s; ISDN PRA enables digital connections of 64 kbit/s to 2 Mbit/.

<sup>6</sup> Despite converging prices (for calls) in mobile and fixed networks UKE considers that customers can not substitute fixed access with mobile access due to different functionalities (quality, network availability and coverage), price difference in terminal equipment, customer preferences.

<sup>7</sup> Managed VoB (provided by cable operators) is included in the market definition, while unmanaged VoIP is not. VoIP does not offer similar functionalities (lower quality which cannot be guaranteed, lack of fax connection, no emergency services), requires broadband Internet connection, and there are significant differences in complexity and prices of terminal equipment.

<sup>8</sup> TP in 2010 had market shares of 63.9% (residential) and 69.1% (non-residential) in terms of number of subscriber's lines. In terms of revenues TP had in 2010 a market share of 63.4% for residential and 60% for non-residential access respectively.

countervailing buying power, (v) easy or privileged access to capital markets or financial resources, (vi) economies of scale and scope, (vii) vertical integration, (viii) developed distribution and sales network, (ix) lack of potential competition, and (x) existence of barriers to further expansion of the operators and of the relevant markets.

On the basis of the aforementioned criteria, UKE concludes that Telekomunikacja Polska S.A. (“TP”) should be designated as having SMP in the retail markets for access to the public telephone networks at a fixed location for residential and non-residential customers.

#### **II.4. Regulatory remedies**

UKE proposes to impose on TP the following obligations:

- to refrain from distorting market entry of other undertakings;
- to refrain from applying preferential treatment to given end-users, excluding those provided for by the Polish telecommunication law;
- to refrain from bundling the access services with other services which the end users consider unnecessary;
- to submit for approval price-lists or rules of service provision;
- to refrain from limiting competition by fixing the retail prices below the costs of the provision of the services.

UKE proposes to withdraw the following obligations, previously imposed on TP<sup>9</sup>:

- An obligation not to charge excessive prices;
- Accounting separation;
- Cost orientation (FL-FDC).

#### **III. NO COMMENTS**

The Commission has examined the notification and the additional information provided by UKE and has no comments.<sup>10</sup>

Pursuant to Article 7(7) of the Framework Directive, UKE may adopt the draft measure and, 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<sup>11</sup> the Commission will publish this document on its website. The Commission does not consider the information contained

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<sup>9</sup> UKE considers that it is justified and proportionate to withdraw part of previously imposed remedies as, at wholesale level, there are sufficient regulatory tools which prevent TP from charging excessive retail prices (in particular a margin squeeze test).

<sup>10</sup> In accordance with Article 7(3) of the Framework Directive.

<sup>11</sup> 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.

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

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<sup>12</sup> Your request should be sent either by email: [INFSO-COMP-ARTICLE7@ec.europa.eu](mailto:INFSO-COMP-ARTICLE7@ec.europa.eu) or by fax: +32 2 298 87 82.

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