EUROPEAN COMMISSION

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Bundesnetzagentur (BNetzA)

Tulpenfeld 4
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Germany

For the attention of:
Mr. Jochen Homann
Präsident

Fax: +49 228 14 6904

Dear Mr Homann

Subject: **Commission decision concerning Case DE/2013/1430: Call termination on individual public telephone networks provided at a fixed location in Germany**

Opening of Phase II investigation pursuant to Article 7a of Directive 2002/21/EC as amended by Directive 2009/140/EC

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

Commission decision concerning Case DE/2013/1429: Call origination on the public telephone network provided at a fixed location in Germany

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

I. PROCEDURE

On 6 March 2013, the Commission registered notifications from the German national regulatory authority, Bundesnetzagentur (BNetzA)[1], concerning the markets for call origination on the public telephone network provided at a fixed location and call termination on individual public telephone networks provided at a fixed location[2] in Germany.

The national consultation[3] concerning the draft remedies ran from 18 April 2012 for one

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 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.

3 In accordance with Article 6 of the Framework Directive.

month. The national consultation concerning the cost methodology for the calculation of termination rates and the actual level of these rates as well as on the level of call origination rates ran from 16 January 2013 for two weeks.

On 15 March 2013, a request for information[4] was sent to BNetzA and a response was received on 20 March 2013. Additional information was received on 21 March 2013.

II. DESCRIPTION OF THE DRAFT MEASURE

II.1. Background

The third round of market analyses of the markets for call origination on the public telephone network provided at a fixed location and call termination on individual public telephone networks provided at a fixed location in Germany was previously notified to and assessed by the Commission under cases DE/2012/1358 and DE/2012/1359[5]. At the time BNetzA notified its proposal for market definition and the assessment of significant market power (SMP).

BNetzA defined a national market (i) for call origination to value-added services and (ii) for call origination plus transit and for call origination plus transit plus conversion to CS and CPS services provided at a fixed location for local, long-distance, subscriber number, international mobile calls or preset codes for CS and CPS. BNetzA proposed to designate Deutsche Telekom (DT) as having SMP on the relevant markets.

BNetzA proposed to define markets for call termination on individual public telephone network at a fixed location including call forwarding. Only services allowing for the termination on the lowest interconnection level were covered by the market definition. BNetzA proposed to designate 57 operators as having SMP on their relevant markets.

The Commission had no comments as to the market definition and the SMP assessment with respect to the markets for wholesale fixed call origination and termination.

Furthermore, on 20 September 2012, BNetzA's communicated provisional draft measures concerning the relevant call origination and call termination markets under Art. 7(9) of the Framework Directive.

II.2. Current draft measure

The current draft measure aims at rendering the above provisional measures permanent. In the currently notified draft measure BNetzA proposes to impose on DT the following obligations on both markets: (i) interconnection and conveyance obligation, (ii) co-location obligation for interconnection purposes, including the obligation to give colocation users access to facilities at all times, (iii) obligation to ensure that access agreements are based on objective criteria, are transparent, grant equally good access and meet the requirements of fairness and reasonableness, (iv) obligation to submit the access agreements to BNetzA, (v) obligation to publish a reference offer, and (vi) price control obligation.

II.2.1 Price caps for call origination services

On the market for call origination on the public telephone network at a fixed location BNetzA proposes to impose (retrospectively, as of 1 December 2012) price caps with regard to different available services and with differentiation according to tariff zones.

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

[5] C(2012)5904.

For some services BNetzA intends to impose peak and off-peak rates, while applying a uniform tariff for other services. For calculating origination rates BNetzA uses the same model as for the determination of termination rates. The basic rate for local and long distance calls in tariff zone I is set at 0.36 €ct/min (peak) and 0.25 €ct/min (off-peak).

II.2.2. Costing methodology for fixed termination rates

With regard to the obligation of cost-orientation, BNetzA proposes to set (retrospectively, as of 1 December 2012) the following fixed termination rates (FTRs) for DT: 0.36 €c/min (peak) and 0.25 €c/min (off-peak)[6]. Those rates should apply until 31 December 2014.

FTRs are based on a LRAIC+ cost model, developed by WIK for broadband and interconnection markets. BNetzA indicates in the draft measure that its approach is not in accordance with Recommends 2 and 6 of the Commission's recommendation on termination rates[7].

CAPEX are set on the basis of a bottom-up (BU) modelling approach (WIK model), while other cost elements such as OPEX, rental costs, product/supply costs related to technology (e.g. interoperability tests) and distribution (product management costs, contractual and client service costs, billing costs), common costs, as well as specific PSTN costs are taken from DT's regulatory accounts. OPEX are subject to an efficiency review and adjusted.

BNetzA explains in the response to the RFI that some of the above cost elements are non-traffic related costs, such as rental and common costs, which have been included in the model.

BNetzA explains that rental costs are considered since they are an important part of the production cost. Technical devices, important for the network, are located in buildings of the regulated operator and the latter should therefore be partially included in the calculation of call termination and call origination tariffs. Common costs are allocated proportionately to their usage by the termination service.

While the model is NGN-based and uses current costs, it also allows for the recoupment of PSTN costs in order to comply with the German telecommunications law (TKG) according to which BNetzA has to ensure cost-recovery of DT's costs incurred for running its actual network (the majority of which is PSTN-based). PSTN costs amount respectively to […]€c of the 0.36 €c/min peak FTR and to […]€c of the 0.25 €c/min off-peak FTR. As for common costs they have been included to the extent that they are related to the provision of the wholesale service. According to BNetzA, the non-inclusion of PSTN costs would not permit on-time migration to a full NGN core network.

BNetzA clarifies in the response to the RFI that at the stage of the next market review foreseen by autumn 2014, BNetzA shall further consider whether full migration from PSTN to NGN is appropriate.

BNetzA states in its draft measure that the relevant provisions of the TKG have to be interpreted in light of EU law – the Termination Rates Recommendation in particular – and that in case of conflict methods set out by the Commission prevail over the regulatory default model set out by national law.

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[6] BNetzA specifies that the proportion peak/off-peak traffic is around […]% vs […]%.

[7] Commission Recommendation of 7 May 2009 on the Regulatory Treatment of Fixed and Mobile Termination Rates in the EU, OJ L124, p. 67 (the "Termination Rates Recommendation").

However, the regulator further explains that according to the relevant provisions of the TKG LRAIC+ should be used as a basis for the calculation of the origination and termination rates. In order to apply the pure BU-LRIC model recommended by the Commission it would have to be proven that this model addresses the identified market failures better than the German LRAIC+ model. BNetzA considers that the LRAIC+ approach will contribute to the development of the internal market and is better suited to meet the policy objectives provided for in Article 8(1) of the Framework Directive and in Article 8(4) of the Access Directive. Further to this, according to BNetzA pure BU-LRIC would neither better support the interest of other fixed operators or those of citizens and end-users. Finally, the German regulator refers to the capital out flow from the fixed network into the mobile network stating that calculation of fixed rates according to BU-LRIC would increase the difference between mobile and fixed termination charges. BNetzA considers that in order to reduce cross-subsidisation from fixed to mobile operators the LRAIC+ approach for setting FTRs is better suited to reduce the gap between FTRs and MTRs. Applying BU-LRIC would according to BNetzA significantly reduce the revenues of fixed operators, thus hampering their investment capacities. Consequently, BNetzA is of the view that this decrease in revenues would be compensated for by DT at retail level, i.e. by increasing the regulated operator's end-user tariffs.

In the response to the RFI BNetzA stated that at the stage of the next market review the regulator will again analyse whether the LRAIC+ approach still best suits the market situation or whether future rates should be BU-LRIC based.

With respect to the other operators previously identified with SMP on their respective fixed voice call termination markets, BNetzA plans to notify corresponding regulatory measures in April 2013 and gives no indication as to when the resulting price control obligations would be implemented. BNetzA indicates however that the other SMP operators would be subject to price caps symmetrical to the ones imposed on DT.

III. ASSESSMENT

The Commission has examined the notifications and the additional information provided by BNetzA and has no comments with regard to the market for call origination on the public telephone network provided at a fixed location in Germany.[8]

Moreover, the Commission has examined the notification and the additional information provided by BNetzA and has the following comment as regards the market for call termination on individual public telephone networks provided at a fixed location in Germany:[9]

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

The Commission welcomes BNetzA's intention to apply symmetric FTRs in Germany. However, the Commission notes that BNetzA plans to notify price control obligations to be imposed on other operators with SMP on their respective markets for voice call termination provided at a fixed location (including the obligation to provide the relevant termination service at FTRs symmetrical to those of DT) only by April 2013. The Commission would like to draw BNetzA's attention to the fact that symmetrical FTRs based on the recommended BU-LRIC

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

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

methodology had to be achieved by NRAs already by 31 December 2012. However, as BNetzA did not comply with the deadline set by the Recommendation, the Commission urges BNetzA to notify the draft measures with respect to all operators having SMP in the fixed voice call termination markets without undue delay. When doing so, BNetzA should replace the currently proposed LRAIC+ cost-accounting methodology with the recommended BU-LRIC model, thus proposing in its forthcoming notification(s) price control remedies that are fully compliant with the Termination Rates Recommendation.

Furthermore, following the examination of the notification and the additional information provided by BNetzA, the Commission considers that the notified draft measures fall under the Commission's powers of ensuring consistent application of remedies as set out in Article 7a of the Framework Directive, as the notified measures aim at imposing obligations on undertakings in conjunction with Articles 9 to 13 of the Access Directive.[10]

Draft measures imposing regulatory obligations on undertakings with SMP in Germany may have an influence, direct or indirect, actual or potential, on the ability of undertakings established in other Member States to offer electronic communication services. BNetzA's notification comprises measures that have a significant impact on operators or users in other Member States, inter alia measures which affect prices for users. Consequently, such draft measures may affect the patterns of trade between Member States[11].

The Commission has serious doubts as to the compatibility with EU law of BNetzA's draft measures concerning price control remedies for the wholesale markets for call termination on individual public telephone networks at fixed locations in its current form, in particular with the requirements referred to in Articles 8(4) and 13(2) of the Access Directive in conjunction with Article 8 of the Framework Directive and Article 16(4) of the Framework Directive. Furthermore, the Commission considers, at this stage, that the draft measures may create barriers to the internal market.

On the basis of the notification and the additional information provided by BNetzA, the Commission has serious doubts in this regard for the following principal reason:

The need to ensure that customers derive maximum benefits in terms of efficient cost-based termination rates

The Commission takes note of the fact that BNetzA intends to implement price caps for fixed termination rates based on a LRAIC+ methodology for the period of 1 December 2012 until 30 December 2014. By proposing a LRAIC+ instead of a pure BU-LRIC costing methodology BNetzA chooses not to follow a core part of the Termination Rates Recommendation, in particular Recommends 2 and 6 thereof.

Compliance with Articles 8(4) and 13(2) of the Access Directive in conjunction with Article 8 of the Framework Directive and Article 16(4) of the Framework Directive

The Commission refers to Articles 8(4) and 13(2) of the Access Directive[12],

[10] Directive 2002/19/EC of the European Parliament and of the Council of 7 March 2002 on access to, and interconnection of, electronic communications networks and associated facilities, OJ L 108, 24.04.2002, p. 7, as amended by Directive 2009/140/EC, OJ L 337, 18.12.2009, p. 37.

[11] See Recital 38 of the Framework Directive.

[12] Directive 2002/19/EC of the European Parliament and the Council of 7 March 2002 on access to, and

which require NRAs (i) to impose remedies, which are based on the nature of the problem identified, proportionate and justified in the light of the objectives laid down in Article 8 of the Framework Directive and (ii) in relation to the imposition of price controls to ensure that the chosen cost recovery mechanism serves to promote efficiency and sustainable competition and maximises consumer benefits. Moreover, the Commission refers to Article 16(4) of the Framework Directive, which requires NRAs to impose on SMP undertakings appropriate regulatory obligations.

In addition, the Commission would like to stress that pursuant to Article 8(3) of the Framework Directive NRAs shall contribute to the development of the internal market by cooperating with each other, with the Commission as well as BEREC in a transparent manner to ensure not only the development of a consistent regulatory practice but also consistent application of the Framework Directive and the Specific Directives (together, the Regulatory Framework).

In the context of the wholesale markets for voice call termination on individual fixed networks, the Commission underlines that, given its characteristics and the associated competitive and distributional concerns[13], the above mentioned objectives of promoting efficiency and sustainable competition, maximising consumer benefit and contributing to the development of the internal market, would best be achieved by a cost orientation remedy based on a pure BU-LRIC methodology. Moreover, the Commission observes that fixed termination rates set at an efficient level contribute to a level playing field among operators by eliminating competitive distortions between fixed and mobile networks in the provision of termination services.

In this regard, the Commission may issue recommendations[14] on the harmonised application of the Regulatory Framework in order to further the achievement of the objectives set out in Article 8 of the Framework Directive. This right arises in particular where the Commission finds that divergences in the implementation by the national regulatory authorities of their regulatory tasks under the Regulatory Framework may create a barrier to the internal market. It is in this context that the Commission, in order to ensure a correct and coherent interpretation and application of the relevant provisions of the Regulatory Framework within the EU, adopted the Termination Rates Recommendation, setting out a consistent approach that the NRAs should in principle follow regarding price control obligations for fixed and mobile termination rates.

The Commission recommended to NRAs to ensure that termination rates are

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interconnection, of electronic communications networks and associated facilities, OJ L 108, 24.4.2002, p. 7 (of the Access Directive).

[13] The accompanying Explanatory Note of the Commission Staff Working paper (SEC(2009) 600, 7.5.2009) sets out that due to the particular nature of the termination markets characterised on the one hand by "two-way" interconnection and on the other hand by monopolies in each relevant market, which create the incentives of terminating operators to raise prices substantially above cost, cost-orientation obligations based on a BU-LRIC methodology are the most appropriate intervention to address productive- and allocative-efficiency concerns as well as maximising consumer welfare. As a result, in order to ensure compliance with the requirements of the regulatory framework, in particular Article 13(2) of the Access Directive, i.e. the requirements to promote efficiency and sustainable competition as well as to maximise consumer benefits, NRAs shall apply a BU-LRIC cost model when setting termination rates.

[14] In accordance with Article 19 of the Framework Directive.

implemented at a (i) cost efficient, (ii) symmetric level (iii) and as of 31 December 2012. In the context of wholesale call termination markets, and given in particular their characteristics and the associated competitive and distributional concerns[15], the cost efficient rate is normally the one resulting from a pure BU-LRIC methodology. This is because a BU-LRIC model both provides the correct cost signal to operators to increase efficiency and contributes to avoiding competitive distortions.

It is therefore recommended that termination rates should be set at the cost which would be faced by an efficient operator providing the relevant service. Given that call termination services are traffic-related services, setting the efficient cost for their provision on the basis of a proper pure BU-LRIC methodology implies that fixed termination rates should allow only for the recovery of those costs which vary with the level of termination traffic and which would be avoided if a wholesale call termination service were no longer provided to third parties[16]. Whilst Article 19(2) of the Framework Directive provides the NRAs the possibility not to follow a recommendation, in such circumstances they have to provide the reasons for such a position. At the same time, any regulatory alternative approach chosen by the NRA to the one recommended by the Commission according to Article 19 of the Framework Directive has to comply with the other provisions of this Directive and the Specific Directives, in the present case, in particular Articles 8(4) and 13(2) of the Access Directive in conjunction with Article 8 and Article 16(4) of the Framework Directive.

A cost orientation remedy based on a pure BU-LRIC methodology best promotes competition by, among other things, ensuring that all users derive maximum benefit in terms of choice, price and quality, in line with Article 8(2) of the Framework Directive.

The Commission observes that the costing methodology presented in BNetzA's draft measure does not appear to comply with the above principles and objectives set out in the regulatory framework. First, the Commission notes that BNetzA proposes to base FTRs on a LRAIC+ methodology which – contrary to Recommends 2 and 6 of the Termination Rates Recommendation – allocates non-traffic related costs to the provision of the fixed termination service.

However, when adopting the Termination Rates Recommendation, the Commission clearly stated that, when deciding on the correct level of the regulated wholesale termination rate, it is essential to ensure that the methodology chosen pursuant to Article 13(2) of the Access Directive promotes efficient production and consumption decisions and minimises artificial transfers and

[15] The accompanying Explanatory Note of the Commission Staff Working paper (SEC(2009) 600, 7.5.2009) sets out that due to the particular nature of the termination markets characterised on the one hand by "two-way" interconnection and on the other hand by monopolies in each relevant market (that create incentives for terminating operators to raise prices substantially above cost), cost-orientation obligations based on a BU-LRIC methodology are the most appropriate intervention to address productive- and allocative-efficiency concerns as well as maximise consumer welfare. As a result, in order to ensure compliance with the requirements of the regulatory framework, in particular Article 13(2) of the Access Directive (which states the requirement to promote efficiency and sustainable competition as well as maximise consumer benefits) NRAs shall apply a BU-LRIC cost model when setting termination rates.

[16] Recommend 6 of the Termination Rates Recommendation.

distortions between competitors and consumers[17]. Due to the specific (two-sided) nature of call termination, only a narrow definition of the incremental cost will lead to the most efficient and least distortionary use of call termination services and ultimately minimise the risk of problems such as cross-subsidisation between operators as well as inefficient pricing and investment behaviour.

The Commission further observes that although the proposed cost model is NGN-based, it allows for the recoupment of some PSTN costs. However, the cost model should be based on efficient technologies available in the time frame considered by the model. Therefore, the core network of a model built today should ideally be NGN-based, to the extent that the costs of such a network can be reliably identified. A hybrid PSTN/NGN model might be suitable to attain the objectives included in Article 8 of the Framework Directive provided that the resulting costs are only traffic-related and that common costs are not being attributed to the recoverable costs of an efficient operator. However, in the proposed model PSTN costs account for about […]% of the FTR level. In view of the impact on the final result, as well as the prospective replacement of PSTN with IP technology by an efficient operator, BNetzA could in any case have reduced the share of PSTN related costs on a forward looking basis, allowing for lower FTRs already during the current review period.

Furthermore, the Commission observes that BNetzA derives OPEX from DT's data adjusted for efficiency. Although the results of a BU-LRIC model may be reconciled with a top-down approach, the starting point of such a reconciliation exercise should be the BU-LRIC model and not DT's data as in BNetzA's proposed approach. The purpose of this reconciliation would be to identify the sources of differences between both models, to quantify those differences and to make appropriate adjustments accordingly, thus assisting in the verification of the BU-LRIC model. Given the absence of BU-LRIC modelling for OPEX, it is difficult to assess to what extent the proposed adjustments have been sufficient to address DT's potential inefficiencies[18]. The Commission consequently considers that Articles 8(4) of the Framework Directive and Article 13(2) of the Access Directive—which require NRAs to ensure that the chosen cost recovery mechanism serves to promote efficiency, sustainable competition and the maximization of consumer benefits — have not been adequately followed.

Taken into account the above, the Commission considers that BNetzA did not provide sufficient justification why it chose not to follow the Recommendation. In particular, the Commission does not share BNetzA's assertion that the recommended BU-LRIC approach would not serve the interests of operators or end-users any better than the proposed LRAIC+ approach. In this respect, the Commission considers that BNetzA neglects the fact that a pure BU-LRIC approach is better suited to facilitate a more efficient distribution of financial

[17] See for more detail, in particular, section 4.1 of the Commission Staff Working Document accompanying the Commission Recommendation on the Regulatory Treatment of Fixed and Mobile Termination Rates in the EU of 7 May 2009, SEC(2009) 600.

[18] Furthermore, according to section 4.1 of the Commission Staff Working Document referred to above, any modification of the BU model must take into account the necessity of showing the costs of an efficient operator; it should not be done merely to bring closer together the results of both models (TD/BU).

transfers between competing operators, thus ultimately minimising the risk of problems such as cross-subsidisation between operators, inefficient pricing and/or investment behaviour.

In addition, BNetzA argues that the use of BU-LRIC for FTRs (instead of LRAIC+) would decrease the level of FTRs thus increasing the FTR-MTR price difference. Moreover, setting FTRs on the basis of BU-LRIC would according to BNetzA reduce the revenues of fixed operators and hamper the investment capacity of the fixed sector. The Commission is of the view that BNetzA's reasoning does not take into consideration the downward impact of BU-LRIC on MTRs, which would lead to a reduction of payments from fixed to mobile operators. BNetzA does not analyse net payments effects based on traffic flows nor does it calculate what the level of BU-LRIC based FTRs would be. Against this background, the Commission considers BNetzA's comparative approach BU-LRIC/LRAIC+ as limited.

Furthermore, the Commission does not agree with BNetzA's assertion that the difference between LRAIC+ based FTRs and pure BU-LRIC based FTRs would lead to an increase of regulated operator's prices for end-users. The Commission considers that BNetzA's argument of a waterbed effect represents a static viewpoint. While cuts in the termination rates may imply price restructuring at retail level, this does not necessarily translate into higher retail tariffs since FTR cuts also lead to dynamic effects which should also be considered. In particular, aligning all termination fees at an efficient cost level gives incentives to operators to compete for subscribers, e.g. by launching new retail packages thus providing additional revenue opportunities for the fixed operators and ultimately greater product/service choice for its end-users. Therefore, the Commission does not share BNetzA's view that its proposed method is better suited (than BU-LRIC) to serve the policy objectives of promoting competition and protecting EU citizens' interest.

In the present case, BNetzA did not present sufficient evidence that the proposed LRAIC+ methodology would achieve the policy objectives set out in Article 8 of the Framework Directive, as it may lead to competitive distortions between operators with asymmetric market shares and traffic flows and, ultimately, lead to the application of consumer tariffs, which are based on wholesale inputs above avoidable costs.

In conclusion of the above, the Commission has serious doubts as to the compatibility of the proposed draft measure with Articles 8(4) and 13(2) of the Access Directive in conjunction with Articles 8 and 16(4) of the Framework Directive.

Creation of barriers to the internal market

The approach proposed by BNetzA results in a level of fixed termination rates, which is higher than the average FTR in those Member States, which employ a pure BU-LRIC methodology in compliance with the Termination Rates Recommendation[19]. Hence, for the period until 30 December 2014 the application

[19] Table of BU-LRIC based target FTRs (depending on exchange rates) in those MS who have already adopted final decisions. MS having not yet developed and/or applied a BU-LRIC model may decide to benchmark their FTRs against these "BU-LRIC" FTRs levels.

Country (Art.7 case number)	Target Rate (€ct/min)

of a LRAIC+ methodology leads to a considerable difference in absolute terms between German FTRs and those of other Member States, which are calculated in accordance with the Termination Rates Recommendation and Articles 8 (4) and 13 (2) of the Access Directive. This difference would be incurred at the expense of the operators, and eventually consumers, in the Member States from where the calls originate.

Any such considerable asymmetries in fixed termination rates within the EU not only distort and restrict competition but have a significant detrimental effect on the development of the internal market, i.e. create a considerable barrier to the single market, and, therefore, result in a violation of the principles and objectives of Article 8(2) and (3) of the Framework Directive. A harmonised approach in setting fixed termination rates is particularly important to ensure that regulators do not favour their national operators at the expense of operators in other Member States by not introducing fully cost-oriented termination rates. It is exactly for that reason that the Commission has adopted the Termination Rates Recommendation to ensure a harmonised application of the Regulatory Framework in order to contribute to the development of the internal market and further the objectives set out in Article 8 of the Framework Directive.

In light of the above considerations, the Commission considers, at this stage, that the draft measure would create barriers to the internal market.

Conclusion

In this particular case, the Commission observes that BNetzA's notification does not provide sufficient justification of why its proposed approach for the wholesale market for call termination on DT's individual public telephone networks provided at a fixed location meets the policy objectives and regulatory principles enshrined in Article 8 of the Framework Directive, and can be considered to be in line with Article 8(4) of the Access Directive. Hence, the Commission has serious doubts that BNetzA's proposal on fixed termination rates can be considered appropriate in the given termination markets within the meaning of Article 16(4) of the Framework Directive and justified in light of the objectives laid down in Article 8 of the Framework Directive, particularly the objectives of promoting competition and user benefits pursuant to Article 8(2) of the Framework Directive and believes, at this stage, that the draft measure would create barriers to the internal market.

The above assessment reflects the Commission's preliminary position on this particular notification, and is without prejudice to any position it may take vis-à-vis other notified draft measures.

The Commission points out that, in accordance with Article 7a of the Framework

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FR (FR/2011/1236)	0.08
DK (DK/2012/1385)	0.06 peak; 0.032 off-peak; 0.063 call set up
IE (IE/2012/1371)	0.098
MT (MT/2012/1402)	0.0443
BG (BG/2013/1409-1410)	0.256

Directive, the draft measures on the market for call termination on individual public telephone networks provided at a fixed location in Germany shall not be adopted for a further three months.

Pursuant to Article 7(7) of the Framework Directive, BNetzA may adopt the draft measure concerning the market for call origination on the public telephone network provided at a fixed location and, where it does so, shall communicate it to the Commission.

Pursuant to Recital 17 of Recommendation 2008/850/EC[20], the Commission will publish this document on its website, together with a notice inviting third parties to submit observations on this serious doubts letter within ten working days. The Commission does not consider the information contained herein to be confidential. You are invited to inform the Commission[21] within three working days following receipt whether you consider that, in accordance with European Union and national rules on business confidentiality, this document contains confidential information which you wish to have deleted prior to such publication. You should give reasons for such request.

Yours sincerely,
For the Commission
Neelie Kroes
Vice-President

[20] 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, OJ L 301, 12.11.2008, p. 23.

[21] Your request should be sent either by email: CNECT-ARTICLE7@ec.europa.eu or by fax: +32.2.298.87.82.