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SG-Greffe (2012) D/6845

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/2012/1309: Amendments of the Reference Offer concerning wholesale leased lines in Poland

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

I. PROCEDURE

On 19 March 2012, the Commission registered a notification from the Polish national regulatory authority, Prezes Urzędu Komunikacji Elektronicznej (UKE)¹, concerning the amendments of the Reference Offer for wholesale leased lines services² provided by the SMP operator, Telekomunikacja Polska SA.

The national consultation³ ran from 15 December 2011 to 14 January 2012.

On 27 March a request for information⁴ was sent to UKE and a response was received on

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 6 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, and the market for trunk segments of leased lines, which is not recommended for ex-ante regulation.

³ In accordance with Article 6 of the Framework Directive.

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

30 March 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 market for terminating segments of leased lines was earlier notified under cases PL/2006/0516 and PL/2007/0667, but no final measure was adopted following these notifications. Finally, the draft measure notified under case number PL/2008/0771, with regard to which the Commission had no comments, was adopted by UKE.

The wholesale market for trunk segments of leased lines has already been notified three times to the Commission (cases PL/2007/0668, PL/2008/0772 and PL/2008/0856⁵). In the first two notifications, UKE proposed to designate Telekomunikacja Polska (TP) as an operator with significant market power (SMP) in the single national product and geographic market. Both notifications were withdrawn by UKE during the second phase investigations, launched as a result of serious doubts raised by the Commission related to the market definition and relevance for ex ante regulation and UKE's conclusions on the SMP assessment.

In the third notification⁶, UKE concluded that each trunk route connecting two locations constituted a distinct product market. Consequently, UKE identified 885 product markets, i.e., trunk lines connecting Polish cities. On the basis of its market analysis, UKE proposed to designate TP as an undertaking having SMP on 740 routes where TP's infrastructure has not been duplicated and where TP is able to act independently of its competitors. As to the remaining 145 routes, where UKE found a duplication of TP's infrastructure and, as a result, effective competition, regulation was withdrawn⁷.

II.2. Currently notified measure

The currently notified draft measure introduces the following main amendments of the Reference Offer⁸: it sets (i) monthly subscription fees for analogue leased lines, (ii) one-off activation fees; (iii) prices for technical inspections of analogue leased lines, (iv) a one-off fee for access to TP's IT system, (v) a requirement for access seekers to use the SMP operator's IT system only after earlier arrangement with the latter; (vi) a requirement for access seekers' employees to participate in training sessions on TP's IT systems.

⁵ SG-Greffe (2007) D/205100, (2008) D/203315 and (2008) D/208656, respectively.

⁶ See case PL/2008/0856

⁷ See case PL/2009/0971

⁸ The administrative decision, imposing the Reference Offer concerning wholesale leased lines was adopted by UKE on 31 December 2009 and later, on 18 October 2010 partially annulled and amended. None of these measures were consulted at EU level. In its reply to the request for information, UKE explained that, as a result of the national court's ruling, requiring consultations of those draft measures which amend regulated prices, it changed its policy concerning EU consultation.

III. NO COMMENTS

The Commission has examined the notification and the additional information provided by UKE and has no comments.⁹

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/EC¹⁰ 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 Commission¹¹ 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.¹² You should give reasons for any such request.

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

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

¹⁰ 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.

¹¹ Your request should be sent either by email: INFSO-COMP-ARTICLE7@ec.europa.eu or by fax: +32 2 298 87 82.

¹² The Commission may inform the public of the result of its assessment before the end of this three-day period.