EUROPEAN COMMISSION

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IT- og Telestyrelsen (NITA)

Holsteingade 63
DK-2100 København
Denmark

For the attention of:
Mr. Jorgen Abild Andersen
Director General

Fax: + 45 35 45 00 10

Dear Mr Andersen,

Subject: Commission decision concerning Case DK/2011/1250: Voice call termination on individual mobile networks– Price control remedy

Article 7(3) of Directive 2002/21/EC:[1] No comments

I. PROCEDURE

On 13 September 2011, the Commission registered a notification from the national regulatory authority of Denmark, the IT-og Telestyrelsen (NITA), concerning an update of the price control remedy on the market for voice call termination on individual mobile networks[2].

The national consultations[3] ran from 28 June 2011 to 12 August 2011.

Pursuant to Article 7(3) of the Framework Directive, national regulatory authorities

[1] 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 544/2009/EC, OJ L 167, 29.6.2009, p. 12 (Framework Directive).

[2] Corresponding to Market 7 of Commission Recommendation 2007/879/EC of 17 December 2007 on relevant product and services 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), OJ L 344, 28.12.2007, p. 65.

[3] In accordance with Article 6 of the Framework Directive.

(NRAs), BEREC and the Commission may make comments on notified draft measures to the NRA concerned.

II. DESCRIPTION OF THE DRAFT MEASURES

II.1. Background

In its previous price decision[4] NITA updated its LRAIC model, which resulted in symmetric MTRs for the four[5] SMP operators (i.e. TDC, Telenor, TeliaSonera and Hi3G), applicable as of 1 May 2011 and until 31 December 2011[6]. In its comments letter, the Commission noted that MTRs in Denmark were (i) set at the level of the cost of the least efficient operator and (ii) based on a LRAIC model which includes some cost categories (e.g. spectrum and business overhead costs) which were not directly attributable to the call termination service. The Commission therefore invited NITA to apply the cost-accounting principles as set out in the Termination Rates Recommendation including the appropriate attribution of costs.

II.2. The notified draft measures

The notification concerns the price control remedy to be imposed for the year 2012 on TDC, Telenor, TeliaSonera and Hi3G. NITA confirmed in the reply to the RFI that there is another operator Lycamobile which is active in the market. NITA further explained that Lycamobile entered the market in the first half of 2010 and that the market analysis (for voice and SMS termination services) was still ongoing. NITA clarified that the national consultation had not started yet but that it was expected to end by mid-November 2011 at the latest.

According to the present draft measure, price caps will first be maintained at the current 2011 level of 0.33 DKK/min for the period 1 January 2012 – 29 February 2012. Price caps will then be reduced to 0.22 DKK/min (~EUR 0.03)[7] for the period 1 March 2012 – 31 December 2012. This price reduction results from the annual update of the LRAIC model[8].

NITA explains that its proposal for a new price decision for 2012 is based on three main considerations: (i) ensure the transition towards the Commission Termination Rates Recommendation; (ii) align MTRs with the annual update of the LRAIC model and (iii)

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4 Case DK/2010/1124, SG-Greffe (2010) D/14503.

5 In its 2009 notifications (see DK/2009/1013-1014, SG-Greffe (2009) D/12014), NITA designated five operators as having significant market power (SMP): the four mobile network operators (MNOs) TDC, Telenor, TeliaSonera and Hi3G and the mobile virtual network operator (MVNO) Barablu. NITA imposed inter alia a price control obligation on all five SMP operators. In its previous notification (case DK/2010/1124) NITA informed the Commission that the MVNO Barablu has left the market for mobile call termination.

6 NITA's previous price decisions (2006-2011) entered into force as of 1 May of each year.

7 Danish Krones have been converted into Euros by applying the ECB Euro foreign exchange reference rates as at 14 September 2011 (1 EUR=7.4480 DKK).

8 A number of model parameters such as population, inflation, migration from 2G to 3G, number of subscribers, traffic volumes, and return on capital have been updated in order to take into consideration both 2010 data and future projections.

adapt the annual date of implementation of NITA's price decisions[9].

As regards the price-caps of 0.22 DKK/min, NITA confirmed in its response to the RFI that MTRs were cost-oriented (based on LRAIC) and that the benchmark[10] of 10 DKK cents (referred to in NITA's response to third parties' comments) was used as the best approximation of the target level that MTRs in Denmark would reach as of 1 January 2013 when the recommended pure LRIC model will be used.

NITA specified in its reply to the RFI that the current LRAIC+ cost model was an "all traffic increment" model, which also allocates some joint, common and business overheads costs to the termination service. NITA is currently upgrading its LRAIC model so that it could produce cost results in accordance with the LRIC modelling principles set out in the Commission Termination Rates Recommendation[11]. According to NITA this would permit that as of 1 January 2013 MTRs in Denmark are based on avoidable costs. Furthermore, while price-caps for 2011 were set at the cost level of the operator with the highest LRAIC, maximum MTRs proposed by NITA for 2012 are set at the level of the average of the LRAIC costs of the four mobile operators having SMP on the market.

III. NO COMMENTS

The Commission has examined the notifications and has no comments.[12]

Pursuant to Article 7(7) of the Framework Directive, NITA 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[13] 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[14] within three

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[9] The entry into force of the new price decision on 1 March 2012 is in line with NITA's intention (expressed in cases DK/2010/1124 and DK/2009/0945) to change the date of implementation of NITA's price decisions from 1 May to 1 January. In order to ensure a gradual transition towards the new implementation date of 1 January, NITA had foreseen that price decisions for 2012 and 2013 enter into force respectively on 1 March 2012 and 1 January 2013.

[10] The list of countries against which NITA benchmarks includes: FR, UK, NL, HU, BE and SE.

[11] In order to facilitate the transition towards the Commission's Termination Rates Recommendation, NITA assumes in the current LRAIC model that all mobile network operators would achieve equal market shares. NITA justifies the proposal to apply the 1/N approach rather than the recommended 20% market share approach (for defining the minimum efficient scale) on the basis of its reference paper on "pure LRIC model" (made public in September 2011) which sets out that the generic operator is assumed to have a market share consistent with an efficient number of networks in the long term in Denmark.

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

[13] 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.

[14] Your request should be sent either by email: INFSO-COMP-ARTICLE7@ec.europa.eu or by fax:

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[15]. You should give reasons for any such request.

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

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