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Ryšių reguliavimo tarnyba (RRT)

Algirdo g. 27
LT03219 Vilnius
Lithuania

For the attention of:
Mr Tomas Barakauskas
Director

Fax: +370 5 216 15 64

Dear Mr Barakauskas,

Subject: LT/2009/0983: Call termination on individual public telephone networks provided at a fixed location

Comments pursuant to Article 7(3) of Directive 2002/21/EC¹

I. PROCEDURE

On 25 September 2009, the Commission registered a notification from the Lithuanian regulatory authority, Ryšių reguliavimo tarnyba (RRT) concerning the wholesale markets for call termination on individual public telephone networks provided at a fixed location in Lithuania.

The national consultation² runs in parallel with the Community consultation under Article 7 of the Framework Directive. The deadline for both consultations expires on 24 November 2009.

A request for information³ was sent to RRT on 13 October 2009 and the reply was received on 16 October 2009.

Pursuant to Article 7(3) of the Framework Directive, national regulatory authorities (NRAs) and the Commission may make comments on notified draft measures to the NRA concerned.

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 (Framework Directive), OJ L 108, 24.4.2002, p. 33.

² In accordance with Article 6 of the Framework Directive.

³ Pursuant to Article 5(2) of the Framework Directive.

II. DESCRIPTION OF THE DRAFT MEASURE

II.1. Background

This is the third notification by RRT concerning the wholesale market for call termination on individual public telephone networks provided in the fixed network of TEO LT AB⁴, whereas it is the second notification as concerns the other alternative network operators (ANOs) present in Lithuania. In its 2007 notification⁵ RRT imposed a full set of remedies on TEO and an access obligation on ANOs. In its comments letter, the Commission invited RRT to revisit its analysis as soon as a common approach would have been established at European level.

II.2. Market definition

The notified draft measure concerns the wholesale markets for call termination on individual public telephone networks provided at a fixed location in Lithuania⁶.

In line with the Recommendation and due to a lack of substitutability for termination services in a particular network, RRT considers that termination in each network constitutes a distinct market for the following operators:

1. TEO LT, AB
2. Lietuvos radijo ir televizijos centras, AB
3. Lietuvos geležinkeliai, AB
4. Mediafon, UAB
5. CSC Telecom, UAB
6. EUROCOM SIP, UAB
7. Linkotelus, UAB
8. Nacionalinis telekomunikacijų tinklas, UAB
9. Telekomunikacijų grupą, UAB
10. Cubio, UAB

According to RRT, the relevant geographic market corresponds to the geographic coverage of each operator's network.

II.3. Finding of significant market power (SMP)

On the basis of its market analysis, RRT intends to designate 10 network operators as having

⁴ The previous notifications concerning TEO LT AB were assessed by the Commission in 2005 and 2007 under case number LT/2005/0263 and case number LT/2007/0607. In its comments letter of 2005, the Commission invited RRT to conduct the market assessment with regard to all other operators who provide wholesale fixed termination services in Lithuania as soon as possible and – if appropriate and justified – to impose differentiated remedies on those operators, by taking into account (for example) the size of the undertakings.

⁵ Case LT/2007/0681.

⁶ Corresponding to market 3 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 of 7 March 2002 on a common regulatory framework for electronic communications networks and services (Recommendation), OJ L 344, 28.12.2007, p. 65.

SMP in their respective markets for fixed call termination⁷.

The main criteria considered by RRT when reaching its conclusions on SMP include i) market shares (each operator has 100% share on the relevant market), ii) barriers to entry, iii) absence of potential competition and iv) absence of/low countervailing buying power.

II.4. Regulatory remedies

RRT intends to impose asymmetrical remedies on TEO and ANOs.

Regarding ANOs, RRT proposes to impose i) an obligation to provide access⁸ and ii) a price control obligation according to which ANOs are obliged to apply prices of call termination on their respective networks that are not higher than the prices of call termination applied by TEO implementing the price control set by RRT.

Regarding TEO, RRT proposes to maintain the obligations of (i) non-discrimination, (ii) transparency and (iii) accounting separation and to amend the obligations to provide (iv) access⁹ and (v) price control by using a glide-path according to which both the call termination rate and call set-up fee¹⁰ should be reduced in equal amounts every year until 1 January 2012, when tariffs reach the price level of an efficient operator calculated on the basis of a Hybrid Long Run Average Incremental Cost (HY-LRAIC) model¹¹. The

⁷ Interneto pasaulis, UAB and EUROCOM, UAB which were identified by RRT in its previous notification as SMP operators are no longer considered as having SMP since the former terminated its activities in 2008 and the latter, after a re-organisation, only provides public mobile telephone services.

⁸ Comprising the obligations to (i) meet all reasonable requests from other business entities to provide access to specific network elements and/or associated facilities connected with the provision of the call termination service; (ii) negotiate in good faith with business entities requesting access to the call termination service; (iii) deny access to the call termination service or unilaterally cancel provision of the service or discontinue it only in cases based on objective criteria, including the absence of technical possibilities or the necessity to ensure the integrity of the network.

⁹ Comprising the obligations to: (i) satisfy all reasonable requests from other business entities to provide access to specific network elements and/or associated facilities connected with the provision of the call termination service; (ii) provide other business entities with access to the specific network elements and/or associated facilities; (iii) negotiate in good faith with business entities requesting access to the call termination service; (iv) not withdraw access to facilities already granted; (v) provide open access to the technical interfaces, protocols or other technologies, necessary for the interoperability of the services or for the provision of virtual network services; (vi) provide access to the facilities or other ways of jointly using the infrastructure of electronic communications; (vii) provide certain services required to guarantee the provision of the services to the service recipients; (viii) interconnect networks or provide network facilities, including the possibility to interconnect networks and provide facilities at any network point where this is technically feasible. (ix) The business entity TEO LT AB has the right to deny access to the call termination service or unilaterally cancel provision of the service or discontinue it only in cases based on objective criteria, including the absence of technical possibilities or the necessity to ensure the integrity of the network. (x) The business entity TEO LT AB cannot deny to provide access to the call termination service or terminate the already-provided access when the prices for the call termination service applied by another business entity, which provides the call termination service on the network, are not higher than the prices for the call termination service applied by the business entity TEO LT AB in accordance with the price control obligation imposed on it by RRT.

¹⁰ Call set up means the maintenance and tear-down of the voice connection. Call set-up service costs as a rule reflect costs for a signaling system used in the network. The network recipient charges the call set-up fee per call (i.e. not on a minute basis).

¹¹ The HY-LRAIC model was formed by combining separate elements of BU-LRAIC and TD-LRAIC models. RRT established its model on the basis of TEO's network. It notes that the currently applied HY-LRAIC model partially does not correspond to the cost accounting methodology specified in the Recommendation on the regulation of call termination rates; e.g. all costs incurred by an efficient operator are included and not only those which would be avoided by not providing the wholesale call termination service to the third parties; the technologies of the Public Switched Telephone Network and not those of the Next Generation Network (hereinafter NGN) were invoked while modeling the main network.

Commission notes that during the transition period until 1 January 2012 the new glide path leads to higher rates than those previously foreseen by RRT¹².

In particular, RRT proposes the following glide-path for FTRs indicated in Lithuanian currency (LLT)¹³:

Service	In 2009, ct/min (VAT excl.)	From 1.1.2010, ct/min (VAT excl.)	From 1.1.2011, ct/min (VAT excl.)	From 1.1.2012, ct/min (VAT excl.)	Annual change of the price ct/min (VAT excl.)
<i>Interconnecting networks in the local point of interconnection of networks</i>					
Call termination, during peak hours	4.2 (~ €ct 1.22)	3.56 (~ €ct 1.03)	2.92 (~ €ct 0.85)	2.28 (~ €ct 0.66)	0.64 (~ €ct 0.19)
Call termination, during off-peak hours	1.5 (~ €ct 0.43)	1.21 (~ €ct 0.35)	0.92 (~ €ct 0.27)	0.62 (~ €ct 0.18)	0.29 (~ €ct 0.08)
Call set-up	3.6 (~ €ct 1.04)	2.63 (~ €ct 0.76)	1.66 (~ €ct 0.48)	0.69 (~ €ct 0.20)	0.97 (~ €ct 0.28)
<i>Interconnecting networks in the National point of interconnection of networks</i>					
Call termination related to national transit, type II, during peak hours	6 (~ €ct 1.74)	5.42 (~ €ct 1.57)	4.84 (~ €ct 1.40)	4.26 (~ €ct 1.23)	0.58 (~ €ct 0.17)
Call termination related to national transit, type II, during off-peak hours	3.6 (~ €ct 1.04)	2.79 (~ €ct 0.80)	1.98 (~ €ct 0.57)	1.16 (~ €ct 0.34)	0.81 (~ €ct 0.23)
Call set-up	3.6 (~ €ct 1.04)	2.63 (~ €ct 0.76)	1.66 (~ €ct 0.48)	0.69 (~ €ct 0.20)	0.97 (~ €ct 0.28)

RRT plans to introduce a LRIC model pursuant to the cost accounting methodology provided for in the Termination Recommendation¹⁴ before the end of 2012. Furthermore, it specifies that in case this is not feasible, it will apply the benchmarking method for setting prices during the period between 1 January 2013 and 1 July 2014 based on the average rates of those EU countries having already applied the recommended cost methodology.

¹² This approach differs from the one previously chosen by RRT according to which TEO should decrease its fixed termination rates (FTR) by 40% each year. In its reply to the Commission services' request for information, RRT noted that the resulting (currently) applied glide-path does not ensure an equal decrease of the components of the wholesale price of a call (e.g. the call set-up fee can reach the level of HY-LRAIC price only in 2013) and that such disproportionate decreasing of rates is not transparent enough for market players. While the newly proposed glide-path results in the same final termination fees as those currently imposed, it proposes higher annual price levels for 2010 and 2011.

¹³ 1 LLT = approx. 0.289€.

¹⁴ Commission Recommendation 2009/396/EC of 7 May 2009 on the Regulatory Treatment of Fixed and Mobile Termination Rates in the EU (Termination Rates Recommendation), OJL 124, 20.5.2009, p.67.

III. COMMENTS

On the basis of the present notification and the additional information provided by RRT the Commission has the following comments¹⁵:

Need for an appropriate price control obligation

The Commission notes that both the current and target level of termination rates in Lithuania remain high in comparison to the average prices reported in 2008 for the incumbent operators in the EU27¹⁶. The Commission regrets therefore the new approach taken by RRT, i.e. to increase the annual price level for the intermediate steps of the previously imposed glide-path. The Commission consequently urges the regulator to reconsider its glide-path and to propose a steeper annual reduction resulting in rates that are closer to the EU average. It stresses that this would allow for a swifter convergence of fixed termination rates towards the efficient level and would help to avoid the need for sudden drops or unduly steep glide paths at the end of the transition period provided for in the Termination Rates Recommendation, according to which termination rates should be set at the level of efficient costs for all operators by 31 December 2012.

Access obligations proposed for TEO and alternative operators

The Commission notes that RRT proposes to amend the access obligation imposed on TEO, in particular by an additional provision according to which the incumbent cannot deny access or withdraw access that has already been granted to operators which apply termination rates not higher than those charged by the incumbent (in accordance with the price control obligation imposed by the regulator).

While acknowledging that the introduction of the above additional access obligation aimed at reinforcing the symmetry among operators, such as recommended in the Commission's Recommendation on Termination Rates, the Commission points out to RRT that remedies imposed under Article 16 of the Framework Directive in conjunction with Article 8 of the Access Directive¹⁷ should be 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. In particular, an access obligation should address the market failure identified in the analysed relevant market, i.e. the risk of market foreclosure. An access obligation is unilateral and unconditional in its nature, and should in principle not be made subject to conditions offered on markets other than the relevant market, in this case another termination market.

Against this background, the Commission invites RRT to explain in its final measure why it considers the said amendment to the access obligation for TEO to be based on the nature of the competition problem identified, proportionate and justified in the light of the objectives laid down in Article 8 of the Framework Directive and to review the scope and adjust the wording of the access obligation if appropriate.

The Commission further notes that RRT intends to impose on alternative operators an

¹⁵ In accordance with Article 7(3) of the Framework Directive.

¹⁶ According to the Commission's 14th Progress Report on the Single European Electronic Communications Market 2008, COM(2009)140, the EU average fixed termination rates applied by incumbent operators (for peak traffic) were 0.58 €cents/minute at local level, 0.83 €cents/minute at single transit level and 1.13 €cents/minute at double transit level in 2008.

¹⁷ Directive 2002/19/EC of the European Parliament and the Council of 7 March 2002 on access to, and interconnection of, electronic communications networks and associated facilities (Access Directive), OJ L 108, 24.4.2002, p.7.

access obligation which is generally defined and less detailed than the access obligation imposed on TEO. In light of RRT's proposal not to impose non-discrimination and transparency obligations, the Commission invites RRT to extend the scope of the access obligation imposed on alternative operators in order to ensure that the termination services are provided on fair and equal conditions and potential competition problems relating to technical conditions of access are sufficiently addressed. Alternatively RRT may consider imposing a non-discrimination and transparency obligation also on alternative operators.

Pursuant to Article 7(5) of the Framework Directive, RRT shall take the utmost account of comments of other NRAs and the Commission and may adopt the resulting draft measures and, where it does so, shall communicate them 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/EC¹⁸ 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 Commission¹⁹ within three working days following receipt whether you consider that, in accordance with Community and national rules on business confidentiality, this document contains confidential information which you wish to have deleted prior to such publication²⁰. You should give reasons for any such request.

Yours faithfully,
For the Commission,
Philip Lowe
Director-General

¹⁸ 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.

¹⁹ Your request should be sent either by email: INFSO-COMP-ARTICLE7@ec.europa.eu or by fax: +32 2 298 87 82.

²⁰ The Commission may inform the public of the result of its assessment before the end of this three-day period.