



EUROPEAN COMMISSION

Brussels, 5/07/2012
C(2012) 4814

Post- och telestyrelsen (PTS)

Box 5398 - Valhallavägen 117
SE -102 49 Stockholm
Sweden

For the attention of:
Mr. Göran Marby
Director-General

Fax: +46 8 678 55 05

Dear Mr Marby,

Subject: Commission decision concerning Case SE/2012/1336: Modification of remedies on the wholesale markets for call termination on individual mobile networks in Sweden

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

I. PROCEDURE

The notification was received from the Swedish national regulatory authority, *Post och telestyrelsen* (PTS), concerning an amendment to the price control remedies on the wholesale markets for call termination on individual mobile networks¹ in Sweden. The amendment to the price control remedies is a pure inflation adjustment.

PTS conducted separate national consultations² with regard to the price methodology and with regard to the cost model. Those national consultations ran from 25 February 2011 to 8 April 2011³ and from 25 February 2011 to 25 April 2011⁴, respectively.

¹ 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.

² In accordance with Article 6 of the 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 (EC) No 544/2009, OJ L 167, 29.6.2009, p. 12 (Framework Directive).

³ National consultation related to price methodology.

The deadline for the EU consultation under Article 7 of the Framework Directive is 5 July 2012.

On 12 May 2012, a request for information⁵ was sent to PTS and a response was received on 13 May 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 second review of the wholesale markets for call termination on individual mobile networks in Sweden was notified to and assessed by the Commission in 2010⁶.

PTS defined eight separate markets for wholesale mobile voice call termination. According to PTS's revised approach⁷, each of the proposed markets included call termination to those telephone numbers from the Swedish Number Plan that were allocated to mobile telephony services and over which one single undertaking had technical control, regardless of the technical solution employed⁸. As a result, the market definition also comprised termination to the following call types: calls to voicemails of mobile numbers, termination of calls to mobile numbers via IP data packages and termination of calls to ported-in numbers⁹. The relevant market did not include, however, short messaging services (SMS), paging services and calls to geographic numbers (fixed numbers) – even where the call was to be terminated on a mobile device – as well as non-geographic numbers which were to provide content services or some other added value¹⁰.

PTS designated eight operators as having SMP in their respective markets. These eight operators were the four MNOs previously designated as having SMP, i.e. TeliaSonera AB ('TeliaSonera'), Tele2 Sverige AB ('Tele2'), Telenor Sverige AB ('Telenor') and Hi3G

⁴ National consultation related to applicable cost model.

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

⁶ Case SE/2010/1134, SG-Greffe (2010) D/16651.

⁷ Contrary to the first round review, it is not the call termination on the relevant operator's network which defines the precise market boundaries but the call termination to the mobile telephone numbers allocated to the relevant operator and implemented in the network.

⁸ In response to the Commission's request for information PTS confirmed that once a telephone number has been allocated by PTS to a specific operator and has been implemented in the network, the operator has the technical control over calls made to this number and is, thus, in a position to set mobile termination rates. In order to be able to exercise the necessary technical control, the operator receiving a call to a specific subscriber, therefore, has to be able to take over the call from the calling party at a handover point in the network and route it to the respective mobile telephone number for termination.

⁹ PTS confirmed that once a number has been ported from Operator A to Operator B, the latter has control over the ported number and, thus, also control over the setting of the termination rate in relation to the ported number.

¹⁰ For example toll free services (020x), calls with shared costs (077x), premium rate services (0900/0944/0939), mass calling services (1999) and services for telematics (0378).

Holdings AB ('Hi3G')¹¹ plus three Mobile Virtual Network Operators (MVNOs), i.e. Lycamobile Sweden AB ('Lycamobile'), TDC Sverige AB ('TDC'), Ventelo Sverige AB ('Ventelo') and a new MNO active in Sweden, i.e. AINMT Holdings AB ('Net1')¹².

PTS imposed on all eight SMP operators an access and interconnection obligation¹³, as well as a non-discrimination obligation¹⁴. PTS further imposed a requirement to publish a reference offer on the four existing SMP operators and transparency obligations on the new SMP operators. In addition and in relation to obligations concerning pricing and cost accounting procedures, PTS continued to impose on the existing SMP operators a charge control obligation¹⁵. On the four new SMP operators PTS imposed an obligation to apply call termination at fair and reasonable prices¹⁶.

In its comments on the notification, the Commission invited PTS to apply the same cost methodology in the calculation of mobile termination rates for all eight SMP operators as soon as possible. The Commission also invited PTS to undertake regular assessments of the relevant markets in the future. In this respect, the Commission reminded PTS that, under the revised Article 16 (6) of the Framework Directive, NRAs shall carry out an analysis of the relevant markets under normal circumstances within three years from the adoption of a previous measure.

In a subsequent notification in 2011¹⁷ PTS proposed to introduce a two staged glide-path in order to ensure that the envisaged transition to a LRIC model using costs of the efficient operator does not lead to avoidable competitive distortions in the relevant market.

This glide-path was established by PTS in order to ensure over a transition period a gradual approximation between the price regulation which were in place at the time and the 'pure LRIC approach' which PTS intended to put in place from a date which was not yet defined by PTS. The transition scheme foresaw two steps for the following periods:

- (i) from 1 July 2011 to 30 June 2012 – mobile termination rates (MTRs) were to be set at a level of SEK 0.21 (approx. EUR-cents 2.37) per minute;

¹¹ These four operators will be referred to in the following as the "existing SMP operators".

¹² The latter four operators will be referred to in the following as the "new SMP operators".

¹³ This remedy includes the obligation to provide direct interconnection and call termination on reasonable request at reasonable terms and conditions.

¹⁴ According to PTS the non-discrimination obligation can be separated into two more specific obligations: (1) the prohibition to discriminate between two (external) operators requesting call termination by applying equivalent terms and conditions in equivalent circumstances and (2) the obligation not to apply different terms and conditions in relation to quality and availability (but not price) in relation to external operators vis-à-vis the SMP operator's internal downstream business. PTS confirmed in its reply to the Commission's request for information, that prices are explicitly not included in the latter non-discrimination obligation.

¹⁵ The current model, last notified under SE/2010/1091, is based on a Long-run Incremental Average Cost (LRAIC) model including common costs and business overheads for the operator's network. The termination rates for all existing operators are then set at the level of costs for the operator with the highest LRIC in order to guarantee all operators' cost recovery. The termination rates for the period until 30 June 2011 is – as was notified under SE/2010/1091 – 2.73 €cent/min.

¹⁶ In PTS' view, a fair and reasonable charge would not exceed the level calculated under the existing LRIC model for the four existing SMP operators.

¹⁷ Case SE/2011/1221, SG-Greffe (2011) D/9863.

- (ii) from 1 July 2012 – MTRs were to be set at a level of SEK 0.14 (approx. EUR-cents 1.58) per minute.

Once the envisaged 'pure LRIC approach' was to be applied at the end of the proposed glide-path MTRs were proposed to be at a level of SEK 0.09 (approx. EUR-cents 1.02) per minute. However, in the notification, PTS has not determined any details of the new pure LRIC costing model.

In its comments on the notification, the Commission welcomed the expressed intention of PTS to move to a pure LRIC cost-model which would ensure that MTRs in Sweden are symmetrical and based on the costs incurred by an efficient operator. However, the Commission also noted that PTS had not yet notified to the Commission any such cost model and had not determined the precise timing of the model's introduction. Therefore, the Commission invited PTS to ensure that the transition scheme leads to full compliance with the Termination Rates Recommendation¹⁸, i.e. that MTRs are implemented at cost-efficient, symmetric levels by 31 December 2012.

II.2. The notified draft measure

In the present notification PTS proposes to introduce an inflation based adjustment to MTRs applicable from 1 July 2012. The proposed adjustment moves the MTR level from SEK 0.14 (approx. EUR-cents 1.58) to SEK 0.15 (approx. EUR-cents 1.70). The original MTRs level was based on costs applied in year 2010. The currently notified MTRs contain an adjustment which is based on inflation in years 2010 and 2011.

PTS, in the answer to the Commission's request for information, confirmed that the exact level of future MTRs regulated by a 'pure BU-LRIC approach' had been identified at level SEK 0.09 (approx. EUR-cents 1.02). PTS intends to implement such MTRs by 1 July 2013 at the latest and such MTRs may be adjusted by PTS for inflation. PTS has, however, not yet determined a specific date for the change to the new 'pure BU-LRIC' costing model. PTS plans to notify the new market analysis in autumn 2012. Upon completion the currently notified MTRs will be immediately succeeded by MTRs regulated by the 'pure BU-LRIC approach'.

III. COMMENTS

The Commission has examined the notification and additional information provided by PTS and has the following comments:¹⁹

Implementation of the Termination Rates Recommendation

The Commission welcomes the expressed intention of PTS to move to a pure LRIC cost-model which will ensure that MTRs in Sweden are symmetrical and based on the costs incurred by an efficient operator.

The Commission notes that PTS has not yet notified to the Commission any such cost model and has not determined the precise timing of the model's introduction. PTS has, however, indicated that the results of the model will be implemented by

¹⁸ 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), OJ L 124, 20.5.2009, p. 67.

¹⁹ In accordance with Article 7(3) of the Framework Directive.

1 July 2013 at the latest.

The Commission would like to remind PTS that the deadline for the implementation of the Termination Rates Recommendation is already before that date, i.e. on 1 January 2013, and would like to ask PTS to ensure that the transition scheme leads to full compliance with the Termination Rates Recommendation, i.e. that MTRs are implemented at cost-efficient, symmetric levels, by 1 January 2013.

Pursuant to Article 7(7) of the Framework Directive, PTS shall take the utmost account of the comments of other NRAs, BEREC and the Commission and may adopt the resulting draft measure; 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/EC²⁰ 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 Commission²¹ 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.²² You should give reasons for any such request.

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

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 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.

²¹ Your request should be sent either by email: CNECT-ARTICLE7@ec.europa.eu or by fax: +32 2 298 87 82.

²² The Commission may inform the public of the result of its assessment before the end of this three-day period.