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**Subject: Case ES/2024/2506: wholesale market for access and call origination
in Spain**

Article 32(3) of Directive (EU) 2018/1972: No comments

Dear Ms Cani Fernández Vicién,

1. PROCEDURE

On 27 May 2024, the Commission registered a notification from the Spanish national regulatory authority, Comisión Nacional de los Mercados y de la Competencia (CNMC) ⁽¹⁾, concerning the Spanish call origination market ⁽²⁾.

The national consultation ⁽³⁾ ran from 7 February to 8 March 2024.

⁽¹⁾ Under Article 32 of Directive (EU) 2018/1972 of the European Parliament and of the Council of 11 December 2018 establishing the European Electronic Communications Code (the Code) (OJ L 321, 17.12.2018, p. 36)

⁽²⁾ Corresponding to 2 of 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 (the 2007 Recommendation on Relevant Markets), OJ L 344, 28.12.2007, p. 65. This market has been removed from the list of the relevant markets that may warrant *ex ante* regulation which is contained in the currently applicable Commission Recommendation (EU) 2020/2245 of 18 December 2020 on relevant product and service markets within the electronic communications sector susceptible to *ex ante* regulation in accordance with the Code (2020 Recommendation on Relevant Markets) (OJ L 439, 29.12.2020, p. 23-31).

⁽³⁾ In accordance with Article 23 of the Code.

2. DESCRIPTION OF THE DRAFT MEASURE

The draft decision concerns the fourth market review of the wholesale market for access and call origination. Since 2014, the market is not included in the list of the recommended markets for *ex ante* regulation. Therefore, CNMC carried out the three criteria test and, as a result, is proposing to deregulate the market.

2.1. Background

Under case ES/2016/1949, CNMC justified the need to regulate fixed call origination based mainly on the lack of competitive pressure on a segment of residential and business customers in Spain purchasing fixed voice services on a stand-alone basis. These customers represented approximately 34% of the total of access lines in Spain (approximately 57% of which are business customers, with residential customers representing 43% of them). CNMC, in particular, considered that there are insufficient competitive constraints on Telefónica's fixed telephony prices for this segment of customers due, in particular, to: (i) the limited coverage of either copper local loop unbundling (LLU), (80% household coverage), hybrid fibre-coaxial (HFC), (49%) or fiber to the home (FTTH), (56%); (ii) the relatively high wholesale prices for services with ubiquitous geographic coverage, such as bitstream or leased lines, when compared to fixed telephony prices; (iii) the relatively higher mobile telephony prices; and (iv) the fact that both residential and business customers seem to consider mobile telephony services as complementary rather than substitute to fixed telephony.

On the basis of its significant market power (SMP) assessment, CNMC proposed to designate Telefónica as the SMP operator and to impose on it a set of regulatory measures.

In its comment letter, the Commission asked CNMC to closely monitor the market, particularly future developments that might accentuate fixed to mobile substitutability in Spain, as well as next generation access (NGA) roll-outs that might increase the competitive constraints on fixed telephony services. The Commission signalled that, if deemed necessary in view of those developments, a new review should be carried out prior to the standard period of three years.

2.2. Market evolution at retail level

CNMC analyses the major observed trends at retail level⁽⁴⁾. Overall, the retail fixed telephone traffic service continues to experience a progressive loss of importance⁽⁵⁾, despite the fact that the number of broadband packages incorporating it continues to grow⁽⁶⁾. In absolute terms, the number of stand-alone access lines decreased from 2,368 263 in 2018 to 1,088 108 in 2023. At the same time, it is observed that most of the fixed telephone lines provided in the residential segment are based on mobile access

⁽⁴⁾ In terms of fixed telephone access lines, at the end of 2023, Telefonica held a quota of 41.79 %, doubling those of Vodafone with quotas of 17.52 %. Following the recent Orange/Masmobile concentration MasOrange has a market share of 34.92 .

⁽⁵⁾ The volume of telephone traffic in the retail market decreased by 61.54 % between the first quarter of 2017 and the fourth quarter of 2023. In the same period, the revenues allocated to the fixed telephone access service decreased by 35.74 %. In absolute terms, the number of stand-alone access lines decreased by 54.05 % between 2018 and 2023.

⁽⁶⁾ Currently, 79.44 % of fixed telephone access lines are bundled with broadband. However, 1,95 million of bundle services does not incorporate the fixed telephone access service.

technology ⁽⁷⁾. To confirm the decline in the take-up of this service by end users, CNMC observes that the 27.9 % of Spanish households did not have a fixed telephone service in June 2023 ⁽⁸⁾. While the majority of customers still consider fixed and mobile telephone access as complementary services, a process of gradual abandonment of fixed telephone access is identified ⁽⁹⁾. This trend of replacing fixed traffic with mobile traffic, is also reflecting the fact that traffic carried out over over-the-top (OTT) networks starts to become an alternative means of making telephone calls.

2.3. Market definition

As in its previous analysis, CNMC defines the relevant product market for call origination on the public telephone network provided at a fixed location as the market including all the services by which an operator delivers a call from an end-user physically connected to the network to another interconnected operator. In particular, CNMC finds that the relevant market includes wholesale line rental (WLR) and indirect access (CS/CPS), intelligent network and short numbering access services, as well as origination services based on IP technology. CNMC also observes that, in particular in a context of migration from copper lines to other technologies, fixed radio access is offered by all operators to provide fixed phone connections and, therefore, FWA is also included in the current wholesale market definition.

The relevant geographic market covers the territory of Spain.

2.4. Three criteria test

As the market is not listed in the current Recommendation on Relevant Markets, CNMC analyses whether or not the market in question continues to satisfy the three criteria test ⁽¹⁰⁾.

As regards the first criterion, when it comes to the structural, legal or regulatory barriers, CNMC underlines the significative deployment of alternative infrastructure, mainly NGA networks, occurred in the recent years in Spain. Alternative operators are not only able to self-provide call origination services but are also providing wholesale access to fibre, which is increasingly relevant ⁽¹¹⁾. In addition, from a *modified greenfield approach*, the wholesale services New Broadband Ethernet Service (NEBA) local and NEBA fibre and

⁽⁷⁾ Specifically, 76.10 %.

⁽⁸⁾ Compared to the 11.6 % in December 2016.

⁽⁹⁾ For example, in 2023, traffic originating from fixed networks represented 9.21 % of the total, compared to 21.91 % in 2017.

⁽¹⁰⁾ In accordance with Article 67(1) of the Code and Recital 22 of the 2020 Recommendation on Relevant Markets, national regulatory authorities should also analyse markets that are not contained in this Recommendation, but that are regulated within the territory of their jurisdiction on the basis of previous market analyses, or other markets, if they have sufficient grounds to consider that the three criteria test is met. Hence, the national regulatory authorities can also define other relevant product and service markets, not listed in this Recommendation, if they can prove that in their national context, the markets meet the three criteria test.

⁽¹¹⁾ According to CNMC's *Fourth Quarterly Report 2023* the wholesale lines provided by alternative operators amount to 2,723,574.

their regulated and commercial modalities, are an alternative to the service of voice call origination and access at fixed locations as long as the retail service also incorporates the broadband service ⁽¹²⁾.

Therefore, according to CNMC, it cannot be argued that there are barriers to entry in the wholesale fixed access and origination market. Indeed, the operators that intend to provide the fixed telephone access service in conjunction with the broadband internet access service have at their disposal appropriate wholesale solutions in addition to the possibility of self-provision.

CNMC further underlines that also legal or regulatory obstacles are not relevant, as the time needed to obtain the necessary civil engineering permits is now shorter. Moreover, in order to be able to operate a network or provide electronic communications services, it is sufficient to notify CNMC.

Therefore, CNMC concludes that the first criterion is not met.

The second criterion analyses whether a market structure tends towards effective competition within the relevant time horizon, taking into account the degree and prospects of infrastructure-based competition, as well as other sources of competition behind barriers to entry. As a general consideration, CNMC underlines that Spain ranks third in the EU in terms of digital connectivity with a coverage of networks providing more than 1 Gbps at 84.96 % of households by 30 June 2022 and by the end of 2024 ultra-fast broadband coverage is expected to reach 95.75 % of households at national level. Moreover, it should be considered that also the switch-off of the copper network has a significant impact on the market for access and call origination ⁽¹³⁾. As a result, the volume of fixed telephone lines provided on copper access on the market will be radically reduced, especially given that most copper telephone access lines belong to Telefónica ⁽¹⁴⁾.

Finally, CNMC underlines that it is empowered to adopt symmetrical regulatory measures and solve disputes. It therefore concludes that also the second criterion is not met.

As regards the third criterion, CNMC notes that, prospectively, the risk of potential non-competitive behaviors is not sufficiently high. Moreover, CNMC monitors the markets through reports on the performance of electronic communications markets, specific requests for information, or even complaints submitted in accordance with competition law by the operators concerned. Therefore, any potential anti-competitive behavior would be easily detectable by CNMC, which, being also a national competition authority, is empowered with the necessary tools to act immediately.

Consequently, CNMC concludes that the market for access and call origination on fixed networks defined in the current draft measure tends towards competition and, therefore,

⁽¹²⁾ This is the case in 79.44 % of cases.

⁽¹³⁾ If both residential and business segments are taken into account, the use of copper represents 5.65 % of the total single lines among alternative operators. The residential segment shows this migration process more intensively, since: (i) the proportion of copper single lines is lower, at 1.40 %; (ii) the reduction between 2018 and 2023 has been stronger, at 89.86 % and the (iii) fixed access provided on mobile technology is more relevant in the replacement process.

⁽¹⁴⁾ Telefónica's market share in the residential stand-alone segment decreased from 46.68 % in 2018 to 28.59 % in 2023. This reduction in Telefónica's market share reflects as well, as explained in section 2.2., the general decrease in the number of stand-alone lines affecting all operators.

should not be subject *to ex ante* regulation. The obligations currently in force should therefore be lifted after six months from the publication of the final decision.

3. NO COMMENTS

The Commission has examined the and has no comments ⁽¹⁵⁾.

Under Article 32(9) of the Code, CNMC 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 on other notified draft measures.

Pursuant to Point 6 of Recommendation 2021/554 ⁽¹⁶⁾ the Commission will publish this document on its website. If CNMC considers that, in accordance with EU and national rules on business confidentiality, this document contains confidential information that you wish to have deleted prior to publication, please inform the Commission ⁽¹⁷⁾ within three working days of receipt ⁽¹⁸⁾. Please give reasons for any such request.

Yours faithfully,

For the Commission
Roberto Viola
Director-General

⁽¹⁵⁾ In accordance with Article 32(3) of the Code.

⁽¹⁶⁾ Commission Recommendation (EU) 2021/554 of 30 March 2021 on the form, content, time limits and level of detail to be given in notifications under the procedures set in Article 32 of Directive (EU) 2018/1972 of the European Parliament and of the Council establishing the European Electronic Communications Code OJ L 112, 31.3.2021, p. 5.

⁽¹⁷⁾ By email: CNECT-markets-notifications@ec.europa.eu

⁽¹⁸⁾ The Commission may inform the public of the result of its assessment before the end of this three-day period.