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Office of Communications (Ofcom)

Riverside House
2a Southwark Bridge Road
London SE1 9HA
United Kingdom

For the attention of:
Mr Ed Richards
Chief Executive Officer

Fax: +44 207981 3504

Dear Mr Richards,

Subject: Commission decision concerning Case UK/2012/1302: Price control for wholesale ISDN30 services in the UK

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

I. PROCEDURE

On 9 March 2012, the Commission registered a notification from the UK national regulatory authority, the Office of Communications (Ofcom),¹ concerning a modification to the implementation of a price control obligation on the wholesale market for ISDN30 exchange lines services in the UK.²

The national consultation³ ran from 22 December 2011 to 2 February 2012.

On 21 March 2012 a request for information⁴ was sent to Ofcom and a reply was

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 Wholesale ISDN30 exchange lines services, although not listed as such, are similar to services covered by market 2 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.

³ In accordance with Article 6 of the Framework Directive.

received on 22 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

In its second review of the markets for retail and wholesale ISDN30 exchange line services,⁵ notified to the Commission in May 2010,⁶ Ofcom defined a wholesale market encompassing ISDN30 exchange lines provided to vertically integrated retailers (self-supply) and to third-party retailers (e.g. using wholesale line rental, or WLR).

Ofcom found that Openreach holds significant market power in the supply of wholesale ISDN30 exchange lines in the UK, excluding Hull, and that KCOM holds significant market power in the supply of wholesale ISDN30 exchange lines in the Hull area. Ofcom proposed to impose on Openreach obligations of: (i) access, (ii) non discrimination, (iii) transparency (in particular publication of a reference offer and technical information on the quality of service), (iv) accounting separation and (v) a price control obligation, given that Openreach is making excessive returns on ISDN30.⁷

II.2. The notified draft measure

The current notification concerns a modification to the implementation of a price control obligation on the wholesale market for ISDN30 exchange lines services.

Ofcom is concerned that, without the proposed regulation, the price of core wholesale ISDN30 services (i.e. connections, rentals and transfers) is likely to be maintained at an excessive level and proposes therefore to modify an RPI⁸-X charge control.⁹

The price control is to be imposed in relation to a number of wholesale ISDN30 services,¹⁰ while the existing interim price control obligations¹¹ are proposed to be withdrawn.

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

⁵ ISDN30 (Primary rate ISDN) provides up to 30 digital channels with a bandwidth of 64 kb/s each and a control channel of 64 kb/s. Wholesale ISDN30 services are supplied by Openreach to other communications providers (CPs), who use them to provide retail ISDN30 services to businesses.

⁶ See UK/2010/1082 (SG-Greffe (2010) D/8320). See also subsequent decisions UK/2010/1139 (SG-Greffe (2010) D/18243) and UK/2011/1202 (SG-Greffe (2011) D/9410).

⁷ Ofcom imposed on KCOM obligations (i) to provide network access on reasonable request, (ii) not to unduly discriminate, (iii) to publish a reference offer, (iv) to notify charges, terms and conditions, and (v) to publish technical information.

⁸ Retail Price Index.

⁹ A price cap of RPI -13.75% for wholesale ISDN30 rentals and connections and RPI 0% for wholesale ISDN30 transfers and for wholesale ISDN30 direct dial-in is proposed.

¹⁰ These services are ISDN30 line rental, ISDN30 connection charges, ISDN30 transfer charges, ISDN30 enhanced care services and ISDN30 direct dial inward services.

¹¹ Charge ceiling.

III. NO COMMENTS

The Commission has examined the notifications and the additional information provided by Ofcom and has no comments.¹²

Pursuant to Article 7(7) of the Framework Directive, Ofcom 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/EC¹³ 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 Commission¹⁴ 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.¹⁵ You should give reasons for any such request.

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

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: +32 2 298 87 82.

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