



EUROPEAN COMMISSION

Brussels, 23/07/2012
C(2012) 5337

Sabiedrisko Pakalpojumu
Regulēšanas Komisija (SPRK)

Brīvības ielā 55
LV-1010 Rīga
Latvia

For the attention of:
Mr Valdis Lokenbahs
Chairperson

Fax: +371 67 097 277

Dear Mr Lokenbahs,

Subject: Commission Decision concerning Case LV/2012/1344: Publicly available national/international telephone services provided at a fixed location for residential/non-residential customers in Latvia

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

I. PROCEDURE

On 21 June 2012, the Commission registered a notification from the Latvian national regulatory authority, Sabiedrisko Pakalpojumu Regulēšanas Komisija (SPRK)¹, concerning the market for publicly available national telephone services provided at a fixed location for residential and non-residential customers and the market for publicly available international telephone services provided at a fixed location for residential and non-residential customers in Latvia.

The national consultation² ran from 1 March 2012 to 1 April 2012.

On 27 June 2012, a request for information³ was sent to SPRK and a response was received on 2 July 2012.

Pursuant to Article 7(3) of the Framework Directive, national regulatory authorities (NRAs), the Body of European Regulators for Electronic Communications (BEREC) and

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, 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 In accordance with Article 6 of the Framework Directive.

³ In accordance with Article 5(2) of the Framework Directive.

the Commission may make comments on notified draft measures to the NRA concerned.

II. DESCRIPTION OF THE DRAFT MEASURE

II.1. Background

In its first round review of the retail (fixed) call services markets⁴, SPRK identified four distinct markets corresponding to the first Recommendation on relevant markets⁵.

The incumbent operator SIA Lattelecom was designated as having SMP on the four markets. SPRK imposed a retail price control obligation based on cost-orientation implemented through a price cap. The Commission commented on the need to clarify the details of the price control obligation and to impose an accounting separation.

II.2. Market definition

The notified draft measures concern the second round review of the retail (fixed) call services markets. SPRK delineates the following two markets: publicly available national telephone services provided at a fixed location for residential and non-residential customers and publicly available international telephone services provided at a fixed location for residential and non-residential customers.

Furthermore, SPRK concludes that certain voice over internet protocol (VoIP) calls (voice call origination and termination over the phone) can substitute traditional PSTN/ISDN calls and therefore includes it in the respective calls markets, while other types of VoIP calls are excluded from the market definition. As regards calls from fixed to mobile phones, SPRK reaches the conclusion that they are part of the respective markets as they are sold at the retail level as part of the same call package. SPRK however excludes from the relevant market calls to more expensive special numbers which not only satisfy the communication need but also provide added value and ancillary services.

The geographic delineation of the markets is national.

II.3. The three criteria test

As the notified markets have been removed from the list of relevant markets annexed to Commission Recommendation 2007/879/EC,⁶ SPRK carries out the three criteria test⁷.

⁴ Cases LV/2006/0567; LV/2006/0568; LV/2006/0569; LV/2006/0570; SG-Greffe (2007) D/200353.

⁵ Markets number 3 to 6 of the (first) Commission Recommendation 2003/311/EC of 11 February 2003 on relevant product and services markets within the electronic communications sector susceptible to *ex ante* regulation in accordance with the Framework Directive, OJ L 114, 8.5.2003, p. 45.

⁶ 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.

⁷ In accordance with Point 2 in conjunction with Recital 5 of the Recommendation on Relevant Markets 2007/879/EC, when identifying markets other than those mentioned in the Annex, national regulatory authorities should ensure that the following three criteria are cumulatively met: (1) there must be high and non-transitory entry barriers, (2) the structure of the market must not tend towards effective competition within the relevant time horizon and (3) the application of competition law alone would not adequately address the market failure(s) concerned.

II.3.1. Publicly available national telephone services provided at a fixed location for residential and non-residential customers

The first criterion: high and non-transitory barriers to entry

Regarding the first criterion, SPRK indicates that while Carrier selection (CS) and Carrier pre-selection (CPS) could remove the market entry barriers, those obligations do not enable market entry in practice since in particular local calls are offered by SIA Lattelecom for free - within its bundles comprising internet and/or TV - while operators relying on CS and CPS can only operate in a shrinking niche market.

The second criterion: no tendency towards effective competition

Regarding the second criterion, SPRK indicates that market shares of SIA Lattelecom have been shrinking only slightly and are expected to stabilise within the next years at around 80-85% based on revenues and 85-90% based on traffic. SPRK concludes that the structure of the market does not tend towards effective competition.

The third criterion: insufficiency of competition law alone

Regarding the third criterion, SPRK is of the view that competition law alone would be insufficient to address the market failures identified. Hence, SPRK considers that the third criterion is also fulfilled.

SPRK concludes that, on the basis of national circumstances, the market for publicly available national telephone services provided at a fixed location for residential and non-residential customers is still susceptible to *ex ante* regulation in Latvia.

II.3.2. Publicly available international telephone services at a fixed location for residential and non-residential customers

According to SPRK, the market for publicly available international telephone services provided at a fixed location for residential and non-residential customers should cease to be regulated. SPRK concludes that the three criteria test is no longer fulfilled due to availability of CS and CPS services and inexistence of structural obstacles for market entry or expansion⁸. Hence, SPRK concludes that entry barriers are no longer high and non-transitory and the market for residential and non-residential customers shows a tendency towards effective competition.

II.4. Finding of significant market power

SPRK intends to designate the incumbent operator, SIA Lattelecom, as having SMP on the market for publicly available national telephone services provided at a fixed location to residential and non-residential customers. SPRK points out that SIA Lattelecom's market share is stabilised and remains very high, i.e., 80-85% in terms of revenues and 85-90% in terms of traffic.

In addition to the high level of SIA Lattelecom's market share, SPRK underlines that other factors contribute to SIA Lattelecom's dominant position on the relevant market, such as economies of scale, lack of countervailing buying power, and a better position to offer bundled services.

II.5. Regulatory remedies

Based on the above analysis, SPRK proposes to withdraw all regulation from the relevant market for international calls provided at a fixed location for residential and non-

⁸ SPRK points to SIA Lattelecom's market share of 67.58% (in terms of revenues) in 2011 and 59.87% (in terms of traffic) in 2009.

residential customers while it proposes to maintain the regulatory obligations already imposed on SIA Lattelecom on the market for national calls provided at a fixed location for residential and non-residential customers, i.e. price control based on a cost oriented *price cap* and cost accounting obligation.

III. COMMENTS

The Commission has examined the notification [and the additional information provided by SPRK and has the following comment:⁹

Effectiveness of wholesale regulation

The Commission would like to recall that, in order to establish that the first criterion is met, NRAs should demonstrate that, within the period of the review, entry barriers are sufficiently high and non-transitory to prevent entry capable of limiting the SMP operator's market power. The Commission notes the limited relevance of CS/CPS and the lack of WLR in Latvia. The Commission further notes, however, the apparent ability of alternative operators to obtain wholesale broadband services from the incumbent, which offers the possibility to provide voice services to end users via regulated wholesale broadband services.

Whilst the Commission does not dispute SPRK's final conclusion with regard to the application of the three criteria test in relation to the market for national calls, the Commission urges the Latvian regulator to strengthen its efforts to ensure the full effectiveness of related wholesale remedies, for example through enhanced compliance enforcement.

Furthermore, the Commission invites SPRK to rigorously monitor the market developments in order to establish whether the effective application of wholesale regulation would mean that the first or second criterion are still met in the future. In particular, the Commission invites SPRK to establish whether the introduction of naked DSL on the wholesale level has a positive effect on the competitive situation in the retail market for national calls.

Consequently, the Commission asks SPRK to re-assess the market for national calls without delay, should competition, which may be evidenced by a more rapid decrease in SIA Lattelecom's market shares, develop and to aim for the withdrawal of regulation as soon as the first or second criterion are no longer met.

Pursuant to Article 7(7) of the Framework Directive, SPRK 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, it 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/EC¹⁰ the Commission will publish this document on its website. The Commission does not consider the information contained

⁹ In accordance with Article 7(3) of the Framework Directive.

¹⁰ 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.

herein to be confidential. You are invited to inform the Commission¹¹ 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.¹² You should give reasons for any such request.

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

¹¹ Your request should be sent either by email: CNECT-ARTICLE7@ec.europa.eu or by fax: +32 2 298 87 82.

¹² The Commission may inform the public of the result of its assessment before the end of this three-day period.