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National Media and  
Infocommunications Authority  
(NMHH)

Ostrom u., 23-25  
H-1015 Budapest  
Hungary

For the attention of:  
Ms. Annamária Szalai  
President

Fax: +36 1 457 7171

Dear Ms Szalai,

**Subject: Commission decision concerning Case HU/2011/1270: Minimum set of leased lines**

**Article 7(3) of Directive 2002/21/EC:<sup>1</sup> No comments**

## **I. PROCEDURE**

On 10 November 2011 the Commission received a notification by the Hungarian Regulatory Authority, the National Media and Infocommunications Authority (NMHH), notified by the short notification procedure<sup>2</sup> and became effective on that day.

The national consultation<sup>3</sup> was held from 20 September 2011 until 10 October 2011. The deadline for the EU consultation under Article 7 of the Framework Directive is 12 December 2011.

Pursuant to Article 7(3) of the Framework Directive, the national regulatory authorities

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<sup>1</sup> 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).

<sup>2</sup> 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, OJ L 301, 12.11.2008, p. 23.

<sup>3</sup> In accordance with Article 6 of the Framework Directive.

(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

The notified draft measure concerns the review of the market for the minimum set of leased lines in Hungary. This market is no longer listed in the Commission Recommendation on relevant markets susceptible to *ex-ante* regulation<sup>4</sup>, but was listed in the previous Recommendation on relevant markets<sup>5</sup>. This market was previously notified to and assessed by the Commission under case number HU/2007/0737.

In its currently notified draft measure NMHH proposes to withdraw regulation as it considers that the three cumulative criteria for markets to be susceptible to *ex-ante* regulation are no longer met. In particular, the first criterion (i.e. the presence of high and non-transitory barriers to entry) and also the second criterion (i.e. the lack of tendency towards effective competition) are not met.

According to NMHH, despite the existence of structural barriers arising from the fact that the infrastructure is not easily duplicated, the service can be provided on the retail market by accessing the wholesale markets for terminating and trunk segments of leased lines, and this lowers entry barriers to the retail market for the minimum set of leased lines.

NMHH states also that the market size has substantially decreased between 2007 and 2009. At the end of 2009 there was no operator with a market share above 40%, and the market shares of the operators tend to be equal whether by number of termination points or by revenues. The average prices over the same period were decreasing. Therefore NMHH identified the market as tending towards effective competition.

## III. NO COMMENTS

On the basis of the present notification, the Commission has no comments.<sup>6</sup>

Pursuant to Article 7(7) of the Framework Directive, the NMHH may adopt the resulting 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/EC<sup>7</sup> the Commission will publish this

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<sup>4</sup> 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 communication networks and services, OJ L 344, 28.12.2007, p. 65.

<sup>5</sup> Market 7 of 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, 8.05.2003, p. 45.

<sup>6</sup> In accordance with Article 7(3) of the Framework Directive.

<sup>7</sup> 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

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

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Council on a common regulatory framework for electronic communications networks and services, OJ L 301, 12.11.2008, p. 23.

<sup>8</sup> Your request should be sent either by email: [INFSO-COMP-ARTICLE7@ec.europa.eu](mailto:INFSO-COMP-ARTICLE7@ec.europa.eu) or by fax: +32 2 298 87 82.

<sup>9</sup> The Commission may inform the public of the result of its assessment before the end of this three-day period.