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**SG-Greffe (2012) D/6631**

Autorité de Régulation des  
Communications Electroniques et  
des Postes (ARCEP)

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France

For the attention of:  
Mr Jean-Ludovic Silicani  
President

Fax: +33 1 40 47 72 02

Dear Mr Silicani,

**Subject: Commission decision concerning Case FR/2012/1304: Voice call termination on individual mobile networks of Free Mobile, Lycamobile and Oméa Télécom in France**

**Opening of Phase II investigation pursuant to Article 7a of Directive 2002/21/EC as amended by Directive 2009/140/EC**

## **I. PROCEDURE**

On 13 March 2012, the Commission registered a notification from the French national regulatory authority, *Autorité de Régulation des Communications Electroniques et des Postes* (ARCEP)<sup>1</sup>, concerning the wholesale market for voice call termination on individual mobile networks of Free Mobile, Lycamobile and Oméa Télécom<sup>2</sup>.

Three national consultations<sup>3</sup> ran from 8 September 2011 to 10 October 2011, from 9

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<sup>1</sup> In accordance with 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.

<sup>2</sup> Corresponding to market 7 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, OJ L 344, 28.12.2007, p. 65.

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

December 2011 to 27 January 2012 and from 16 February 2012 to 2 March 2012, respectively.

On 20 March 2012, a request for information<sup>4</sup> was sent to ARCEP and a response was received on 23 March 2012.

Pursuant to Article 7a(1) of the Framework Directive, the Commission may notify the national regulatory authority (NRA) and the Body of European Regulators for Electronic Communications (BEREC) of its reasons that the draft measure would create a barrier to the internal market or its serious doubts as to its compatibility with EU law.

## **II. DESCRIPTION OF THE DRAFT MEASURE**

### **II.1. Background**

The market for voice call termination on individual mobile networks in France was previously notified to and assessed by the Commission under case FR/2010/1128<sup>5</sup>.

In this third round analysis, ARCEP designated three mobile operators (MNOs) in mainland France (Bouygues, Orange and SFR) and 8 MNOs in the French overseas territories (Orange Caraïbe, SRR, Digicel, Orange Réunion, Outremer Télécom, Dauphin Télécom, UTS Télécom and SPM Télécom) as having significant market power (SMP) on their own mobile network, and imposed on them the full set of obligations<sup>6</sup>.

With regard to the price control, the current mobile termination rates (MTRs) in mainland France were notified to and assessed by the Commission under case FR/2011/1200<sup>7</sup>. ARCEP updated its Bottom-up Long Run Incremental Costs (BU-LRIC) model in accordance with the pure BU-LRIC model recommended by the Termination Rates Recommendation<sup>8</sup> and set a three-year glide path, which foresaw reaching the target level of 0.8 Euro cent as of 1 January 2013 and price symmetry as of 1 July 2011<sup>9</sup>. The Commission did not comment.

### **II.2. Market definition**

ARCEP proposes to define three separate markets for voice call termination in the networks of the new MNO (Free Mobile) and the two full mobile virtual network operators (MVNO) (Lycamobile and Oméa Télécom). It comprises all the call termination services provided to mobile numbers which are opened to interconnection, irrespective of the technology (GSM, UMTS, Wifi or other).

Based on the licensing conditions for exploiting mobile frequencies and the geographic coverage of the respective networks, ARCEP considers that the relevant geographic markets correspond to mainland France.

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<sup>4</sup> In accordance with Article 5(2) of the Framework Directive.

<sup>5</sup> SG-Greffe(2010)D/15875 and 16530.

<sup>6</sup> ARCEP imposed the obligation of accounting separation and cost accounting only on the three metropolitan operators and as well on Orange Caraïbe and SRR.

<sup>7</sup> SG-Greffe(2011)D/6588.

<sup>8</sup> Commission Recommendation of 7 May 2009 on the regulatory treatment of fixed and mobile termination rates in the EU, OJ L 124, 20.05.2009, p. 67 (Termination Rates Recommendation).

<sup>9</sup> ARCEP took account of the Commission's comment made in case FR/2010/1039 and removed the asymmetry for Bouygues as of 1 July 2011.

### **II.3. Finding of significant market power**

ARCEP proposes to designate Free Mobile, Lycamobile and Oméa Télécom as having SMP on their individual networks. The main criteria considered by ARCEP in reaching its conclusion are: (i) 100% market share of each operator on its individual mobile network<sup>10</sup>; (ii) lack of potential competition and high entry barriers and (iii) lack of countervailing buying power both at retail and wholesale levels.

### **II.4. Regulatory remedies**

ARCEP proposes to impose the following obligations on Free Mobile, Lycamobile and Oméa Télécom: (i) access and interconnection; (ii) non-discrimination; (iii) transparency (i.e. publication of a reference offer) and (iv) price control based on cost orientation. Additionally, ARCEP proposes to impose the obligation of accounting separation and cost accounting only on Free Mobile.

#### Price asymmetry of MTRs in favour of Free Mobile, Lycamobile and Oméa Télécom

As regards the price control and cost orientation obligation, ARCEP justifies its proposal of setting asymmetric MTRs for Free Mobile, Lycamobile and Oméa Télécom on the basis of Point 10<sup>11</sup> of the Termination Rates Recommendation by arguing that these operators:

- are 'new mobile entrants' since Free Mobile and Lycamobile were not active in the mobile market prior to their entry in January 2012 and July 2011, respectively, and Oméa Télécom presently only operates as a light MVNO rather than as a full MVNO;
- face 'impediments on the retail market to market entry and expansion' because of established MNOs' commercial strategies and the existing long commitment contracts and loyalty programs that make switching operator increasingly difficult in the post-paid segment; and
- incur 'higher per-unit incremental costs' when terminating a call because of the charges for the wholesale service of national roaming<sup>12</sup> that they have agreed with their respective host MNOs for having access to the latter's mobile access network<sup>13</sup>.

#### Implementation of the cost orientation obligation

ARCEP argues that MTRs for Free Mobile, Lycamobile and Oméa Télécom should be

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<sup>10</sup> The full MVNOs own a location database infrastructure and are in possession and control of a unique operator code (Mobile network code) for the routing of calls to the numbers open to interconnection.

<sup>11</sup> Rather than Point 9 of the Termination Rates Recommendation. ARCEP considers that the criterion of an uneven spectrum assignment is not fulfilled as regards Free Mobile. As regards Lycamobile and Oméa Télécom, ARCEP considers that Point 9 of the Termination Rates Recommendation is not of application due to their lack of spectrum acquisition.

<sup>12</sup> For sake of simplicity, the wholesale service of national roaming denotes the service provided by the host MNO to either a new MNO (as Free Mobile) or a full MVNO (as Lycamobile and Oméa Télécom).

<sup>13</sup> ARCEP explains that a new entrant incurs, at least, the same incremental costs as an efficient operator when it terminates the call in its own network but higher costs when it makes use of the host MNO's network due to the tariff conditions of the commercial access agreements. These access agreements are indispensable for full MVNOs (on a permanent basis) and also for the new MNOs whose own network's coverage is limited in the initial years of its deployment.

ARCEP further considers that given that the full MVNOs have had a possibility to acquire spectrum licences but have chosen not to, the costs taken into account cannot be higher than the costs of an operator having acquired the spectrum licence.

based on the incremental costs for call termination of a "generic efficient new entrant which has access to a third party's network to provide such wholesale service" (hereinafter, efficient new entrant) thereby resulting in MTRs which are higher than established MNOs' MTRs, that are based on the incremental costs of a "generic efficient operator" (hereinafter, efficient operator) as set in the Termination Rates Recommendation (i.e. pure BU-LRIC based termination cost).

ARCEP clarifies in the response to the request for information that it calculates the incremental cost incurred by such an efficient new entrant for call termination as a "weighted average incremental termination cost" according to the following formula:

$(\text{Transmission cost} + \text{National roaming cost}) * \text{percentage of national roaming based terminating traffic} + \text{own network incremental termination cost} * \text{percentage of own network based terminating traffic}$ .

#### *Transmission cost*

The transmission cost refers to the additional cost of switching and transmitting the call through the efficient new entrant's core network in those cases where a call is terminated while on national roaming. This cost amounts to 0.12 Euro cents per minute.

#### *National roaming cost*

The national roaming cost refers to the incremental cost of terminating the call by means of the wholesale service for national roaming that the host MNO provides.

According to its response to the request for information, ARCEP analyses the access agreements signed by Free Mobile, Lycamobile, Oméa Télécom and NRJ Mobile<sup>14</sup> with the respective host MNOs<sup>15</sup> and concluded that the economic conditions obtained by [...] can be regarded as the most advantageous that could be expected from new operators in commercial negotiations.

As [...]s access agreement accounts for [...], ARCEP then makes an additional adjustment to obtain the fixed and variable prices which would in its view correspond to the economic conditions of efficient access. ARCEP distinguishes the costs which are strictly fixed (and hence independent of traffic volumes) and the variable costs which depend of the traffic volumes. ARCEP points out that the latter would reflect the incremental termination costs when using a third party's network (i.e. the host MNO's network) instead of its own network<sup>16</sup>.

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<sup>14</sup> Although NRJ Mobile has signed an access agreement, it is not providing termination services yet and thus ARCEP's proposal does not include NRJ Mobile in its present notification.

<sup>15</sup> These contract are heterogeneous [...].

<sup>16</sup> ARCEP outlines that such adjustment leads to costs for terminating traffic which are [15-30]% lower than the lowest costs which stem from the commercial access agreements.

**Table 1** shows the results relative to an efficient new entrant.

	Fixed Part in Million Euro	Variable part (National roaming based incremental termination cost) in Euro cents per minute		
		1st half 2012	2nd half 2012	2013
Incoming traffic	[...]	[...]	[...]	[...]
Outgoing traffic	[...]	[...]	[...]	[...]

#### *Own network incremental termination cost*

The own network incremental termination cost are, according to ARCEP, comparable for both new entrants and established MNOs, i.e., they are equivalent to the pure BU-RIC rates of 0.8 Euro cents per minute.

#### *Percentage of national traffic roaming costs*

ARCEP considered the deployment pace contained in the spectrum assignment decision of Free Mobile to be efficient and set the respective percentages of traffic terminated in the own network and the host MNO accordingly.

#### *Weighted average termination incremental cost*

Based on the above calculated parameters, ARCEP estimates the weighted average incremental termination cost of a new efficient operator in Euro cents/min as it is shown in **table 2**.

	1 half 2012	2 half 2012	2013
Transmission cost	0.12	0.12	0.12
National roaming cost (incoming traffic)	[...]	[...]	[...]
National roaming based incremental termination cost	[...]	[...]	[...]
Own network based incremental termination cost	0.8	0.8	0.8
Percentage of national roaming based terminating traffic	[...]%	[...]%	[...]%
<b>Weighted average termination incremental cost</b>	[...] <sup>17</sup>	[...]	[...]
Surcharge for national roaming <sup>18</sup>	[...]	[...]	[...]

#### Setting of MTR caps for Free Mobile, Lycamobile and Oméa Télécom

ARCEP sets the MTR caps as the sum of the following three elements:

<sup>17</sup> For example the weighted average incremental cost in the first half of 2012 is calculated, applying the above mentioned formula, as: [...]\*[...] + 0.8\*[...] = [...]

<sup>18</sup> The difference between the weighted average termination incremental cost incurred by the efficient new operators and the pure BU-LRIC based termination cost.

1. The weighted average termination incremental cost. It would comprise the own network based incremental termination cost (equivalent to the pure BU-LRIC based termination cost of 0.8 Euro cents/min) and the surcharge for national roaming;
2. The difference between the rates in the actual glide-path imposed on the established MNOs and the pure BU-LRIC rate<sup>19</sup>.
3. The surcharge to compensate the efficient new entrant for traffic imbalances, which is aggravated (in cash-flow terms) by the above-cost MTRs of the established MNOs as set in the glide path. The compensation for traffic imbalance is set at [...]Euro cents in the first semester 2012 and [...]Euro cents in the second semester 2012 and does no longer apply in 2013<sup>20</sup>.

The **graph 1** shows the proposed MTRs for Free Mobile, Lycamobile and Oméa Télécom in Euro cents/min.

[...]

ARCEP further considers that as the generic efficient cost level will not be achieved in this market analysis, it is coherent (with the decision in case FR/2011/1200) to retain also the *connection capacities* component (in Euro/year), whose unit measure is the Primary Numeric Block (PNB), besides the per minute MTR.

Therefore ARCEP proposes a symmetric glide path for Free Mobile, Lycamobile and Oméa Télécom as shown in **table 3**.

	Until 30 June 2012	From 1 July 2012 until 31 December 2012	From 1 January 2013 until 31 December 2013
<b>MTRs</b> (in Euro cents/min)	<b>2.4</b>	<b>1.6</b>	<b>1.1</b>
<b>PNB</b> (Euro per year)	<b>2 400</b>	<b>1 600</b>	<b>1 100</b>

### III. ASSESSMENT

The Commission has examined the notification and the additional information provided by ARCEP. ARCEP's draft measures concerning the wholesale market for voice call termination on individual mobile networks in France fall within Article 7a(1) of the Framework Directive.

<sup>19</sup> In 2011, ARCEP set a three-year glide path towards the pure BU-LRIC termination rate, which reaches the target level of 0.8 Euro cents on 1 January 2013. On this basis, the three established MNOs as well as the new entrants will be able to benefit from the same surcharge of 0.7 and 0.3 Euro cents for the first and second semester 2012, respectively.

<sup>20</sup> According to ARCEP the ratio between incoming traffic and outgoing traffic for the efficient new entrant would amount to [...] implying that the efficient new entrant receives [...] incoming minute per [...] outgoing minutes. In the case of Free Mobile this negative imbalance has been greater ([...]) since its commercial launch. Nonetheless, ARCEP expects that it will decline as long as the volume of on-net traffic increase and the profile of the average customer changes.

Therefore, as the efficient new entrant's traffic is negatively imbalanced ARCEP calculates the additional financial loss that such operator incurs as a result of the above-cost MTRs set in the glide-path. ARCEP only compensates for [...] % of the maximum possible asymmetry as it did for Bouygues when it set its asymmetrical MTRs for the year 2010.

Draft measures imposing regulatory obligations on undertakings with SMP in France may have an influence, direct or indirect, actual or potential, on the ability of undertakings established in other Member States to offer electronic communication services. ARCEP's notification comprises measures that have a significant impact on operators or users in other Member States, inter alia measures which affect prices for users. Consequently, such draft measure may affect the patterns of trade between Member States<sup>21</sup>.

The Commission has serious doubts as to the compatibility with EU law of ARCEP's draft decision in its current form, in particular with the requirements referred to in Article 8(4) and 13(2) of the Access Directive in conjunction with Article 8 of the Framework Directive and Article 16(4) of the Framework Directive. Furthermore, the Commission considers, at this stage, that the draft measures may create barriers to the internal market.

The Commission considers that the notified draft measures fall under the Commission's powers of ensuring consistent application of remedies as set out in Article 7a of the Framework Directive, as the notified measures aim at imposing an obligation on an operator in conjunction with Articles 9 to 13 of the Access Directive.<sup>22</sup>

The Commission expresses serious doubts in this regard for the following principal reasons:

**The need to ensure that customers derive maximum benefits in terms of efficient cost-based termination rates**

The Commission agrees that based on the competition problem identified by ARCEP in the wholesale market for voice call termination on the individual mobile networks of Free Mobile, Lycamobile and Oméa Télécom, consisting of the risk of excessive pricing, a price control remedy based on cost orientation is appropriate.

The Commission notes that the proposed MTRs for new entrant MNO and full MVNOs are not set at a symmetric level, which would correspond to the costs of an efficient operator (as those set for the established MNOs). The Commission considers, at this stage, that such asymmetry is not adequately justified by higher incremental unit costs of the new mobile entrant when compared to the modelled efficient operator, as explained below.

*Compliance with Article 8(4) and 13(2) of the Access Directive in conjunction with Article 8 of the Framework Directive and Article 16(4) of the Framework Directive*

The Commission refers to Article 8(4) and 13(2) of the Access Directive<sup>23</sup> which require the NRAs (i) to impose remedies which are based on the nature of the problem identified, proportionate and justified in the light of the objectives laid down in Article 8 of the Framework Directive and (ii) in relation to the imposition of price controls to ensure that the chosen cost recovery mechanism

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<sup>21</sup> See Recital 38 of the Framework Directive.

<sup>22</sup> Directive 2002/19/EC of the European Parliament and of the Council of 7 March 2002 on access to, and interconnection of, electronic communications networks and associated facilities, OJ L 108, 24.04.2002, p. 7, as amended by Directive 2009/140/EC, OJ L 337, 18.12.2009, p. 37.

<sup>23</sup> Directive 2002/19/EC of the European parliament and the Council of 7 March 2002 on access to, and interconnection, of electronic communications networks and associated facilities, OJ L 108, 24.4.2002, p. 7 (the Access Directive).

serves to promote efficiency and sustainable competition and maximises consumer benefits. Moreover, the Commission refers to Article 16(4) of the Framework Directive which requires NRAs to impose on SMP undertakings appropriate regulatory obligations.

In addition, the Commission underlines that pursuant to Article 8(3) of the Framework Directive NRAs shall contribute to the development of the internal market by cooperating with each other, with the Commission and BEREC in a transparent manner to ensure not only the development of a consistent regulatory practice but also consistent application of the Framework Directive and the Specific Directives (together, the Regulatory Framework).

In this regard, the Commission points out that it may issue recommendations<sup>24</sup> on the harmonised application of the Regulatory Framework in order to further the achievement of the objectives set out in Article 8 of the Framework Directive. This right arises, in particular, where the Commission finds that divergences in the implementation by the national regulatory authorities of their regulatory tasks under the Regulatory Framework may create a barrier to the internal market. It is in this context that the Commission, in order to ensure a correct and coherent interpretation and application of the relevant provisions of the Regulatory Framework within the EU, adopted the Termination Rates Recommendation, setting out a consistent approach that the NRAs should follow regarding price control obligations for fixed and mobile termination rates.

The Commission considers that full MVNOs and their respective host MNOs provide the same termination service because both operators make use of the same mobile network on the basis of the wholesale service for national roaming. The same is also true for all calls of the new MNO Free Mobile that are terminated under the national roaming agreement. Consequently, both Free Mobile and full MVNOs can benefit from the same economies of scale and/or scope as the host MNO and hence achieve the same unit costs irrespective of their actual market shares<sup>25</sup>. Furthermore, ARCEP itself argues that Free Mobile can generate the same efficiencies as the established MNOs when terminating calls *on its own network*. Therefore, the Commission cannot at this stage identify any higher per unit incremental termination costs incurred when Free Mobile or full MVNO customers are receiving calls.

In the present case, any cost difference between a host MNO and operators purchasing national roaming would largely depend on the negotiated airtime rate. However, unless the wholesale market for access and call origination to mobile networks is not effectively competitive, termination rates under a national roaming agreement should not normally exceed those of the host MNO. If higher commercial rates were to materialise then this should not normally be encouraged by higher MTRs for those operators not owning a network. Much to the contrary, full MVNOs/new MNOs may gain additional negotiating power if all operators knew in advance that the regulator would not grant asymmetric rates. Conversely, the granting of higher rates may give incentives not to negotiate too hard because the consumer would eventually foot the bill via higher regulated rates. When modelling the efficient new entrant it is, in view of the Commission, therefore wrong and circular to conclude that incoming calls under national roaming will

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<sup>24</sup> In accordance with Article 19 of the Framework Directive.

<sup>25</sup> See comment made by the Commission in case DK/2009/1013.



lead to higher MTRs because it is this regulatory approach that will induce higher commercial rates and consequently higher MTRs.

Further to that, point 10 of the Termination Rates Recommendation, which ARCEP itself invokes, would in any case require the NRA to demonstrate that a new MNO incurs higher per unit costs because it operates below the minimum efficient scale. ARCEP itself has determined that the unit costs of the new entrant Free Mobile (when it terminates the calls on its own network) are the same or potentially lower than those of the established MNOs, despite its low market share. Further to that, point 10 should, in view of the Commission, not be applied to MVNOs because their MTRs would at all times be determined by negotiated national roaming rates, which may not be as scale sensitive as ARCEP suggests.

Against this background, the Commission has serious doubts whether surcharge for national roaming that result in a price asymmetry between the MTRs of Free Mobile, the full MVNOs and the host MNOs are in compliance with the Regulatory Framework.

As to the surcharge for traffic imbalances, the Commission notes that according to ARCEP new entrants should be compensated because their traffic is imbalanced in the early years of activity, and the resulting financial loss is greater than what would be incurred if MTRs were already set at the level of pure BU-LRIC. In this regard, the Commission would like to stress that traffic is not imbalanced because of the presence of small and large operators in a market *per se* but is often the result of a distinct commercial strategy of the new entrant (e.g. uniform vs. on-net/off-net price differentiation). This should not normally justify higher termination rates of new entrants.

Moreover, the Commission notes that ARCEP fails to establish the direct relationship between (i) the financial imbalance stemming from traffic exchange and (ii) the termination costs incurred by the operator subject to such imbalance. This issue is relevant in the light of the retail prices in France, which are still well above MTR<sup>26</sup> and which raises the question whether operators should be compensated in those instances where they are not incurring losses on off-net calls.

The Commission therefore has serious doubts whether both surcharges for national roaming and traffic imbalance would not be contrary to Articles 8(4) and 13(2) of the Access Directive in conjunction with Article 8 of the Framework Directive and Article 16(4) of the Framework Directive. Indeed, such unjustified asymmetries would result in higher MTRs for full MVNOs and new entrant operators, which in turn will lead to higher retail prices and the associated loss in consumer benefit contrary to Articles 8(4) and 13(2) of the Access Directive in conjunction with Article 8 of the Framework Directive and Article 16(4) of the Framework Directive.

*Compliance with the non-discrimination principle as set out in the Article 8(5) (b) of the Framework Directive*

The non-discrimination principle is a general principle of EU law, mandating equal treatment of similar situations. In the context of the Regulatory Framework, Article 8(5) (b) of the Framework Directive imposes an obligation on NRAs to apply, *inter alia*, non-discriminatory regulatory principles to ensure that there is

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<sup>26</sup> According to the response of ARCEP to the request for information, the average revenue per minute was of [10-20] Euro cents in 2011.

no discrimination in the treatment of operators in similar circumstances.

The Commission, at this stage, takes the view that the price control remedy proposed by ARCEP would lead to a price discrimination of host MNOs *vis-à-vis* the respective full MVNOs and the new MNO because both operators provide the same termination service over the same mobile network and ARCEP did not provide an adequate justification as regards the objective cost differences that would warrant asymmetric MTRs, even when the new MNO terminates the calls on its own network.

#### *Creation of barriers to the internal market*

The Commission further notes that if the termination rates were set by one NRA above the cost-efficient level, the terminating operators in this Member States will be able, on the basis of the calling party pays principle, to benefit from this rate at the expense of the operators, and ultimately the consumers, in the Member State from which the call originates.

The measure proposed by ARCEP would very likely lead to the creation of a barrier to the internal market, as on the basis of the calling party pays principle, the terminating new MNO Free Mobile as well as full MVNOs in France would be able to charge higher wholesale terminating rates than their host MNOs for calls originated in those Member States, where as of 1 January 2013 (or later on in 2013) the recommended pure BULRIC rates are applied. Although host MNOs may in turn benefit from this via higher national roaming rates, operators and their subscribers in other Member States will still suffer from higher rates in France.

In addition, the Commission points out that in several Member States a symmetric price control remedy was imposed on the full MVNOs following their entry in the market<sup>27</sup>. Different regulatory approaches adopted by the NRAs within the EU would undermine the integrity of the internal market.

Moreover, the Commission observes that MTRs set at an efficient level contribute to a level playing field not only at national but also at EU level, by eliminating competitive distortions between fixed and mobile networks.

#### *Conclusion*

In this particular case, the Commission observes that ARCEP's notification does not provide adequate justification of why the proposed approach for the price remedy on the termination service provided by Free Mobile, Lycamobile and Oméa Télécom meets the policy objectives and regulatory principles enshrined in Article 8 of the Framework Directive, and can be considered to be in line with Articles 13(2) and 8(4) of the Access Directive. Hence, the Commission has serious doubts that ARCEP's proposal on termination rates can be considered appropriate in the given termination markets within the meaning of Article 16(4) of the Framework Directive and justified in light of the objectives laid down in Article 8 of the Framework Directive, and in particular the objectives of promoting competition and user benefits and ensuring that there is no distortion

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<sup>27</sup> For example, in Netherlands (cases NL/2005/0215, NL/2010/1080 and NL/2012/1285), Austria (cases AT/2005/0238 and AT/2010/1036), Sweden (case SE/2011/1221), Germany (case DE/2009/0947) Spain (cases ES/2007/0706, ES/2008/0819 and ES/2012/1291), NRAs have considered that the MTRs of full MVNOs should be equal to their host MNOs' MTRs. Even in Denmark where the NRA proposed asymmetric MTRs for full MVNOs the reasoning was based on the national law provision rather than on an economic assessment (case DK/2009/1013).

or restriction of competition in the electronic communications sector, pursuant to Article 8(2) of the Framework Directive and believes, at this stage, that the draft measures would create barriers to the internal market.

The above assessment reflects the Commission's preliminary position on this particular notification, and is without prejudice to any position it may take vis-à-vis other notified draft measures.

The Commission points out that, in accordance with Article 7a of the Framework Directive, the draft measure regarding the wholesale markets for voice call termination on individual mobile networks of Free Mobile, Lycamobile and Oméa Télécom in France shall not be adopted for a further three months.

Pursuant to Recital 17 of Recommendation 2008/850/EC<sup>28</sup>, the Commission will publish this document on its website, together with a notice inviting third parties to submit observations on this serious doubts letter within ten working days. The Commission does not consider the information contained herein to be confidential. You are invited to inform the Commission<sup>29</sup> within three working days following receipt whether you consider that, in accordance with European Union and national rules on business confidentiality, this document contains confidential information which you wish to have deleted prior to such publication. You should give reasons for such request.

Yours sincerely,  
For the Commission,  
Joaquín ALMUNIA  
Vice-President of the Commission

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<sup>28</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>29</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.