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National Media and
Infocommunications Authority
(NMHH)
Ostrom u., 23-25
H-1015 Budapest
Hungary

For the attention of
Ms. Monika Karas
President

Fax: +36 1 457 7171

Dear Ms Karas,

Subject: Case HU/2015/1705: Wholesale voice call termination on individual mobile networks in Hungary

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

1. PROCEDURE

On 5 February 2015, the Commission registered a notification from the Hungarian national regulatory authority, National Media and Infocommunications Authority (NMHH), concerning the fifth round review of the wholesale market for voice call termination on individual mobile networks in Hungary[1].

The national consultation[2] ran from 3 to 23 December 2014.

On 12 February 2015, a request for information (RFI)[3] was sent to NMHH and a response was received on 17 February 2015.

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.

[1] Corresponding to market 2 of the Commission Recommendation 2014/710/EU of 9 October 2014 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 295, 11.10.2014, p. 79.

[2] In accordance with Article 6 of the Framework Directive.

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

2. DESCRIPTION OF THE DRAFT MEASURE

2.1. Background

The fourth round review of the market was assessed by the Commission in case HU/2011/1225[4]. The market definition included all calls terminated on mobile networks, irrespective of the technology used (i.e., both 2G and 3G). Three mobile network operators (MNOs) were designated with significant market power (SMP) in their respective termination markets: Magyar Telekom, Telenor and Vodafone. The following regulatory obligations were proposed to be imposed on the three SMP operators: transparency, non-discrimination, accounting separation, access and interconnection, cost accounting and price control.

As regards the price control remedy, NMHH proposed to maintain the mobile termination rates (MTRs) at the level of 11.86 HUF/min (approx. 4.47 €ct/min at the time of the notification) and to introduce a two staged glide-path for MTRs for the three SMP operators. The transition scheme was foreseeing two steps for the following periods: i) from 1 January 2012 to 31 December 2012 MTRs were to be set at a level of 9.46 HUF/min (approx. 3.57 €ct/min); and ii) from 1 January 2013 MTRs were to be set at a level of 7.06 HUF/min (approx. 2.66 €ct/min). NMHH presumed in its draft measure a later imposition of a third step to regulate MTRs from 1 January 2014, as a result of the next market analysis, to arrive at the cost based target level of 4.64 HUF/min (approx. 1.75 €ct/min), depending on the situation in the market. This price level was based on long-run incremental cost model using a hybrid modelling approach calibrated with data from dominant market players. NMHH thus only announced that possible third step without imposing it by virtue of the notified draft measure.

In its comments letter, the Commission, while recognising NMHH's efforts to minimise business and regulatory uncertainty resulting from a strong decrease in MTRs, urged NMHH to reconsider its glide-path and align it with the deadline provided for in the Termination Rates Recommendation[5], i.e. 31 December 2012.

2.2. Market definition

In line with its 2011 approach, NMHH defines the market as including all calls terminated on mobile networks, irrespective of the technology used or the origination of the call.

2.3. Finding of significant market power

Currently there are six operators providing mobile termination services in Hungary: in addition to the three MNOs previously found with SMP, three mobile virtual network operators (MVNOs) have entered the market since 2011 (Tesco MBL, UPC and Netfone).

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4 C(2011) 4536.

5 Commission Recommendation 2009/396/EC of 7 May 2009 on the Regulatory Treatment of Fixed and Mobile Termination Rates in the EU (Termination Rates Recommendation), OJ L 124, 20.5.2009.

In their response to the Commission's request for information NMHH confirmed that the three MVNOs have not been regulated since their entry in the market[6]. NMHH further explains that in case of possible market entry in the future, the NRA will assess the market entry in terms of its impact on competition and if justified, it will conduct the market analysis immediately. At the same time, NMHH is of the view that an extraordinary market analysis (i.e. before the three-year review period) is only justified if the interconnection conditions applied by a new entrant severely distort market competition.

NMHH proposes to designate all six operators as having SMP on their individual networks. The criteria considered by NMHH in reaching its conclusion are *inter alia*: i) 100% market share of each operator on its individual mobile network; ii) absence or low level of countervailing buying power, iii) lack of potential competition, and (iv) control of infrastructure which is not easily duplicated.

2.4. Regulatory remedies

NMHH intends to impose the following regulatory obligations on each of the six SMP operators: transparency, non-discrimination, obligations relating to access and interconnection; and cost accounting and price control. In addition, the obligation of accounting separation will be imposed on the three MNOs.

As regards the price control remedy, NMHH proposes to calculate the MTRs in Hungary based on a pure bottom-up long run incremental (pure BU-LRIC)[7] model and sets them at the level of 1.71 HUF/min. (or 0.55 €ct/min[8]) without introducing a glide-path[9]. In line with its approach in the fixed termination markets[10], NMHH foresees the possibility for operators, in case of IP-based interconnection, to set MTRs based on data volume (instead of per minute rate). In this case, the equivalent per minute rate of the price based on volume data should not exceed the proposed per minute rate.

The scope of the price control obligation is limited to the termination of calls originated within the European Economic Area. NMHH explains this differentiation of the price control obligation by the fact that termination rates in the countries outside this Area are not subject to the same cost-orientation obligation as in the

6 In response to the Commission's RFI NMHH stated that Tesco MBL entered the market in the second quarter of 2012 whereas UPC and Netfone entered the market in the fourth quarter of 2014. Despite lack of regulation of the new MVNOs NMHH explains that the operators were applying the regulated MTRs.

7 The model foresees the economic depreciation of the assets and reflects the costs incurred by a hypothetical efficient operator having 33.3 % market share and running an NGN backbone and a combined access network.

8 Conversion based on the ECB's Euro foreign exchange reference rates as at 10 February 2015, i.e.1 € = 309.34 HUF.

9 According to NMHH the new MTRs are to be applied as of the first day of the month following publication of the final measure. As to the target level of 4.64 HUF/min calculated in 2011 with a view to its possible imposition in 2014, NMHH explains that the entry of new operators on the market and the resulting delay in the BU-LRIC modelling have implied the non-imposition of this rate.

10 See case HU/2013/1506.

EU, thereby resulting in higher levels than the ones applicable in Hungary. Such higher termination rates are not necessarily based on higher costs incurred in the countries outside the European Economic Area. Therefore, NMHH considers that a uniform BU-LRIC based price-control obligation (i.e. imposed also on calls originated outside the European Economic Ares) is not necessary to fulfil the objectives set out in Article 8.2 of the Framework Directive. On the contrary, allowing Hungarian operators to charge higher termination rates would give them more countervailing buyer power in their negotiations with operators from outside the European Economic Area. NMHH considers therefore that such wide application of the BU-LRIC price control obligation would not be proportionate and justified and refers to other NRAs' similar approaches.

3. COMMENTS

The Commission has examined the notification and the additional information provided by the NMHH and has the following comment:[11]

Need for a timely review of all relevant markets

The Commission notes that one of the three operators, which have entered the market since NMHH's last review in 2011, has been active in the market for over 2 years without its respective termination market having been analysed until now. With respect to the timeframe for market reviews, the Commission would like to remind NMHH that, under Article 16(1) of the Framework Directive, NRAs have to undertake a market analysis at such intervals that ensure that ex ante regulation is imposed and maintained in markets in which, due to a lack of effective competition, ex ante regulation is warranted. The Commission maintains[12] that since the markets for mobile call termination are listed in the Recommendation on relevant markets, a market analysis should be carried out as soon as transactions can be observed on such markets. From responses to the national consultation and NMHH's response to the Commission's RFI, the Commission takes note that further market entry is expected in the near future. Therefore, the Commission asks NMHH to analyse in the future any new termination services launched without undue delay.

Pursuant to Article 7(7) of the Framework Directive, NMHH 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, 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[13] the Commission will publish this document on its website. The Commission does not consider the information contained

[11] In accordance with Article 7(3) of the Framework Directive.

[12] See for example the Commission's comment in case SE/2010/1091.

[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.

herein to be confidential. You are invited to inform the Commission[14] 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

[14] Your request should be sent either by email: CNECT-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.