



EUROPEAN COMMISSION

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Urząd Komunikacji Elektronicznej
(UKE)
7/9 Giełdowa Street
01-211 Warsaw
Poland

For the attention of
Mr Marcin Cichy
President

Subject: Commission Decision in Case PL/2019/2201 concerning a review of the reference offer in the following markets:

Call origination on the public telephone network provided at a fixed location in Poland (Market 2 - 2007 Recommendation);

Wholesale call termination on individual public telephone networks provided at a fixed location (Market 1 – 2014 Recommendation);

Wholesale local access provided at a fixed location (Market 3a – 2014 Recommendation), and

Wholesale central access provided at a fixed location for mass-market products (Market 3b – 2014 Recommendation).

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

Dear Mr. Cichy,

1. PROCEDURE

On 17 September 2019, the Commission registered a notification from the Polish national regulatory authority, *Urząd Komunikacji Elektronicznej* (UKE)¹, concerning an amendment of a reference offer regarding penalties and discounts. This reference offer concerns markets for: (i) call origination on the public telephone network provided at a fixed location in Poland; (ii) wholesale call termination on individual public telephone networks provided at a fixed location; (iii) wholesale local access provided at a fixed location and (iv) wholesale central access provided at a fixed location for mass-market products².

The national consultation³ ran from 14 June 2019 to 15 July 2019.

2. DESCRIPTION OF THE DRAFT MEASURE

2.1. Background

On 29 September 2010, UKE adopted a single reference offer covering several regulated services such as the markets for wholesale call origination, call termination, local loop unbundling and bitstream access (including interconnection services and wholesale line rental) (“the Reference Offer”).

Since its adoption, the Reference Offer has been subject to frequent amendment, numbering around 18 updates since the first one in 2011 to the current notified draft measure⁴. When questioned in a previous notification (ref: PL/2016/1869⁵) about the frequency of amendments to the Reference Offer, UKE responded that all changes proposed so far were due to rapidly changing market demand, as well as the fact that a single Reference Offer encompasses a variety of access products. UKE explained that all

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 Corresponding, respectively, to 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 the Framework Directive (Recommendation on Relevant Markets), OJ L 344, 28.12.2007, p. 65, and to Markets 1, 3a and 3b in 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 Framework Directive (Recommendation on Relevant Markets), OJ L 295, 11.10.2014, p. 79..

³ In accordance with Article 6 of the Framework Directive.

⁴ Including Notifications such as, PL/2014/1578 (C(2014)2735); PL/2014/1589-1590-1591 C(2014)3362; PL/2015/1715 C(2015)1969; PL/2015/1724 C(2015)2346; PL/2015/1730 C(2015)3411; PL/2015/1734 C(2015)4176; PL/2015/1780 C(2015)6950; PL/2015/1797 C(2015)8818; PL/2016/1852-1853 C(2016)2794; PL/2016/1869 C(2016)3907; PL/2016/1918 C(2016)7390; PL/2016/1869 C(2016)3907; PL/2017/1972 C(2017)2368; PL/2018/2102-2103-2105 C(2018)5900.

⁵ C(2016)3907

proposed amendments were subject to national consultation, which gave the market participants a possibility to express their views on the matter.

The full market reviews for the Polish markets affected by the Reference Offer⁶ were previously notified to and assessed by the Commission under cases PL/2018/2081⁷, PL/2019/2156⁸, PL/2019/2160⁹ and PL/2019/216¹⁰, respectively. In those cases where UKE designated Orange Polska S.A. (OPL, previously Telekomunikacja Polska S.A.) as having Significant Market Power on the relevant markets, it imposed on it a set of regulatory obligations including, in all cases, the obligation of publication of a reference offer.

2.2 The Notified Draft Measure

The notified draft measure proposes to introduce the following updates to the Reference Offer:

- (a) selected penalties on the incumbent operator are reduced and/or removed;
- (b) the possibility of calculation of doubled penalty for the same offense is prohibited;
- (c) specification of circumstances in which penalties are not charged to the incumbent;
- (d) procedures for discount calculation, and
- (e) limitation of the maximum value of contractual penalty for each event to sixty fold of the base contractual penalty.

3. NO COMMENTS

The Commission has examined the notification and has no comments.¹¹

Under Article 7(7) of the Framework Directive, UKE may adopt the draft measure and, where it does so, shall communicate it to the Commission.

⁶ i.e. the markets for (i) call origination on the public telephone network provided at a fixed location in Poland; (ii) wholesale call termination on individual public telephone networks provided at a fixed location; (iii) wholesale local access provided at a fixed location and (iv) wholesale central access provided at a fixed location for mass-market products.

⁷ C(2018)4134 – On ex-Market 2, 2007 Recommendation, UKE concluded that the market was not susceptible to *ex ante* regulation; it proposed to withdraw all remedies previously imposed on OPL, planning a transition period of 2 years.

⁸ C(2019)3355 – On Market 1, 2014 Recommendation, the Commission raised serious doubts as to whether UKE's proposal on fixed termination rates could be considered appropriate in the given termination markets.

⁹ C(2019) 4073 - On Market 3a, 2014 Recommendation, UKE proposed to designate OPL as having SMP throughout the whole of Poland with the exception of the 51 communal areas meeting the criteria for a high level of competition.

¹⁰ C(2019) 4073 – On Market 3b, 2014 Recommendation, With regard to UKE proposed to designate OPL as SMP throughout the whole of Poland with the exception of the 151 communal areas identified as competitive.

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

The Commission's position on this particular notification is without prejudice to any position it may take on other notified draft measures.

Pursuant to point 15 of Recommendation 2008/850/EC¹² the Commission will publish this document on its website. In case UKE considers that, in accordance with EU and national rules on business confidentiality, this document contains confidential information, which you wish to have deleted prior to publication, please inform the Commission¹³ within three working days following receipt¹⁴ and give reasons for any such request.

Yours sincerely,

For the Commission
Roberto Viola
Director-General

¹² 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.

¹³ By email: CNECT-ARTICLE7@ec.europa.eu .

¹⁴ The Commission may inform the public of the result of its assessment before the end of this three-day period.