Brussels, 10.3.2014
C(2014) 1690 final

Hellenic Telecommunications & Post Commission (ΕΘΝΙΚΗ ΕΠΙΤΡΟΠΗ ΤΗΛΕΠΙΚΟΙΝΩΝΙΩΝ ΚΑΙ ΤΑΧΥΔΡΟΜΕΙΩΝ) (EETT)
60 Kifissias Avenue
(Λ. Κηφισίας 60)
GR-151 25 Maroussi (Μαρούσι)
Greece

For the attention of:
Mr Konstantinos Louropoulos
President

Fax: + 30 21 06 151 113

Dear Mr Louropoulos,

Subject: Commission Decision concerning Case EL/2014/1562: Call origination on individual public telephone networks provided at a fixed location
Commission Decision concerning Case EL/2014/1563: Call termination on individual public telephone networks provided at a fixed location
Commission Decision concerning Case EL/2014/1564: Transit services in the public telephone network

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

I. Procedure

On 11 February 2014, the Commission registered a notification1 from the Hellenic Telecommunications & Post Commission (EETT), concerning the third round review of the markets for (i) call termination on individual public telephone networks provided at a fixed location in Greece, (ii) call origination on individual public telephone networks

---

provided at a fixed location in Greece\(^2\), and (iii) transit services in the public telephone network in Greece\(^3\).

Two national consultations relative to the pure BU-LRIC model were carried out in 2013; from 24 May to 24 June and from 4 September to 4 October. The national consultation relative to the market definition, SMP designation, and proposed remedies ran from 26 July 2013 to 4 October 2013.

A request for information (RFI) was sent to EETT on 18 February 2014, and a response was received on 21 February 2014. Additional information was received on 27 February 2014.

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.

II. DESCRIPTION OF THE DRAFT MEASURE

II.1. Background

In the second market review, notified to and assessed by the Commission in 2010\(^4\), EETT designated OTE as an operator having significant market power (SMP) in the markets for call origination, call termination and transit services. Concerning the transit market, the Commission pointed to the signs of network duplication and direct interconnection among operators and commented on the need for EETT to monitor whether \textit{ex ante} regulation would still be needed. Moreover, the Commission urged EETT to align, as soon as possible, its cost accounting methodology with the principles set out in the \textit{Termination Rates Recommendation}\(^5\). Finally, the Commission reminded EETT of the obligation for NRAs to notify under Article 7(3) of the Framework Directive any draft measure impacting price levels.

II.2. Market definition

In the light of technological developments, EETT changes the delineation of the interconnection markets defining the boundaries of the relevant markets depending on the underlying technology\(^6\): for TDM networks, the delineation point of call origination and


\(^6\) The current delineation of the interconnection markets is based on OTE’s TDM network topology. Call origination and call termination are defined as the transfer of calls between the subscriber and the local exchanges.
call termination services is defined at OTE's single tandem node, while for NGA networks it is at the NGN central node.

**II.2.1. The market for call origination on the public telephone network provided at a fixed location**

EETT identifies one market for the provision of all call origination services irrespective of call categories (geographic and non-geographic numbers) to (i) Carrier Selection (CS) and Carrier Pre-Selection (CPS) operators, and to (ii) direct access providers that are hosting or terminating calls to service providers where the called party pays, partially or in full, for the call to those services. Self-supply from both OTE and ANOs is excluded from the relevant market.

**II.2.2. The market for call termination on the public telephone network provided at a fixed location**

EETT considers that the provision of termination services on each individual fixed network in Greece constitutes a distinct product market. Termination services for on-net (self-supply) and off-net calls are included in the relevant product markets. Termination services using non-geographic numbering are excluded from the relevant market.

**II.2.3. The market for transit services in the fixed public telephone network**

EETT considers that all call categories (geographic and non-geographic numbers) are part of the transit market. Self-supply from alternative network operators (ANOs) is excluded from the relevant market.

EETT considers the geographic scope of all interconnection markets to be national.

**II.3. Three criteria test with respect to the market for transit services**

Since this market is not included in the 2007 Recommendation on relevant markets susceptible to *ex ante* regulation, EETT carries out the three criteria test.

As to the first criterion, EETT explains that the market is no longer characterized by high and non-transitory structural entry barriers, which is mainly due to the deployment of ANOs' own networks and development of direct interconnection. In EETT's view, an ANO intending to provide wholesale transit services will not incur significant sunk costs, and OTE's economies of scale and scope are not unsurmountable. In addition, EETT finds that network deployment and development of direct interconnection suggest that OTE's infrastructure could be duplicated to a sufficient extent to offer a substitute to OTE's transit services. EETT further explains that there are no barriers to customer switching.

EETT thus concludes that the first criterion is not met and that the market for transit services no longer warrants *ex ante* regulation.

**II. 4 SMP assessment**

EETT proposes to designate OTE as an operator having SMP on the call origination and call termination markets. 17 other operators are also proposed to be designated as having SMP only on their respective markets for voice call termination at a fixed location. The criteria considered by EETT when assessing SMP are on both markets: market shares, barriers to entry and potential competition, vertical integration/ability to charge excessive prices, and lack of countervailing buyer power.
II.5 Remedies

EETT proposes to impose on all SMP operators active on the relevant call origination and call termination markets the obligations of access, transparency, non-discrimination, price control and cost-accounting. The additional obligation of accounting separation will be limited to OTE on the markets for fixed voice call origination and fixed call termination.

II.5.1. Market for fixed voice call origination

In line with its previous notification, the price control obligation is proposed to be based on a top-down long-run average incremental costs plus (LRAIC+) methodology. In this respect, OTE has an obligation to offer call origination services using the above-mentioned model based on data annually audited by EETT. In the response to the RFI, EETT clarifies that the call origination prices to be determined for 2014 by OTE and audited by EETT are expected to be close to the 2013 levels.

However, EETT explains that the call origination prices could deviate from the output of the top-down model in case OTE wants to recoup the cost difference between the top-down LRAIC+ termination rates and the pure BU-LRIC model termination rate. Such recoupment would require prior EETT approval. While the cost difference is to be at least partially recouped from retail access and retail calls, OTE could also recoup costs from the call origination and WLR services.

In a response to the RFI, EETT clarified that the price control obligation will be implemented from the date of entry into force of the relevant EETT decision.

II.5.2. Market for fixed voice call termination

The fixed termination rates (FTRs) are calculated on the basis of a bottom-up long-run incremental costs (BU-LRIC) model. The model, based on the modified scorched node approach⁷, assumes a FTTC access network and a hybrid core TDM/NGN, with a gradual migration towards a full core NGN (assumed to start in 2014 and to be completed not earlier than 2022).

As regards the minimum efficient scale, EETT models the efficient operator as a hypothetical existing operator⁸ with nation-wide coverage over a period of 25 years. The efficient operator would enter the market 5 years prior to regulation (i.e. 2008), gradually increase its market share to 17% (in terms of traffic) at the end of 2013 after which the next regulatory period starts, to reach the target market share of 25% over 13 years. The target market share of 25%, applicable for the remaining duration of the model, reflects a stabilised competitive market with four competitors⁹.

---

⁷ This approach takes the existing network topology (e.g. nodes) as given but eliminates inefficiencies (e.g. with respect to the connection technologies used between the existing nodes).

⁸ While the model's assumptions with respect to the proposed market share of the efficient operator and its evolution are based on the current state of the Greek termination markets, they do not reflect a particular existing operator.

⁹ Thus, for the purpose of determining the minimum efficient scale, EETT favours the 1/N approach where N is the number of operators with important presence on the relevant market.
EETT’s proposed modelling results in the following pure BU-LRIC based FTRs\(^{10}\):

<table>
<thead>
<tr>
<th>Pure BU-LRIC FTRs in (€c/min)</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>From entry into force of the present draft measure - until the end of 2014</td>
<td>0.0983</td>
</tr>
<tr>
<td>2015</td>
<td>0.0820</td>
</tr>
<tr>
<td>2016</td>
<td>0.0719</td>
</tr>
<tr>
<td>2017 - until the next round of market analysis</td>
<td>0.0638</td>
</tr>
</tbody>
</table>

EETT confirms in the response to the RFI that the proposed FTRs do not result from a glide-path but that their gradual decrease is among other elements due to an increase in the market share of the modelled operator. EETT further clarifies that the above rates have been calculated on the basis of the projected consumer price index for the years 2014, 2015, 2016 and 2017. The FTRs will therefore be directly applicable for these years without the need for EETT to issue new price decisions.

In its response to the RFI, EETT explains that the modelled operator is based on an operator with a progressively increasing market share rather than on an operator with a stable market share fixed at 25% as it considers it being more realistic in an actual development of a Greek telephony network\(^{11}\). EETT further considers the fact that the modelled operator enters a market in 2008\(^{12}\) with a PSTN network which gradually, (starting in 2014) evolves to NGA network and concludes that the target efficient scale of 25% will be reached once this transformation is fully completed.

In a response to the RFI, EETT also clarified that the proposed fixed termination rates are to be implemented one month after the entry in force of the relevant EETT decision in order to allow the operators to adjust their pricing plans, IT systems, and inform their customers.

### III. COMMENTS

The Commission has examined the notification and the additional information provided by EETT and has the following comments\(^{13}\):

---

\(^{10}\) EETT explains in the response to the RFI that each of the above FTRs (e.g. 0.0983 €c/min for the year 2014) does not solely depend on the market share of the base year 2013 but on the total evolution in the market share throughout the modelled period (2008-2033). EETT further explains that based on EETT’s sensitivity analysis the evolution of the modelled market share affects the resulting FTRs no more than 1%.

\(^{11}\) In this respect, EETT explains in the response to the RFI that given that the Termination Rates Recommendation does not determine exactly the efficient operator’s market share over time, EETT has considered in the initial public consultation on the model two different approaches: one approach under which the modelled operator reaches immediately a stable market share (i.e. from the date of entry in the market), and a second approach which is the chosen one and according to which the operator’s market share evolves gradually with the development of the network until it reaches a target value.

\(^{12}\) EETT notes that the alternative operators began to offer services through LLU in 2007, and there are currently 5 major fixed telephony operators besides the incumbent.

\(^{13}\) In accordance with Article 7(3) of the Framework Directive.
Need for consistency between the cost model used for setting FTRs and pursued regulatory objectives

The Commission welcomes that EETT notified FTRs based on a pure BU-LRIC model. However, pursuant to the Termination Rates Recommendation (the Recommendation) EETT should have ensured that termination rates are implemented at a cost-efficient level on the basis of a pure BU-LRIC model already by 31 December 2012. In this respect, the Commission regrets that EETT failed to set FTRs consistent with the principles and timing of the Recommendation which results in their considerably late implementation, i.e. only in the second quarter of 2014.

The Commission observes that the pure BU-LRIC methodology best promotes competition by, inter alia, ensuring that all users derive maximum benefit in terms of choice, price and quality, in line with Article 8(2) of the Framework Directive. Moreover, the Commission observes that termination rates, which are based on a pure BU-LRIC model, contribute to a level playing field among operators by eliminating competitive distortions in the termination markets.

The Commission notes that the pure BU-LRIC rate notified by EETT is gradually decreasing from 0.0983 €c/min in 2014 to 0.0638 €c/min in 2017. The Commission observes that an assumption is made that if an efficient operator were to enter the market, it would take him several years to reach the target efficient scale in a competitive termination market in Greece. Thus, EETT models the efficient operator as one with a market share which progressively increases.

While recognising the difficulty to determine the minimum efficient scale for fixed networks and leaving to NRAs the flexibility to set its precise level, the Recommendation sets out that NRAs, when defining the appropriate single efficient scale, should take into account the need to promote efficient market entry, assuming hence a modelled operator who is already efficient when it enters the market. The Commission has no grounds to question the efficient scale assumptions employed by EETT in the present case. While acknowledging the potentially low sensitivity of BU-LRIC costs to the modelled market share, the Commission is of the view that there is a reference market share under which an operator would not be efficient and which has to be clearly defined for the purpose of the BU-LRIC modelling. Accordingly, the modelled efficient operator is to be considered as one who is already present on the market and has achieved an efficient level of operations. Such approach would best ensure promotion of efficiency, sustainable competition and maximise consumer benefit in line with Article 13 of the Access Directive.

Since the rate that EETT considers being BU-LRIC in the regulatory period is based on the assumption of an increasing market share and could incentivise inefficient market entry, the Commission considers that EETT's approach is not in line with the primary objective pursued by a BU-LRIC model, i.e. to mimic a competitive market which supports only efficient operators.

The Commission further notes that EETT's modelling outcome suggests that pure BU-LRIC unit costs are decreasing for a larger scale operator. However, the Commission would like to point out that the specificities of the pure BU-LRIC modelling exercise may well result in BU-LRIC unit
costs, which increase with scale. This is due to additional capacity needs for the purpose of carrying additional wholesale termination traffic for those providers which are operating close to existing capacity.

Against this background, the Commission urges EETT to ensure that the FTRs result from a BU-LRIC model that would ensure efficient entry and are modelled already in 2014 on the basis of an efficient operator's market share which is stable over time.

**Need for common approach to price control of call origination services**

EETT considers that an increase in the call origination prices in Greece could not be excluded, which is due to the possibility for OTE to recoup a proportion of the costs no longer recouped through the pure BU-LRIC termination tariff on related regulated markets.

In this respect, the Commission reminds EETT that, as already stressed at other occasions\textsuperscript{14}, terminating operators normally have the ability to recover their costs from non-regulated retail services offered in competitive markets. Shifting costs from the wholesale call termination market to other regulated services may create additional barriers to enter the retail telephony market, thus hindering competition.

The Commission therefore calls upon EETT to make the necessary adjustment to its final measure as well as to reflect it in its subsequent assessment of OTE’s request to recoup certain costs which are no longer recovered through the termination tariff from the call origination regulated products.

Finally, the Commission reminds EETT that any change in the actual levels of the call origination prices are considered to be material changes to the nature or scope of a remedy, having an appreciable impact on the market and should therefore be notified prior to its adoption under Article 7(3) of the Framework Directive.

Pursuant to Article 7(7) of the Framework Directive, EETT 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 \textit{vis-à-vis} other notified draft measures.

Pursuant to Point 15 of Recommendation 2008/850/EC\textsuperscript{15} the Commission will publish this document on its website. The Commission does not consider the information contained herein to be confidential. You are invited to inform the Commission\textsuperscript{16} within three working days following receipt whether you consider that, in accordance with EU and

\textsuperscript{14} See cases FR/2011/1236, LU/2013/1520.


\textsuperscript{16} Your request should be sent either by email: CNECT-ARTICLE7@ec.europa.eu or by fax: +32 2 298 87 82.
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 any such request.

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

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