EUROPEAN COMMISSION

Brussels, 10.3.2015
C(2015) 1703 final

Hrvatska agencija za poštu i elektroničke komunikacije (HAKOM)
Ulica Roberta Frangeša Mihanovića 9
10110 Zagreb

For the attention of:
Mr Dražen Lučić
President of Council

Fax: + 385 1 700 70 70

Dear Mr Lučić,

Subject: Commission Decision concerning Case HR/2015/1709: Wholesale voice call termination on individual mobile networks in Croatia

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

1. PROCEDURE

On 11 February 2015, the Commission registered a notification from the Croatian national regulatory authority, Hrvatska agencija za poštu i elektroničke komunikacije (HAKOM)[1], concerning wholesale voice call termination on individual mobile networks[2] in Croatia.

The national consultation[3] ran from 17 December 2014 to 30 January 2015.

On 19 February 2015 a request for information[4] (RFI) was sent to HAKOM and a response was received on 24 February 2015.

---

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 to market 2 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 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.

3 In accordance with Article 6 of the Framework Directive.

4 In accordance with Article 5(2) of the Framework Directive.

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.

2. DESCRIPTION OF THE DRAFT MEASURE

2.1. Background

This is the first time that the market for wholesale voice call termination on individual mobile networks in Croatia is notified to and assessed by the Commission. The reason is that HAKOM reviewed the market in June 2013, before Croatia joined the European Union (on 1 July 2013) and, consequently, at the time HAKOM's market analysis was not subject to the Commission's review. In the 2013 review of the market for wholesale mobile voice call termination, HAKOM identified HT, Tele2 and Vipnet as operators with significant market power (SMP) and imposed on them the following regulatory obligations: (i) access to and use of specific network facilities; (ii) non-discrimination; (iii) transparency; and (iv) price control.

2.2. Market definition

In the present notification, HAKOM proposes to define the relevant product markets as corresponding to the termination of voice calls on each of the operators owning a mobile network (HT, Tele2 and Vipnet), irrespective of the network where the call originated and the technology used (e.g. 2G, 3G or 4G). HAKOM defines the relevant geographic market as national.

2.3. Finding of significant market power

HAKOM finds HT, Tele2 and Vipnet to have SMP on their respective markets on the basis of an assessment of market shares, lack of countervailing buyer power and the advantages that these operators derive from the existence of economies of scale.

In addition, HAKOM considers that the operators owning a mobile network (and designated with SMP) would be able to behave anti-competitively in the absence of regulation, in particular, by means of refusing to interconnect, setting excessive voice call termination charges, tacitly coordinating their behaviour, discriminating against competitors and/or cross-subsidising lower subscriber charges with higher voice call termination charges.

2.4. Regulatory remedies

HAKOM states that the market dynamics have remained relatively unchanged since the previous market analysis and, consequently, it considers appropriate to retain the regulatory obligations imposed at the time. In particular, HAKOM proposes to impose on all SMP operators the following obligations: (i) access and interconnection, (ii) non-discrimination, (iii) transparency, and (iv) price control based on a pure BU-LRIC model of a hypothetical efficient operator.

In relation to the price control remedy, in a separate decision of 10 June 2013 HAKOM established that starting on 1 January 2015 the prices for mobile voice call termination should be capped at a level determined on the basis of a BU-LRIC model, consistent with the 2009 Termination Rates Recommendation. On this basis, HAKOM estimated the mobile termination price caps applicable from 1 January 2015 at HRK 0.0630/min (0.82 €cents/min). In response to the RFI, HAKOM notes that it expects to update the BU-LRIC model over the course of the year and notify the model and the new termination price caps to the Commission in the beginning of 2016. It notes that the BU-LRIC model that it is currently developing includes a network design reflecting some 4G roll-out, as well as any annual cost reductions resulting from decreases in the prices of equipment or traffic changes. HAKOM explains that if the mobile termination price caps resulting from the model are sufficiently differentiated in every year, it will adopt a different price cap in every year, whereas if they are not it will adopt the same average price cap for the entire period of the charge control.

In addition, HAKOM proposes to distinguish between calls from numbers belonging to (i) one of the EU/EEA countries and (ii) countries outside of the EU/EEA. It proposes that calls from numbers belonging to the EU/EEA and terminated by a Croatian mobile network operator designated with SMP should be subject to the regulated termination rate, whereas the termination rates applicable to calls from international (non-EU/EEA) numbers should be left to commercial negotiations between Croatian and international operators. HAKOM justifies this proposal with the specific features of the mobile voice termination market in Croatia. In particular, in response to the RFI, HAKOM explained that the vast majority of international traffic terminating on Croatian mobile networks is routed via EU/EEA operators (subject to the regulated termination rates) rather than through direct interconnection agreements, as the price differential is substantial. In these circumstances, HAKOM believes that mobile network operators and end-users in Croatia are disadvantaged vis-à-vis their international counterparts, as the former pay substantially higher termination rates when calling international numbers compared to the regulated termination fees paid by international callers terminating calls on Croatian networks.

In terms of the implementation of this differentiated termination rates regime, HAKOM proposes that calls are distinguished by the caller's A number, allowing mobile operators to identify the number's country of origin. A numbers from EU/EEA countries would be subject to the regulated termination price caps, whereas the termination rates applicable to A numbers from non-EU/EEA countries would be subject to commercial negotiations between Croatian operators and their international counterparts. According to HAKOM, this would increase the bargaining power of Croatian operators vis-à-vis international operators (particularly those of neighbouring countries) and would reduce the existing disparity between the termination rates paid by Croatian operators (and end-users) when calling abroa1d and international callers when calling Croatian numbers. HAKOM proposes that Croatian mobile operators will be able to differentiate the termination rates charged as soon as they can demonstrate that they have set up the systems allowing them to adequately distinguish between different A numbers. In response to the RFI, HAKOM explained that Croatian mobile operators would be able to recognise the calling numbers even in the event that the caller decided to hide its customer line identification (CLI). It noted that the only situation where Croatian mobile operators would not be able to identify the calling number would be where the transit operator decided not to transfer or distort the A number. HAKOM proposed that in these situations the caller should still be subject to the commercially agreed termination rate. However, it noted that calls where the transit operator did not transfer or distorted the A number typically represented less than 1% of international (both EU/EEA and non-EU/EEA) calls.

3. COMMENTS

The Commission has examined the notification and the additional information provided by the HAKOM and has the following comment:[5]

The update of the BU-LRIC model

The Commission welcomes HAKOM's proposal to cap termination rates based on a pure BU-LRIC model as of 1 January 2015, in line with the Termination Rates Recommendation. Moreover, the Commission notes HAKOM's intention to update the BU-LRIC model over the course of 2015 and notify the new model and the new termination price caps to the Commission in the beginning of 2016. However, the Commission would like to remind HAKOM of its obligation to carry out an analysis of the relevant markets and notify the corresponding draft measures (in accordance with Article 7) within two years from Croatia's accession, as set out in Article 16(6)(c) of the Framework Directive. In light of Croatia's accession to the European Union on 1 July 2013, the time limit for HAKOM's notification of the new model and new termination price caps to the Commission is 1 July 2015. Thus, the Commission urges HAKOM to abide by the time limits prescribed by the Framework Directive and notify the new model and price caps by this date.

In addition, in response to the RFI, HAKOM has explained some of the features of the BU-LRIC model that it is developing to estimate mobile termination rates. The Commission welcomes HAKOM's approach to model the network design of the hypothetical efficient operator including 4G roll-out. In relation to whether setting a single average price cap or different annual price caps would be more appropriate, the Commission takes note of HAKOM's view that if the difference in rates in every year are not significant, it would prefer to set a single average price cap. The Commission notes, however, that other Member States where this is the case have opted for annual price ceilings reflecting the exact pure BU-LRIC cost of providing the relevant termination service. Against this background, the Commission calls upon HAKOM to consider, at the time when it will notify the new model and new termination price caps, whether an approach based on annual price caps would be more appropriate, in particular to capture expected efficiency gains, changes in network configuration and/or prices of network equipment.

Pursuant to Article 7(7) of the Framework Directive, HAKOM 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[6] the Commission will publish this document on its website. The Commission does not consider the information contained

---

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

6 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

herein to be confidential. You are invited to inform the Commission[7] 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.[8] You should give reasons for any such request.

Yours sincerely,

For the Commission,
Robert Madelin
Director-General

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

7 Your request should be sent either by email: CNECT-ARTICLE7@ec.europa.eu or by fax: +32 2 298 87 82.

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