EUROPEAN COMMISSION

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Rundfunk und Telekom
Regulierungs-GmbH (RTR)

Mariahilferstraße 77-79
A-1060 Wien
Austria

For the attention of:
Mr Johannes Gungl

Fax: + 43 1 58 058 9191

Dear Mr Gungl,

Subject: Commission Decision concerning:

Case AT/2014/1617: Voice call termination on individual mobile networks in Austria

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

Case AT/2014/1618: Call termination on individual public telephone networks provided at a fixed location in Austria

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

I. PROCEDURE

On 3 June 2014, the Commission registered two notifications[1] from the Austrian national regulatory authority, Telekom-Control-Kommission (TKK)[2], concerning the markets for (i) call termination on individual public telephone networks provided at a fixed location[3],

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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 According to the Austrian Telecommunications Law regulatory decisions concerning the market analysis and remedies are adopted by the Telekom-Control-Kommission (TKK), which is supported by the Rundfunk und Telekom Regulierungs-GmbH (RTR). RTR is furthermore responsible for defining relevant markets by means of an ordinance. Only markets defined in this way can and shall be made subject to a market analysis.

3 Corresponding to Market 3 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

and (ii) voice call termination in individual mobile networks[4] in Austria.

The national consultation ran from 6 May to 20 May 2014. The deadline for the EU consultation under Article 7 of the Framework Directive is 3 July 2014.

A request for information (RFI) was sent to TKK on 13 June, and the response was received on 18 June 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

The present notifications concern the analyses of additional operators active on their relevant termination markets.

II.1. Background

The fourth review of the wholesale markets for call termination on individual fixed and mobile networks in Austria was assessed by the Commission *inter alia* under cases AT/2013/1435-36[5]. TKK designated the fixed incumbent (A1 TA)[6], and 5 mobile operators as having significant market power (SMP). TKK maintained a set of remedies, and modified the price control methodology to a pure bottom-up long run incremental cost (BU-LRIC) model.

The notification of the termination markets of alternative fixed operators was assessed under case AT/2013/1457[7]. The Commission commented on the weight of wholesale commercial costs in the total costs for providing termination in a fixed network (75%), and requested TKK to reassess in its final measure whether the wholesale commercial costs included in its model calculations correspond to the costs incurred by an efficient fixed network operator.

II.2. Market definition

As in its previous notification, TKK defines fixed call termination as a service of transporting the incoming traffic to the subscribers' termination point from the last interconnectable exchange. All voice calls, regardless of their origination (whether from fixed, mobile or Voice over Internet operators), are included in the market definition.[8]

Mobile call termination includes the necessary services for termination of voice calls to the selected mobile phone, regardless of where the call originates (domestic,

Council on a common regulatory framework for electronic communications networks and services, OJ L 344, 28.12.2007, p. 65-69.

4 Corresponding to market 7 in the Recommendation on Relevant Markets.

5 C(2013) 2383, C(2013) 2673.

6 The registered notification also concerned 34 fixed alternative network operators (ANOs), but without making them subject to an access obligation. TKK withdrew its notification concerning the ANOs one day before the expiry of the EU Article 7 consultation procedure.

7 SG-Greffe (2013) 8734.

8 The termination of narrowband dial-up IP traffic is excluded from the market definition, in line with TKK's previous notifications.

international, mobile or fixed network), including the interconnection service provided for the customers of a reseller (IC termination). The market definition does not include SMS termination.

The relevant geographic markets are defined by the area (network coverage) in which the fixed and mobile termination services are provided.

II.3. SMP assessment

TKK proposes to designate all 5 operators[9] concerned by the present market analyses as having SMP on their respective termination markets. The main criteria considered by TKK are: market shares, barriers to entry, and countervailing buyer power.

II.4 Remedies

TKK proposes to impose on all SMP operators the obligations of access and price control, while the MVNO will also be obliged to not discriminate and to publish a reference offer.[10] Regarding price control, the termination rates will be set at the same pure BU-LRIC level as for previously notified SMP operators, i.e. 0.137 cents/min (peak) and 0.085 cents/min (off-peak) for fixed termination, and 0.8049 cents/min for mobile termination.

The pure LRIC model developed by TKK calculates the contribution of wholesale commercial costs to the final termination rate at the same value for either mobile or fixed termination, irrespective of the considerably different overall level of mobile and fixed rates, respectively. Therefore, the impact of wholesale commercial costs is significantly higher on fixed termination rates. In fact, as in TKK's previous notifications of the termination markets in Austria, the wholesale commercial costs constitute for fixed termination more than 75% of the total incremental costs. These costs have been calculated on the basis of systems developed by A1 Telekom, an integrated fixed and mobile operator. TKK confirms in the present draft measure that it considers the calculated wholesale commercial costs corresponding to the costs which would be incurred by an efficient hypothetical fixed network operator.

III. COMMENTS

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

Share of wholesale commercial costs in total fixed termination costs

TKK confirms in the present notifications its previous view that wholesale commercial costs account for more than 75% of the total costs of an efficient

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9 Telefon-und Marketing Services, 3U Telecom, Finarea, and Schuster & Kyba Gesellschaft on their respective markets for voice call termination at a fixed location.; Lycamobile Austria Limited (who is a mobile virtual network operator (MVNO)) on its market for mobile voice call termination.

10 The proposed remedies correspond to regulatory obligations imposed on other fixed and mobile operators in Austria, regulated on the basis of previously notified draft measures. TKK considers that the additional obligations of non-discrimination and transparency proposed with respect to Lycamobile are appropriate in view of the importance of the mobile telephony market; they would be disproportionate for the small fixed operators.

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

operator providing the relevant fixed termination service.

The Commission acknowledges that the Termination Rates Recommendation[12] allows for the inclusion of wholesale commercial costs in the termination increment to the extent that these costs are directly related to the provision of the wholesale termination service to third parties.

However, the Commission insists on its concerns expressed in previous comments on TKK's notifications relating to fixed termination markets, namely that the ratio of wholesale commercial costs to total costs, resulting from TKK's LRIC model, appears very high, in particular by EU comparison. According to information available to the Commission, some NRAs did entirely disregard in their BU-LRIC cost models wholesale commercial costs, and those NRAs which did indeed calculate such costs would not have found ratios exceeding 20% of the total fixed termination costs. [13]

Against the background of the much higher proportion of wholesale commercial costs in Austria, the Commission calls upon TKK to reconsider in the next review of its modelling approach the treatment of such costs. In this regard, the Commission also asks TKK to more closely collaborate with other NRAs and BEREC to redress inconsistencies in modelling approaches likely contributing to the currently considerably diverging outcomes between Member States when it comes to the contribution of wholesale commercial costs to the overall termination rate.

Pursuant to Article 7(7) of the Framework Directive, TKK shall take utmost account of the comments of other NRAs, BEREC and the Commission and may adopt the resulting draft measures; where it does so, shall communicate them to the Commission. The Commission's position on these particular notifications 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[14] 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[15] 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.[16] You should give

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[12] 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, p. 67.

[13] Cf. questionnaire of BEREC Termination Rates Expert Working Group of March 2013. See also Commission decision in case AT/2013/1457. In its Opinion in case CZ/2012/1392, BoR (13)04, BEREC stressed that the assessment of wholesale commercial costs varies among countries. As the incremental network costs for fixed networks are low, the incremental wholesale commercial costs can represent a substantial proportion of the whole fixed termination rate cost.

[14] 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.

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

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

reasons for any such request.

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

CERTIFIED COPY
For the Secretary-General,

Jordi AYET PUIGARNAU
Director of the Registry
EUROPEAN COMMISSION