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Hellenic Telecommunications &
Post Commission (EETT)

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For the attention of:
Mr. Konstantinos Masselos
President

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Subject: Case EL/2020/2237: Wholesale local access provided at fixed location and Wholesale central access provided at a fixed location for mass market products (remedies) in Greece

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

Dear Mr Masselos,

1. PROCEDURE

On 17 February 2020, the Commission registered a notification from the Greek national regulatory authority (NRA), the Hellenic Telecommunications & Post Commission (EETT)¹, concerning details of the price control remedy on the markets for wholesale local access provided at fixed location² and wholesale central access provided at a fixed location for mass-market products³ in Greece.

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 3a in Commission Recommendation 2014/710/EU of 9 October 2014 on

EETT had three rounds of the national consultations⁴ (from 6 June 2018 to 11 July 2018, from 23 April 2019 to 27 June 2019 and from 26 November 2019 to 20 December 2019).

The Commission sent a request for information⁵ (RFI) to EETT on 27 February 2020 and received a reply on 3 March 2020. An additional RFI was sent on 4 March 2020 and a response was received on 5 March 2020.

Under Article 7(3) of the Framework Directive, 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

2.1.1. Wholesale local access provided at a fixed location (EL/2016/1936)

The market for wholesale local access provided at a fixed location in Greece was previously notified to and assessed by the Commission under case EL/2016/1936⁶.

EETT had concluded that the market for wholesale local access included both the copper access network and the optical fibre access network for the purpose of providing broadband and voice services. EETT found the geographic scope of the market to be national. The incumbent OTE was found to hold a Significant Market Power (SMP) on the market. EETT imposed a set of regulatory obligations on OTE, namely access, non-discrimination, transparency, accounting separation and price control.

With regard to access obligations, EETT imposed local loop and sub loop unbundling (LLU and SLU) access obligations. EETT also imposed an obligation to provide two wholesale virtual products: (i) VPU (Virtual Partially Unbundled services) and (ii) VPU light⁷. During the assessment of the draft market analysis, EETT had indicated to the Commission that it was about to finalize the Reference Offer, including the specifications of the VPU and VPU light, and that it would notify it to the Commission shortly after.

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 Corresponding to Market 3b in the Recommendation on Relevant Markets.

⁴ In accordance with Article 6 of the Framework Directive.

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

⁶ C(2016) 8300 final.

⁷ VPU provides the ability to alternative operators to replicate OTE's retail voice and VDSL bundle service at a local level, without having to collocate in the cabinet. VPU light gives the ability to the operators to provide to their users voice and VDSL services only through a L2 bitstream product.

With regard to the prices of the regulated products, EETT had proposed that in the transitional period until the development of a Bottom-up long-run incremental cost plus (LRIC+) model is finished, cost-oriented prices for access services to the local loop/sub-loop, virtual products and related services would be calculated based on OTE's Top Down long run average incremental cost model using a current cost accounting (LRAIC+/CCA). Once the Bottom-up LRIC+ model is available, the relevant wholesale prices for access services to the local loop/sub-loop, virtual products and related services would be calculated based on that model.

2.1.2. Wholesale central access provided at a fixed location for mass-market products (EL/2016/1937)

The market for wholesale central access provided at a fixed location for mass-market products in Greece was previously notified to and assessed by the Commission under case EL/2016/1937⁸.

EETT concluded that the market for wholesale central access included bitstream services of the incumbent operator (including self-supply) via copper and fiber. EETT found the geographic scope of the market to be national. The incumbent OTE was found to hold a Significant Market Power (SMP) on the market. EETT imposed a set of regulatory obligations on OTE, namely access, non-discrimination, transparency, accounting separation and price control.

With regard to access obligations, EETT imposed bitstream access product obligations which are delivered at a central point (i.e. regional or national level), such as ARYS (BRAS) and V-ARYS (BRAS). Obligations concerning associated facilities, including collocation and the appropriate backhaul services, have been equally imposed in market 3a and 3b.

With regard to the prices of the regulated products, EETT had proposed that prices of wholesale broadband access services shall be calculated based on OTE's Bottom up LRIC+ model, once the model is available.

2.2. Details of the notified regulatory remedies

In the notified draft measure, EETT proposes to set new prices for the wholesale access products defined on the markets 3a and 3b based on the Bottom LRIC+ model. EETT developed the model in accordance with the Commission Recommendation on non-discrimination obligation and costing methodologies⁹ and the model is used for the calculation of both the prices of next generation access (NGA) and copper access products.

The model is developed based on the following main principles:

- EETT will use the Modified Scorched Node approach;

⁸ C(2016) 8300 final.

⁹ Commission Recommendation 2013/466/EU of 11 September 2013 on consistent non-discrimination obligations and costing methodologies to promote competition and enhance the broadband investment environment, OJ L 251, 21.9.2013, p. 13–32.

- The whole Greek territory with the exception of state aid rural areas is covered with the NGA model, while the copper model covers the whole territory;
- The NGA model combines FttH and FttC technologies taking into account the business plans of the operators;
- EETT models an exclusive wholesale access provider that develops an efficient NGA network;
- All subscribers are served by the modelled network;
- All the civil engineering assets in the distribution/drop part and 20% of the civil engineering assets in the feeder part of the network are considered re-usable when modelling FttC network¹⁰;
- 20% of the civil engineering assets in the feeder part of the network are considered re-usable when modelling FttH network;
- An overhead rate of 18% is determined as the weighted average of data provided by operators and the benchmark from other countries.

Regarding the overhead rate, EETT in the decision explains that costs of provider, which are not directly relate to modelled infrastructure are considered as overhead concerned costs. In its decision, EETT more specifically explains which categories should be included when calculating the overhead costs.

The overhead rate is calculated as the weighted average of data provided by operators and a benchmark from other countries¹¹. In its reply to the RFI, EETT provided a list of countries and corresponding overhead rates used in the calculation. EETT additionally explained that two operators submitted their data in questionnaires and during public consultations while for the incumbent's overheads EETT used data from the top-down cost accounting system. The final overhead rate was calculated as the weighted average between four sources (the three operators and the benchmarking average). The weights for the three operators were adjusted according to the number of allocated NGA cabinets per operator.

In its reply to the RFI, EETT confirmed that is using the same WACC¹² for both the legacy and the NGA access products. EETT further informed in the reply to the RFI that the methodology used for the WACC calculation is the one notified to the Commission under the case EL/2019/2225 with the difference that the WACC used in the cost models is calculated based on updated data.

¹⁰ In other words, EETT argues that in reality, according to Greek operators, only in 20% of cases the feeder part of the network is constructed with assets which can be re-used.

¹¹ Norway, Sweden, Finland, Denmark, Germany, France, Belgium, Spain, Italy, Luxembourg and Cyprus

¹² EETT proposes a nominal, pre-tax WACC of 8.48%, which is a decrease of 0.85 percentage points compared to the previous decision.

The notified prices will be applied in the period between the publication of the final EETT decision and 31 December 2020. In the context of the next cycle of analysis of the relevant markets, EETT will proceed to an update of the model taking into account all relevant changes.

3. COMMENTS

The Commission has examined the notification and the additional information provided by the EETT and has the following comments:¹³

3.1. Calculation method of overhead costs and reconciliation of the model

The Commission notes that EETT has calculated overhead CAPEX and OPEX for the NGA network based on a weighted average between a domestic benchmark and an international benchmark. The use of an international benchmark as such is a common practice in the field of market analysis and cost models, used for benchmarking, peer-groups (related to the WACC-estimation) or for comparison of values reported by stakeholders. However, in the argumentation from EETT, the selection of countries included in the international benchmark seems based solely on available public cost model and less so on whether the country included in the benchmark is relevant for comparisons purposes with Greece. Further, EETT gives the same weight to all countries included in the benchmark, regardless of how comparable their situation is to Greece, for instance in terms of geographical conditions or population density. It is also not clear whether the items included in each country's definition of overhead costs are the same both when compared to the other countries of the benchmark, and even more importantly when compared to Greece.

The Commission therefore asks EETT to reconsider if the current benchmark analysis and countries used for comparison are reflective of the situation in Greece.

Concerning the domestic benchmark used by EETT, the Commission also remarks that the values of overhead costs differ very significantly between Greek operators, both in absolute levels and in the relative levels of CAPEX and OPEX. Moreover, the weighting applied by EETT to data of various Greek operators leads to over-reliance on the data provided by the SMP operator, which reported the overhead mark-up significantly above that of other Greek operators and international benchmarks. The Commission therefore invites EETT to investigate the reasons for differences and possibly, to revise its calculation accordingly in order to estimate the overhead costs that a hypothetical efficient operator would have.

Further, from the consultation documents, the Commission observes the efforts made by EETT to accommodate new information provided by stakeholders to the cost model. Following these updates, we further observe comments from stakeholders, pointing to areas of the cost model where the methodology described appears to not be followed correctly. Therefore, we invite EETT to ensure, that the model still reconciles under all possibilities and that from a mathematical perspective it is performing as described in the methodological documents.

¹³ In accordance with Article 7(3) of the Framework Directive.

Under Article 7(7) of the Framework Directive, EETT shall take utmost account of the comments of other NRAs, BEREC and the Commission and may adopt the resulting draft measure. Where it does so, the NRA shall communicate it to the Commission.

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/EC¹⁴ the Commission will publish this document on its website. If EETT considers that, in accordance with EU and/or national rules on business confidentiality, this document contains confidential information that you wish to have deleted prior to publication, please inform the Commission¹⁵ within 3 working days of receipt and give reasons for any such request.¹⁶

Yours sincerely,

For the Commission
Roberto Viola
Director-General

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 By email to CNECT-ARTICLE7@ec.europa.eu.

¹⁶ The Commission may inform the public of the result of its assessment before the end of this 3-day period.