EUROPEAN COMMISSION

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Post and Electronic Communications
Agency of the Republic of Slovenia
Stegne 7, p.p. 418
1001 Ljubljana
Republic of Slovenia

For the attention of:
Mr. Tomaž Simonič
Fax: +386-1-511 11 01

Dear Mr Simonič,

Subject: Case SI/2007/0591: voice call termination on individual mobile networks in Slovenia.

Comments pursuant to Article 7(3) of Directive 2002/21/EC[1]

I. PROCEDURE

On 7 February 2007, the Commission registered a notification by the Post and Electronic Communications Agency of the Republic of Slovenia ("APEK") concerning voice call termination on individual mobile networks in the Republic of Slovenia under case number SI/2007/0591.

The notification at hand is subsequent to the market review[2] previously notified to and assessed by the Commission, where the mobile network operators ("MNOs") Mobitel[3], Si.mobil[4] and WWI[5] were found to have significant market power on the wholesale market for voice call termination on their individual mobile networks[6]. Mobitel and Si.mobil were subjected to, among other, ex-ante price regulation until the end of December 2007. APEK is conducting a second review of the relevant market following new developments on the overall mobile market.

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1 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.

2 Wholesale mobile voice call termination (case SI/2005/0276).

3 Mobitel telekomunikacijske storitve d.d. (Mobitel d.d.).

4 Si.mobil telekomunikacijske storitve d.d. (Si.mobil d.d.).

5 Western Wireless International, družba za telekomunikacije, d.o.o. (WWI).

6 See Commission comments letters of 1 December 2005 (D/206525).

On 6 March 2007, APEK withdrew the part of the notification concerning SMS mobile termination. APEK added that if it finds out that the three criteria test is fulfilled, SMS mobile termination will be subject to a separate markets analysis, and notified to the Commission as such.

The national public consultation[7] runs in parallel to the consultation under Article 7 of the Framework Directive and the deadline for both consultations is 9 March 2007.

Pursuant to Article 7(3) of the Framework Directive, national regulatory authorities (NRAs) and the Commission may make comments on notified draft measures to the NRA concerned.

II. DESCRIPTION OF THE DRAFT MEASURE

II.1. Market definition

There are now two mobile network operators ("MNOs") in Slovenia: Mobitel and Si.mobil. On 31 May 2006, WWI ended its commercial activities in Slovenia and switched off its network on the same date. In addition, there are two mobile virtual network operators in Slovenia: Debitel and Izimobil. Both provide UMTS and GSM services to end-users through Mobitel's public mobile network. Debitel and Izimobil are not in the situation to set their own termination rates.

Mobitel and Si.mobil entered on the GSM mobile market in July 1996 and March 1999, respectively. At the end of August 2006, the respective market shares of Mobitel and Si.mobil, in terms of subscribers, were 73% and 24.5%, with the remainder being served by Debitel and Izimobil. Both of Mobitel and Si.mobil networks cover more than 99% of the population. The penetration rate per inhabitant of mobile services is around 90%.

Due to a lack of substitutability between termination services on the different networks, a distinct market is defined for voice call termination on the network of each MNO (including 3G), in accordance with the Recommendation on relevant markets.[8]

The geographic scope of each product market coincides with the geographic coverage of the network concerned.

II.2. Finding of significant market power ("SMP")

Based on its market analysis, APEK intends to designate Mobitel and Si.mobil as having SMP on their respective markets.

When reaching its conclusion on SMP, APEK considered three main criteria: (i) market shares (each MNO is a monopolist on its market) in combination with market concentration; (ii) barriers to entry and the lack of potential competition; and (iii) the lack of countervailing buyer power.

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7 In accordance with Article 6 of the Framework Directive.

8 Commission Recommendation 2003/311/EC of 11 February 2003 on relevant product and services markets within the electronic communications sector susceptible for *ex ante* regulation in accordance with the Framework Directive, OJ L 114, 8.5.2003, p. 45.

II.3. Regulatory remedies

In order to remedy market power on the respective wholesale markets, APEK proposes to impose the following set of obligations on each MNO:

- Obligation to provide access and interconnection
- Non-discrimination (external and internal)
- Transparency (including the publication of a reference offer)
- Price control and cost accounting
- Accounting separation

The non-discrimination obligation includes the imposition of a single termination rate irrespective of the calling party by the first of June 2007. The measure proposed by APEK is supposed to redress the current situation where prices for terminating a call from a fixed network are higher than for mobile networks despite the absence of cost differences.

In order to address potential competition problems caused by low on-net retail prices in relation to termination rates charged from third parties, APEK is also of the view that the non-discrimination obligation imposed on Si. Mobil and Mobitel should include the obligation to price on-net retail calls above their respective termination rates.

APEK intends to implement a price control obligation with a view to reduce mobile termination rates[9] to the level of the efficient costs incurred by the 31st of March 2009, under **symmetric** conditions. For that purpose, APEK requires the two MNOs' detailed accounts of the costs involved when providing termination services. The detailed accounts will progressively be based on Long Run Incremental Costs (at the latest by the end of March 2009), while being based currently on historic accounts and the method of Fully Allocated Costs.

III. COMMENTS

The Commission has examined the notification and has the following comment[10]:

> **Proposed retail price control mechanism on Mobitel and Si.mobil**: APEK intends to address the issue of asymmetric on net/off net tariffs in the Slovenian retail mobile market by proposing a remedy which links the MNOs' termination rate to their retail on-net prices. This approach would nevertheless result in retail regulation through a remedy imposed pursuant to market analysis on a wholesale market.
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> In accordance with Article 8(4) of the Access Directive, the obligations imposed on SMP operators shall be based on the nature of the problem identified, proportionate and justified in the light of the regulatory objectives laid down in Article 8 of the Framework Directive. In the present case APEK does not demonstrate as to how the linkage of MNOs' termination rates and their retail on-net prices would resolve the lack of competition in the termination market nor does it show how the imposition of such a remedy would render other proposed obligations in the termination market

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[9] Mobitel is currently charging 6.98€ cents per minute, and Si.mobil 10.18€ cents per minute.

[10] Pursuant to Article 7(3) of the Framework Directive.

effective. Therefore the Commission asks APEK not to impose the proposed internal non-discrimination obligation.

The Commission reminds APEK that problems identified by APEK in this wholesale market should be remedied by the implementation of an effective price control mechanism ensuring cost-oriented level of Mobitel's and Si.mobil's termination rate at wholesale level.

Pursuant to Article 7(5) of the Framework Directive, APEK shall take the utmost account of comments of other NRAs and the Commission and may adopt the resulting draft measure and, 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 12 of Recommendation 2003/561/EC[11] 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[12] within three working days following receipt whether you consider, in accordance with Community and national rules on business confidentiality, that this document contains confidential information which you wish to have deleted prior to such publication. You should give reasons for any such request.

Yours faithfully,
For the Commission,
Fabio Colasanti
Director General

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[11] Commission Recommendation 2003/561/EC of 23 July 2003 on notifications, time limits and consultations provided for in Article 7 of Directive 2002/21/EC, OJ L 190, 30.7.2003, p. 13.

[12] Your request should be sent either by email: INFSO-COMP-ARTICLE7@ec.europa.eu or by fax: +32.2.298.87.82.