



EUROPEAN COMMISSION

Brussels, 04/04/2011  
C(2011) 2478

**SG-Greffe (2011) D/5445**

Autorità per le Garanzie nelle  
Comunicazioni (AGCOM)

Via Isonzo 21/b  
I-00198 Roma  
Italy

For the attention of:  
Mr. Corrado Calabro  
President

Fax: +39 06 696 44 933

Dear Mr Calabro,

**Subject: Commission decision concerning case IT/2011/1196: Remedies related to wholesale markets for call origination on the public telephone network provided at a fixed location, call termination on individual public telephone networks provided at a fixed location and transit services in the fixed public telephone network in Italy**

**Comments pursuant to Article 7(3) of Directive 2002/21/EC<sup>1</sup>**

## **I. PROCEDURE**

On 4 March 2011, the Commission registered notifications from the Italian national regulatory authority, *Autorità per le Garanzie nelle Comunicazioni* (AGCOM), concerning remedies relating to the wholesale markets for (i) call origination on the public telephone network provided at a fixed location, (ii) call termination on individual public telephone networks provided at a fixed location and (iii) transit services in the fixed public telephone network in Italy.

The national consultation<sup>2</sup> ran from 6 December 2010 to 5 January 2011. The deadline

---

<sup>1</sup> 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.

<sup>2</sup> In accordance with Article 6 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.

for the Community consultation under Article 7 of the Framework Directive expires on 4 April 2011.

On 17 March 2011 a request for information<sup>3</sup> (RFI) was sent to AGCOM and a response was received on 22 March 2011.

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 MEASURES**

### **II.1. Background**

The second review of the wholesale markets for (i) call origination on the public telephone network provided at a fixed location<sup>4</sup>, (ii) call termination on individual public telephone networks provided at a fixed location<sup>5</sup> and (iii) transit services in the fixed public telephone network<sup>6</sup> was notified to and assessed by the Commission in 2009<sup>7</sup>.

As regards the market for fixed call origination, AGCOM designated TI as having significant market power (SMP) and imposed the following obligations on it: (i) access, (ii) transparency, (iii) non-discrimination, (iv) price control and (v) cost accounting.

As to the fixed call termination market, AGCOM designated TI and all alternative operators (ATOs) as having SMP on their own networks. AGCOM imposed the following obligations on Telecom Italia (TI): (i) access, (ii) transparency, (iii) non-discrimination, (iv) price control and (v) cost accounting. "Infrastructure-based alternative operators" were subject to access, (ii) transparency, (iii) non-discrimination, and (iv) price control. "Non-infrastructure-based alternative operators" were only subject to a transparency obligation.

Finally, as regards the market for transit services, which is no longer listed amongst the markets susceptible to *ex-ante* regulation, AGCOM conducted the three criteria test and identified two separate transit markets; a market for national transit services (including regional transit) and a market for district transit services. AGCOM concluded that the national transit market has become competitive, whereas the market for district transit services still met the three criteria and did warrant *ex ante* regulation. In view of that, AGCOM withdrew regulatory obligations on the market for national transit services, whilst it imposed (i) access, (ii) transparency, (iii) non-discrimination, (iv) price control

---

<sup>3</sup> Pursuant to Article 5(2) of the Framework Directive.

<sup>4</sup> Corresponding to market 2 of the Commission Recommendation 2007/879/EC of 17 December 2007 on relevant product and services 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 (the Recommendation), OJ L 344, 28.12.2007, p. 65.

<sup>5</sup> Corresponding to market 3 of the Recommendation.

<sup>6</sup> Originally listed as market 10 of Commission Recommendation 2003/311/EC of 11 February 2003 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, OJ L 114, 8.5.2003, p. 45.

<sup>7</sup> Cases IT/2009/1025, IT/2009/1026 and IT/2009/1027, SG-Greffe (2010) D/3536.

and (v) cost accounting obligations on the market for district transit services.

In its comments on the notifications, the Commission invited AGCOM to undertake a market analysis of the transit market should further changes occur within the timeframe of the review and to clearly specify the migration rules and a period of notice for expiry of the current access regulation at the lower network level (SGU level) in order to encourage timely migration towards a higher network level and IP interconnection for transit services. Furthermore, the Commission invited AGCOM to impose on all ATOs a cost orientation obligation on the market for call termination and to set fixed call termination rates which reflect the cost of an efficient operator.

## **II.2. Current notification**

AGCOM proposes to set the rates for call origination and termination<sup>8</sup> and the rates for transit services<sup>9</sup> on the network of TI for year 2011.

Furthermore, AGCOM intends to maintain for year 2011 the currently imposed termination rates on the networks of ATOs which are set at a level equivalent to TI's tariff at SGT level (tandem exchange at regional level)<sup>10</sup>. AGCOM justifies its proposal with differences between the network architectures of TI and ATOs, which in view of AGCOM, justify maintaining symmetry at SGT level (regional level) and postponing complete symmetry at IP level<sup>11</sup>. However, in line with previous Commission comments, AGCOM proposes to set a single termination rate for all ATOs, thus removing previous differences of regulatory treatment between 'infrastructure-based' and 'non-infrastructure-based' ATOs.

AGCOM intends to define in 2011 and to implement as of 2012 a BU-LRIC model for calculating the termination rates based on IP technology, which would be applicable in those cases where TI's and ATOs' network architectures do not differ. In those cases where TI's and ATOs' network architectures are still different, AGCOM would consider setting ATO's termination rates in 2012 at a level equivalent to TI's tariff at SGU level (local level on the basis of a traditional TDM architecture).

In its reply to the request for information AGCOM states that the notified draft measure implies the expiry of regulation at SGU level from the beginning of January 2013. AGCOM explains that setting termination rates in the traditional TDM technology for

---

<sup>8</sup> Local exchange SGU collection/termination services (EUR cents 0.302/minute), double SGU collection/termination services (EUR cents 0.500/minute) and SGT -tandem exchange at regional level- collection/termination services (EUR cents 0.570/minute).

<sup>9</sup> SGU single transit service (EUR cents 0.138/minute), SGU double transit service (EUR cents 0.320/minute), SGT single transit (EUR cents 0.087/minute) and SGU-SGT transit service (EUR cents 0.283).

<sup>10</sup> AGCOM Decision n°179/10/CONS states that for year 2010 TI's termination rates are: i) 0.57 EUR cents at the regional (SGT) level and ii) 0.302 EUR cents at the local (SGU) level. AGCOM's decision states as well that ATOs' termination rates are equivalent to TI's SGT termination rate and are set at 0.57 EUR cents as of July 1<sup>st</sup> 2010.

<sup>11</sup> AGCOM explains that although the principal alternative operators are connected to almost all of TI's main exchanges (i.e. "direct interconnection"), TI terminates its own traffic on their networks at a considerably lower number of nodes. According to AGCOM this implies that in the ATOs' network there is not necessarily a hierarchical (local) level equivalent to TI's local main exchanges for supplying the termination service. According to AGCOM, termination rate symmetry will be achieved when symmetry in the design of the network architecture is achieved, with the adoption of a common IP interconnection architecture.

the year 2012, in addition to IP tariffs resulting from the BU-LRIC model, "may provide the right incentives" for operators to implement the IP interconnection technology, consequently contributing to develop a more competitive transit market.

### III. COMMENTS

On the basis of the present notifications and the additional information provided by AGCOM, the Commission has the following comments<sup>12</sup>:

#### **Need to impose fixed call termination rates on ATOs which reflect the cost of an efficient operator**

The Commission reiterates the comment already made in the context of AGCOM's previous notification of the relevant market for call termination on fixed networks<sup>13</sup>. At the time the Commission had asked AGCOM to implement a price control obligation on ATOs, which reflects the costs of an efficient operator offering fixed call termination services.

In the present notification, AGCOM proposes to set ATOs' termination rates equivalent to TI's tariff at SGT level for the year 2011. This leads to higher and asymmetric rates for ATOs in 2011, not reflecting the case of an efficient operator contrary to what is foreseen in the Termination Rates Recommendation.

For 2012 AGCOM intends to introduce rates for ATOs, which are either equivalent to TI's rates at SGU level in a TDM technology or to rates at IP level coming out of a BU-LRIC model. It is yet unclear which rates will finally apply but they seem to depend on whether or not an individual ATO has migrated to IP level. This could even lead to different rates for individual ATOs and overall asymmetries of FTRs, which would neither reflect efficient provisioning of termination services nor be in line with the principles of the Termination Rates Recommendation.

The Commission therefore insists on its previous comments and urges AGCOM to set the tariffs of all fixed network operators in a symmetric way at the level of an efficient operator at the earliest possible time. In this respect, AGCOM would have to decide whether, on a forward looking basis, efficient rates are equivalent to the level of the tariff set for local call termination or at that cost level which is incurred by an operator which terminates calls at the level of TI's BBN/IP interconnection nodes. This could exceptionally justify that rates for all operators are set at a symmetric level corresponding to termination at a local SGU level in the interim period and, after such period, at a level corresponding to IP termination, in any event, as soon as the results of the BU-LRIC model referred to above are available.

#### **Migration towards IP interconnection**

The Commission reiterates a previous comment inviting AGCOM to clearly specify in its final adopted measure the migration rules and a period of notice for the expiry of the current access regulation at the lower (SGU) network level in order to encourage timely migration towards a higher (IP) network level and IP

---

<sup>12</sup> In accordance with Article 7(3) of the Framework Directive.

<sup>13</sup> See footnote 7 for case references.

interconnection.

Pursuant to Article 7(5) of the Framework Directive, AGCOM shall take the utmost account of comments of other NRAs and the Commission and may adopt the resulting draft measures and, where it does so, shall communicate them 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<sup>14</sup> 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<sup>15</sup> 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<sup>16</sup>. You should give reasons for any such request.

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

---

<sup>14</sup> 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.

<sup>15</sup> Your request should be sent either by email: [INFSO-COMP-ARTICLE7@ec.europa.eu](mailto:INFSO-COMP-ARTICLE7@ec.europa.eu) or by fax: +32 2 298 87 82.

<sup>16</sup> The Commission may inform the public of the result of its assessment before the end of this three-day period.



EUROPEAN COMMISSION

Brussels, 2/05/2011  
C(2011)3112

**SG-Greffe (2011) D/7031**

Autorità per le Garanzie nelle  
Comunicazioni (AGCOM)

Via Isonzo 21/b  
I-00198 Roma  
Italy

For the attention of:  
Mr. Corrado Calabro  
President

Fax: +39 06 696 44 933

Dear Mr Calabro,

**Subject: Corrigendum of Commission decision SG-Greffe (2011) D/5445 of 04 April 2011**

**Commission decision concerning case IT/2011/1196: Remedies related to wholesale markets for call origination on the public telephone network provided at a fixed location, call termination on individual public telephone networks provided at a fixed location and transit services in the fixed public telephone network in Italy**

**Comments pursuant to Article 7(3) of Directive 2002/21/EC<sup>17</sup>**

In the Comments part (chapter III. of the decision), in the first comment at the end of the second paragraph the sentence "Questa proposta dà luogo a tariffe più elevate ed asimmetriche per gli OAOs nel 2011, che non rispecchiano i costi di un operatore efficiente" is modified as follows: "Questa proposta dà luogo a tariffe più elevate ed asimmetriche per gli OAOs nel 2011, che non rispecchiano i costi di un operatore efficiente, in contrasto con la Raccomandazione sulla regolamentazione delle tariffe di terminazione".

---

<sup>17</sup> 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.

In the fourth paragraph the sentence "La Commissione ribadisce, pertanto, le proprie osservazioni precedenti e insiste affinché l'AGCOM fissi quanto più rapidamente possibile le tariffe di tutti gli operatori in postazione fissa al livello di un operatore efficiente" is modified as follows: "La Commissione ribadisce, pertanto, le proprie osservazioni precedenti e insiste affinché l'AGCOM fissi quanto più rapidamente possibile le tariffe di tutti gli operatori in postazione fissa al livello di un operatore efficiente in maniera simmetrica".

In the fourth paragraph the sentence "la fissazione nel periodo transitorio delle tariffe di tutti gli operatori a un livello corrispondente alla terminazione della chiamata a livello SGU locale" is modified as follows: "la fissazione nel periodo transitorio delle tariffe di tutti gli operatori, in maniera simmetrica, a un livello corrispondente alla terminazione della chiamata a livello SGU locale".

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