



EUROPEAN COMMISSION

Brussels, 17/09/2012  
C(2012) 6640

Communications Regulation  
Commission (CRC)  
6 Gurko str,  
1000 Sofia  
Bulgaria

For the attention of:  
Mr. Veselin Bozhkov  
Chairman

Fax: +359 2 986 76 13

Dear Mr. Bozhkov,

**Subject: Commission Decision concerning Case BG/2012/1361: Leased lines in Bulgaria**

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

## **I. PROCEDURE**

On 15 August 2012, the Commission registered a notification from the Bulgarian national regulatory authority, Communications Regulation Commission (CRC)<sup>1</sup>, concerning the retail leased lines market as well as the wholesale markets for terminating segments of leased lines and for trunk segments of leased lines in Bulgaria.

CRC has carried out two national consultations<sup>2</sup>. The first public consultation started on 21 February 2012 and ended on 22 March 2012 and the second public consultation ran from 5 June 2012 until 6 July 2012.

On 24 August 2012, a request for information<sup>3</sup> was sent to CRC and a response was received on 30 August 2012.

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.

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<sup>1</sup> 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.

<sup>2</sup> In accordance with Article 6 of the Framework Directive.

<sup>3</sup> In accordance with Article 5(2) of the Framework Directive.

## **II. DESCRIPTION OF THE DRAFT MEASURE**

### **II.1. Market definition**

#### *Retail leased lines*

CRC defines retail leased lines as electronic communications services providing symmetrical, transparent and dedicated transmission capacity for end users irrespective of the capacity and technology used.

#### *Trunk segments of leased lines*

CRC defines the wholesale trunk segments of leased lines as a wholesale electronic communications service providing symmetrical, transparent and dedicated transmission capacity between two points of market participants' core networks, connecting any of the 27 regional centres in Bulgaria, irrespective of the capacity and technology used to provide leased capacity.

#### *Terminating segments of leased lines*

The wholesale market for terminating segments comprises all wholesale leased lines, which are not included in the wholesale market of trunk segments as defined above and where the two end points are located within any of the 27 districts.

Moreover, as a result of the existence of different competitive conditions, the CRC proposes to define two separate product-submarkets: a submarket for wholesale terminating segments of leased lines up to and including 8 Mbit/s and a submarket for wholesale terminating segments of leased lines above 8 Mbit/s.

As regards the two product submarkets, CRC states that, from a supply side perspective, the lower and higher bandwidth leased lines are not considered substitutes because higher capacities can only be provided via fibre networks, whereas leased lines below 8 Mbit/s are generally provided on the basis of the legacy copper network and alternative operators have rolled out their own fibre network in some parts of Bulgaria. From the demand side perspective, however, both types of leased lines are substitutable i.e. CRC observes that access seekers can and actually do easily switch from lower to higher bandwidth leased lines in case of a small but significant price increase of the former. Yet, this trend is observed only in those areas in which alternative networks exist.

CRC, in its response to the request for information, provided additional data, which indicate price developments for terminating segments of leased lines<sup>4</sup>:

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<sup>4</sup> For the purpose of the analysis, the weighted average monthly price is calculated on the basis of the monthly revenues generated from the respective wholesale terminating segments, distributed by capacity and technology, divided by their number. For the sake of comparability, such weighted average monthly prices are calculated only for local leased lines, i.e. wholesale leased lines provided within one town/city.

year	Weighted average monthly price (in BGN) for wholesale terminating segments of local leased lines							
	Analogue	Digital 2 Mbit/s	Digital 4 Mbit/s	Digital 8 Mbit/s	Ethernet 2 Mbit/s	Ethernet 5 Mbit/s	Ethernet 10 Mbit/s	Ethernet 100 Mbit/s
2008	180	452	n.a.	n.a.	504	170	257	403
2009	180	593	451	n.a.	375	121	160	289
2010	180	592	519	748	375	106	136	248
2011	180	581	513	759	149	96	112	142

## II.2. The three criteria test

As the markets for retail leased lines and wholesale trunk segments of leased lines are no longer listed in the Recommendation on Relevant Markets<sup>5</sup>, CRC carried out the so-called "three criteria test"<sup>6</sup>. In addition, CRC carried out a three criteria test with regard to the market for terminating segments of leased lines above 8 Mbit/s:

### *Retail leased lines*

CRC concluded that for retail leased lines there are no high and non-transitory barriers to entry. In this respect CRC points to (i) new market entries (5 new entrants in 2009 and 3 new entrants in 2010 on the retail leased lines market); (ii) broad penetration of an alternative technology (Ethernet); (iii) applicable wholesale Reference leased lines offer; and (iv) no legal and regulatory barriers.

As to the second criterion, CRC indicates that (i) the incumbent's market shares are decreasing<sup>7</sup>; (ii) there is an established trend of increasing market volume<sup>8</sup>; (iii) a gradual migration from traditional to alternative leased lines is observed; (iv) retail prices are decreasing; and (v) there have been no competition complaints since 2004.

CRC is also of the view that competition law is sufficient to address any failures in the market.

As a result, CRC concluded that the three criteria test is not fulfilled.

### *Trunk segments of leased lines*

Similarly, as regards the first criterion, CRC does not identify the existence of high and non-transitory structural, legal or regulatory entry barriers

<sup>5</sup> 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 Council on a common regulatory framework for electronic communications networks and services (Recommendation on Relevant Markets), OJ L 344, 28.12.2007, p. 65.

<sup>6</sup> In accordance with Point 2 in conjunction with Recital 5 of the Recommendation on Relevant Markets, when identifying markets other than those mentioned in the Annex, national regulatory authorities should ensure that the following three criteria are cumulatively met: (1) there must be high and non-transitory entry barriers, (2) the structure of the market must not tend towards effective competition within the relevant time horizon and (3) the application of competition law alone would not adequately address the market failure(s) concerned.

<sup>7</sup> In terms of volume from 98.7% to 59.4% and in terms of revenues from 97.6% to 84.8%.

<sup>8</sup> The number of leased lines with capacity above 2 Mbit/s increased over 29 times within the period of 2008-2010 and by 15% year on year in 2011;

CRC states that in all of the 27 administrative district centers in Bulgaria there are points of presence of high-speed core networks of at least two alternative operators. Further to that, according to CRC, 96% of wholesale leased lines provided by alternative undertakings have two endpoints located in different administrative district centres in Bulgaria. Alternative operators tend to provide capacity on routes that aggregate traffic between the administrative district centers.

With respect to the second criterion, according to CRC, the number of wholesale trunk segments of leased lines provided in 2010 increased by 40% year on year and by 19.2% year on year in 2011.

The number of wholesale trunk segments of leased lines provided by the alternative undertakings increased by 50% during the period 2008 – 2010 and by 42.1% year on year in 2011. These positive trends are reinforced by additional data concerning decreasing market shares<sup>9</sup> and price reductions for trunk segments of leased lines.

CRC is also of the view that competition law is sufficient to address any market failures.

As a result, CRC concluded also for trunk segments of leased lines that the three criteria test is not fulfilled.

#### *Terminating segments of leased lines above 8 Mbit/s*

According to CRC, no single undertaking has control over infrastructure not easily duplicated. All market players face equal barriers to entry and expansion, as the provision of leased lines above 8 Mbit/s requires the construction of a fibre access network, which tends to be done on demand from customers. As a result, in CRC's view, there is no undertaking that can benefit from the competitive advantage of a widely deployed fibre access network to allow the provision of wholesale leased lines.

In the context of the second criterion CRC in particular points to the large number of new market entries as well as low and constantly decreasing market share of the incumbent which, in 2011, was at the level of 13%. CRC is also of the view that competition law is sufficient to address any market failures.

CRC, therefore, concluded that the three criteria test is not met.

On the basis of its analysis of the three criteria test CRC concludes that the markets for (i) retail leased lines; (ii) wholesale trunk segments of leased lines and (iii) wholesale terminating segments of leased lines above 8 Mbit/s are not susceptible to ex-ante regulation.

### **II.3. SMP assessment**

CRC decided that only the wholesale market for terminating segments of leased lines up to and including 8 Mbit/s is non-competitive and proposes to designate the Bulgarian Telecommunications Company AD (BTC) with SMP on this market.

Taking into consideration that a high market share<sup>10</sup> alone is not sufficient to establish whether BTC has SMP on the relevant market CRC has decided to base its SMP finding also on the following criteria: (i) barriers to entry and market expansion, in particular control of infrastructure not easily duplicated<sup>11</sup>, sunk costs, economies of scale and scope

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<sup>9</sup> From the level of 90% in 2008 to 57% in 2011.

<sup>10</sup> In 2011 BTC's market share in terms of number of lines was at 53.6% (compared to 92.1% in 2008)

<sup>11</sup> CRC explains that BTC is the only provider who has a nationwide copper network, which is used to provide wholesale terminating segments of leased lines of low bandwidth.

and vertical integration; (ii) absence of or low countervailing buying power; and (iii) lack of potential competition.

#### **II.4. Regulatory remedies**

CRC proposes to impose on BTC the following regulatory obligations: (i) access to and use of specific network facilities, (ii) transparency; (iii) non-discrimination; (iv) price control obligation (in a form of a price cap) and accounting separation.

### **III. COMMENTS**

The Commission has examined the notification and the additional information provided by the CRC and has the following comments:<sup>12</sup>

#### **Definition of two separate markets for wholesale terminating segments of leased lines**

The Commission notes that CRC itself demonstrates that, looking at the demand side, access seekers would switch from lower bandwidth to higher bandwidth leased lines if a hypothetical monopolist were to increase the price of the lower bandwidth connection products by a small but significant amount, e.g. by 10 %. The fulfilment of this test, accompanied by rapid decrease of BTC's market shares indicate that both types of leased lines are substitutable and should, in principle, belong to the same relevant product market.

The Commission recognises, however, the additional argument put forward by CRC, that the copper based leased lines of the incumbent operator constitute the only nationwide infrastructure. Therefore, a competitive constraint stemming from alternative providers, offering Ethernet based services, is possible only in those areas where BTC's infrastructure is replicated. The lack of replicability of the legacy network seems to be evidenced by the current pricing structure for terminating segments of leased lines, as provided by CRC, where copper lines are significantly more expensive than alternative interface terminating segments of leased lines, which are also provided by alternative operators. This evidences an ability of BTC to still act independently of its competitors in the low bandwidth market (up to and including 8 Mbit/s) as defined by the Bulgarian regulator.

Bearing in mind the current trend of sharply decreasing market shares of the incumbent, the Commission reminds CRC that alternative networks could eventually be able to also replicate effectively the legacy network of BTC, or demand may decrease to such an extent that certain low capacity leased lines become technically and economically redundant.

The Commission, whilst not contesting the current findings of CRC, therefore invites the latter to closely monitor the market with a special focus on the market segment of wholesale terminating segments of leased lines of up to and including 8 Mbit/s.

Pursuant to Article 7(7) of the Framework Directive, CRC 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

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

position it may take *vis-à-vis* other notified draft measures.

Pursuant to Point 15 of Recommendation 2008/850/EC<sup>13</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>14</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>15</sup> You should give reasons for any such request.

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

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<sup>13</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>14</sup> Your request should be sent either by email: CNECT-ARTICLE7@ec.europa.eu or by fax: +32 2 298 87 82.

<sup>15</sup> The Commission may inform the public of the result of its assessment before the end of this three-day period.