



EUROPEAN COMMISSION

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Bundesnetzagentur (BNetzA)

Tulpenfeld 4
D-53113 Bonn
Germany

For the attention of:
Mr Jochen Homann
President

Fax: +49 228 14 6904

Dear Mr Homann,

Subject: Commission Decision concerning Case DE/2012/1358: Call origination on the public telephone network provided at a fixed location in Germany and Case DE/2012/1359: Call termination on individual public telephone networks provided at a fixed location in Germany

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

I. PROCEDURE

On 17 July 2012, the Commission registered a notification from the German national regulatory authority, Bundesnetzagentur (BNetzA)¹, concerning market definition and significant market power (SMP) finding within the third review of the market for call origination on public telephone network provided at a fixed location² and the market for call termination on individual public telephone networks provided at fixed location³ in Germany.

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

³ Corresponding to market 3 in the Recommendation on Relevant Markets.

The national consultation⁴ ran from 14 March 2012 to 16 April 2012.

On 30 July 2012, a request for information⁵ was sent to BNetzA and a response was received on 2 August 2012 and 3 August 2012.

II. DESCRIPTION OF THE DRAFT MEASURE

II.1. Background

The markets for fixed call origination and termination in Germany were previously notified to and assessed by the Commission under cases DE/2008/0843 and DE/2008/0844, respectively⁶.

BNetzA defined three separate markets for wholesale call origination services: (i) wholesale call origination services on the public telephone network provided at a fixed location to value added services, (ii) wholesale call origination services plus transit on the public telephone network provided at a fixed location for the purposes of Carrier Selection (CS) and Carrier Pre-Selection (CPS) and (iii) wholesale call origination services on the public telephone network provided at a fixed location via primary multiplex access for calls to online services.

All three markets were defined to be national in scope. BNetzA considered the three criteria test to be fulfilled only for markets (i) and (ii). BNetzA proposed to designate Deutsche Telekom (DT) as having SMP in markets (i) and (ii).

BNetzA also defined 58 markets for wholesale fixed call termination and proposed to designate 58 operators with SMP on their individual networks.

The Commission urged BNetzA to notify the corresponding remedies and/or withdraw previously imposed obligations without undue delay.

BNetzA notified the corresponding remedies under cases DE/2009/0887-0888⁷ and DE/2009/0948.⁸

II.2. Market definition

II.2.1. Wholesale fixed call origination

BNetzA proposes to define markets for (i) call origination to value-added services (with exception to CS and CPS) in national public telephone networks provided at a fixed location and (ii) call origination, call origination plus transit and call origination plus transit and conversion to CS and CPS services for local, long-distance, subscriber number, international mobile calls or preset codes for CS and CPS.

Both markets include services over narrowband and broadband (DSL, cable, IP-based fibre loop, static mobile frequency solutions) connections transferred at PSTN level and/or at IP level. The 0(32) number range is included in the market definition.

⁴ In accordance with Article 6 of the Framework Directive.

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

⁶ SG-Greffe(2008)D/208561.

⁷ SG-Greffe(2009)D/1896.

⁸ SG-Greffe(2009)D/4957.

Two different models are under discussion or operated in the market: a model for local exchange network technology-neutral transfer and a model for local exchange technology-compliant transfer. As regards the technology-neutral transfer, the lowest network connection point is independent of the technology implemented. As regards the technology-compliant transfer, the lowest network connection point complies with the technology (IP or PSTN) agreed for the respective telephone number.

The relevant geographic market is national.

BNetzA also concluded that these markets meet the three criteria test.⁹

II.2.2. Wholesale fixed call termination

BNetzA proposes to define markets for call termination on individual public telephone network provided at fixed location including call forwarding.

This market includes services over narrowband and broadband (DSL, cable, IP-based fibre loop, static mobile frequency solutions) connections transferred at PSTN level and or at IP level. Geographical telephone numbers, emergency calls, calls to 115¹⁰ and 0(32) number ranges are included in the market definition.

In the response to the RFI, BNetzA confirmed that only services allowing for the termination on the lowest interconnection point belong to the termination market defined.

The relevant geographic market corresponds to coverage of each operator's network.

BNetzA also concluded that this market meets the three criteria test.

II.3. Finding of significant market power

II.3.1. Wholesale fixed call origination

BNetzA proposes to designate DT as having SMP on the basis of the following main criteria: market shares¹¹; barriers to entry and expansions; control of non-easily duplicated infrastructure; absence of or low countervailing buyers' power; technological advantages; diversification of products and/or services; economies of scale and scope; vertical integration; highly developed distribution and sales network and the absence of potential competition.

II.3.2. Wholesale fixed call termination

BNetzA proposes to designate 57 operators as having SMP in the wholesale call termination markets identified on the basis of the following main criteria: market shares¹² and potential competition; absence of or low countervailing buyers' power; overall size of DT; technological advantages; access to capital markets or financial resources; diversification of products and/or services; economies of scale and scope; vertical integration; highly developed distribution and sales network and/or barriers to

⁹ In accordance with Point 2 in conjunction with Recital 5 of the Recommendation on Relevant Markets 2007/879/EC, 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.

¹⁰ Uniform public authority telephone number.

¹¹ [...]

¹² 100% market share of an operator on its network.

expansion.

III. NO COMMENTS

The Commission has examined the notifications and the additional information provided by BNetzA and has no comments.¹³

Pursuant to Article 7(7) of the Framework Directive, BNetzA may adopt the 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 15 of Recommendation 2008/850/EC¹⁴ 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 Commission¹⁵ 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 reasons for any such request.

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

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

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.