EUROPEAN COMMISSION

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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/2013/1409: Call origination on the public telephone network provided at a fixed location in Bulgaria – Price control, and

Case BG/2013/1410: Call termination on individual public telephone networks provided at a fixed location in Bulgaria – Price control, and

Case BG/2013/1411: Voice call termination on individual mobile networks in Bulgaria – Price control

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

I. PROCEDURE

On 3 January 2013, the Commission registered a notification[1] from the Bulgarian national regulatory authority, CRC, concerning the markets for (i) call origination on the public telephone network provided at a fixed location, (ii) call termination on the public telephone network provided at a fixed location, and (iii) voice call termination on individual mobile networks[2] in Bulgaria.

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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 respectively to markets 2, 3 and 7 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

The national consultation[3] ran from 16 October 2012 to 15 November 2012[4].

On 15 January 2013, a request for information[5] was sent to CRC and a response was received on 18 January 2013. Additional information was received from CRC on 21 and 22 January 2013.

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.

II. DESCRIPTION OF THE DRAFT MEASURES

The present draft measures concern the BU-LRIC model proposed by CRC for setting call origination charges, fixed termination rates (FTRs) and mobile termination rates (MTRs).

II.1. Background

The relevant markets were previously notified to and assessed by the Commission under case numbers BG/2012/1316-1317-1318[6].

The following undertakings were designated with significant market power (SMP): (i) the incumbent BTC on all three markets, (ii) 19 alternative operators[7] on the market for call termination on the public telephone network provided at a fixed location, and (iii) Cosmo Bulgaria and Mobiltel on the markets for voice call termination on individual mobile networks. A price control obligation, together with other remedies, was imposed on SMP operators on each of the relevant markets. With respect to the (fixed and mobile) call termination markets, CRC proposed a glide-path based on international benchmarking from 1 July 2012 until 30 June 2013, when a pure BU-LRIC model would be used for setting termination rates. Regarding tariffs for call origination, CRC proposed to set them at the same level as fixed termination rates (FTRs), i.e. based on a pure BU-LRIC model.

Regarding MTRs (case BG/2012/1318), the Commission issued a "comments" letter asking CRC to modify its benchmarking method in such a way that it would lead already in the period preceding 1 July 2013 to a reduction of MTRs in line with the Termination Rates Recommendation[8]. Also, the Commission took note of CRC's assurance to implement its pure BU-LRIC model as from 1 July 2013.

As regards FTRs (case BG/2012/1317), while the Commission noted that despite the

services (Recommendation on Relevant Markets), OJ L 344, 28.12.2007, p. 65.

3 In accordance with Article 6 of the Framework Directive.

4 Also, a consultation with designated undertakings has run from 16 February 2012 to 6 March 2012.

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

6 C(2012)3442, C(2012)3443, C(2012)3444.

7 "ITD Network" AD, "Blizoo Media and Broadband" EAD, "Varna Net" OOD, "Vestitel BG" AD, VOXBONE S.A./N.V, "Globul Communication Net" AD, "Gold Telecom Bulgaria" AD, "Eastern Telecommunication Company" AD, "Interbild" OOD, "Interoute Bulgaria" EAD, "Cosmo Bulgaria Mobile" EAD, "Mobiltel" EAD, "Nexcom Bulgaria" EAD, "NET IS SAT" OOD, "Netfiniti" EOOD, "Orbitel" EAD, "Skat TV" OOD, "Spectrum Net" EAD, "Telecom 1" OOD.

8 Commission Recommendation 2009/396/EC of 7 May 2009 on the Regulatory Treatment of Fixed and Mobile Termination Rates in the EU (Termination Rates Recommendation), OJ L 124, 20.5.2009, p. 67.

application of a benchmarking approach based on the rate of reduction of FTRs in one Member State (Netherlands), the levels of FTRs as proposed by CRC appear to be broadly consistent with the actual pure BU-LRIC price level in the benchmarked country. The Commission (i) invited CRC to review the benchmarking method as soon as further comparable data on FTRs becomes available and (ii) asked CRC to implement the planned pure BU-LRIC model as proposed on 1 July 2013.

As regards prices for call origination, the Commission noted *inter alia* that they could be significantly reduced as a result of CRC's approach to base them on a pure BU-LRIC model and asked CRC to provide further explanations and relevant data on wholesale call origination charges.

II.2. Price control

II.2.1 Call origination and call termination on public telephone networks provided at a fixed location

CRC proposes to base both FTRs and call origination charges at the level of pure BU-LRIC, which results in equal charges of 0.005 BGN/min (0.256 €ct/min[9]), as of 1 July 2013. From this date there will be no differentiation between peak and off-peak rates. From 1 January 2013 FTRs and origination rates (local/national segment) are as follows: 0.0085 BGN/min (0.435€cents/min) for peak hours and 0.0070 BGN/min (0.358 €cents/min) for off-peak hours.

The BU-LRIC model is based on the NGN network (IP-based core network) of a hypothetical efficient operator. When modelling long-run incremental costs, CRC uses the scorched node approach according to which the location of existing nodes is taken as given.

The proposed FTR levels of 0.005 BGN/min appear high as compared to BU-LRIC based FTRs in other EU countries[10]. CRC acknowledges this fact in its response to the RFI and explains that, contrary to other Member States, the telecom sector in Bulgaria is characterised by wide geographical coverage but low traffic volumes, which leads to increased costs. CRC further states that the ICT penetration rates in Bulgaria being much lower, the proportion of internet and data traffic carried over the network is well behind that of the Member States having already implemented the recommended cost methodology. This, according to CRC, leads to the fixed call termination service increment representing a much higher proportion of the total costs, which in turn makes the pure LRIC rate higher[11].

As regards CRC's proposal to set charges for fixed voice call origination on the basis of a pure BU-LRIC model, CRC explains that this would be an appropriate signal to BTC's competitors. According to CRC, the decrease in the charges for fixed voice call

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9 ECB's Euro foreign exchange reference rates as at 11 January 2013: 1€ = 1.9558 BGN.

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Country (Art.7 case number)	Target Rate (€ct/min)
FR (FR/2011/1236)	0.08
DK (DK/2012/1385)	0.06 peak; 0.032 off-peak; 0.063 call set up
IE (IE/2012/1371)	0.098
MT (MT/2012/1402)	0.0443

11 In this respect CRC points out that according to the Digital Agenda Scoreboard 2012 the fixed broadband penetration in Bulgaria remains the second lowest in the EU, i.e. 16% in Bulgaria as compared to the EU average of 27.7% (in terms of population).

origination would not be detrimental to competition since the resulting increased margin between wholesale and retail tariffs would stimulate entry on the retail market of new operators using carrier-selection/carrier pre-selection (CS/CPS), enabling already active operators to increase their market share. The resulting economic benefits would promote the use of existing facilities and investments in new ones in places where the use of the existing infrastructure is not economically feasible. CRC further stresses that the number of operators using CS/CPS services has remained unchanged during the 1st and 2nd round reviews of the relevant market. As to BTC's revenues from the provision of the CS/CPS service, in 2010 the latter represented only 0.05% of BTC's overall revenues (this figure was 0.1% in 2007).

II.2.2 Voice call termination on individual mobile networks

When modelling an efficient mobile operator, CRC considers a 2G/3G access network, a NGN-based core network, and a 20% minimum efficient scale.

The BU-LRIC model would result in the following MTRs[12]:

	BGN/min	**€cents/min**
01.07.2013	0.023	1.18
01.01.2014	0.020	1.02
01.01.2015	0.019	0.97

CRC confirms in its response to the RFI that MTRs will be BU-LRIC based as of 1 July 2013. CRC further clarifies that the above MTR levels result from the pure BU-LRIC model and reflect forecasted termination traffic in minutes for the years 2013, 2014 and 2015 respectively.

As to the mark-ups referred to in the annex to the BU-LRIC model for mobile termination, CRC clarifies in the additional information provided on 21 January 2013 that these mark-ups have been calculated for the purpose of also obtaining BU-LRIC+ results and that the latter mark-ups are not applied when setting the pure BU-LRIC MTRs. CRC further confirmed in its additional response of 22 January 2013 that this would be clarified in CRC's final decision.

III. COMMENTS

The Commission has examined the notification and the additional information provided by the CRC and has the following comments:[13]

Need for a common approach to price control of call origination services

CRC sets fixed call origination rates on the basis of a pure BU-LRIC model, thus following the pricing approach already proposed in case BG/2012/1316, i.e. the use of the same price control methodology for the SMP operator on the one-sided market for fixed call origination as for the market for fixed call termination.

The Commission notes that, in accordance with the Commission's comment[14]

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12 Current MTRs in Bulgaria (from 01.01.2013) are as follows: 0.046 BGN/min (2.34€cents/min) for peak hours and 0.039 BGN/min (1.99 €cents/min) for off-peak hours.

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

14 The Commission noted *inter alia* that as a result of the use of a BU-LRIC model it can be expected that the call origination prices decrease because the host access network operator would be

made in case BG/2012/1316, the use of a BU-LRIC model for pricing fixed call origination services results in a decrease of the fixed call origination rates. In this respect, the Commission takes note of the limited development of CS/CPS services in Bulgaria and of CRC's explanation that lower call origination rates would not be detrimental to competition since this would encourage entry on the retail market of new carrier select and pre-select operators.

However, the Commission would like to stress again that NRAs use a variety of costing methods for call origination services[15]. Against this background, the Commission would like to reiterate that under Article 7 of the Framework Directive NRAs have to contribute to the development of the internal market by working with each other and with the Commission and BEREC in a transparent manner, so as to ensure the consistent application, in all Member States, of the provision of this Directive and Specific Directives. In this regard, and in the context of the on-going work within the "FTRs/MTRs" BEREC expert working group on the impact of BU-LRIC based FTRs on other fixed markets, the Commission would like CRC to closely cooperate with the Commission, BEREC and other NRAs to define the price control remedy best suited to address failures identified on the market for fixed voice call origination services.

Need for consistent levels of fixed termination rates

CRC sets FTRs in Bulgaria on the basis of a pure BU-LRIC model. The Commission notes that the resulting FTRs are high when compared to FTRs in all the other Member States already using a pure BU-LRIC model. The Commission takes note of CRC's explanation that the higher level of FTRs in Bulgaria can be explained by the specific characteristics of the Bulgarian market, i.e. the combination of wide network coverage (low density population requires a more widely distributed transmission network), low traffic volume and higher proportion of voice traffic as compared with data/internet traffic.

The Commission recognizes that the above mentioned national specificities can influence the outcome of BU-LRIC models to an extent but the observed deviations in BU-LRIC based FTRs are many times higher when compared to BU-LRIC based MTRs. The Commission would therefore like to ask CRC to work with the Commission, BEREC and other NRAs in order to further identify the critical model parameters and/or country characteristics which would explain the observed divergences specifically of BU-LRIC based FTRs, with a view to further harmonise the treatment of individual cost elements within the recommended BU-LRIC approach across Member States.

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 measures; 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/EC[16] the Commission will publish this

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compensated only for the traffic-related avoidable costs of providing call origination services to carrier select and pre-select operators, but not for the non-traffic related costs.

15 See in this respect footnotes 14 and 15 in the Commission's decision in case BG/2012/1316.

16 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

document on its website. The Commission does not consider the information contained herein to be confidential. You are invited to inform the Commission[17] 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.[18] You should give reasons for any such request.

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

Council on a common regulatory framework for electronic communications networks and services, OJ L 301, 12.11.2008, p. 23.

17 Your request should be sent either by email: CNECT-ARTICLE7@ec.europa.eu or by fax: +32 2 298 87 82.

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