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Telekomunikačný úrad Slovenskej republiky (TÚSR)

Továrenská 7
810 06 Bratislava 16
Slovakia

For the attention of:
Mr Ladislav Mikuš
Chairman

Fax: +421 2 5293 2095

Dear Mr Mikuš,

Subject: Commission Decision concerning Case SK/2012/1346: Access to the public telephone network at a fixed location for residential and non-residential customers in Slovakia

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

I. PROCEDURE

On 27 June 2012, the Commission registered a notification from the Slovak national regulatory authority, *Telekomunikačný úrad Slovenskej republiky* (TÚSR)¹, concerning the market for access to the public telephone network at a fixed location for residential and non-residential customers² in Slovakia.

The national consultation³ ran from 15 May 2012 to 15 June 2012.

On 5 July 2012, a request for information⁴ was sent to the TÚSR and a response was received on 11 July 2012.

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 1 of 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.

³ In accordance with Article 6 of the Framework Directive.

⁴ Pursuant to Article 5(2) of the Framework Directive.

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 MEASURE

II.1. Background

The second round analyses of the markets for access to the public telephone network at a fixed location for respectively residential and non-residential customers were notified to the Commission by TÚSR in 2007⁵. The nationwide product markets included both metallic PSTN and ISDN lines. Alternative access networks such as cable TV networks, fibre networks, and wireless fixed networks were excluded from the product market definition.

TÚSR found Slovak Telekom to have significant market power and proposed to impose on it the obligation to provide cost-oriented CS/CPS, to ensure non-discrimination of end-users, and not to engage in anti-competitive tying practices or excessive pricing⁶.

The Commission invited TÚSR to clarify in its final measures the relation between the market share calculations and the product market definition, and commented on the absence of a cost calculation methodology to properly enforce cost-oriented CS/CPS and the prohibition to charge excessive prices.

II.2. Market definition

In the present notification, TÚSR defines the product market as including not only metallic PSTN/ISDN lines but also alternative networks such as cable TV networks, fibre networks, wireless fixed networks (FWA, WiFi), and public mobile telephone networks where the mobility of service is restricted to a certain radius around a fixed location (Home Line and Corporate Line).⁷ The product market definition also includes managed VoIP and bundled services. TÚSR makes no distinction in user type to define the markets (i.e. residential and non-residential).

The geographic scope of the market is national.

II.3. Finding of significant market power

TÚSR finds Slovak Telekom to continue to have significant market power on the basis of market shares⁸; existence of technological advantages; level of differentiation of services; economies of scale; existence of a highly developed distribution and sales network;

⁵ Registered under case numbers SK/2007/676 and SK/2007/696 and corresponding to markets 1 and 2, respectively, in 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.

⁶ This latter obligation was proposed with regard to access to the fixed telephone network for residential customers only.

⁷ Market shares concerning, respectively, coverage and the total number of provided accesses per type of infrastructures in 2011 were respectively 32.63% and 83.84% (metallic lines); 9.23% and 5.03% (cable); 17.24% and 5.04% (fibre); 2.74% and 1.16% (wireless); 38.15% and 4.83% (mobile).

⁸ Although gradually decreasing, the market share of Slovak Telekom on the global market (including both residential and non-residential) is 82.90%. On the residential segment, Slovak Telekom has 83.97% market share; on the non-residential segment, Slovak Telekom has 79.49% market share.

economic, time and strategic barriers to market entry; and the limited state of competition on the market.

II.4. Regulatory remedies

TÚSR proposes to impose on Slovak Telekom the obligations to ensure non-discrimination of end-users and not to engage in anti-competitive tying of services.

TÚSR proposes to withdraw from Slovak Telekom the obligation not to charge excessive prices for access to the fixed public telephone network for residential customers. TÚSR found that the prices charged by Slovak Telekom and its competitors in this market are comparable. According to the regulator, Slovak Telekom can not afford to charge inadequately high prices without considering comparable offers of alternative operators. Slovak Telekom's lump sum fees for setting up retail access are gradually decreasing. Furthermore, the wholesale line rental (WLR) obligation recently imposed on Slovak Telekom via the wholesale call origination market⁹ should increase the use and effectiveness of the carrier selection (CS) and carrier pre-selection (CPS) service obligations imposed on that same market.

III. COMMENTS

The Commission has examined the notification and the additional information provided by TÚSR and has the following comment:¹⁰

Need to monitor the market in terms of pricing

The Commission notes that TÚSR proposes not to impose an obligation not to charge excessive prices on Slovak Telekom. However, against the background of Slovak Telekom's continued high market share and other competitive advantages, and despite the increasing presence of alternative infrastructures, the risk of excessive pricing by Slovak Telekom cannot be fully excluded. TÚSR considers that the fees charged by the SMP operator and the alternative operators are comparable but only provides the one-off fee for establishing access and making public telephone services available to customers. The Commission notes that Slovak Telekom's one-off fees appear to be considerably higher than those of the alternative operators. With regard to monthly fees, TÚSR considers that these would not be informative as the individual operators have multiple offers with various contract durations, including pre-paid minutes, free calls, or bundles with internet access or TV broadcasting for a single price. Nevertheless, TÚSR considers that offers of both the SMP operator and its competitors are comparable in price. TÚSR also refers to aggressively priced monthly fee offers from Orange Slovensko in the beginning of 2010 - in some cases half the fee charged by Slovak Telekom - but notes that the influence of Orange Slovensko, despite its geographical coverage, is small.

The Commission notes the increase in alternative infrastructures offering access to the public telephone network at a fixed location in Slovakia and a WLR obligation, which was recently imposed alongside the existing wholesale CS/CPS obligations. Whilst this should further improve the competitive conditions on the market, the Commission nevertheless invites TÚSR to monitor the market closely, in particular with regard to pricing structures and strategies.

⁹ Corresponding to market 2 of the Recommendation.

¹⁰ In accordance with Article 7(3) of the Framework Directive.

In particular, the Commission invites TÚSR to enforce strictly its wholesale regulation and rigorously monitor market developments both at retail and at wholesale level. Where the wholesale remedies imposed and the currently proposed limited form of retail regulation would not achieve the regulatory objectives set out in Article 8 of the Framework Directive, TÚSR should consider imposing, in accordance with Article 17 of the Universal Service Directive, further regulatory obligations based on the nature of the problem identified in the retail access market.

Pursuant to Article 7(7) of the Framework Directive, TÚSR 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 position it may take *vis-à-vis* other notified draft measures.

Pursuant to Point 15 of Recommendation 2008/850/EC¹¹ 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 Commission¹² 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.¹³ You should give reasons for any such request.

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

¹¹ 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.

¹² Your request should be sent either by email: CNECT-ARTICLE7@ec.europa.eu or by fax: +32 2 298 87 82.

¹³ The Commission may inform the public of the result of its assessment before the end of this three-day period.