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Sabiedrisko Pakalpojumu
Regulēšanas Komisija (SPRK)

Brīvības ielā 55
LV-1010 Rīga
Latvia

For the attention of:
Mr Valdis Lokenbahs
Chairperson

Fax: +371 67 097 277

Dear Mr Lokenbahs,

Subject: Commission Decision concerning Case LV/2012/1356: Voice call termination on individual mobile networks in Latvia

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

I. PROCEDURE

On 13 July 2012, the Commission registered a notification from the Latvian national regulatory authority, Sabiedrisko Pakalpojumu Regulēšanas Komisija (SPRK)¹, concerning the markets for voice call termination on individual mobile networks².

A one-month national consultation³ was commenced on 15 May 2012 and lasted for one month. The deadline for the EU consultation under Article 7 of the Framework Directive is 13 August 2012.

A request for information⁴ was sent to SPRK on 24 July 2012 and a response was

¹ 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 This market corresponds to market 7 of 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 communication networks and services, OJ L 344, 28.12.2007, p. 65 (the "Recommendation on relevant markets").

³ In accordance with Article 6 of the Framework Directive

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

received on 27 July 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.

II. DESCRIPTION OF THE DRAFT MEASURE

II.1. Background

Under cases LV/2010/1030-1031 SPRK notified the second review of the markets for voice call termination on individual mobile networks⁵ and the details of price control obligations already imposed on some operators having significant market power (SMP) since the first market review. SPRK designated four operators as having SMP, namely Tele2, Latvians Mobilais Telefons, BITE Latvija and Telekom Baltija. SPRK proposed to maintain a full set of remedies on Latvians Mobilais Telefons and Tele2 and to modify the remedies of transparency and non discrimination previously imposed on BITE Latvija by including also the obligations of access, price control and accounting separation. As regards Telekom Baltija, SPRK proposed to maintain the previously imposed remedies, i.e. only transparency and non discrimination obligations.

The Commission, in its comments letter, invited SPRK to reconsider the obligations proposed for Telekom Baltija and impose also access and price control obligations so as to ensure effective regulation on the mobile termination markets. The Commission also invited SPRK to ensure that its methodology used to set the interim prices in the currently proposed glide path results in outcomes consistent with the principles of forward-looking economic efficiency, serves to promote competition and maximises consumer benefits. The Commission further invited SPRK to reconsider its cost accounting method and to align it with the recommended cost accounting principles of the Termination Rates Recommendation in the next round of market analysis.

Under case number LV/2012/1296, SPRK notified the third review of the wholesale markets for voice call termination on individual mobile networks in Latvia.

SPRK did not propose to impose any access obligation for BITE Latvija and 12 mobile virtual network operators.

With regard to the lack of imposition of an access obligation, the Commission raised serious doubts as to the compatibility of the proposed measure with EU law and to enter a second phase investigation under Article 7a of the Framework Directive.

SPRK withdrew its draft measure on 27 April 2012.

II.2. Market definition

In the current notification SPRK defines the relevant product market as the market for voice call termination on individual mobile networks. The market definition includes all

⁵ This market corresponds to market 7 of 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 communication networks and services, OJ L 344, 28.12.2007, p. 65 (the "Recommendation on relevant markets").

calls terminated on the respective mobile networks of four mobile network operators ("MNOs") i.e. SIA "Tele2", SIA "Latvijas Mobilais Telefons", SIA "BITE Latvija" and SIA "Telekom Baltija" as well as 12 mobile virtual network operators ("MVNOs") i.e. SIA „Amber Telecom”, AS „BALTICOM”, SIA „Camel Mobile”, SIA „CSC TELECOM”, SIA „ECO Solutions”, SIA „INTERNETA PASAULE”, SIA „Master Telecom”, SIA „Radio Telecommunication Network”, SIA „Rigatta”, SIA „SOTUS”, SIA „Telegrupa Baltijā”, SIA „Tivi”, irrespective of the technology used (i.e. 2G, 3G)⁶.

The relevant geographic markets coincide with the geographic coverage of each network.

II.3. Finding of significant market power

On the basis of the analysis of the relevant markets, SPRK proposes to designate all sixteen operators as having SMP in the market for voice call termination on their respective mobile networks. The criteria used by SPRK to assess SMP on these markets include: market shares⁷, lack of countervailing buyer power, absence of potential competition and barriers to entry.

II.4. Regulatory remedies

SPRK proposes to maintain previously imposed obligations on Tele2, LMT, and BITE Latvija, i.e. access, transparency, non-discrimination, cost accounting and accounting separation, and price control.

With regard to AS Telekom Baltija, apart from previously imposed obligations of transparency and non-discrimination, SPRK proposes to add access and price control. New entrants (MVNOs) should be subject to access, transparency, and price control obligations⁸.

SPRK proposes to set MTRs for all SMP operators on the basis of a benchmarking approach. It proposes to use as a reference for price calculation those MTRs in four Member States (i.e. Belgium, France, Hungary and the UK⁹), which in SPRK's view calculate MTRs using a pure BU-LRIC methodology. Furthermore, SPRK adjusted the average rates of these four countries (published by BEREC as of 1 January 2013) taking into account national circumstances in Latvia by comparing the results of the bottom-up modelling approach with those of a top-down model which uses audited data of Latvian Mobilas Telefons (the most efficient Latvian mobile operator in terms of costs). As a result the target MTR level was set at 0.011 LVL/min (or approx 1.58 €ct/min) and is to be applied by all SMP operators as of 1 April 2013¹⁰.

⁶ In order to determine the number of operators which should be taken into account, SPRK used two criteria: (i) the existence of at least one interconnection agreement with another operator which covers the provision of call termination services; (ii) the possession of numbering usage rights.

⁷ Each operator has a monopoly position on its own network.

⁸ SPRK proposes not to impose a non-discrimination obligation on the smallest operators as this would hinder the development of a "bill and keep" model in the future.

⁹ In its response to the request for information SPRK acknowledged that it was not aware of the fact that the finally adopted measure by OFCOM in the UK imposed a maximum MTR of 0.85c€/min, and not 0.95c€/min, as originally proposed.

¹⁰ SPRK explained in its response to the request for information that the decision to apply new MTRs as of 1 April 2013 is made because of an established practice to inform interested parties about important decisions at least 6 months in advance. The final decision on new MTRs is scheduled to be

III. COMMENTS

The Commission has examined the notification and the additional information provided by SPRK and has the following comment:¹¹

Need for an appropriate benchmarking methodology

At the outset, the Commission welcomes SPRK's decision to impose an access obligation on all SMP operators. This addresses the concern expressed by the Commission with regards to SPRK's previously notified draft measure¹².

With regard to the current SPRK proposal to regulate MTRs, the Commission would like to stress that there are other Member States, such as Denmark, Italy, Portugal and Spain¹³, which have implemented the pure BU-LRIC cost model and thus their MTRs should be taken into account when benchmarking. Secondly, the Commission reiterates that rates used for benchmarking purposes should be the cost efficient target rates at the end of the respective glide paths in the chosen Member States, and not the intermediate rates¹⁴. Such an approach has also been endorsed by BEREC¹⁵. Contrary to this, when benchmarking against Hungarian MTRs, SPRK has chosen a benchmark rate of 2.32€/min which does not in fact represent a cost-efficient MTR that results from a costing model developed by the Hungarian NRA but an intermediate rate leading to the cost efficient MTR. As the Commission noted in its decision concerning case HU/2011/1225, MTRs set at the cost-efficient level have not yet been imposed in Hungary, but its imposition was only announced for January 2014, as it depends on the outcome of a new market analysis.

In this context the Commission would like to point out that there are other reliable and publicly available sources, such as decisions adopted by NRAs, as well as Commission decisions concerning notifications made in accordance with Article 7 of the Framework Directive.

More generally, when setting the MTRs on the basis of a benchmark, the NRA should ensure that the target rate is not higher than the average of the cost-efficient target rates in those Member States having implemented the recommended pure BU-LRIC model in order to comply with the Recommend 12 of the Termination Rates Recommendation. Therefore, the NRA should (i) identify the Member States which have not only developed a pure BU-LRIC model, but have already adopted a decision which stipulates that the cost-

adopted in September 2012.

¹¹ In accordance with Article 7(3) of the Framework Directive.

¹² See cases LV/2010/1030-1031 and LV/2012/1296.

¹³ See cases DK/2012/1342, IT/2011/1219, PT/2012/1312 and ES/2012/1314.

¹⁴ As the Commission noted in its decision concerning case HU/2011/1225, MTRs set at the cost-efficient level have not yet been imposed in Hungary, but its imposition was only announced for January 2014, as it depends on the outcome of a new market analysis. Therefore, the rate of 2.32€/min does not in fact represent a cost-efficient rate that results from a costing model developed by the Hungarian NRA.

¹⁵ See BEREC's opinion in Phase II investigation in cases NL/2012/1284 and NL/2012/1285 on fixed and mobile termination markets in the Netherlands.

efficient target rate will come into force on 1 January 2013, or, exceptionally, delays its introduction for a short period of time beyond this deadline and (ii) use the target rates resulting from the pure BU-LRIC models applied in the above specified Member States (and not the rates foreseen in the glide-path¹⁶) to calculate such average rate of the cost efficient MTRs.

In addition to the BEREC Reports, the information required for the above analysis should be taken from final decisions adopted by NRAs in their respective Member States. Further on Commission Article 7 decisions concerning market 7 notifications, which very often contain a list of Member States having implemented the pure BU-LRIC methodology, as well as their cost-efficient rates¹⁷ (such as the one below) might provide a more updated list of Member States and their rates than the BEREC Report which is published every six months. However, the Commission points out that the NRAs would still need to verify the finally adopted measures, to determine whether they indeed correspond to the notified draft decisions.

Table of Member States which have notified a pure BU-LRIC methodology for MTRs to the European Commission under Article 7 (as of 31 July 2012)

Country	Target Rate (€/ct/min)	Deadline
BE	1.08	01/01/2013
FR	0.8	01/01/2013
PT	1.27	01/01/2013
IT	0.98	01/07/2013
ES	1.09	01/07/2013
DK	1.07	01/01/2013
UK	0.86*	01/04/2013
*Adjusted rate by Ofcom following the Competition Appeal Tribunal's judgement according to which the MTRs glide-path would target 0.67ppm (2008/09 prices) on 1 April 2013. This would equal approx. 0.859 €/ct/min using exchange rate of 24 July 2012 (1 GBP = 1.28240 EUR).		

Once the NRA has calculated the pure BU-LRIC rate, it should then determine the appropriate glide-path, resulting in the pure BU-LRIC target rate as of 1 January.

Finally, the Commission is of the view that SPRK, by comparing the results of the benchmark approach with those of a top-down model which uses audited data of one of the Latvian operators has moderately increased the level of MTR. The Commission would like to stress that, according to the Termination Rates Recommendation, such a comparison is foreseen only in order to verify the bottom-up modelling approach, but not when a NRA decides to apply benchmarking against prices existing in other Member States.

The Commission therefore urges SPRK to (i) benchmark against all pure BU-LRIC MTRs currently implemented across the EU and remove the adjustment stemming from the audited top-down model of Latvian Mobilas Telefons, (ii) verify whether the proposed benchmark rates actually correspond to the pure BU-

¹⁶ Please see footnote 15.

¹⁷ See for example cases BG/2012/1318 and MT/2012/1330.

LRIC rates adopted by the NRAs by way of final decisions¹⁸, (iii) in case deviations are identified, correct the benchmark rates and adopt in its final decision an amended benchmarking methodology as described above, and (iv) modify its glide-path in order to set the MTRs at the level of the pure BU-LRIC rate already as of 1 January 2013, as foreseen in the Termination Rates Recommendation.

The Commission recalls that Article 7(7) of the Framework Directive imposes on NRAs the obligation to "*take the utmost account*" of the Commission's comments.

The Commission reminds SPRK that, in any event, the proposed regulation including the above-mentioned necessary adjustments should be of temporary nature and ought to be replaced as soon as possible by the pure BU-LRIC methodology (at the latest as of 1 July 2014).

The Commission finally reminds SPRK that if it were to propose a new price remedy, which would deviate from EU law and the principles of the Termination Rates Recommendation, the Commission could proceed to opening a phase II investigation pursuant to Article 7a of the Framework Directive.

Pursuant to Article 7(7) of the Framework Directive, SPRK 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, it 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/EC¹⁹ 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 Commission²⁰ 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.²¹ You should give reasons for any such request.

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

¹⁸ See Commission comments in cases IT/2008/0779, SK/2012/1313, BG/2012/1318, CZ/2012/1327, GI/2011/1248 and MT/2012/1330.

¹⁹ 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.

²⁰ Your request should be sent either by email: CNECT-ARTICLE7@ec.europa.eu or by fax: +32 2 298 87 82.

²¹ The Commission may inform the public of the result of its assessment before the end of this three-day period.