

Notification of four draft measures (“orders”) according to Article 7 (3) of the Framework Directive (2002/21/EC) regarding Market 7 of Recommendation 2007/879/EC – MNO

The Federal Network Agency for Electricity, Gas, Telecommunications, Post and Railway (Bundesnetzagentur) is hereby making four draft measures (so-called "regulatory orders", cf section 13(1) sentence 1 TKG) available to the European Commission, to BEREC and to the national regulatory authorities of every other member state in accordance with Article 7(3) of the Framework Directive, transposed by sections 13(1) sentence 2 and 12(2) of the TKG.

With regulatory orders from 5 December 2008, supplemented by regulatory orders from 1 September 2009, the MNOs T-Mobile Deutschland GmbH, Vodafone D2 GmbH, E-Plus Mobilfunk GmbH & Co. KG and Telefónica O2 Germany GmbH & Co. OHG were subjected to regulatory measures in market 7 of the Markets Recommendation. The respective mobile termination rates were lastly approved on 24 February 2011. The approvals expired on 30 November 2012.

The outcome of a new market definition and market analysis carried out by the President's Chamber of market 7 showed *inter alia* Telekom Deutschland GmbH (as successor of T-Mobile Deutschland GmbH), Vodafone D2 GmbH, E-Plus Mobilfunk GmbH & Co. KG and Telefónica Germany GmbH & Co. OHG to have still significant market power in their mobile termination markets. This outcome was notified to the European Commission on 23 November 2011 and finally adopted by the President's Chamber on 2 January 2012.

On 18 April 2012 four draft regulatory orders were posted on the Agency's website. Additionally notices published in Official Gazette No 7/2012 as Communications No 241-244/2012 called attention to the postings. Comments were invited from interested parties within a period of one month from publication.

The published drafts contained the following remedies:

- maintenance of measures according to
 - section 9(2) in conjunction with sections 13(1), 21(3) para 3 and (2) para 1 of the TKG, as far as the four operators are obliged in I.1 to provide interconnection and in I.2 to provide conveyance;
 - section 9(2) in conjunction with sections 13(1), 21(3) para 5 of the TKG, as far as the operators are obliged in I.3 to grant, for interconnection purposes, colocation and as part of this, to give colocation users and their authorised agents access to these facilities at all times;
 - section 9(2) in conjunction with sections 13(1) and 19 of the TKG, as far as the operators are obliged in I.4 to make sure that access agreements are based on objective criteria, are transparent, grant equally good access and meet the requirements of fairness and reasonableness;
 - section 9(2) in conjunction with sections 13(1) and 20(3) of the TKG, as far as the operators are obliged in I.5 to submit to the Regulatory Authority agreements on access services and facilities to which they are parties as providers;
 - section 9(2) in conjunction with sections 13(1) and 23(1) of the TKG, as far as the operators are obliged in I.6 to publish a reference offer;
 - section 9(2) in conjunction with sections 13(1) and 30(1) sentence 1 of the TKG, as far as, under I.7, the rates for interconnection and conveyance services and the granting of colocation are subject to approval in accordance with sections 31 and 32 of the TKG;

- amendment of measures according to
 - section 9(2) in conjunction with sections 13(1) and 31(2) para 2 of the TKG, as far as, under II.1, from 1 December 2012 onwards the rate regulation for conveyance services is modified by the stipulations of the Termination Rates Recommendation with the exception that the traditional approach for the distribution of common costs (LRAIC) is maintained;
 - section 9(2) in conjunction with sections 13(1) and 31(2) para 2 of the TKG, as far as, under II.2, from 1 December 2012 onwards the rate regulation for interconnection services and the granting of colocation is modified by the aim of symmetrical rates predominantly determined by benchmarking methods.

The responses from the parties concerned and the other interested parties were posted on 30 May 2012 as the outcome of the consultation procedure on the Agency's website. Additionally notices published in Official Gazette No 10/2012 as Communication No 330-333/2012 called attention to the postings. Under the public consultation, the parties concerned and the other interested parties also had the opportunity to comment during the oral proceedings held on 3 May 2012.

On 31 May 2012 a pre-notification meeting took place between Bundesnetzagentur and the European Commission. The Commission indicated that it would appreciate a notification which includes not only the draft regulatory orders but also the communication of the (provisional) approval decisions concerning the termination rates. This way a proper assessment of the draft regulatory orders would be much facilitated.

Therefore, on 22 August 2012, the Agency adopted four provisional regulatory orders which put the measures contained in the draft from 18 April 2012 provisionally into force from 1 December 2012 onwards. On 24 August 2012, according to Article 7 (9) of the Framework Directive, these orders were communicated to the Commission, to BEREC and to the national regulatory authorities of every other member state. The provisional regulatory orders are applicable until the final regulatory orders will have been adopted.

On 16 November 2012, based on the provisional regulatory orders, Bundesnetzagentur provisionally approved the termination rates of Telekom, Vodafone, E-Plus and Telefónica. The rates, which entered into force on 1 December 2012, were set at 1,85 Eurocent/Min. (01.12.2013-30.11.2013) and 1,79 Eurocent/Min. (01.12.2013-30.11.2014). The provisional approval decisions were communicated on 16 November 2012 to the Commission, to BEREC and to the national regulatory authorities of every other member state.

In light of this, Bundesnetzagentur resumes the proceedings for notifying the drafts of the final regulatory orders. These draft orders contain the same remedies as the provisionally adopted regulatory orders from 22 August 2012.

This notification includes

- four draft regulatory orders.

Bundesnetzagentur
Bonn, 31 January 2013