



Brussels, 19.4.2013
C(2013) 2382

Rundfunk und Telekom
Regulierungs-GmbH (RTR)

Mariahilferstraße 77-79
A-1060 Wien
Austria

For the attention of:
Mr Georg Serentschy

Fax: + 43 1 58 058 9191

Dear Mr. Serentschy,

Subject: Commission Decision concerning Case AT/2013/1434: Call origination on the public telephone network provided at a fixed location in Austria

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

I. PROCEDURE

On 19 March 2013, the Commission registered a notification¹ from the Austrian national regulatory authority, Telekom-Control-Kommission (TKK)², concerning the market for call origination on the public telephone network provided at a fixed location³ in Austria.

The national consultation⁴ ran from 19 December 2012 to 4 February 2013.

On 27 March 2013, a request for information⁵ was sent to TKK and a response was received on 3 April 2013.

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 According to the Austrian Telecommunications Law regulatory decisions concerning the market analysis and remedies are adopted by the Telekom-Control-Kommission (TKK), which is supported by the Rundfunk und Telekom Regulierungs-GmbH (RTR). RTR is furthermore responsible for defining relevant markets by means of an ordinance. Only markets defined in this way can and shall be made subject to a market analysis.

³ 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.

⁴ In accordance with Article 6 of the Framework Directive.

⁵ In accordance with 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 market for call origination on the public telephone network provided at a fixed location in Austria was previously notified to and assessed by the Commission under case AT/2010/1046⁶. TTK considered that Telekom Austria holds a SMP position and imposed on it the following remedies: access and interconnection, non-discrimination, transparency, accounting separation, price control based on LRAIC and cost accounting. In its measure TTK proposed to maintain the previously existing interconnection tariffs in order to avoid an increase of prices and tariff instability (LRAIC prices were increasing due to the traffic volume decrease). The Commission commented on the need to adopt an appropriate price control methodology, and expressed the view that the sole maintenance of tariff levels, to ensure their stability, cannot be regarded as a proper price control method.

II.2. Market definition

Wholesale call origination services consist of the transmission of voice and data traffic from the subscriber to the nearest interconnectable switching point in the network of A1 TA. The market definition comprises the origination services of calls, fax and modem connections, and Voice over Broadband (VoB). As previously, Voice over Internet (VoIP) origination services are excluded from the market.

The relevant geographic market is national.

II.3. Finding of significant market power

TTK applied the following criteria to assess SMP in the relevant markets: (i) market shares, (ii) economies of scale/scope, (iii) barriers to entry, (iv) vertical integration and leveraging of market power, (v) control of infrastructure not easily duplicated and (vi) countervailing buying power.

A1 TA still maintains a high market share of 75% in the relevant market, and its market share is relatively stable (decrease of 1-2% annually). The two main competitors have approximately 10% market share each, and the remaining 5% of the market is spread between 30 small operators.

TTK proposes to designate the incumbent operator, A1 TA, as having SMP in the call origination market.

II.4. Regulatory remedies

TTK proposes to impose on A1 TA the following remedies:

- obligation to interconnect (with single PoI starting from January 2014);
- cost orientation based on efficient fully distributed historical costs (2.135 €/min peak and 1.321 €/min off-peak). Moreover, pricing will be monitored by a margin squeeze test;
- carrier selection and carrier pre selection (CS/CPS);
- accounting separation.

⁶ C(2010)1738.

In view of A1 TA's migration towards an all-IP network ("Next Generation Network", NGN), and the resulting closure of the interconnection points at the lowest level of A1 TA's network (in the local exchanges), A1 TA is obliged to offer call origination services at two national IP interconnection points (located in Vienna and Salzburg), as well as at the level of 7 main switching centres (however without any distinction concerning the level of rates for national/regional call origination services). Moreover, A1 TA should continue to offer call origination services at the level of 44 existing local exchanges until the end of 2013.

In the notified draft measure TKK proposes to change the costing methodology from a forward-looking long-run average incremental cost (FL-LRAIC) to a historical Fully Allocated Costs (FAC) methodology. The implication of the proposed change is a significant increase in wholesale charges:

Local origination	Peak in €/min.	Off-Peak in €/min.
Current Origination Rates	0.820	0.480
Proposed Origination Rates	2.135	1.321
Increase in %	+160%	+175%
Origination Rates Increase	+1.315	+0.841

TKK justifies the change of the price setting methodology with changed market conditions on the retail markets, in particular significant competitive pressure exerted by the mobile operators.

In addition, in the reply to the RFI, TKK justifies the increase of the wholesale call origination rates also by the need to ensure sufficient differentiation in the relative prices for CS/CPS and wholesale products based on Voice over Broadband. TKK considers that in the near future the services provided by means of CS/CPS should be replaced by retail offers based on VoB. TKK would like to promote the uptake of competitive offers based on wholesale VoB, as it impacts not only the retail markets for phone call services, but also for access to the telephony network. In that regard the increase of prices for wholesale call origination will make the wholesale VoB offers relatively more attractive for the competing operators. TKK considers the VoB offers as "future proof", and considers that too low wholesale charges for CS/CPS could negatively impact the take up of the VoB offers.

Moreover, TKK considers that there is a sufficient margin between the retail prices and the increased charges for wholesale call origination. TKK regularly monitors whether the margin squeeze can be observed.

Finally, in its reply to the RFI, TKK specifically explains that the increase of the wholesale call origination charges is not resulting from the simultaneous decrease of the wholesale fixed termination rates (FTRs) in accordance with the recently notified measure setting such termination rates on the basis of the recommended pure BU LRIC cost model.⁷

III. COMMENTS

The Commission has examined the notification and the additional information provided by the TKK and has the following comment:⁸

⁷ See case AT/2013/1435.

⁸ In accordance with Article 7(3) of the Framework Directive.

Change of pricing methodology and resulting significant increase of wholesale call origination rates

The Commission notes that TKK intends to change its wholesale price setting methodology for call origination services, which will in consequence significantly increase the call origination charges. TKK motivates its proposal with changed competition conditions at the retail level (strong pressure from mobile operators) and its intention to incentivize competitors to migrate towards future-proof technology based on VoB.

The Commission considers that the competitive pressure from neighbouring mobile markets might not be sufficient to justify the change of price setting methodology and such significant increase of wholesale call origination charges. To the contrary, the competitive pressure from mobile markets would suggest that A1 TA could decrease its retail tariffs, and consequently the wholesale charges to avoid a margin squeeze.

Furthermore, the Commission notes TKK's intention to ensure the relative attractiveness of wholesale offers based VoB. While indeed such offers could positively impact the development of competition not only on the retail calls market(s) but also on the retail access market(s), the Commission considers that in the short to medium term such offers may not be considered substitutes of wholesale call origination services in the specific Austrian context. The Commission notes that despite the existence of regulated wholesale VoB offers on the Austrian market for a significant period of time, there has been virtually no take up of the wholesale services, and only few retail customers are provided with services based on VoB.⁹ The Commission points out that the reason for the low take up of VoB offers may not be the relative attractiveness of the CS/CPS model, but possible deficiencies (concerning both pricing and technical issues) of the wholesale VoB offer.

In that regard the Commission asks TKK to analyse further, prior to adopting its final measure, the ability of VoB services to substitute wholesale call origination over the relevant timeframe of the review. Should TKK come to the conclusion that the proposed increase of the wholesale call origination tariffs will most likely strengthen the ability of A1 TA to exclude CS/CPS competitors, without bringing about the expected migration towards VoB, the Commission requests TKK to reconsider in its final measure the need to modify the price setting methodology.

In any event, TKK should closely monitor the market and ensure that there is sufficient margin between the increased wholesale charges and prevailing retail tariffs.

Pursuant to Article 7(7) of the Framework Directive, TKK 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.

⁹ According to a statement by a large operator in Austria, there are only 55 retail customers who are provided with telephony services on the basis of VoB. This low take up of wholesale VoB services is explained (by the alternative operators) by the unattractiveness of such offers, especially the pricing which is based on the volume of the data consumption (which cannot be predicted by the access seeker). In addition VoB access has different technical features, which makes it less attractive for the retail customer (such as quality, need for additional terminal equipment, etc).

Pursuant to Point 15 of Recommendation 2008/850/EC¹⁰ 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 Commission¹¹ 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.¹² You should give reasons for any such request.

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

¹⁰ 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.

¹¹ Your request should be sent either by email: CNECT-ARTICLE7@ec.europa.eu or by fax: +32 2 298 87 82.

¹² The Commission may inform the public of the result of its assessment before the end of this three-day period.



(1) EUROPEAN COMMISSION

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Austria

For the attention of:
Mr Georg Serentschy

Fax: + 43 1 58 058 9191

Dear Mr. Serentschy,

Subject: Corrigendum of Commission Decision C(2013) 2382 of 19 April 2013 concerning case AT/2013/1434 (Call origination on the public telephone network provided at a fixed location in Austria)

Please note that the above decision is amended as follows:

1. **Footnote 2** is deleted.

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