



EUROPEAN COMMISSION
Information Society and Media Directorate-General

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Communications Regulation
Commission (CRC),
6 Gurko str,
1000 Sofia,
Bulgaria.

For the attention of:
Mr. Veselin Bozhkov
Chairman
Fax: +359 2 987 06 95

Dear Sir,

Subject: Case BG/2009/0866: Market for voice call termination on individual mobile networks in Bulgaria

Comments pursuant to Article 7(3) of Directive 2002/21/EC¹

I. PROCEDURE

On 23 December 2008, the Commission registered a notification from the Bulgarian national regulatory authority, the Communications Regulation Commission (CRC), concerning the wholesale market for voice call termination on individual mobile networks in Bulgaria².

The national consultation³ on the proposed decision ran from 19 September 2008 to 20 October 2008. The deadline for the Community consultation under Article 7 of the Framework Directive is 23 January 2009.

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 (the “Framework Directive”), OJ L 108, 24.4.2002, p. 33.

² Corresponding to market 7 of Commission Recommendation 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 OJ L 344, 28.12.2007, p. 65-69.

³ In accordance with Article 6 of the Framework Directive.

A request for information was sent to CRC⁴ on 12 January 2009 and a response was received on 15 January 2009.

Pursuant to Article 7(3) of the Framework Directive, national regulatory authorities (NRAs) and the Commission may make comments on notified draft measures to the NRA concerned.

II. DESCRIPTION OF THE DRAFT MEASURE

II.1. Market definition

CRC considers that the provision of wholesale voice call termination by each individual mobile network operator constitutes a separate relevant market as there are no services which are interchangeable with voice call termination on individual mobile networks. CRC further considers that the geographic scope of the market corresponds to the coverage of each individual network, i.e., Bulgaria.

Accordingly, CRC defines four markets comprising the provision of wholesale voice call termination provided by:

- Mobitel plc (Mobiltel) on its mobile network according to GSM and UMTS standards;
- Cosmo Bulgaria Mobile plc (Cosmo Bulgaria Mobile) on its mobile network according to GSM and UMTS standards;
- Bulgaria Telecommunications Company Ltd (BTC) on its mobile network according to GSM and UMTS standards; and
- BTC on its mobile network according to NMT and/or CDMA standards.

II.2. Finding of significant market power (“SMP”)

CRC intends to designate each of the above operators as having SMP for wholesale voice call termination on their respective mobile networks.

The main criteria considered by CRC when reaching its conclusion are: (i) market shares (each of the four MNOs has 100% share of voice call termination provided on its individual network); (ii) barriers to entry and expansion; (iii) insufficient countervailing buyer power; and (iv) prices and price policy⁵.

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

⁵ During the period 2004-2007, the prices of voice call termination were commercially determined. The peak price level of [...] BGN/min or [...] eurocents/minute for fixed-to-mobile calls terminating on the networks of Mobiltel and Cosmo Bulgaria Mobile and BTC in the case of its NMT/CDMA network as well as the asymmetry in the prices charged for calls incoming from fixed and mobile networks respectively remained unchanged for the entire period. At the retail level, CRC also notes that on-net prices for mobile networks are over six times lower than off-net retail prices and that fixed-to-mobile retail prices are, in some cases, almost three times higher than mobile-to-fixed prices. By way of a decision adopted on 3 January 2008, CRC initiated a glide path for a gradual reduction in the fixed-to-mobile termination rates. This aims to achieve symmetry for the termination rates charged for fixed-to-mobile and mobile-to-mobile calls respectively by 1 July 2009 at the level of 0.25 BGN/min or 12.7 eurocents/min (peak) and 0.19 BGN/min or 9.7 eurocents/min (off-peak).

II.3. Regulatory remedies

Having identified potential competition problems associated *inter alia* with excessive pricing, price discrimination and market foreclosure, CRC proposes the following regulatory obligations⁶:

- to provide access to, and use of, specific network facilities (applicable to Mobiltel, Cosmo Bulgaria Mobile and BTC);
- transparency⁷ (applicable to Mobiltel, Cosmo Bulgaria Mobile and BTC with less detailed transparency obligations for BTC's NMT and/or CDMA network);
- non-discrimination (applicable to Mobiltel, Cosmo Bulgaria Mobile and BTC only in the case of its GSM and UMTS network);
- price control (applicable to Mobiltel, Cosmo Bulgaria Mobile and BTC); and
- cost orientation, cost accounting and accounting separation (applicable to Mobiltel and Cosmo Bulgaria Mobile).

As regards the absence of a non-discrimination obligation for BTC in the case of its NMT/CDMA network, CRC notes that in view of recent market trends⁸ any non-price discrimination by this network would likely have negligible effects.

As regards price control and cost accounting, CRC proposes to apply a cost orientation obligation only on the two largest operators, Mobiltel and Cosmo Bulgaria Mobile, and to impose an obligation on BTC to apply rates which are reciprocal with those cost-oriented rates. Although CRC considers cost-orientation and cost-accounting a necessary measure for the efficient determination of prices, it further proposes to specify these cost-oriented rates only over the medium term following finalisation of the Commission's Recommendation on the regulatory treatment of fixed and mobile termination rates in the EU⁹.

In the interim period, CRC proposes a glide path based on international benchmarks as reported in the European Commission's 13th Progress Report on the Single European Electronic Communications Market¹⁰.

⁶ Mobiltel and Cosmo Bulgaria Mobile were already subject to a number of obligations according to the regulatory framework in place in Bulgaria over the period 2005-2007. These included obligations of equal treatment, access and business confidentiality. BTC was also subject to an obligation to implement interconnection on the basis of a written contract.

⁷ CRC does not propose an obligation to publish a reference interconnection offer as such. However, it proposes detailed publishing requirements in respect of a number of procedural, commercial and technical elements related to interconnection including descriptions of relevant interconnection services, conditions of service provisioning, prices, interconnection points, procedures and technical requirements for interconnection, etc.

⁸ In its draft decision CRC notes that this network accounts for approx. 0.1% of subscribers. CRC clarified further in its response to the Commission's request for information that, according to the most recent data submitted to it, as of end October 2008 there are no more subscribers served by the NMT/CDMA network.

⁹ In its response to the request for information CRC also notes that it is not possible to implement a cost accounting system and cost oriented prices at present as there have not been any cost orientation obligations imposed to date. Therefore time is needed for elaboration of the cost allocation mechanism and for the elaboration of the cost of capital calculation due to an absence of relevant market data.

¹⁰ See the Commission's 13th Report on the Implementation of the Telecommunications Regulatory Package – 2007, Progress Report on the Single European Electronic Communications Market 2007. CRC specifies maximum price levels based on the average termination rates reported for EU Member States applying cost-oriented prices. CRC chose the following six countries as relevant: Austria, Belgium, Germany, Italy,

On that basis, the following interim glide path would apply to Mobiltel and Cosmo Bulgaria Mobile:

Table 1: Interim glide path proposed for Mobiltel and Cosmo Bulgaria Mobile¹¹

| from (Date) | M2M | | F2M | |
|-------------|----------------------|--------------------------|----------------------|--------------------------|
| | Peak (€cents/minute) | Off-peak (€cents/minute) | Peak (€cents/minute) | Off-peak (€cents/minute) |
| 01.01.2009 | 12.8 | 9.7 | 14.8 | 12.8 |
| 01.07.2009 | 12.8 | 9.7 | 12.8 | 9.7 |
| 01.09.2009 | 11.8 | 9.2 | 11.8 | 9.2 |
| 01.01.2010 | 10.7 | 8.7 | 10.7 | 8.7 |
| 01.07.2010 | 7.6 | 6.6 | 7.6 | 6.6 |

Until 01.07.2009, the maximum price obligations that would apply to BTC are defined in accordance with the prices from interconnection agreements in force at the end of 2007. According to the following glide path for BTC, symmetry would be reached with Mobiltel and Cosmo Bulgaria Mobile from July 2007 onwards:

Table 2: Interim glide path proposed for BTC

| To (Date) | BTC for its GSM and UMTS network | | | | BTC for its NMT and CDMA network | | | |
|------------|----------------------------------|----------|------------------|----------|----------------------------------|----------|------------------|----------|
| | M2M (€cents/min) | | F2M (€cents/min) | | M2M (€cents/min) | | F2M (€cents/min) | |
| | Peak | Off-peak | Peak | Off-peak | Peak | Off-peak | Peak | Off-peak |
| 01.01.2009 | 12.8 | 9.7 | 12.8 | 9.7 | 12.8 | 9.7 | 19.4 | 18.8 |
| 01.07.2009 | 12.8 | 9.7 | 12.8 | 9.7 | 12.8 | 9.7 | 19.4 | 18.8 |
| 01.09.2009 | 11.8 | 9.2 | 11.8 | 9.2 | 11.8 | 9.2 | 11.8 | 9.2 |
| 01.01.2010 | 10.7 | 8.7 | 10.7 | 8.7 | 10.7 | 8.7 | 10.7 | 8.7 |
| 01.07.2010 | 7.6 | 6.6 | 7.6 | 6.6 | 7.6 | 6.6 | 7.6 | 6.6 |

The accounting separation obligation which CRC proposes only for Mobiltel and Cosmo Bulgaria Mobile¹² will be specified after a further three-month consultation period following the adoption of this decision.

III. PRELIMINARY ASSESSMENT

On the basis of the present notification and the additional information provided by CRC, the Commission has identified the following issues:

Further consultations planned by CRC

CRC states in its draft measure that a further consultation will be held on the details and implementation of the accounting separation obligation applicable to Mobiltel and Cosmo Bulgaria Mobile. CRC further intends to specify the cost orientation obligation

Cyprus and Sweden. Long Run Incremental Cost ("LRIC") and Current Cost Accounting ("CCA") cost accounting systems based on top down models are applied in the selected countries.

¹¹ All prices have been converted from BGN into euro (1.9558 BGN=1 euro) and are approximate values only. The draft decision should be referred to for the original values expressed in BGN.

¹² In deciding not to apply an accounting separation obligation to BTC, CRC notes that BTC's market position (its GSM/UMTS network accounts for 10.7% of mobile subscriptions) is not equivalent to that of Mobiltel (51.5% share of mobile subscriptions) and Cosmo Bulgaria Mobile (37.7% share of mobile subscriptions). It also takes into account the obligation of accounting separation imposed on BTC in the market for wholesale call termination on individual public telephone networks provided at a fixed location.

at a later date. The Commission reminds CRC that draft measures relating to these regulatory obligations are required to be notified to the European Commission and the national regulatory authorities of other Member States in accordance with Article 7(3) of the Framework Directive.

Cost of an efficient operator and need for a coherent European approach

The Commission notes that mobile termination rates in Bulgaria are currently the highest in the EU¹³. Excessive pricing, price discrimination and cross-subsidisation strategies are amongst the main competition concerns identified by CRC.

According to Article 8(4) of the Access Directive, obligations should be based on the nature of the problem identified, and be proportionate and justified in the light of the objectives laid down in Article 8 of the Framework Directive. In this regard, the Commission considers that the price regulation proposed by CRC is not sufficiently precise to address the identified concerns effectively. In particular, the draft measure does not specify the method on which the cost-orientation or accounting separation obligations will be implemented but proposes to determine the details at a later date. In view of the price-related competition problems which have been identified, the Commission urges CRC to specify a cost-orientation obligation and relevant supporting measures for all three operators at the earliest possible opportunity. With a view to determining the cost of an efficient operator, the Commission has previously invited regulators to assess the appropriateness of applying a forward-looking long-run incremental cost (FL-LRIC) model for setting termination rates. In this context the Commission takes note of CRC's commitment to specify the cost-oriented rates following finalisation of the Commission's Recommendation on the regulatory treatment of fixed and mobile termination rates in the EU. In that regard, the Commission invites the CRC to review its analysis as soon as the Recommendation applies.

While the Commission welcomes that CRC, pending implementation of the cost orientation measure, intends to implement an interim glide path on the basis of a comparison with other Member States which use cost accounting methodologies, the Commission also notes that the proposed mobile termination rates are still high when compared to the average values currently applied in the EU¹⁴. In view of the need to reduce termination rates to the cost which would be faced by an efficient operator as soon as possible¹⁵, the Commission urges the CRC to re-consider its glide path and, in applying the principle of forward-looking efficiency, to implement a steeper reduction resulting in rates which are lower than those currently proposed and which more closely approximate the average values which CRC itself has forecasted for the reference countries for the corresponding period¹⁶.

¹³ According to the ERG (08) 41 final MTR Snapshot, as of 1 July 2008 Bulgaria had an average MTR of 15 eurocents/minute.

¹⁴ In a number of countries average mobile termination rates are already below 7.5 eurocents/minute, i.e., CRC's intended MTR level for peak calls in 2010. According to the ERG (08) 41 final MTR Snapshot, on 1 July 2008 this was the case in Cyprus (2.01 eurocents/minute), Sweden (4.55 eurocents), Finland (5.29 eurocents), Austria (6 eurocents), Slovenia (6.38 eurocents), Romania (6.78 eurocents) and France (6.85 eurocents).

¹⁵ See, for example, cases UK/2006/0498, FR/2007/0669, FI/2008/0778, IT/2008/0779, PL/2008/0794 and CZ/2008/0841.

¹⁶ For instance, CRC in its draft measure estimates an average price for the six benchmarked countries of approx. 5 eurocents/minute in July 2010.

Implementation of symmetry for fixed-to-mobile and mobile-to-mobile calls

According to CRC's draft measure, mobile network operators should apply the same level of termination tariffs for fixed-to-mobile and mobile-to-mobile calls from 1 July 2009.

However, the Commission is concerned that delaying the implementation of this obligation, even for a relatively short period of time, would not be consistent with ensuring no distortion or restriction of competition nor with allowing consumers to derive the maximum benefit in terms of price (as foreseen by Article 8 of the Framework Directive). In view of the fact that: i) incoming calls from other fixed and mobile networks fall within the same relevant market, ii) competition problems have been identified independently of the origination of the call, and iii) there is no reason to believe that the cost of terminating a call would be dependent on the network the call is originated from, it is not clear why such differential pricing practices should be permitted to continue beyond the adoption of the final measure.

Thus, with a view to ensuring that obligations within similarly defined markets are similarly effective and appropriate to address the competition problems identified, the Commission calls upon CRC to apply a symmetric termination rate for fixed-to-mobile and mobile-to-mobile calls from the date of implementation of the final measure.

Pursuant to Article 7(5) of the Framework Directive, CRC shall take the utmost account of comments of other national regulatory authorities and the Commission and may adopt the resulting draft measure and, 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/EC¹⁷, 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 Commission¹⁸ within three working days following receipt whether you consider that, in accordance with Community and national rules on business confidentiality, this document contains confidential information which you wish to have deleted prior to such publication. You should give reasons for any such request.

Yours faithfully,
For the Commission,
Fabio Colasanti
Director-General

¹⁷ 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, OJ L 301, 12.11.2008, p. 23.

¹⁸ Your request should be sent either by email: INFSO-COMP-ARTICLE7@ec.europa.eu or by fax: +32.2.298.87.82.