

Barablu Submission in Response to the Commission’s Draft Recommendation of the Regulatory Treatment of Fixed and Mobile Termination Rates in the EU

Barablu is a pan-European full mobile virtual network operator (“MVNO”): a mobile operator distinguishable from mobile virtual network operators, or service providers, by virtue of its ability to set its own pricing and control and own its infrastructure. We welcome the Commission’s Intervention as our experience has been that national regulatory authorities (“NRAs”) in different states have varying interpretations of the Regulatory Framework. As the Commission notes, this causes problems for enterprises operating in multiple Member States and beyond.

The diverse interpretations from NRAs have resulted in timid regulatory involvement in the regulation and analysis of MVNOs in traditional oligopolistic markets. By contrast, as demonstrated in Norway where the MNOs formed an effective duopoly, the regulation of MVNOs was addressed in the scope of the regulation of Market 16. A harmonised interpretation would ensure that this analysis is undertaken by all NRAs, not just those where market entry is more onerous due to near-ineffective competition at the MNO level.

Detailed Comments on preamble:

1. Barablu is a MVNO with operations in Denmark, Norway, Sweden and the Netherlands. Barablu has signed agreements with three further host mobile network operators and expects to launch networks in Spain, Austria and Switzerland this year. Since commencing MVNO operations in 2006, Barablu considers that on a pan-European basis there is real inconsistency in NRAs’ approach to regulation and particularly with regard to the regulation of mobile termination rates (“MTR”). Consequently Barablu welcomes the Commission’s recommendations to encourage greater transparency between NRAs and the Commission and pan-European consistency in the regulation of MTR.

2. NRAs appear to be generally unaware of the specific characteristics of the MVNO economic model. The absence of recent consideration of the MVNO model is not confined to the NRAs: even the European Regulators' Group's recent paper on MTR (ERG (07) 83) makes no mention of the MVNO model, a model of telecommunications operation that has considerable differences in structure to that of mobile network operators ("MNOs"). In discussions with NRAs, Barablu has encountered a variety of opinions as to the way in which MVNOs should be regulated and whether asymmetry in national MTR is acceptable to accommodate the establishment of a new entrant.
3. No comment.
4. Barablu agrees that the harmonisation of approaches to cost accounting principles will provide greater transparency. This would help create an environment in which new entrants would benefit from a greater degree of certainty in approaching market entry on a pan-European basis. This will invariably be reflected in consumer benefit in the downstream market.
5. Barablu agrees.
6. Barablu agrees.
7. Barablu understand the competition concern of excessive pricing and submits that this may facilitate cross-subsidisation by established MNOs. Lower MTRs would address these problems and the present barriers and market distortion effects.
8. Barablu agrees that in ensuring effective competition, the approach of the NRAs should be technology neutral. However, regulation must take account of the fact that the MVNO cost structure is markedly different to that of MNOs and significantly relies on the financial terms of its agreement for network access that the MVNO has with its host operator. Barablu respectfully submits that the

Commission and NRAs should consider how MTRs should relate to the costs of an efficient operator in respect of MVNOs.

9. In respect of paragraphs 9, 10 and 11, MVNOs do not have historic avoidable costs and therefore compete essentially on the basis of current costs alone. Harmonisation on the interpretation of the community regulation by NRAs as to how MVNOs are to be regulated in light of their different costs model to that of established MNOs may clarify the applicability of a bottom up model to the MVNO cost structure.

12. With regard to the LRIC model the only avoidable cost to the MVNO is that of the Mobile Access Rate (the cost charged by an MNO to its hosted MVNO for access to network elements). The true cost of that access is the relevant cost of that MNO and in the circumstances the MVNO's avoidable cost should essentially be the same as that of the MNO. At present however, commercial terms ensure that access is not charged to the MVNO at cost, but rather the MNO applies a significant mark-up that can be considerable. Barablu considers that in the absence of regulation, MNOs will continue to charge a significant mark-up resulting in an MVNO's LRIC always being higher than that of its MNO host. This produces the situation that in respect of an LRIC application, the MTR of an MVNO would always need to be higher than that of its MNO host.

13. Barablu understands the concept of unavoidable costs, but as no operator would ever offer services without inbound termination the calculation will depend on cost allocation and accounting, leading potentially to divergent results. The concern of any MVNO will always be that some element of the unavoidable costs will be captured in an MNO's LRIC model, leading to cross-subsidisation and market distortion. By comparison, it will be clear that no part of the unavoidable costs will ever be so covered in the LRIC of an MVNO. Barablu's concern is that whilst MTR remains relatively high, MNOs are still making margins allowing them to subsidise unavoidable costs, whereas under the proposed costs regulation,

an MVNO would not be able to recover, unavoidable costs, which places Barablu, without regulatory assistance on MTR or access costs, at a disadvantage until at least 2011 under the current proposals.

14. The principle which obliges MTR to only cover avoidable costs is not detrimental to MVNOs provided that the difference between the host MNO's avoidable costs and the access fees that the MNO host charges its MVNO are recognised and allowed for.
15. As above, clearly MVNO's will have higher costs which are objective cost differences outside the control of the MVNO operator.
16. We do not believe that this will affect our LRIC.
17. Barablu has no comment as this appears not to apply to an MVNO.
18. Barablu would support this contention so far as allowance is made in any regulation specifically for the MVNO model.
19. The period of transition appears reasonable to Barablu, however it will be important to any new entrant whose business plan was based on the traditional model predominant in most member states until recently, that for a transitional period it would be allowed asymmetric MTR.

Comments on the Recommendation:

A. Paragraph 1

Paragraph 1 recommends that NRAs should set symmetrical termination rates based on an efficient operator. A Full MVNO is an operator but its cost structure is fundamentally different from an MNO. Its avoidable costs, if defined as in this recommendation would be limited to the fees the MNO charges the MVNO for termination onto the MVNO's network. If symmetrical pricing is enforced, MVNOs will only be able to compete on a level field if the Mobile Access Rates the host MNO charges are also based on an efficient operator's costs.

B. Paragraph 2

A bottom up LRIC approach to cost methodology may be appropriate. However, if only avoidable costs are to be included, then a MVNO's LRIC will solely be the Mobile Access Rate it pays to its host MVNO. Comparing an MNO's LRIC with an MVNO's LRIC will not be a like for like comparison.

C. Paragraphs 3, 4, 5, 6, 7

These refer to the specifications of the cost methodology for MNOs. If the only allowable cost is the Mobile Access Rate the host charges under the MVNO they have no impact on MVNOs and we therefore have no comment.

D. Paragraph 8

As noted above an MVNO's cost structure is based on its Mobile Access Rate with its host. This will clearly be different from an MNOs cost structure and as such will be an

objective cost difference. Unless there is regulation to bring Mobile Access Rate in line with an efficient operator, then this should remain a reason for asymmetrical pricing.

D. Paragraph 9

no comment

E. Paragraph 10

As noted above Barablu has concerns, which it believes any full MVNO would share, in relation to Barablu's MTR compared with its host termination rate. However, notwithstanding this, Barablu considers that a low termination rate based purely on avoidable cost is beneficial to customers, new entrants and the industry in general.

F. Paragraphs 11,12,13

No comment

Conclusion

Barablu welcomes harmonisation of national regulatory interpretations and a robust cost methodology to determine termination rates.

We also welcome a move away from high termination rates and we believe symmetry coupled with termination rates much higher than justified by marginal costs lead to market distortion and a lack of effective competition.

Barablu is concerned that the recommendation addresses the regulation of the market using the MNO model as the basis. NRAs, until recently with the exception of the Norwegian authority, have adopted divergent interpretations in the treatment of MVNOs which has resulted in the uneven application of the implied principles of the current

regulatory framework. As a result, a number of NRAs have chosen to align the regulatory regime for MVNOs with that of MNOs without any further consideration. Barablu is concerned that the different cost structures of MNOs and MVNOs do not allow a like for like comparison between a full MVNO and an MNO. As such, rates may be set symmetrically based solely on MNO cost structure, ignoring MVNO cost structure. If NRAs are allowed to apply the tenets of the recommendation without the guidance of the Commission, NRAs will likely continue to adopt divergent interpretations, thus defeating the purpose of the recommendation.

It is in the interest of large incumbents to press for symmetry first and delay lower termination rates for as long as possible. Glide paths should be set reflecting that low termination rates are seen as both good for consumers and also as an alternative for the asymmetries that new entrants have been traditionally afforded. As such, new entrants' glide paths should start higher than incumbents and be steeper.

Dated: 8th August 2008