

Legal Affairs / Teemu Summanen

Finnet response to public consultation by the Commission on Draft Commission Recommendation on the Regulatory Treatment of Fixed and Mobile Termination Rates in the EU

General Finnet position

Finnet welcomes the possibility to express its position on the regulation of termination rates (TR) in Europe.

It is commonly known the cost of a call is composed of the cost for origination, termination and any transit in between. Hence, this cost should roughly be the same whether carried on one operator's network end to end or over two or more interconnected networks. This should also be the case when carrying a call from a national fixed network to a national mobile network. However the MTR level has been substantially higher than FTR for unjustified reasons.

Today in FTR access costs (local loop) are not allowed to be included in fixed networks' wholesale termination charges based on the assumption that access costs are recovered via retail line rental charges. Mobile network operators on the other hand are allowed to include coverage costs (BTS and BSC) in their wholesale termination charges, which allow mobile operators not to charge a monthly fee but only pay as you go charges. This has led to a higher "costs" in MTR compared to FTR. This is self-explanatory because one crucial cost item is added to the calculation of MTR. Finnet finds this discriminatory between different technologies.

Therefore Finnet partly supports with the draft Recommendation on the issue of symmetry of TR between different mobile networks and between different fixed networks respectively.¹ However the same cost items should be taken account when TR is sized up in fixed network and in mobile network without giving benefit for both of them.

It is self evident that the wholesale charges levied by some mobile network operators have been clearly in excess of their true costs (in terms of MTR) because they have only nominally charged themselves when calculating their "on-net" retail prices. This means "on-net" calls are cheaper per minute than the MTR per minute. This also means that mobile network operators' true costs are much lower than usually demonstrated by mobile network operators.

However Finnet is sceptic if the draft Recommendation is able to provide or keep up with the incentives to make further investments to the fixed networks, especially in NGN networks, if TR is "pushed" too low just by using calculation methods and without having a true sense of cost origination and risks involved when investing to the true new technology (3G excluded from this definition). It is also a basic principle that an operator should be justified to compensation from a cost item that is used to produce services in question. TR services are such services.

¹ However Finnet is in favor of effective cost orientation.

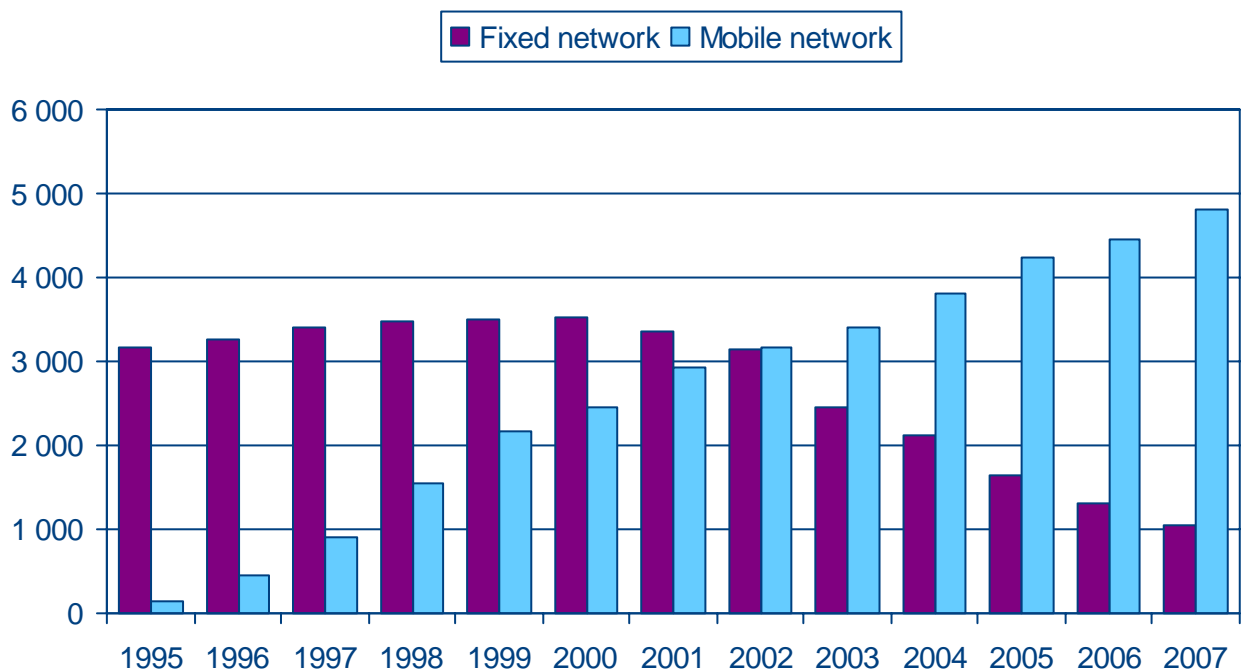
Fixed operator discrimination

It is clear that mobile network operators are in excess of costs. This is resulted in on-net/off-net retail price differentiation whereby mobile operators charge themselves no or lower MTRs than the regulated MTR they charge to their rivals and same time offering very cheap or even free on-net calls but more expensive off-net calls to their retail customers. Particularly in Finland fixed operator discrimination has gone so far as it is legalized to a mobile operator to freely set the price for a call that is carried from a fixed network to a mobile network if the end user has not used/dialled a pre carrier selection.

In Finnet's point of view these factors have significant detrimental effects not just on a competition between fixed/mobile competition but also to consumers. Consumers and business users pay comparatively higher retail call tariffs - for all fixed to mobile calls and most off-net mobile calls.

Fixed operators are placed at a disadvantage and/or excluded from particular markets because high wholesale mobile termination rates effectively result in a substantial transfer between the fixed and mobile sectors affecting fixed operators' ability to invest in fixed network and especially in NGN network. It is estimated that in some big European countries the financial transfer from fixed to mobile network has been many billion Euros just in a few years. The discrimination prevents fixed operators from offering for example flat-rate retail packages for calls to all directions, especially to mobile numbers) and at the same time mobile operators are able to benefit from very low fixed call termination rates to offer packages including calls to fixed networks as well as other calls.

The discrimination of fixed network in Finland can also be seen from the following picture (the y-axis shows the number of outgoing calls in millions) where number of outgoing calls in fixed network has dramatically dropped since the millennium. Finnet admits the consumer habits and the evolution of technology plays a big part behind the picture but in Finnet's point of view the high MTR is a big factor boosting the shift. For fixed telephone customer high MTR means higher retail prices and detrimental progress for fixed network coverage.



Finnet is not aiming to slow down the technological progress but regulation should provide a playing field in which all efficient operators have an equal opportunity to provide services efficiently and produce new services. This is clearly not the case when mobile operators are allowed to maintain discriminatory practises and strengthen their competitive position by benefit of fixed operators. Also a lack of a real MVNO access strengthen their position and prevents entry and innovation by those who are interested in to take part in a mobile field. As a consequence this means less competition in the markets and higher retail prices for the consumers.

Finnet hopes that the draft recommendation brings an end to the discrimination of fixed network.

The outcome or the way to get there?

The draft Recommendation suggests that NRAs should use LRIC model when assessing the cost of an operator. However a transitional period is provided to NRA under certain circumstances.

In Finnet's point of view the LRIC model should be voluntary for a NRA if the outcome can be reached by using some other model. For example top down model has produced decent results in Finnish MTR but has not deleted the discrimination in termination between fixed network and mobile network. Therefore Finnet suggests that NRAs should have a freedom to choose the model but at the same time to ensure that neither fixed network nor mobile network will benefit. Same cost calculation principles should be applied to mobile and fixed network. This means, for example, that BTS² and BSC³ costs are excluded from MTR calculation or allowing local loop costs to be included to FTR. At least a reasonably transition period should be guaranteed to NRA for implementing new cost calculation principles. Suggested 2 years period might, in some cases, be too tight.

It should also be noted that if a member state already has effective methods to assess operator's cost the changing of method should not take place just per se. This would just cause unnecessary costs which, finally, will be an additional cost for the industry. However Finnet agrees with the goal to ensure that all operators are operating efficiently.

Complete symmetry or just effective cost orientation

Finnet is not in favour of complete symmetry regarding TR. The fundamental principles contained in the EU Regulatory Framework of non-discrimination, technological neutrality and promotion of competition and cost recovery imply in general that all operators should be treated in a similar manner in similar circumstances and be allowed to recover their costs in order to promote fair and sustainable competition. Furthermore, the principle of technological neutrality implies that regulators cannot favour specific

² Base station

³ Base station controller

operators and technologies by allowing some operators the ability to fully recover costs (or even over-recover, as is undoubtedly the case for some mobile operators).

In this respect, the concept of symmetry should be intended as the application of similar remedies in similar circumstances rather than the application of the same remedy in different circumstances. Therefore, the application of symmetry of wholesale termination rates is a possibility but only in case there is an effective equivalence of circumstances and it is justified by an objective alignment of underlying costs. However, Finnet points out that a pure technological difference is not a justification for different cost calculation principles.

There are some circumstances that for example must be taken into account: Time of entry to the market and time to reach efficient scale, late entry-related costs, justified technological differences⁴, differences in risk profile and cost of capital and network investments to NGN.

In view of the above listed objective and significant differences, Finnet suggests that effective cost orientation be the principle instead of absolute symmetry. Effective cost orientation is the right tool in order to avoid competitive distortions and ensure that all operators in the market have incentives to make efficient investments. This is the case particularly in NGN. The temporary asymmetry of new entrants' wholesale termination rates should not be considered entry assistance policy if the asymmetry is based on cost orientation, but as a tool to ensure non-discrimination and a level playing field. Incumbents in the mobile network have been able to recover their costs and make a very fair return on their investment. Mobile operators have been and are still able to make substantial profits through their allegedly cost oriented wholesale termination rates. Disallowing new entrants in the field of mobile business to recover merely their costs is seriously distorting competitive conditions and favours mobile operators. For the avoidance of doubt this has only been the case for mobile operators while TR in fixed networks has been relatively low for a longer period and still is.

Future

It is estimated that major part of telecommunication traffic, including calls, will be moved to IP-networks. "Old fashioned" GSM and 3G –technology is coming to its end within coming years. In Finnet's point of view organising current termination model may be difficult and inefficient. Finnet admits separating voice calls from other IP-traffic is possibly but as said above, it is difficult and inefficient.

Therefore European Commission should eye in future and make investigations for renewal of whole termination system. Deletion of a whole termination system could be a considerable alternative. Nowadays, for example, ADSL customers are able to enjoy from flat rate pricing which is almost impossible to productize cost-effectively in fixed voice call market. However, for above mentioned reasons, this is possibly in some extent in mobile voice call market. Also diverged market⁵ in terms of number of players in the market inevitably forms a situation where the ingoing and outgoing calls are

⁴ It is pointed out that there are no justified technological differences between mobile and fixed networks.

⁵ As in Finland.

imbalanced. Usually this means bigger players collect more incoming calls and are therefore net receivers in terms of termination fees.

Helsinki, September 10th 2008

FINNET ASSOCIATION

Teemu Summanen
Director, Legal Affairs