



Commissioner Neelie Kroes
Commissioner Viviane Reding
European Commission
1049 Brussels
Belgium

Brussels, September 12, 2008

Dear Ms. Reding,
Dear Ms. Kroes,

We, the CEOs of the Mobile Challengers, would like to express our support for continued regulation of mobile termination rates (MTRs), with the aim of establishing a consistent approach throughout Europe and a reduction of MTRs to appropriate cost oriented levels, when combined with an impact analysis on smaller operators to safeguard competition and to set a suitable transition period. We believe such regulation will remove barriers to fully effective competition at the retail level (e.g.: on-net tariffs) and will, therefore, be good for competition and consumers in the long run.

Nonetheless, it will be crucial to ensure the transition from the current system to lower and more consistent MTRs is adapted to all market circumstances. National markets, and thus mobile operators' situations, are currently at vastly dissimilar starting points. This simple fact means the Recommendation should take into account that the most appropriate way to achieve the Commission's objective may differ for each national market.

In this context of "inter-national" market discrepancies and "intra-national" operator disparities, we would like to share with you two issues related to the ongoing debate.

- **The transition from the current state to significantly lower termination rates for all operators should provide sufficiently flexibility** to take account of different national circumstances.

The appropriate speed of transition to lower MTRs will differ in each national market. Competitive conditions and the position of challenger operators differ in each Member State and NRAs should have the flexibility to implement transitional arrangements that are appropriate to their own market conditions in order to ensure that challenger operators do not face a competitive landscape tilted against them and are able to remain catalysts to greater competition. In some markets, the Recommendation should allow sufficient time to avoid undue disruption that might harm competition and consumers. Equally, in other markets the distortions from the current system are so great that they will need to move more urgently to low MTRs. The Recommendation should not prevent a more speedy transition where that is appropriate.

Questions?
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Therefore, the Recommendation should encourage regulators to move to lower MTRs in a way that best addresses the distortions in their national market. In particular, the Recommendation should also **encourage national regulators to take steps to avoid a subsidy from small to incumbent operators during the transition period.**

- Estimating the costs of an **efficient operator** will remain a key element in determining the appropriate termination rate. What is meant by “efficient” is important. We are concerned that the concept of efficiency could be fixed according to a rigid formula that bears no relation to market reality. For instance, in a market of three operators each is presumed to have a 33% share.

We believe that an approach relying on a **theoretical market structure will never reflect market reality.** The evidence of late entry over the last 10 years shows that fluidity of mobile markets is so weak that smaller operators would need many years to reach their “theoretical” market share, if ever. Estimating costs according to these theoretical market shares leads to:

- above normal margins for larger operators and, when cost oriented, below cost rates for smaller operators; and
- a direct subsidization of larger operators by the smaller ones.

It has the **perverse result of giving large operators a subsidy** which means they are not encouraged to cost efficiency, whereas smaller operators face regulatory-imposed losses.

Such an approach is also incompatible with national and European court decisions. It is also inconsistent with the whole liberalisation project, since, in an industry characterised by economies of scale, it implies that monopolies are the most efficient market structure.

We believe the Recommendation should allow NRAs to consider real market dynamics and objective (including scale) differences between operators. In other words, we believe the Recommendation should acknowledge that asymmetry may be the outcome of a neutral cost model, which considers the specific costs of each operator. This will not hinder the establishment of a consistent approach throughout Europe for a reduction of MTRs since **from a welfare point of view the impact of asymmetry is irrelevant.**

In summary, **we fully endorse the objectives of lower and consistent termination rates in Europe subject to impact analysis.** At the same time we believe **the proposed Recommendation should provide sufficient flexibility for all Member States to achieve the end point of lower and more consistent MTRs in a way that best addresses their market distortions, safeguarding consumers interest and competition in the market.** Finally, the Recommendation should avoid an overly theoretical approach that risks harming competition. Consequently, we propose to include in the Recommendation the principle of asymmetry and the freedom for each NRAs to implement a glide path adapted to national circumstances.

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Our teams remain available to share our views and analyses with your services.

Yours sincerely,

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