



**Contribution of
Hellenic Telecommunications Organisation S.A. (OTE S.A.)
to the Commission of the European Communities Consultation
on the draft Commission Recommendation
on the Regulatory Treatment of Fixed and Mobile Termination Rates in the EU**

OTE is pleased to contribute to the public consultation launched by the Commission of the European Communities on “Draft Commission Recommendation on the Regulatory Treatment of Fixed and Mobile Termination Rates in the EU”. With its commitment in making investments, promoting innovative solutions and services in the Greek market, OTE S.A. (Hellenic Telecommunications Organisation), the incumbent telecommunications provider in Greece, would like to make some general comments and also raise some important issues.

In general, **OTE strongly supports EC’s recommendation for setting symmetric TR** within a relevant market, as both economic theory and empirical evidence point to the competition problems arising from asymmetric TR, and this in line within the scope of the current Framework.

OTE would like to point out the unduly long timeframe (end of 2011) set for the implementation of symmetric TR. There already exists sufficient accumulated experience and relevant data (absolute, relative, trend) to be used as benchmarks to set symmetric TR in a number of European markets, where competition and regulatory processes have been introduced and developed. Cost-oriented termination rates are effectively implemented for sometime now, using tested and generally accepted methodologies based on observable networks.

However, OTE **is deeply concerned** about some EC’s explicit, as well as implicit, key issues that are stated in this Recommendation. These are highlighted below.

- EC seems to associate the apparent industry need for symmetric network termination rates (TR) with its implicit aspiration to drive TR downwards to very low (zero?) levels. Towards this aim EC proceeds to violate basic principles and practices of the current framework.
 - Cost-oriented prices for TR have been imposed on the monopolistic operators then, incumbents now, since the liberalization of the industry, based on LRIC economic principles and development of bottom-up models in order to account for their alleged ‘inefficiencies’
 - Now, and after long periods of restructuring, reorganizing and reengineering, the incumbents set the efficient standard with, among others, low and decreasing TR, whereas the observed asymmetries appear mainly among the newer operators and networks.
 - EC instead of generalizing the existing, tested and accepted methodologies and outcomes to the relevant operators and networks, is trying to impose ad hoc and arbitrarily defined symmetric TR, resorting to imaginary efficient networks and unproven practices.
- The proposed ‘pure’ NGN and new methodology grossly and in many ways violate the concepts of network neutrality and cost recovery of the current framework.

- EC abstracts from reality, takes a 'timeless' leap forward and assigns regulators with the task to envision and to model 'pure' NGN networks. Not only regulators will impose 'the' technology, but they will model it even if NGNs are still nowhere to be observed. And that is at the same time that the industry is still exploring its options towards NGN, the roll out of which both in terms of scale and transitory path is characterized by a great deal of uncertainty and high risk. Uncertainty over the optimal pace to transition, over the future interconnections arrangements of networks (both PSTN-NGN and NGN-NGN) and, most importantly over the demand for next generation services by consumers. Since services and business models have not been established in the market, investments of fully fledged NGN entail high risk. The transition towards NGN will definitely involve an extensive migration period, where operators will also employ legacy PSTN and any inappropriate regulatory intervention could only further delay innovation and investment in NGN.
- It breaks the principle of full cost recovery by arbitrarily excluding relevant joint and common cost categories. In addition, it does not provide any assessment of the likely impact of recovering these costs from other types of retail prices
- **OTE strongly opposes EC's proposed new methodology** for the determination of such symmetric TR. The simulation of an 'efficient' operator, NGN or not, by a regulator is unnecessary, unprecedented and unsubstantiated by any theoretical arguments or empirical evidence.
 - **Unnecessary**

Symmetric prices of network termination can only be set by a regulator at fully allocated LRIC of observable networks. LRIC efficiency principles have been effectively applied for setting fixed network termination prices, and forms of bottom-up model have been used by regulators to estimate investment costs. But these bottom-up models were always in line with existing networks and demand structures, with real accounting references for operating costs and involved the development of formal reconciliation processes with relevant top-down models provided by operators. Reference to observable networks and reconciliation between bottom-up and top-down models with full cost allocation have been indispensable parts of already developed methodologies and processes that have been successful in implementing generally accepted, workable and predictable terminating prices for the regulated operators and the industry. There is absolute no justification to modify these principles and processes to set symmetric TR.

Alternative arrangements between operators, whether these may be symmetric or asymmetric/complementary or not, can only be an outcome of emerging market conditions and free negotiations among players.

○ **Unprecedented**

Implementation of the proposed methodology will constitute an unprecedented direct regulatory intervention in the industry. Regulators will have to step in the definitions of the efficient scale of production, of the efficient technology, of the efficient network. In order to do these things they will have first to estimate current and projected levels and structures of demand for existing and new services. At the end of the day they will have to define the efficient number of market players. At that point they will have to decide what to do in the case that the real number does not turn out to be the efficient one. This process apparently oversteps the regulatory discretion within a market economy, not to mention that it exceeds by far any competences the regulators may have.

○ **Unsubstantiated**

Whereas the recommendation explicitly sets economic efficiency and social welfare as its main objectives -which by definition are long term, total impact concepts- the majority of the presented arguments are based on ad hoc and arbitrary assertions void of analytical or empirical justification, which focus on partial short-run and questionable effects.

- OTE shares the concerns raised by prominent economists, that any attempt to simulate 'correct' termination rates by the regulator may prove to be a Sisyphean task and that the idea of an 'optimal' TR is a 'chimera' (Littlechild). For EC to embark in such a task, may lead to profound and undue frictions and delays. Even, if an acceptable level of consensus were ever achievable, that could override any potential efficiency gains, even in the case that such gains were present to start with, and by that time a next NGN will be on the way.
- Totally ad hoc and arbitrary definitions of increments, of efficient scale, of efficient technology, of efficient operator are employed throughout the recommendation. In a multi-product telecommunications environment the definition of increments cannot be fine-tuned at will. Telecommunication products still share the economic characteristics of 'public goods'. The fact that their marginal cost may be zero does not imply that they will be priced accordingly.
- Any proposed remedies that lead to TR which are below cost, need to be tested against their total direct and indirect effects on investment decisions in NGN, innovation and growth, as well as any implicit cross-substitutions between classes of services and users.
- EC also seems to abstract from the conditions of the market economy. In a market economy, it is the competitive forces that impose upon players the need to constantly seek to improve their efficiency through continuous technological change and innovation in order to be viable in the long run. Any snapshot of 'technology' used at any point of time is a transitory one, and may consist of a mix of technologies of different age. Observable networks of substantial scale are not and will never be technologically 'pure'. Furthermore, availability may be a

necessary but is not necessarily a sufficient condition for the implementation of 'best technologies'. The time path for implementation of a new technology is foremost dependent on the operator's assessment of current and anticipated demand and market conditions. The latter requires intensive and extensive costly market research and analysis, and there is no evidence of that either in the recommendation.

- 'The best available technology in use' is by definition the one that can be freely and timely be employed and the reference one for new entrants, but in a rapidly changing and merging industry, will not necessary stay still for the years needed to reach scalability.
- The real world is not timeless, frictionless and transaction less. As long as a network is composed of assets of different age and technologies the relation between historic and current asset valuation is determined ex post by reviewing the specific assets and depreciation profiles used. This relation can go either way on a case by case basis, and can only be equal if economic depreciation is used. However, given the fact that economic depreciation can hardly, if ever, be employed due to the very heavy data requirements it presents, the historic vs. current asset valuation can not be pre-assessed as implied by EC. In any case this issue is not even as important as it was at the initial phase of the industry liberalization, and certainly it cannot constitute a driver for technology choices.

Based on the above, OTE believes that the recommendation should not be endorsed, while drawing from the existing framework and methodologies, EC should support implementation of symmetric TR within the relevant markets.