

**WIND Hellas Telecommunications comments to
Draft Commission Recommendation on the Regulatory Treatment of
Fixed and Mobile Termination Rates in the EU**

We support the objective of coherent regulation in termination markets through the EU and the harmonization in the application of price control and cost-accounting principles to termination markets. However, we cannot follow the reasoning of the Commission leading to the specific orientation of its present Draft Recommendation.

While we can understand the rationale according to which termination rates should normally be symmetric and asymmetry requires an adequate justification (ERG (07) 83 final 080312, p.82) we believe that the orientation given by the EC is sending the wrong signal to the market and will eventually lead to inconsistencies in the regulation of mobile voice call termination rates, exactly what the EC is looking to avoid.

In this respect we principally question why the objective cost differences outside the control of operators, the so-called exogenous cost differences, should be limited, in the mobile sector, to uneven spectrum assignments (point 8). First because national market specificities give reason to different MTRs throughout the EU level and second because operator specificities justify intra-national differences.

Up front let us recall that the EU framework recognizes that mobile markets remain national markets. This is confirmed by the fact that they are examined nationally. In cases where intervention is required, NRAs are entitled to impose remedies¹ on a national case by case basis². The use of EU-wide information regarding particular prices is limited insofar as comparison is to “take account of prices available in comparable competitive markets”.³

1. MTRs as EU level

We believe that within Europe there are country-specific characteristics that objectively justify different MTRs per country.

These include amongst others, different topography and related geographical population distribution/dispersion (including seasonal traffic), spectrum

¹ Art 13.1 Access Directive.

² “Because prices depend on both supply (costs) and demand conditions in a market, there is a limit to what can be learned from undertaking cross-country comparisons. Comparing the price of a service with the price charged in other countries for that service will not provide information on the relative efficiency or competitiveness of that country's mobile industry. (...) Even looking at prices of all services and trying to draw conclusions is limited by dynamic considerations—networks and competition may evolve differently in different countries”, Europe Economics, Cost Structures in Mobile Networks and their relationship to prices, 2001, page v.

³ Art 13.2 Access Directive.

licensing costs, spectrum allocation mechanisms, network deployment conditions (antenna/masts installation, collocation) and network use/network congestion levels, all of which are factors that contribute to differentiation of costs. Ultimately, since we are talking about the European Union, the actual geographical location of each Member State compared to the other is a key factor for the differentiation of cost allocation in relation to infrastructures that serve international traffic (peripherally/centrally located within the EU-example Greece compared to Belgium).

2. MTRs at national level

If we introduce the widely accepted⁴ economic model of network competition (i) network asymmetry, meaning mobile networks of different size⁵ and (ii) exogenous costs heterogeneity, which is present between operators in many Member States, firstly the model comes closer to reality⁶ and secondly it can be demonstrated⁷ that the optimal regulatory policy is not the one of imposing symmetric MTRs close to ideal marginal costs.

It is an utopia to believe that marginal costs of terminating calls are the same between competing networks and the difference in technologies used, as identified until today, just isn't the entire case.

Referring exclusively to exogenous reasons leading costs to rise, the different network technologies on which the networks are built⁸ is one factor. However, the debate until today failed to identify that the exogenous costs a network faces, are not only concentrated in the access part of the network but to the backhaul as well⁹. In many cases MNOs lack cost savings that other competing MNOs, subsidiaries of fixed incumbents, benefit from, in the form of privileged access to collocation or extraordinary essential facilities¹⁰.

This is the case of the Greek mobile market and we believe that is not the only one at European level. In such an anticompetitive environment it is notable that although the present market leader was the late entrant and used

⁴ Between many see Laffont, Rey & Tirole "Network competition I & II" (1998) and Armstrong (1998)

⁵ In terms of their subscribers base

⁶ Even in such a case there are parameters that are not illustrated, such as:

(i) the subscribers fee imposed to mobile subscribers in the case of Greece, which works as a state aid in favor of fixed networks and especially the fixed incumbent, who still holds an above of 70% market share in the fixed market,

(ii) the different calling partners between operators who target different ends/groups of the market, something that can be easily found analyzing the subscriber base of each operator

⁷ See Hansen "Network Competition when Costs are Heterogeneous" (2005)

⁸ MNOs' spectrum allocations, is one case.

⁹ Refer to the debate for NGNs & MNGNs and the new allocation of costs, due to the increase of investments to backbone networks with high bandwidth

¹⁰ In the case of Greece, the incumbent's subsidiary who at the same time is the mobile market leader in terms of market share, has privileged access to collocation in all incumbent's infrastructure and other essential facilities, when at the same time the same privilege is denied to the competing operators. Such a difference in exogenous costs was never identified during market's 16 and now market 7 analysis.



DCS technology, it succeeded to overtake the established operators, in market share, and turned its operations so profitable that managed to finance (i) on national level, its growth vertically, making the market significantly inelastic and (ii) on international level, its expansion to many neighboring countries.

Because of these two sets of observations, at EU level and at national level, we raise serious doubts on the common principles advocated by the Commission on the concepts of an efficient operator & symmetric regulation and on the identification and calculation of efficient costs.

We believe that asymmetry within a Member State is justified until a true playing level field is established and effectively supported by the regulator. In case of calculated asymmetries the real cause of the asymmetry has to be investigated. Regulation is actually needed to address the causes of these asymmetries. i.e. why collocation for WIND Hellas is not offered to OTE buildings?

Otherwise, prematurely setting symmetric termination rates, according to the costing methodology proposed, considering the “equal market share efficient operator” would lead to:

- above normal margins for operators with a market share above their theoretical share
- below cost rates for operators with a market share below the theoretical level, and
- consequently, a direct subsidy from smaller operators to larger ones.

In fact there is no inconsistency in finding that MTRs differ amongst operators within a country and amongst EU countries, until a true level playing field is achieved.

Regarding the proposed principles for the cost calculation of wholesale termination rates in mobile networks (point 5), we are concerned that the sudden changes proposed by the Commission may not signal “greater legal certainty and the right incentives for potential investors” (whereas 4). In the short term, undoubtedly, the radical change in the current regulatory mechanisms will create uncertainty on the impact of the proposed measures on the EU mobile industry and ultimately on its end-users and may actually jeopardize sustainable investment and innovation in the sector.

Let alone that this may also disrupt NRA’s national ongoing processes. In Greece we have been exposed for the past years to a bottom-up LRIC calculation that has allowed, amongst others, recovery of appropriate fixed costs, typical of network industries, over a reasonable period of time.



Departing from a given cost modeling orientation requires more than a public consultation, but thorough economic impact assessment on all the market players and segments.

On this specific point, we thus reserve our more detailed comments in the course of a more documented debate.

To conclude, with the aim of regulation being the safeguard of the welfare of consumers, but also of competition and of investments, we caution against a “one fits for all MTR solution, i.e. *level*” in light of such different market realities. It is only in theory that the proposed approach based on the efficient operator and with the new regulatory arrangements can avoid the monopoly becoming stronger, to the detriment of second, third or fourth market players.

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