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Directorate D: Government Finance Statistics (GFS)

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Ms Gabriella Vukovich  
President  
Hungarian Central Statistical  
Office  
Keleti K. u. 5-7  
H-1024 Budapest

**Subject:** Statistical treatment of the mobile phone spectrum 15 years concession

**Ref:** Your letter sent on 29 March 2013

Dear Ms Vukovich,

In reply to your request for advice, I am in a position to provide you with Eurostat's observations.

#### **The accounting issue**

The statistical authorities of Hungary were informing Eurostat about their proposal for the treatment of the mobile phone spectrum 15-year concession in Hungary. In their letter they provide Eurostat the conclusion on the treatment reached by the EDP Working Group.

#### *Documentation provided*

The Hungarian statistical authorities provided their analysis in their letter, furthermore they submitted also the decisions of the Court of Budapest (Budapesti Törvényszék) and the Supreme Court (Kúria) on the case. Moreover, the Hungarian statistical office provided further information on the case in e-mail at the request of Eurostat on 3 April 2013.

#### *Description of the case*

The National Media and Telecommunication Authority, the NMTA (Nemzeti Média- és Hírközlési Hatóság) announced an international tender for certain blocks of 900MHz spectrum for mobile phones in August 2011. Four competitors were selected by NMTA in its tender decision in January 2012: three existing service providers and one newly-established public corporation (MPVI Mobil Zrt). All of them paid the concession fee for 15 year concession to NMTA in February 2012, amounting to 43 876mn HUF+VAT. The three existing service providers appealed against the first instance decision made by NMTA, asking for the exclusion of the fourth competitor. In their description the Hungarian authorities also mention that "*Because the legal basis was questioned, no contract between NMTA and any of the service providers was concluded.*"

In separate administrative procedures the three existing service providers applied for and received the necessary licences and other administrative permission for the use of the mobile phone spectrum, NMTA in its second instance decision refused the appeal of the three companies in March 2012. The three existing service providers appealed at the Court of Budapest (Fővárosi Törvényszék) asking a revision of the second instance decision of the NMTA, in terms of exclusion of the fourth corporation. In its non-appealable final judgement the Court of Budapest annulled the decision of NMTA in September 2012, resulting in the annulment of the 15 year concessions and obligating NMTA to repay the concession fees received.

The Supreme Court (Kúria) also reviewed the issue. The Supreme Court suspended the enforcement of the judgement of the Court of Budapest, however, in February 2013, affirmed the judgement of the latter. But, according to the Hungarian authorities, *“Although the enforcement of the judgement (repayment) has been suspended for the duration of the review at Supreme Court, the obligation created by the judgement of Budapest Court has existed since 2012 and has not been affected by the suspension.”*

In your letter, the Hungarian authorities proposed to record the licence fee as revenue for government in Q1/2012, and the same amount as government expenditure in Q3/2012, recorded as *“K.2 Acquisitions less disposal of non-financial non-produced assets”*.

At the request of Eurostat, the Hungarian statistical office provided further information in respect of two questions:

1) The redemption of the auction fee (paid by all four winners, that is the above mentioned 43 876mn HUF+VAT) was not paid back to the winners, and remains in a separate bank account. The Supreme Court has suspended the enforcement of the judgement of the Court of Budapest (taken in September 2012). The decision is suspended as long as the Supreme Court does not officially notify the NMTA about its decision. Until this time the concession fee cannot be paid back.

2) The three incumbent operators started using the UMTS licence as soon as they paid the concession fee, moreover, they have asked for further different licences (necessary to operate), and these licences are valid also for 15 years. They pay for these licences (recorded as revenue for the NMTA). The Media authority had no right so far to withdraw the licences because of the Supreme Court’s suspension. So, they use the licences, as if nothing had subsequently happened. The Media authority has already prepared the withdrawal of the licences and is waiting for the Supreme Court to notify it of its decision.

### *Analysis*

Eurostat agrees with the proposal of the Hungarian statistical authorities to record a revenue in Q1/2012, as all operators (except for the non-incumbent new operator) have started to use their licence, having paid the concession fee, therefore the licence is legally allocated (which is the time of recording specified in MGDD Chapter VI.2 Allocation of mobile phone licences, paragraph 10).

However, the recording of the redemption of the licence fee is more debatable. The Hungarian statistical authorities propose to record this at the time of the decision of the Court of Budapest (September 2012). Conversely, the licences were not actually withdrawn at this time, because the Supreme Court suspended the enforcement of the court judgement. Therefore, until the exact moment of the NMTA withdrawing the licence – in the possession of the Supreme Court’s decision (not done until the phrasing of this letter) – the operators are

free to use the licences they have paid for, so they gain economic benefits from licences. This is also confirmed by the fact that they not only paid the licence fee but they also applied and got the additional licences (necessary to operate), for 15 years, and they paid for these as well (recorded as revenue of the NMTA).

The legal reasoning mentioned by the Hungarian authorities "*Although the enforcement of the judgement (repayment) has been suspended for the duration of the review at Supreme Court the obligation created by the judgement of Budapest Court has existed since 2012 and has not been affected by the suspension*" must therefore be seen in the light of the economic reality that the operators continue to exploit these licences now.

This analysis would argue for the recording of expenditure by the Hungarian government when the companies are notified about the suspension of their licences in 2013, and therefore cease to economically exploit them.

### **Conclusion**

Eurostat agrees with the proposal of the Hungarian statistical authorities to record a revenue from the concession in Q1/2012. However, regarding the expenditure relating to the redemption of the concession fee to the winners of the auction, Eurostat is the view that, in order to take into account economic reality, this should rather be recorded in 2013 when the licences are actually suspended.

### **Procedure**

This preliminary view of Eurostat is based on the information provided by the country authorities. If this information turns out to be incomplete, or the implementation of the operation differs in some way from the information presented, Eurostat reserves the right to reconsider its view.

In this context, we would like to remind you that Eurostat is committed to adopt a fully transparent framework for its decisions on debt and deficit matters in line with Council Regulation 479/2009, as amended, and the note on ex-ante advice, which has been presented to the CMFB and cleared by the Commission and the EFC. Eurostat is therefore publishing all official methodological advice (ex-ante and ex-post) given to Member States on the Eurostat website. In case you have objections concerning this specific case, we would appreciate if you let us know before 24 April 2013.

Yours Sincerely,



François Lequiller  
Director