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EXECUTIVE SUMMARY
of the Evaluation Report on the Commission's 2009 Recommendation on Termination Rates (Recommendation 2009/396/EC)

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At the outset, it has to be considered that the evaluation of the 2009 Termination Rates Recommendation (hereinafter the "Recommendation" or the "TRR") ran in parallel with the legislative works on the adoption of the European Electronic Communications Code ("EECC"). In June 2018 a political agreement on the EECC was reached, and it is expected that it will be formally adopted by end of that year.

The main principle established by the TRR refers to the methodology used to set the rates applied to termination services by operators of fixed and mobile networks. The same principle set by the TRR has been included in the EECC and, consequently, it became binding. Indeed, Annex III of the EECC provides that "the cost methodology to calculate efficient costs shall be based on a bottom-up modelling approach using long-run incremental traffic-related costs of providing the wholesale voice call termination service to third parties". Therefore, the publication of this Evaluation Report follows the adoption of the EECC. Nevertheless, the Commission considers necessary, in the interest of transparency and accountability, to publish this Evaluation Report, which was prepared in the course of the preparatory works for the EECC. This Evaluation Report also fulfils the obligation to review the functioning and the effects of the Termination Rates Recommendation.

The Termination Rates Recommendation (TRR) aims at ensuring consistency of the EU regulatory approaches for calculating termination rates at a cost-oriented level in order to best achieve the policy objectives set out in the regulatory framework for electronic communications and services, in particular the Framework Directive and Access Directive. Its main objective is to limit the observed differences among national regulatory approaches to the fixed and mobile termination rates, providing guidance to the National Regulatory Authorities (NRAs) as to the methodology of calculating such rates. It recommends NRAs to set termination rates on the basis of a specific costing methodology (pure BU-LRIC)[1], by 31 December 2012 at the latest.

Recommend 13 of the TRR requires that the Recommendation "will be reviewed no later than four years after its date of application", i.e. by end of 2016.

The present evaluation was carried out between 2015 and 2017 and covers the implementation of TRR across the EU since its adoption in 2009 to September 2016.

Methodology

In the context of the evaluation, the Commission assessed the Recommendation against a number of indicators pursuant to Better regulation guidelines, namely effectiveness, efficiency, relevance, coherence and EU added-value.

Evidence supporting this evaluation was collected through Commission monitoring of cases notified under the EU consultation procedure[2], a specific study commissioned to an external consultancy, reports of the Body of European Regulators for Electronic Communications (BEREC) and a 12 week public open consultation. The main findings of the evaluation are summarised below.

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1 Bottom-Up Long-Run Incremental Costs model.

2 Under Article 7 of Directive 2002/21/EC of the European Parliament and of the Council of 7 March 2002 on a common regulatory framework for electronic communications networks and services (Framework Directive), OJ L 108, 24.4.2002, p. 33, as amended by Directive 2009/140/EC, OJ L 337, 18.12.2009, p. 37, and Regulation (EC) No 544/2009, OJ L 167, 29.6.2009, p. 12. Under Article 7 national draft regulatory measures are scrutinised by the Commission to ensure the consistent application of the EU Regulatory Framework.

Findings

Relevance – Although the TRR has contributed to greater consistency of regulatory approaches, the persistent asymmetries in mobile and fixed termination rates show that the pursuit of the objectives of the Recommendation is still relevant. The recommended pure BU-LRIC approach remains the most relevant cost methodology to provide operators with the correct signal to increase efficiency.

Effectiveness – The TRR has contributed to achieving lower and more consistent termination rates across the EU thereby addressing the issue of cross-subsidisation between fixed and mobile operators on one hand, and small and larger operators on the other hand, thus increasing the level playing field in the termination markets. In addition, lower wholesale rates are likely to have triggered a decrease of retail prices, an increase in traffic volumes and the launch of new offers. Since the adoption of the TRR in 2009, new mobile operators entered the market and the market shares of small operators have been constantly growing in all Member States. The TRR did not have a negative impact on investment. However, the lengthy and still ongoing process of the implementation by the NRAs of the recommended approach proved that a non-binding Recommendation is not the most effective legal instrument to ensure efficient and consistent termination rates.

Efficiency – The evaluation has shown that the benefits of the Recommendation – for most operators, end-users and society as a whole – broadly outweigh the costs resulting from its implementation. The main negative effect observed by NRAs is related to the asymmetric implementation of the TRR in the EU. This in turn significantly distorts cross-border traffic and leads to financial imbalances across the EU, ultimately creating a barrier to the internal market.

EU added value – The TRR has led to lower termination rates, thus boosting competition and increasing social welfare. It has also resulted in increased consistency of national regulatory approaches to modelling termination costs and contributed to the development of the internal market for telecommunications. The same results would not have been achieved absent a coordinated action at EU level.

Coherence – The TRR contributes to meeting the objectives of the Regulatory Framework, namely promoting efficiency and sustainable competition, and maximising consumer benefits, pursuant to Article 13(2) of the Access Directive, and furthering the internal market pursuant to Article 8(3) of the Framework Directive. The TRR is also coherent with the objectives pursued by the roaming implementing act to set maximum roaming charges ('Roam Like At Home' – RLAH), given that consistent mobile termination rates across the EU are a pre-requisite for the elimination of roaming fees by 2017.

In **conclusion**, the TRR has broadly met its general objective of achieving lower and more consistent termination rates across the EU, thereby promoting competition and enhancing consumer benefits. While the objectives of the TRR and the recommended methodology remain relevant, persistent divergences in national approaches create a barrier to the internal market and should be further addressed. A non-binding instrument such as the current TRR appears insufficient to achieve consistent regulation of termination rates across the EU. Finally, a cost-benefit assessment associated with the TRR indicates a social welfare surplus which in the worst case scenario is of EUR 1.7 billion, as compared to a situation without the TRR.