



Brussels, 24-11-2008
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Opinion

Title **Staff Working Paper on: Regulatory treatment of fixed and mobile termination Rates**

(draft version of 30 October 2008)

Lead DG **DG INFSO and DG COMP**

1) Impact Assessment Board Opinion

(A) Context

Directive 2002/21/EC on a common regulatory framework for electronic communication networks and services leaves it to national regulators to determine the level of regulated wholesale call termination rates. National regulators have so far notified the Commission of more than 120 remedies concerning fixed and mobile termination rates. In its responses under the Community consultation mechanism, the Commission has stated on numerous occasions that termination rates should be based on the costs of an efficient operator and that they should normally be symmetric, unless there are objective cost differences. This proposal for a Recommendation builds on these earlier responses.

Although the document accompanying the proposed Recommendation is a Staff Working Paper rather than a fully-fledged Impact Assessment, the Board has welcomed the opportunity to examine it and issue an opinion on its quality.

(B) Positive aspects

The document is well written, and provides a good overview of the rationale for the Recommendation and its possible impacts. Considering the uncertainty about the elasticity rates that are to be used when quantifying the impacts on prices and revenues, it can be considered good practice to make the calculations using various rates.

(C) Main recommendations for improvements

The recommendations below are listed in order of descending importance. Some more technical comments have been transmitted directly to the author DG and are expected to be incorporated in the final version of the staff working paper.

General recommendation: The staff working paper should present the main features of the recommended methodology including about the treatment of common costs under the LRIC (long-run incremental cost) methodology and the definition of an efficient operator, and state clearly whether this is different from what the Commission has recommended in the past. It should describe more clearly current and expected take-up of the Commission's methodology by national regulators and substantiate the expectation of a reduction of 70% in mobile termination rates (compared to 40% under the baseline), enhance the assessment of dynamic effects and analyse the risk of a waterbed effect more conclusively, and clarify the need for EU action and the role of national specificities. Furthermore a summary of the outcomes of the consultation with stakeholders should be added.

During their meeting with the Board, the authors accepted these recommendations and indicated that they would submit a revised version of the text.

(1) Explain the main features of the recommended methodology. The paper should present an overview of the main features of the recommended methodology, and relate this to the Commission's previous replies to notifications by national regulators. This could for instance be done in a box. This overview needs to make clear whether there is any difference between the Commission's previous and current view on the methodology that should be used. Any changes need to be highlighted and justified, including with regard to the question which costs regulators may or may not take into account in the definition of long-run incremental costs (e.g. the costs of licenses).

(2) Analyse the take-up by national regulators. The paper should state more clearly how many national regulators are already considered to be acting in compliance with the recommended methodology, how far the methodologies used by the other regulators diverge from the recommended methodology, and on what basis it assumes that a Recommendation will lead to a higher take-up by regulators than the Decisions and comment notes that were issued in previous years. Based on this information, the paper should substantiate the expectation that the Recommendation will lead to a reduction in termination rates of 70% (as compared to 40% in the baseline) and clarify the timing for this target (2011/2012). It should also indicate what part of the current differences in termination rates can be explained through differences in the methodologies used, and what part through objective cost differences between Member States.

(3) Enhance the analysis of dynamic impacts and value added of EU action. The paper should set out more clearly the value added of EU action in regulating termination rates, even though this Recommendation deals with the interpretation of existing legal requirements. In justifying the rationale for intervention the paper currently emphasises the static impacts of (changes in) termination rates on producers and consumers, but the dynamic impacts on product development and competition seem to be at least as relevant and merit a more detailed description and assessment. This dynamic assessment should also systematically and conclusively analyse the possible occurrence of a "waterbed effect", and how this phenomenon would affect the impacts of this initiative.

(D) Procedure and presentation

- A section outlining the evaluation and monitoring arrangements should be added.
- The paper would benefit from adding to the overview table of advantages/disadvantages some (not necessarily real life) examples of what the Recommendation would mean for

individual operators in different stylised situations.

- Given that stakeholders have commented extensively on the draft proposal, this document could usefully address more explicitly the observations they have made.

2) IAB scrutiny process

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Author DG	INFSO-B-5
External expertise used	Professor Tommaso Valletti from Imperial College Business School in London provided the Board with input in writing
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