

IRG Expert Group Report

Opening of Phase II investigation

Pursuant to Article 7(4) of Directive 2002/21 EC:

Case PL/2007/0668 – wholesale national market for trunk segments of leased lines in Poland

Executive summary

On 19 July 2007, the European Commission (“the Commission”) registered the notification by UKE regarding the market analysis for the national wholesale market for trunk segments of leased lines¹. A national consultation in accordance with Article 6 of the Framework Directive (2002/21/EC) was held in parallel with the Community consultation under Article 7 of the Framework Directive and the deadline was 20 August 2007.

On 20 August 2007 the Commission issued a serious doubts letter to UKE setting out the areas where the Commission has serious doubts with UKE’s market assessment. The Commission serious doubt relates to:

- Insufficient analysis as to the inclusion of end-to-end lines and captive sales in the market definition
- Insufficient market data provided by UKE to support the designation of TP as SMP operator in the market for wholesale trunk segments of leased lines
- Duplicability of TP’s network.

The IRG set up an Expert Group to consider the issues raised by the Commission in its serious doubts letter and to provide a report to UKE on these issues. The Expert Group met on 10 September 2007 in Warsaw. UKE was also invited to the meeting and was able to present its findings to the Expert Group. The Expert Group has worked on the basis that it was not re-examining the UKE case in its entirety but was rather evaluating it from the perspective of the Commission’s serious doubts letter and considering in each case whether they were justified. The Expert Group completed its works on the 24 September 2007 with the completion of its final Report.

The Expert Group has carefully evaluated both the objections moved by the Commission and UKE’s analysis, including the additional analysis presented in UKE’s response to the Commission request for information of the 31 July 2007. The Expert Group has also considered the presentation made by UKE in Warsaw on the 10th September 2007 to explain its rationale for its results and findings of SMP. The Expert Group notes the difficulties experienced by UKE in gathering relevant market information, especially from the alternative providers. Nevertheless, the Expert Group has come to the view that the Commission’s objections were unfounded. With respect to the consideration of end-to-end leased lines, the Expert Group is of the opinion that UKE has failed to analyse properly the nature of such services, in particular whether they are wholesale or retail services. The precise nature of such

¹ Case PL/2007/0668: National wholesale market for trunk segments of leased lines.

services depends on how these lines are used, and the condition observed in the markets for such services, such as terms and conditions, including pricing.

The Expert Group agrees with a Commission that UKE has failed to justify the inclusion of the end-to-end leased lines into the wholesale trunk segments market definition. On the basis of the evidence presented, the Expert Group doubts if the full substitution among wholesale end-to-end leased lines and leased line trunk segments could occur in Poland.

With regard to the market share calculation, the Expert Group is of the view that UKE should re evaluate its allocation of end-to-end leased lines to the terminating and trunk markets. This allocation is instrumental to the SMP finding, and clearer evidence must be presented to support it. Experience in other Member states shows that end-to-end leased lines comprise both terminating and trunk segments in some cases, only terminating segments in others.

With respect to the treatment of self-supply, the Expert Group is of the view that UKE has addressed this issue, but only partially. While it has considered the self-supply of TP, it has failed to account for that of the alternative providers.

Further, the Expert Group believes that UKE has failed to properly account for the extent to which the networks of alternative providers duplicates TP's network, hence exerting an additional competitive constraint on TP.

This executive summary is published on the ERG website. The full expert report will only made available after the art. 7 second phase procedure has been closed.