

26 June 2008

## **IRG Expert Group Report**

### **Opening of Phase II investigation**

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

#### **Case PL/2008/0772 – wholesale national market for trunk segments of leased lines in Poland**

##### **Executive summary**

On 23 April 2008, the European Commission (“the Commission”) registered the notification by UKE concerning the market analysis for the national wholesale market for trunk segments of leased lines<sup>1</sup>. 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 23 May 2008.

This market was previously notified to and assessed by the Commission. The market for terminating segments was earlier notified under cases PL/2006/0516, PL/2007/0667, but the final measure was never adopted. The notification of trunk segments of leased lines (PL/2007/0668), on which the Commission opened a second phase of examination, was withdrawn by UKE on 27 September 2007. Concerning that case, the IRG also issued an Expert Group Report. An executive summary of the Report can be found on the ERG website<sup>2</sup>.

On 30 April 2008 the Commission sent a request for information to UKE. The reply was received on 7 May 2008. On 23 May 2008 the Commission issued a serious doubts letter to UKE setting out the problematic areas. The Commission serious doubts relates to:

- Lack of sufficient evidence that the market is susceptible for ex ante regulation (the three criteria test).
- Insufficient evidence to support the designation of TP as SMP operator.

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 17 June 2008 in Barcelona. UKE was also invited to the meeting and was able to present its findings to the Expert Group. The Expert Group completed its final Report on the 24 June 2008.

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 responses to the Commission requests for information of the 30 April 2008 and 2 June 2008. The Expert Group has also considered the presentation made by UKE in Barcelona on the 17 June 2008 to explain its rationale for its results and findings of SMP.

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<sup>1</sup> Case PL/2008/0772: National wholesale market for trunk segments of leased lines.

<sup>2</sup> [http://www.erg.eu.int/doc/publications/irg\\_07\\_26\\_irg\\_exp\\_grp\\_rep\\_uke\\_mkt\\_14\\_exec\\_sum.pdf](http://www.erg.eu.int/doc/publications/irg_07_26_irg_exp_grp_rep_uke_mkt_14_exec_sum.pdf)

The Expert Group notes the difficulties experienced by UKE in gathering relevant market information from the operators. As previous notifications show, not only UKE has experienced this problem. The Expert Group considers that the difficulty in obtaining data in relation to wholesale leased lines markets should be acknowledged.

In the Expert Group opinion, the serious doubts from the Commission mostly derive from the lack of information concerning alternative operators' own infrastructure and from that UKE couldn't quantify the trunk segments provided by alternative operators but relying in TP's infrastructure. In addition, UKE's treatment of captive sales shows some inconsistencies.

The Expert Group agrees with the Commission that the previous points should be clarified in order to properly assess the market analysis. Hence, the group concurs with the Commission that insufficient data was provided in this case to support the findings of the three criteria tests and designation of TP as SMP operator.

In any case, the Commission noted that there are some routes where the TP's infrastructure has been duplicated by alternative operators and UKE accepted this argument. The Expert Group also believes that there are some evidences that a relevant degree of competition could be found in major routes. On the other hand there are reasons to believe that there are other parts of Poland where TP's infrastructure cannot be bypassed. In consequence, the Expert Group suggests analysing different market segments that may show different degrees of competition (for instance routes between major cities and rest of the routes).

Finally, the Expert Group wants to point out that the backbone infrastructure to the TP's MDF (which is a key service for development of ULL and bitstream) might be available only from TP<sup>3</sup>.

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<sup>3</sup> As ECTA noted in Poland there were only 118 out of 7690 MDFs where in order to collocate equipments has been placed by alternative operators in Q3 2007.