ERG's public consultation on the document “Draft Common Position on symmetry of mobile/fixed call termination rates”

BEUC's Comments

BEUC very much welcomes the initiative taken by the European Regulators Group to look into termination rates. As we have seen in the debate on the roaming regulation, their level has been the key element in defining the current and future "Euro" tariffs. On many occasions, BEUC has made it very clear that the level of roaming charges is still not in line with the costs of providing the service which relates directly to the current excessive level of termination in the European Union. Bringing the level of termination in line with the costs must therefore be an priority.

We find it necessary to highlight that the high level of mobile termination rates, coupled with an important heterogeneity between European countries creates obstacles for the internal market as the level of termination constitutes an element which is important in the decision of non-European telecom company when taking investment decisions. Furthermore, because of high termination rates, the mobile markets are segmented and competition reduced. (Club effects)

On the side of the regulators and the European Commission, there is a strong desire to tackle the problem. BEUC considers that the regulator's action on the mobile market needs to be a priority. It should be a coordinated action, leading to low rates. The Commission should pressure individual regulators who are less favourable of a decrease simply because it will shake up the market. Consumers as a result are being offered less innovative and more expensive products. Instant messenger is technological feasible, but not offered, simply because SMS is very profitable.

Although the present consultation does not deal with the thorny problem of the cost calculation method, BEUC finds it necessary to stress that in its view**, the priority for the regulators should be the lowering of call termination prices.** While asymmetry versus symmetry of termination is indeed important, it remains a secondary problem. Determining the cost of an efficient operator through choosing the correct calculation method and the cost elements naturally leads to determining in which situations asymmetry has to be preferred above symmetry and vice versa. The primary focus should therefore be on lowering termination so that they mirror the costs of an efficient operator. In our view the first question is therefore not relevant. The general principle should be to have cost efficient termination.

I. Exception to take into account exogenous factors, not related to a late entrance

In Europe, there are cost differentials between the operators within a single country, due to the different cost structures for the frequencies. The relatively high level of use of the 1800 MHz band implies higher costs which need to be offset by a higher call termination level. However, there are other ways of resolving this problem: the various national regulators are, for instance, able to make an optimal allocation as frequencies are freed up, notably thanks to the advent of digital television, the so-called digital dividend.

As to the effect of late entry on the costs, it is closely related to the frequency used. It will be important to be particularly vigilant regarding the distribution of the frequencies. If they are mainly in 1800 MHz, care will need to be taken on the one hand to ensure that the extra cost is offset, and on the other, to ensure that new entrants are among the first to benefit from the upcoming frequency reallocation.

II. Transitory exception to take into account a significantly late entrance

Asymmetry can be a key factor in ensuring competitive markets. Indeed the cost of deploying a network may form a barrier to entry and serve as a strong disincentive to invest. The existence of asymmetry serves to some degree to remove this obstacle, because it allows new entrants to finance their networks in part.

As to the value of this differential, it must, in the medium term at least, be reasonable and cover only the cost differential. Under no circumstances must it be a source of additional income, in the same way as the billing of interconnection is in reality in Europe.

The differential treatment of the various players on the market must be justified, and its relevance must be periodically reviewed. It will need to be the subject of three-year plans, for example, providing for a regular lowering of the call termination price differential, the aim being to adapt this 'subsidy' to the trend in the costs of the new operator but also to those of the incumbent operators.

III. Transitory exception before MTRs are at cost, to limit distortions created by MTRs above cost

It is important to maintain asymmetry as long as the termination rates are high. However, it is essential that this type of exceptions is accompanied by a firm plan for lowering the mobile termination rates. Within a 5-year time frame, the regulated mobile termination tariffs should be in line with the real cost of call termination which are estimated at 1 to 2 Euro cent in Europe.

Paradoxically, the asymmetry is often justified because of the effects of a high call termination rate. The point is that where there are dominant players on the market, it becomes very interesting from a strategic point of view to offer 'on net' abundance deals, which generate very advantageous 'club effects'. This leaves the smaller operators with little or no means of retaliation. In France, Bouygues Télécom has offered unlimited calls to all operators, but to do so the operator needs to accept an outgoing financial flow due to having more outgoing than incoming calls because of its smaller market share. As such, it may seem legitimate to grant it a higher call termination price. Yet this surplus would not be necessary if call terminations were genuinely at cost!

Consequently, the real solution remains to lower call termination, because we are faced with the absurd situation where the price of call termination is kept asymmetric to offset the effects of their excessive level!

In the medium term, 'bill and keep' might even constitute a suitable solution insofar as it does away with this type of imbalance and removes the constraint of the regulation. Nevertheless, a 'bill and keep' system should be implemented gradually by lowering the termination rates over time. Once the mobile termination has been lowered and it level is comparable to fixed termination rates, a bill and keep system can be introduced.