KPN Belgium answer to ERG public consultation on a draft Common Position on symmetry of mobile/fixed call termination rates

KPN Belgium (formely TELE2/Versatel Belgium) has largely invested into a fixed network in Belgium, the largest not inherited network. KPN's market share in direct access is still below 1%, just after the incumbent (89%) and the largest cable operator (10%). Termination rates have been imposed at incumbent's rate +15%, which is widely below costs and is discriminatory towards mobile operators as KPN Belgium has been imposed a price cap regardless of its own cost model.

ERG's consultation favours the symmetry of TRs in the short term. Whereas, symmetry could be an adequate goal to set, numerous arguments need to be taken into account by **NRAs to determine if and when symmetry should become effective in their specific countries**.

NRAs should take into account following elements:

(i) Climbing the investment ladder

The investment ladder principle has always been central in the liberalisation of the communications market.

Many new entrants followed that principle, starting by offering indirect access services. Slowly, once their client base became larger, they could move to deploying their own network first by using a wholesale bitstream offer, then ULL.

Depending on the quality and pricing of ULL offers in each country, they could or could not move to direct access.

This migration from indirect to direct access takes a number of years. If the ERG wishes more infrastructure based competition, it must allow NRAs to analyse the real level of infrastructure based competition for direct access. Even if the liberalisation started in the late 90s, the direct access competition is much more recent. In some countries such as Belgium, there is still in 2008 less than 1% unbundled lines! Such market situation is necessarily very different than markets where ULL penetration is above 30%.

NRAs must have the freedom to decide on FTRs as an instrument to:
- increase competition
- for the benefit of end-users.

Even if OAOs can concentrate their network investments in urban areas, national peculiarities must be taken into account by NRAs, such as ULL conditions, accessibility and cost of rights of way or past unfair practices that have weaken competition.

(ii) Objective cost differences:

In addition to the objective cost differences raised in the Consultation (lower economies of scale, incentive to invest in new networks, lower number of interconnection points and lower bargaining powers), the following differences should also be taken into account:
- more expansive access to financial markets,

- impact of national rights of way in the speed of deploying a network (in Brussels, roads can only be dug in every two years),
- high entry related marketing costs needed to win voice customers that are reluctant to switch in a mature market,

(iii) National market conditions

NRAs must have the freedom to decide on the asymmetry of TR as an instrument to increase competition for the benefit of end-users.

In countries that experience a serious lack of competition such as Belgium where only two operators (incumbent + one cable operator) enjoy very high market shares and have lowered retail voice prices below costs and have kept broadband retail prices extremely high with no decrease in 7 years in a row, it is necessary to support the emergence of at least one additional viable player by allowing it to adequately recover its investments.

(iv) Voice revenues are as important as in the past

Currently, voice revenues remain extremely important in all markets. Even if operators add broadband and sometimes broadcasting to their offer, still voice remains a huge source of revenue. Many citizens still only have voice and no broadband, and even less digital broadcasting.

Moving to bundles, it is important that each element of the bundle allow for profitability. It is important that operators that add broadband (ultimately broadcasting) to their portfolio, do not undermine their (difficult) business case by selling at loss their voice services.

(v) Duration of the asymmetry

NRAs must have the freedom to take into account national circumstances to determine whether asymmetry is possible, for how long, and by whom.

KPN Belgium favours individual termination rates linked to the evolution of the market share of the OAO. On the fixed markets, termination rates should be cost based until the OAO has reached some strength, the threshold could be 20% of the fixed termination minutes in the country, then an adequate glide path should be defined. The Irish ComReg precedent of a threshold linked to reaching a minimum level of market shares reflects a fair, proportionate, non-discriminatory remedy in markets that are not yet competitive.

Over time, when market shares increase, the value of the OAO termination rate will decrease and come closer to the incumbent’s rate. If an OAO is inefficient and does not increase its market shares, it will inevitably disappear from the market, so that the asymmetry would also disappear.

(vi) Glide path

NRAs should receive guidelines from ERG on how to structure an adequate glide path (per operator).The ERG consultation states:

"Therefore, it is suggested here that NRAs, in their next market 9 review, should consider setting a path to achieve symmetry in FTRs as soon as possible (e.g. over a period of four to five years) taking into account the prevailing local circumstances such as the date of market opening, the actual numbering of OAOs and their respective market shares)" (page 37).

In August 2006, the Belgian NRA has imposed a glide path on the second (Telenet) and third (KPN Belgium) network operators that brings FTRs from incumbent + 550% to incumbent + 15% in two years (1.1.2007 to 1.1.2009)! Such glide path is extremely disruptive for the business and does not take into account that there is a strong duopoly in Belgium and none of the network operators have yet been able to increase their market shares, among others due to the absence of a viable ULL offer until late 2007.

We believe NRAs that which to move towards symmetry must allow a glide path that secures a smooth transition. As said above, the level of FTRs shall decrease with the increase of market shares (the filing ratio of the level will increase, so that the cost per minute will decrease).

(vii) Impact of asymmetry on incumbent and end-users

Impact on incumbents: most incumbents are able (sometimes even obliged) to reflect higher termination cost in their retail prices, so that there is no financial impact for them. This is a national circumstance that the NRA must take into account. Further, even if the incumbent may not reflect the asymmetry of tariffs into its own retail tariffs, the financial impact is necessarily limited, because asymmetrical tariffs would only be applicable to smaller OAOs.

Impact on end-users: as long as OAOs only enjoy limited market shares, the overall effect also remain limited. Further, end-users are better informed than in the past and NRAs/legislators have imposed many transparency obligations on operators.

(viii) Regulatory cost of different TR

The NRA should propose a standard FTR for OAOs, preferably in value than in reference to the incumbent's TR that can vary in time, which reduces the legal certainty of OAOs.

If the OAO wishes to obtain a higher TR, it must bear the costs of providing its own cost model for NRA's review.

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