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INTRODUCTION

We would like to take this opportunity to present our opinion on the consultation from the European Regulators Group (ERG) for the Common Position on symmetry of mobile/fixed call termination rates.

ONO is the leading alternative provider of telecommunications, broadband Internet and pay television services in Spain and the only cable operator with national coverage. ONO offers its services to more than 1.8 million residential cable access and 69,000 business customers, through its own new optical-fibre and coax-cable network which give direct access to nearly seven million homes in franchises that cover the majority of Spain, including the nine largest cities. ONO is the principal competitor to the incumbent telecommunications and pay television operators in Spain. For the third Quarter 2007, ONO generated revenues of €1,608 million and EBITDA of €592 million, on an annualized basis.

OVERVIEW

In Spain, ONO has achieved considerable growth without the benefit of asymmetric rates. However, as a result of the case we presented to the CMT in 2003, asymmetric fixed termination rates (FTR) were finally implemented in Spain in 2006.

Spain is not the only country where the implementation of asymmetric FTR has been carried out recently, as this has also happened in Italy. Additionally, the implementation asymmetric rates is also currently being discussed in a number of other countries, as the consultation document pointed out, so the discussion on a return to symmetric rates seems to be somewhat premature.

We believe that asymmetric rates are an important motivator for OAOs to enter a market that, due to its nature, is very difficult to penetrate. We also agree that, as the incumbent loses market share, the need for this remedy decreases and over time a return to symmetric rates should occur.

It needs to be pointed out that the mobile and fixed markets do not currently share the same characteristics; particularly regarding the time it would take fixed new entrants to achieve a significant market share. This is mainly due to the expensive and slow network roll-out process and the entrenchment of the incumbent operators.

Hence, asymmetric FTRs do not only allow new OAOs to enter the market, but they also help in maintaining new entrants in the market while they achieve a more significant scale. The time it will take for OAOs to reach the point where asymmetric FTRs are no longer necessary will vary by country, depending on the evolution of the market, and this length of time cannot be pre-established. Regulators in each country should periodically revise the market situation and

assess each OAO in a number of criteria such as relative size, growth and sustainability in order to decide when a return to symmetric rates can take place.

Finally, on the issue of fixed–mobile convergence and asymmetric rates between the two platforms, we believe that the market will be moving towards a single termination rate.

Currently, policies allow mobile termination rates (MTRs) to include the full costs of the access network, while this is not the case for FTRs. If this policy, which favours mobile services over fixed services, is not corrected in the medium term, it will lead to inefficiently high mobile usage and inefficiently low fixed usage.

However, in the long term the fixed and mobile networks should converge in terms of services and technologies, making it counter-productive to try to try to distinguish different termination rates between them, hence a “bill and keep” arrangement would be rational.

CONSULTATION QUESTIONS

QUESTION G1: Do you think that the principles outlined in the general economic introduction adequately cover the underlying economic situation of both mobile and fixed termination markets?
– If yes, do you think they are sufficiently reflected in the two parts on "MTR symmetry" and "FTR symmetry" and that they are consistently applying the principles?
– If no, what do you think is missing and what reasoning should be added?

The general economic introduction is particularly effective in its description of the European market. The introduction describes a very heterogeneous market where each country’s situation is different; a number of costing methodologies are being applied for the setting of rates and different remedies also have to be applied.

In addition to what has already been mentioned in the consultation, it is very important to point out that asymmetric rates have been in place for very different periods of time, as can be observed in the table below. This makes asymmetric FTR a particularly new remedy in some countries.

Country	Introduction of asymmetry of FTR
Belgium	2002
Germany	2003
Portugal	2003
Spain	2006

Ireland	2003
Italy	2006
France	2003
Netherlands	2003
Luxembourg	Proposed
Slovenia	Proposed

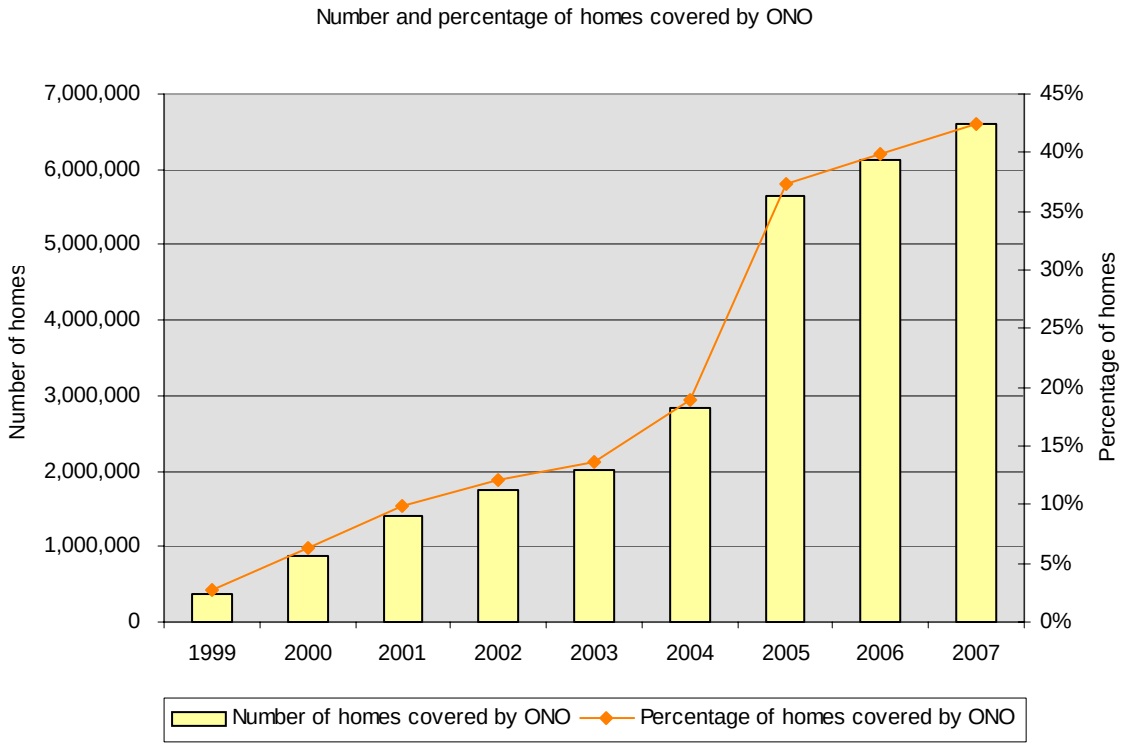
Thus, it is important to note that, even though there is some measure of convergence, it is still not possible to apply a uniform criterion for asymmetric termination rates across all countries.

It seems to be the case that the general economic introduction is trying to apply the same criteria for fixed and mobile networks. We believe that the ERG could go much further than it has in applying the same principles to both fixed and mobile termination rates, as well as to issues of asymmetry. That is, the need for asymmetry depends on the scale of the entrants in both cases, as demonstrated in the quote below. However, the time required to achieve efficient scale differs between fixed and mobile networks.

"With regard to its position (in particular as understood from Article 7 procedures comments), it seems the Commission is in line with these economic theory arguments and with the assumption that equally efficient operators are assumed to have equal market shares, ***at least for mobile network operators****."*

It is clear that, in the fixed market, the scale of the operator definitely matters, as it is not possible to assume that the same market shares exist when the incumbent can be 78 times larger than the biggest OAO (which is the case in Hungary). A similar situation would only present itself for a new mobile operator when it enters the market, but the new operator would rapidly gain considerable scale in the short term, as the consultation demonstrates on page 82.

Hence the asymmetric rates in fixed markets are not just about new entrants, but they are also about allowing OAOs with a "lack of scale" to grow and compete with the incumbent. It takes considerably longer for a fixed new entrant to gain the appropriate scale than it does for a mobile new entrant. This is illustrated by the following chart, which shows ONO's roll-out over the past nine years.



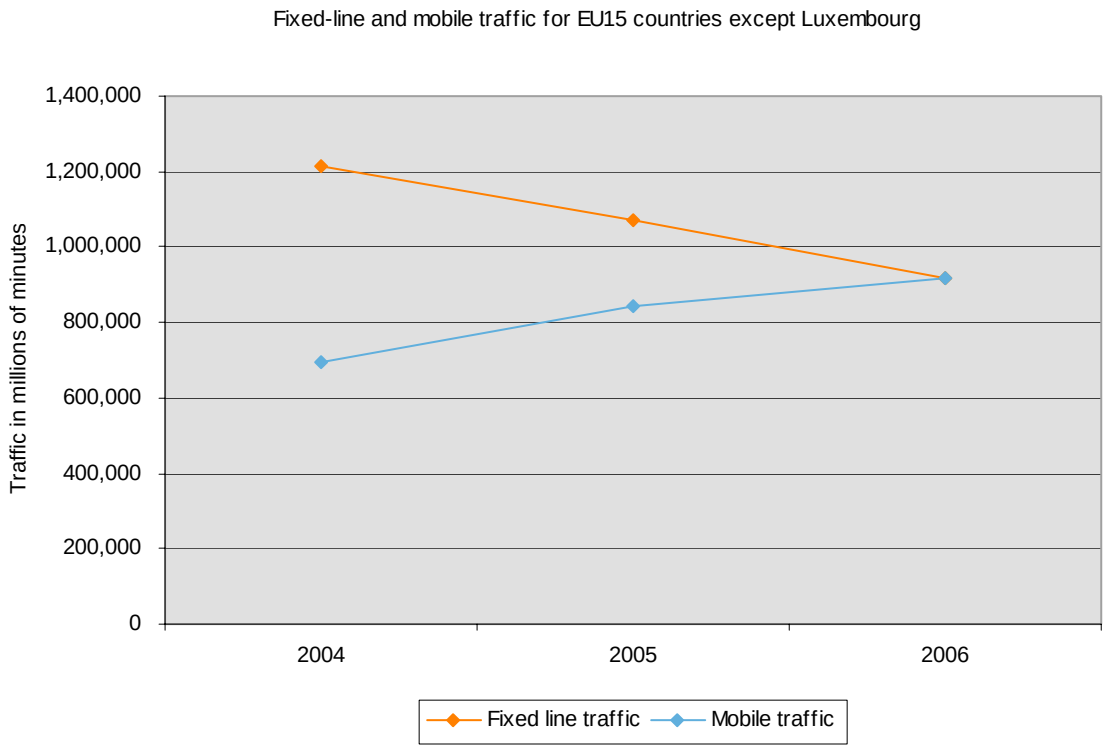
Source: Euromonitor and ONO

QUESTION G2: Any further comments regarding consistent regulation of both MTR and FTR with regard to symmetry is welcome.

An important matter that will be further discussed is QUESTION G3 is the different costing methodologies used to set MTRs and FTRs, particularly regarding access.

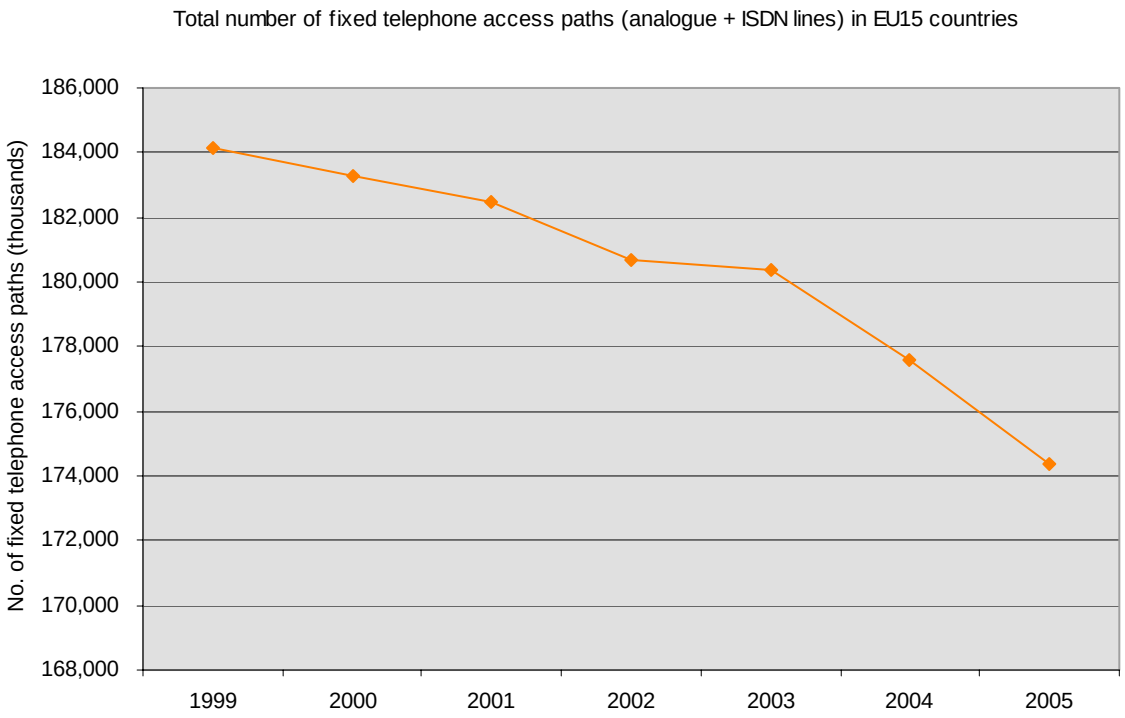
QUESTION G3: Finally we would like to ask you to elaborate on the question of converging MTR and FTR and the timeframe you envisage for this.

One of the most important developments in telephony over the past few years has been the displacement of fixed by mobile for voice communications. This displacement has affected local, domestic long distance and international traffic, as well as the number of fixed lines. In Europe, mobile traffic has been rapidly increasing, while fixed traffic has been declining**,** as shown by the following chart.



Source: Incumbent and other operators' quarterly and annual reports and presentations, regulator websites, ITST.

The number of fixed access lines has also been declining, as demonstrated by the following chart.



Source: OECD

A more recent trend has been the convergence of fixed and mobile services. Services have been developed that combine the advantages of mobility with the higher capacity and better retail prices of fixed service. A couple of examples are:

- Services that direct calls from a mobile phone to a fixed line (e.g., via WiFi) as it is already happening in France and the UK.
- Devices that send instructions from subscribers to their mobile operator via the Internet. Upon receiving the instructions, the mobile operator directs calls to the subscriber over a fixed line (to a telephone number on a fixed network).

It is likely that many more convergent services will be developed in the near future. An obvious possibility is to enable subscribers to use a mobile phone to direct the downloading of a file to their broadband access line.

These developments have already profoundly affected the telecommunications industry. In the future, these effects will lead to an even more significant transformation.

The ultimate structure of the market is certain to differ greatly from its current state. What remains to be seen is whether the new market structure will be efficient or whether it will embody substantial inefficiencies resulting from regulatory distortions of market processes.

In this regard, there are serious concerns regarding the current EU regulatory policies. In particular:

- The policies allow MTRs to include the full costs of delivering calls to mobile subscribers. In contrast, FTRs do not include any contribution to recover the costs of the access network.
- In most European countries, MTRs far exceed costs. They are based on the glide paths that began at the excessive rates that were charged before regulation. These high rates are economically efficient and reward mobile operators for the excessive rates that they charged prior to regulation.

These policies strongly favour mobile services at the expense of fixed services. They will, if not corrected, lead to an outcome in which mobile usage and subscription are inefficiently high, while fixed usage and subscription are inefficiently low.

These regulatory distortions are augmented by the abusive business practices of the mobile oligopolists. In particular, mobile operators often charge more for calls to fixed subscribers than for calls to their own subscribers. The price differential generally far exceeds the cost differential. For example in Nuevo contrato 1, Vodafone Spain charges 35 times the amount; in Tarjeta Nostros, Orange charges almost 17 times; and in Tarjeta Movistar, Telefónica Móviles charges almost 12 times.

This may be a result of implicit collusion among the oligopolists allows this large differential to be sustained.

The practice of imposing large penalties for off-net calls is problematic for two reasons:

1. They favour mobile subscribers at the expense of fixed subscribers and thereby aggravate the already distorting effects of regulatory policies.
2. They constitute an abuse of the regulatory policy of cost-oriented interconnection. The reason that operators are required to offer cost-based termination is to facilitate the calling of their subscribers by subscribers of other networks. This objective is largely thwarted if the other network imposes large penalties for off-net calls in its retail pricing.

Competition among mobile operators may, via the waterbed effect, limit the profitability of the mobile industry. Nevertheless, the practice of imposing (off-net) penalties for calls to fixed networks benefits the entire mobile industry (through oligopolistic collusion) at the expense of fixed networks and consumers.

It is important to note that cable networks in Spain were only developed in 1998 and not over existing cable networks. Hence, it is a more expensive fibre NGN designed to provide telephony, television and internet services. However, as their main source of income has been telephony, asymmetric FTRs have been an important driver.

Recommended Policies

In order to promote the efficient future development of the telecommunications industry, and in particular, the efficient convergence of fixed and mobile services, we recommend that the EU and the CMT should adopt the following policies:

1. MTRs should be reduced at a faster rate than they have been in the past. Ultimately, MTRs should only cover the cost of the mobile switch and (terrestrial) transmission to the base station. MTRs should not cover any costs of radio transmission or spectrum-related costs. In this way, a level playing field will be created for fixed and mobile networks.

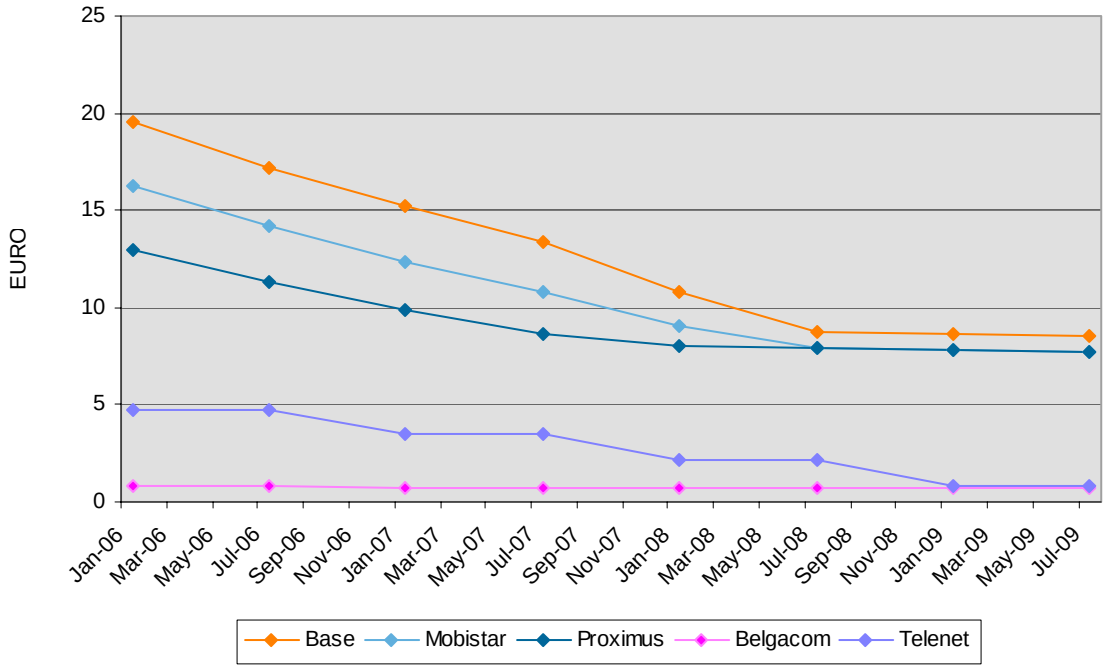
2. An inferior ('second-best') way to create a level playing field is to include an allocation of the costs of the access network in the FTRs. Although less than satisfactory, this policy is better than requiring fixed-mobile competition and convergence to take place on today's uneven playing field. One way to perform this allocation is to take the cost of an unbundled loop and divide it by the traffic that goes over a typical loop to get the per-minute cost.

QUESTION F1: How do you think termination should be regulated in a converging fixed mobile market?

The regulation of mobile and fixed communications in general, and that of the termination rates in particular, has been different for fixed telephony and mobile telephony.

MTRs have been typically set above cost and have always been higher than FTRs. This asymmetry between fixed and mobile has brought about significant market distortions. The high MTRs have allowed operators to gain market share and fine-tune their tariff plans while being subsidised by fixed operators due to the imbalance between FTRs and MTRs. Additionally, in some cases, alternative fixed operators have had steeper glide paths imposed on them (when the FTRs were asymmetric) than mobile operators, as shown in the chart below for Belgium.

Glidepath of mobile and fixed operator termination rates in Belgium



Source: Telenet asymmetry case

As we have already highlighted in our answer to Question G3, one of the reasons why FTRs are much lower than MTRs is the different approach that NRAs have typically taken to regulating them.

- In general, MTRs have been set using a wider range of tools than fixed networks. In many cases, a hypothetically efficient operator has been defined. The MTR has been set taking into account the unit cost of this operator. The FTRs, however, have often been based on the costs of the incumbent, which was considered to be the efficient operator, but whose scale the alternative operators could not enjoy.
- The full cost of the access network has been taken into account in the mobile world but not in the fixed one when calculating the termination rate.
- Network deployment commitments (coverage specified by license) have had an impact, and been reflected in the MTR. In the fixed world, some operators, namely cable operators, have had similar commitments. This fact has not generally been taken into account when calculating the FTR.
- Mobile operators were allowed (and some still are) to recover all or part of the handset costs through the MTR. This has not been the case in the fixed world.
- Network externality charges have more often been taken into account by NRAs when setting the MTRs than FTRs.

As it has already been pointed out in our answer to Question G3, we are seeing a converged world, where fixed and mobile services converge. Additionally, there is also a convergence in the technology arena:

- underlying IP networks are becoming ubiquitous (in both mobile and fixed transport networks)
- new radio technologies such as WiFi and WiMAX are bridging the gap between fixed and mobile with nomadic services.

To the extent that this is possible, we believe that the regulation of termination in the short term should aim to align the decision-making processes for both MTR and FTR. Please see answer to QUESTION G3.

In the long run, however, the regulation of both FTR and MTR should converge, in the sense that they should be set regardless of the type of network. The convergence of fixed and mobile networks in terms of services and technologies will make it counter-productive to try to distinguish between them. ONO thinks that the end target should be a “bill and keep” arrangement where the reciprocal call termination rate between two operators is zero.

QUESTION F2: Do you agree on the methodology and assumptions underlying the asymmetry index calculation?

ONO does not really see the value in calculating such an index. This index, whether built based on total volumes and revenues or on tariffs (as the one in the consultation) would reflect in any case a snapshot of the situation of interconnection in the fixed telephony market. In other words, it would be an indication (though an imperfect one) of the situation, not of the causes that brought about that situation.

We believe that setting (symmetric or asymmetric) FTRs should be the result of a market analysis that takes into account the situation of the fixed telephony market. In other words, although symmetric FTRs are a praiseworthy long-term target, the competitiveness of the entrant(s) in terms of scale (output, market share, revenues, etc.) should also be taken into account. Technology and architecture are important only insofar as they affect the lack of scale economies.

QUESTION F3: Do you think the list in paragraph 7.1 constitutes an exhaustive list of the possible reasons justifying the adoption of asymmetric tariffs?

ONO believes that the main reason for setting asymmetric FTRs is the emphasis on dynamic efficiency versus static efficiency. Asymmetric FTRs allow alternative operators to gain market share while being profitable, and they are a stimulus to further develop and deploy their own network so that the market becomes more competitive in the long term. Dynamic efficiency, as

opposed to static efficiency (where users might only benefit from lower prices in the short term), ensures lower prices and more innovative and useful services in the long run.

Asymmetric rates should compensate OAOs for artificially low interconnection rates that would not be at that level if they were freely negotiated.

Since fixed entrants are generally small, asymmetric FTRs do not have a significant impact on the market in the short term. The following table provides an estimate of the likely impact of FTR asymmetry in Spain (30% over the Telefónica interconnection rate). As can be seen, the overall impact on the industry's revenue is less than 0.1%

Operator	Total revenues per fixed line (Euro)	Percentage of customers who have direct access	Estimated revenues per national termination interconnection service (EUR millions)	30% asymmetry
Telefónica	6,095.16	81.8%	147.40	N/A
ONO	633.32	12%	21.62	6.49
Remaining Operators	1,005.91	16.2%	11.17	3.35
Total	7,734.39	100%	180.19	9.84

Source: CMT's annual report 2006

We believe that the importance of scale has not been sufficiently stressed. As pointed out in other parts of this document, the incumbent has often been used as the reference for setting the FTRs in a given country. We acknowledge the fact that, in most cases, an incumbent has the lowest unit cost of termination. However, this fact is mainly related to two factors: market reach (and penetration) and scale.

ONO would like to point out that an alternative operator faces a much more difficult task to achieve the same market reach, penetration and scale as an incumbent, due to the slower pace of deployment of a fixed network (for example, in comparison with a mobile network). We would also like to mention that a cable operator can be more efficient than an incumbent if both had the same market share and output (as mentioned in the allegations presented by ONO on November 25th, 2003, during the conflict on asymmetric FTRs. The chart below shows that a cable operator can be as efficient as (or more than) the incumbent. The sensitivity curve shows the unit cost of terminating a call on a cable operator's network if the homes passed were 35% of total since 1998 and penetration reached the level of the incumbent (91%) which shows the

importance of scale when setting the FTRs. ONO expresses its view of an efficient operator in Question F5.

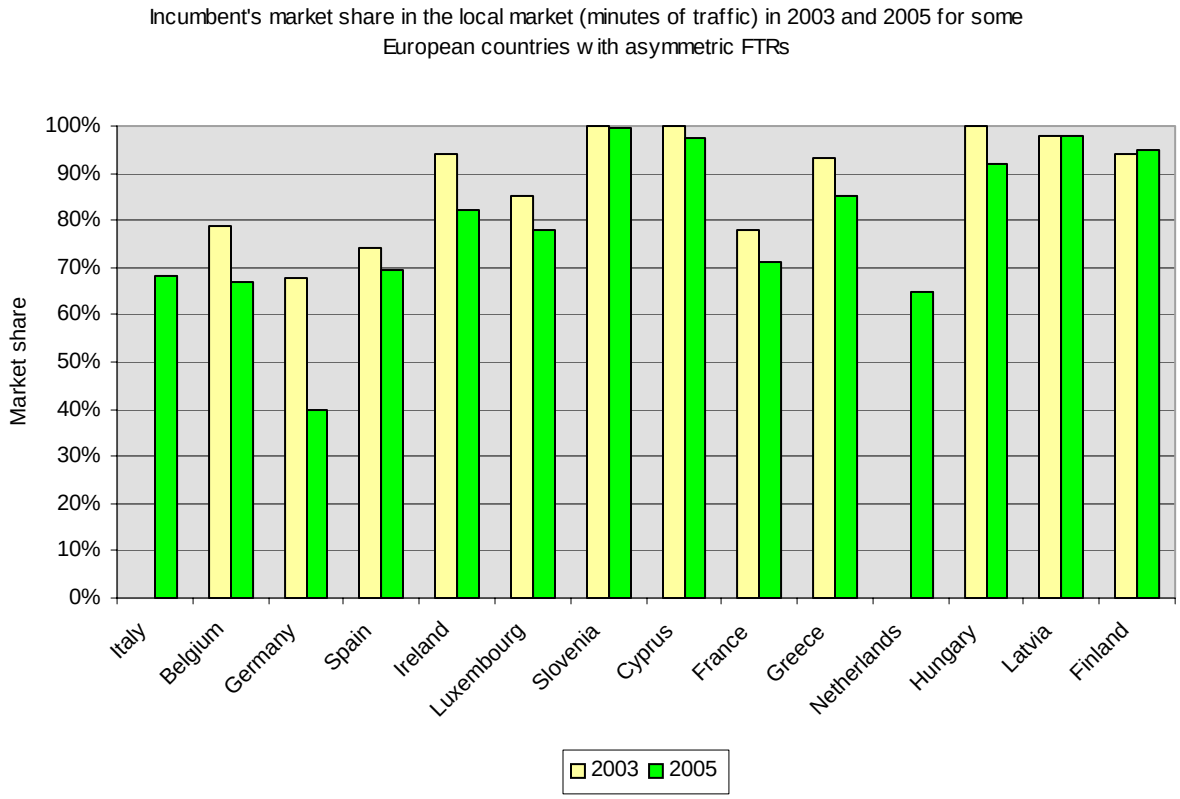
As in the mobile world, asymmetric FTRs should allow alternative operators that deploy their own networks and receive compensation for the higher costs that result from lack of scale. In the case of cable companies, the lack of economies of scale resulting from geographical density of subscribers is aggravated by license commitments that require the achievement of certain population coverage.

An important reference as to how asymmetry works is what has happened in the mobile world. MTR asymmetries have worked towards dynamic efficiency and have allowed new entrants to gain market share. The market, in turn, has become more competitive, with lower prices for customers over time as well as a larger service choice.

Asymmetric FTRs should be associated with investment rates of OAOs which would in turn translate into more dynamic competition.

QUESTION F4: Do you agree on the fact that any entry assistance policy for the future based on higher OAOs' FTRs is likely to be less effective than in the past?

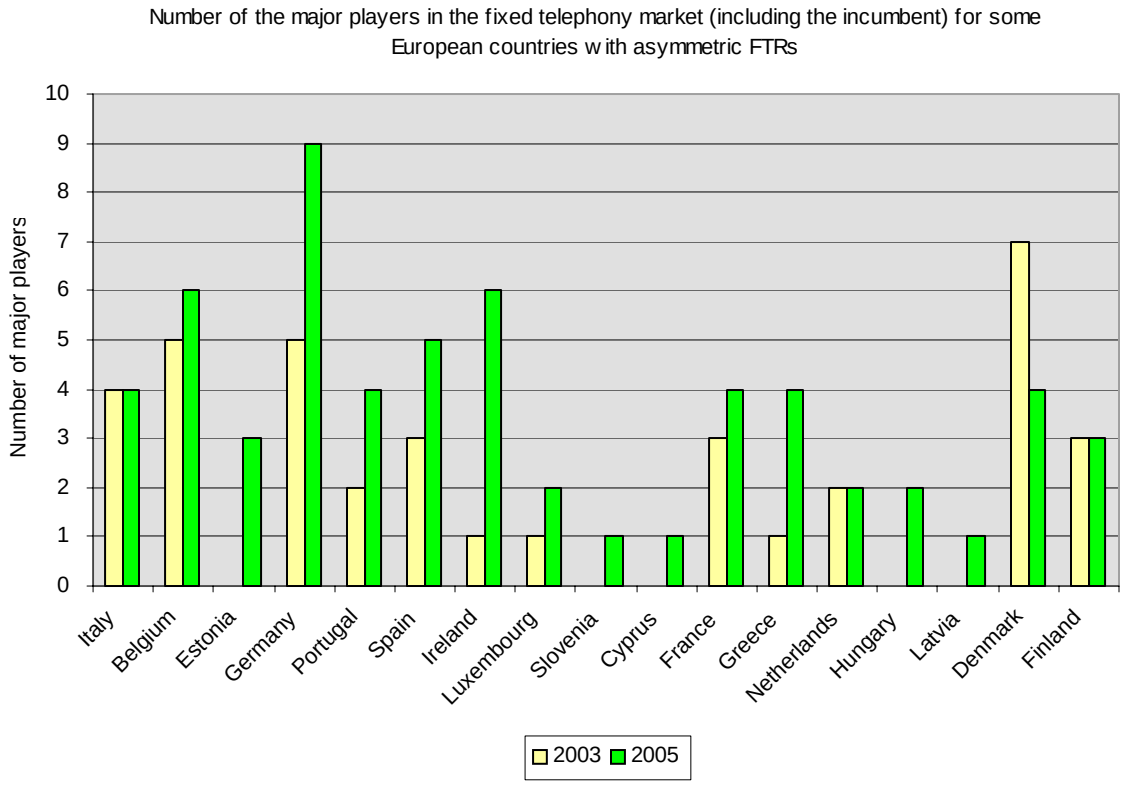
First of all, it must be pointed out that asymmetric FTRs are relatively new; hence it is difficult to say that market conditions have changed greatly. An important reason for an OAO to enter, and indeed remain in, the market is that the OAO is getting some relief from the incumbent's power in the form of asymmetric termination rates. As the incumbent loses market share, the need for this remedy for a new entrant decreases. However, as can be observed in the following chart, the incumbents' market shares in many countries have declined rather slowly.



Source: EU Implementation Reports

Additionally, the market dynamics have not considerably changed between 2002 and 2008, as the number of OAOs has not increased considerably in most European countries, as shown in the following chart.

Finally, as long as asymmetry foments network deployment, it is still being an effective tool in increasing the market competitiveness.



Source: EU Implementation Reports

QUESTION F5: Could you please provide a definition of the "efficient operator" NRAs should refer to in fixing FTRs? What are the costs an efficient operator would incur to provide termination services?

We believe that the costs of termination should be calculated in the same way for *all* operators – both fixed and mobile. The costs should include the costs of switching the call at the point of interconnection (PoI), transmitting the call to/from a point closer to the subscriber, and switching the call a second time at that point.

The scorched node approach is widely used to calculate interconnection costs, and we believe that it is the best practical approach. It is a reasonable approximation and avoids the dubious exercise of regulators (without the detailed knowledge that the companies have) trying to specify a network architecture that is more efficient than the existing one.

- For a traditional fixed telephony networks, the scorched nodes are the host switching centres. They would be the MSANs in a next-generation network. For HFC networks, on the other hand, the scorched nodes would be the terminal nodes, where coaxial links are connected to the network.

- For a mobile network, the scorched nodes are the base stations.

Termination costs include the costs of transmitting the call between the PoI and the scorched node, and switching the call a second time at the scorched node. Interconnection costs should not include any further costs – traffic sensitive or non-traffic sensitive – incurred to deliver the call to/from the subscriber.

We believe that the scorched nodes should be used to calculate the costs for all fixed operators, based on efficient theoretical models that consider different architectures.

The usual definition of an efficient firm is one that uses the most efficient technologies that are available and minimises non-capital costs. The technologies in this case apply to the interconnection switch, the host switch or base station switch, and the transmission channel between them.

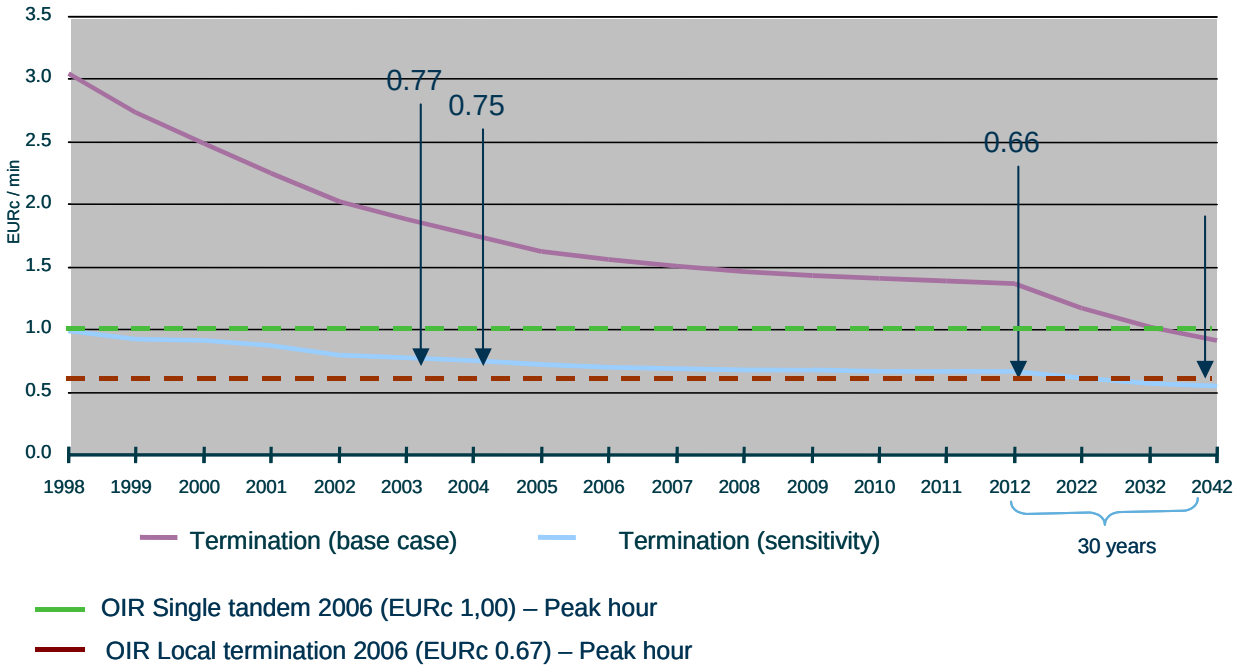
QUESTION F6: Do you agree on the fact that OAOs should be as efficient as the incumbent?

It is certainly reasonable to expect OAOs to be as efficient as the incumbent, but only if they are operating at the same scale. The slower network deployment of an alternative fixed operator makes it more difficult to achieve the same coverage, and potentially scale, as the incumbent than in the mobile world.

The consultation argues that an OAO could achieve the same efficiency as the incumbent if it concentrates its customer base in a few locations (i.e. acting more as a regional player). However, even if an operator followed that strategy, the economies of scale would never be of the same magnitude as the incumbent's, particularly in terms of equipment value and common costs.

A possible answer would be to work with theoretical efficient costing models in a similar fashion to what the consultation is suggesting for MTRs.

Besides, even the more successful OAOs that operate on a national scale – such as ONO, which have been investing in modern equipment – could only achieve the same efficiency if they were to attain similar scales to the incumbents, as shown in the following charts.



Source: Conflicto ONO - Telefónica 2003

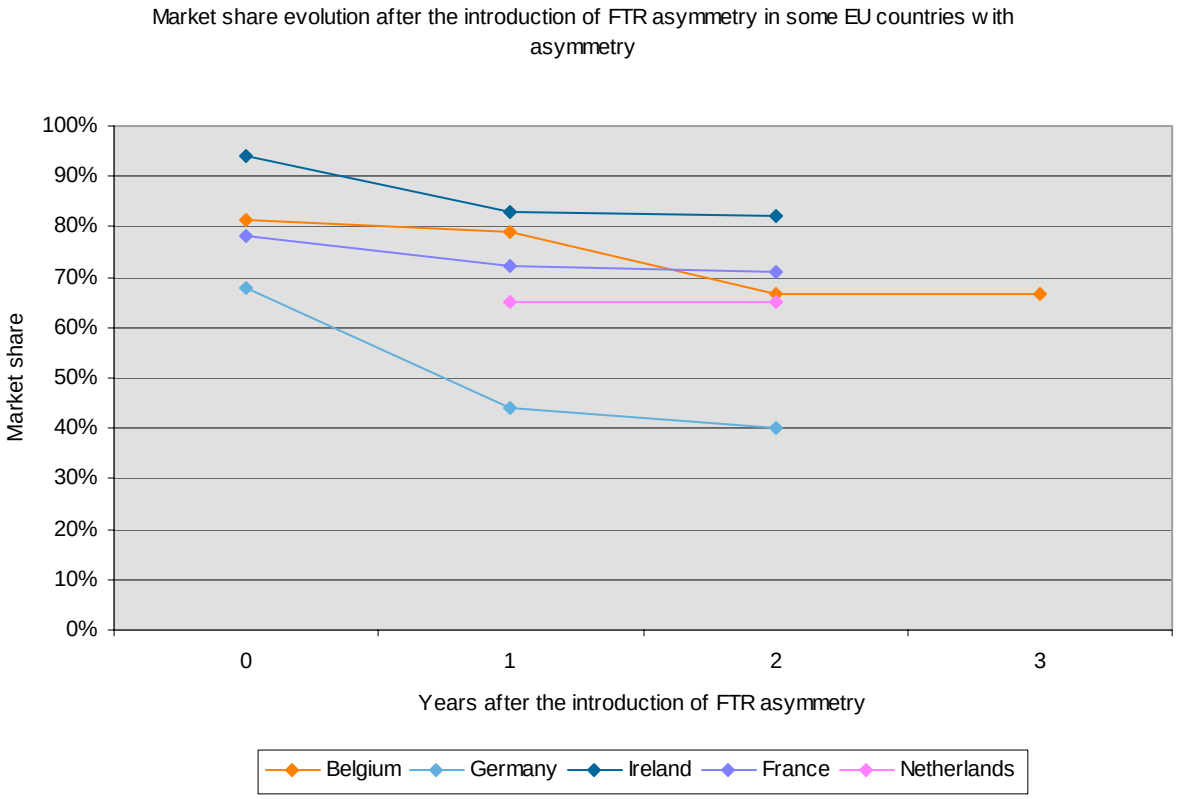
QUESTION F7: Do you agree on the fact that there are less reasons for fixed operators compared to mobile operators that justify the adoption of asymmetric tariffs?

ONO does not agree with the statement made in the text of the question.

The process and approach to set FTRs should take into account market conditions and the specifics of each country. If a detailed analysis of those conditions reveals that entrants have achieved efficient scale, symmetric FTRs should be implemented. On the other hand, if the analysis indicates that entrants have not yet achieved efficient scale the asymmetry should be continued.

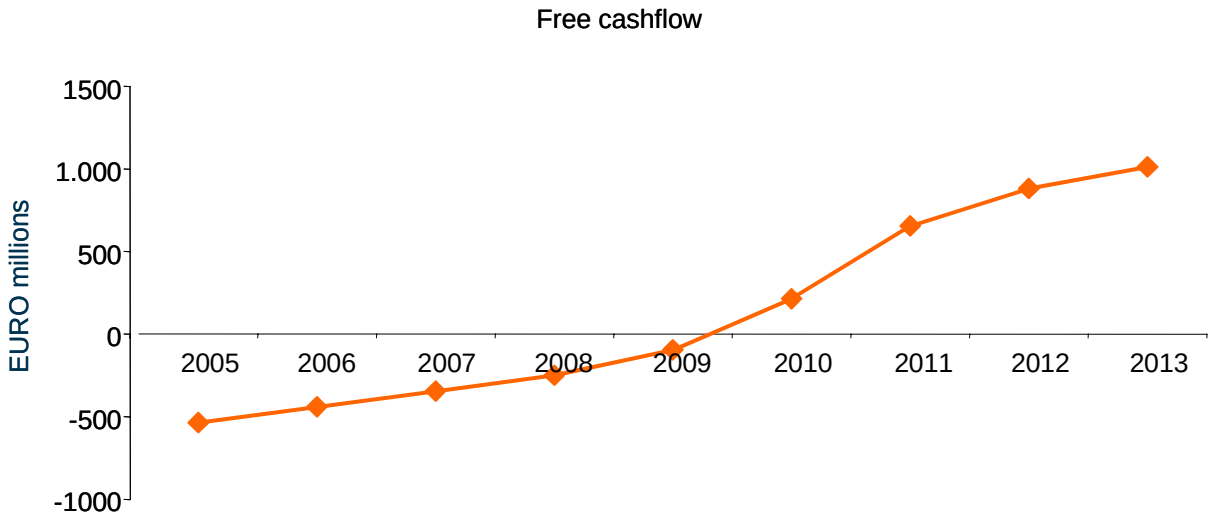
An example that shows that asymmetric FTRs can be a valid solution is the fact that the Spanish regulator, the CMT, has just recently changed its approach to setting FTRs, which are now asymmetric, as established in the document “Resolución Mercado 9 número AEM 2005/1199”.

The following chart shows the evolution of the market share of local calls’ traffic in some of the European countries that first introduced asymmetric FTRs. It is important to note that both Italy and Spain introduced asymmetric FTRs very recently, therefore insufficient data is available for these countries.



Source: EU Implementation reports
Notes: Year 0 is the year of implementation of FTR asymmetry

Another factor to take into account is that investments in fixed networks, as well as business plans, have a much longer timeframe than their mobile counterparts. Achieving the same coverage, (and potentially the same scale) as the incumbent operator requires larger investments over a longer period of time. Therefore, asymmetric FTRs in the fixed world are likely to be justified for a longer period than in the mobile world.



Source: ONO

Ruling out asymmetric FTRs would send the wrong signals to new entrants that were willing to deploy their own (next-generation) access networks, as they would be in a disadvantaged position with respect to the incumbent due to their initial lack of scale. ONO thinks that a new operator should not be deterred from entering the fixed telephony market because of unfavourable conditions caused by regulation.

This is a particularly important moment to avoid such a situation, as operators are investing in NGN infrastructures partly motivated by remedies such as asymmetric rates. If the OAO were not investing in this new networks, there would be a re monopolisation risk.

QUESTION F8: Do you agree on the fact that if all call termination charges were based strictly on incurred costs there would be a distortion of competition?

Yes, there would be a distortion to the market as different technologies have been deployed which do not carry the same costs even though the market would not support significant changes in retail prices.

However, if the termination rates were set at the costs incurred by the incumbent. Competition would then definitely be distorted by being eliminated, and would prevent potential entrants that could achieve efficient scale to compete vigorously with the incumbent in the long term to the benefit of consumers.

Additionally refer to question F1 regarding the distortion between fixed and mobile termination rates.

QUESTION F9: Do you agree on the fact that symmetric tariffs would allow to avoid transaction and regulatory costs?

As there would still be considerable negotiations between the operators and the regulator to establish the adequate termination rates for both the mobile and fixed networks, only minimal costs could be avoided. The overall cost figures for both groups would probably remain at very similar levels.

Hence the savings would most likely be insignificant compared to the resulting effect on the market competitiveness.

To avoid regulatory costs related to each operator, theoretical models could be used that analyse asymmetric circumstances.

QUESTION F10: Do you agree on the fact that NRAs should reach symmetry in fixed termination tariffs within a reasonable period of time?

Yes, symmetric termination rates should be reached within a reasonable period of time, but the reasonable period would be longer for fixed than for mobile networks, and would depend on the specific circumstances of the country.

As expressed throughout the document, a new fixed operator will take time to achieve symmetric conditions with the incumbent, mainly due to the investment required, the slower network roll-out process and the incumbent's market power

Instead of trying to establish a glide path based on forecasts, which could potentially not be met, each country's regulator needs to regularly assess the situation in the specific country for each OAO to establish whether asymmetric termination rates are still needed.

The general country parameters should include the existing technologies, incumbent's market share, number of OAOs and geographical spread, as well as the time that asymmetric rates have been enforced.

For each one of the OAOs, the following criteria should be evaluated:

- size compared to the incumbent – has it achieved similar costs?
- investment rates – is the remedy working?
- growth rates – are consumers choosing the OAO?
- sustainability – is it profitable?
- coverage – where is it competing?

By conducting this evaluation on a regular basis, the national regulators could ensure that the investments by OAOs are maintained, as well as supporting long-term competition and maximising consumer benefits.

QUESTION F11: Do you agree that it would be reasonable for NRAs to allow a transition period to move to symmetric FTRs? How long should this transition period be?

The length of the appropriate transition period would be revealed over time, and would depend on the conditions expressed in the previous question being reached for removing asymmetric termination rates.

QUESTION F12: In your opinion what criterion should NRAs adopt to set the glide path?

Please refer to Question F10.

QUESTION F13: As the length of the glide path is a controversial point, in your opinion, should the time period to reach symmetry be the same for all NRAs or should each NRA determine it according to national circumstances?

Please refer to Question F10.