Telekomunikacja Polska
Regulatory Affairs Branch
ul. Twarda 18, 00-105 Warszawa, Poland
tel.: (+48 0 22) 527 22 39
fax: (+48 0 22) 527 22 68

www.tp.pl

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TP position on the ERG draft Common Position on symmetry of mobile/fixed call termination rates

Telekomunikacja Polska supports ERG's position stated in the document "Draft Common Position on symmetry of mobile/fixed call termination rates" regarding symmetry of settlements of call termination in the fixed networks in individual countries. Moreover, in TP's opinion, the appropriate approach would also include upholding the symmetry of settlements between operators for call termination in the mobile networks. However, possible introduction of the symmetry of settlements for terminating calls between fixed and mobile networks shall be assessed negatively.

In reference to the general questions, TP would like to stress that the most relevant target solution is to institute settlements between undertakings in reliance on market mechanisms. However, should NRA's intervention be necessary, upholding a coherent approach to regulation in this regard based on reliable economic analyses shall be demanded. The lack of clear and consistent policy in their implementation may lead to considerable market distortions, both in the retail and wholesale dimensions.

An example of chaotic regulations, introduced with no proper economic benefit justification, may be the Polish market which has been dropped to a certain extent in the consulted document due to the lack of information (reasons for not supplying the information are not known to TP).

On 18 September 2006, the President of the Office of Electronic Communications (hereinafter the "President of UKE") passed an administrative decision in which she found that on the market of providing the service of call termination in TP's public fixed telephone network (hereinafter "Market 9") there occurs no effective competition, and she indicated TP as an SMP undertaking, imposing on TP, among others, the obligation to apply telecommunications access charges considering the return of justified costs (price control obligation).

In subsequent proceedings, the President of UKE has found that there occurs no effective competition on markets of providing the service of call termination in the public fixed telephone networks of 29 other Polish operators (alternative operators), and she found that those operators have significant power on Market 9. However, the President of UKE has not imposed the price control obligation on any of the 29 alternative operators.

Under the notification process, the European Commission has taken the arguments of the President of UKE that there exist no reasons for imposing the price control obligation on alternative operators into account. The Commission stressed however (statement dated October 2006 designation: SG-Greffe

(2006) D/206221, case PL/2006/0502), that its position is well-grounded due to conditions existing on the Polish market, especially by the restricted level of asymmetry in cases in which it occurs and by decreasing call termination rates applied by alternative operators despite the lack of price regulation.

However, the Commission has called the President of UKE to closely monitor the call termination rates applied by alternative operators. The Commission has emphasized that should no expected trend of further price reductions be observable, or should the level of asymmetry in relation to TP call termination rates increase further, the President of UKE should intervene and impose effective price regulation also on alternative operators.

It should be stressed that while presenting draft decisions to the Commission, the President of UKE explained that in the majority of cases the asymmetry of call termination rates in the TP's fixed network (in the incumbent's network) and in the fixed networks of alternative operators amounts to 5-10%.

At the same time, as from 2007, the Polish Regulator initiated the process of considerable reduction of the incumbent's prices (TP), leaving charges of alternative operators unchanged. **Such action, having no reasonable grounds, has led to the situation in which call termination charges in the networks of alternative operators are from tens to 550% higher than call termination charges in the network of the incumbent (TP).**

Decisions of the President of UKE result in the overstated income of alternative operators to the detriment of TP. With a relatively balanced telecommunications traffic directed from and to the networks of alternative operators, due to the asymmetry of rates, alternative operators can gain considerable profit. Whereas TP incurs loss on directing telecommunications traffic.

As a result, effective competition is distorted, as for the service of call termination alternative operators gain financial resources enabling the development of their telecom networks, introduction of advanced solutions and new services, whereas funds for TP investment are limited.

Asymmetry of rates on Market 9 influences also the retail market. Due to the extremely significant cost component, that is call termination rates, these large disproportions prevent TP from competing with alternative operators by means of the level of its retail rates and also through its inability to introduce new offer forms (non-limit or semi-limited offers), which weakens TP's competitive position also in relation to mobile operators.

As a consequence, alternative operators having significant power on Market 9 gain unjustified competitive advantage (enforcing absolutely unreasonable/ridiculously high margins amounting to up to five-fold effective rate for one minute of call origination/termination in the TP network).

Therefore, TP supports ERG's aspirations to work out a common position in this regard and encourages ERG to monitor the activities of regulatory authorities, in order to ensure harmonious and coherent implementation of the regulation.

Marta Brzoza

Director of Analyses and Regulatory Affairs Department