

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

UFC Que Choisir's Comments

UFC-Que Choisir is particularly pleased that a consultation on termination rates at European level is finally taking place. In an increasingly integrated and interconnected market, the exercise of regulation by the different national authorities has to be coordinated and has to be based on best practices. The current isolation of regulatory decisions in the European Union is one of the main reasons for the inertia in decreasing call termination rates. The latest decision on mobile telephony call terminations by the French regulatory authority, the ARCEP proves this.

Although the ARCEP would consider it legitimate to slash the mobile termination rates in order to bring them in line with the costs of an efficient operator, the authority keeps termination at levels significantly above costs so as not to break ranks with the other European authorities. There is no doubt that while this decision is to some extent favourable to the operators, it is not favourable at all to consumers. This is why, in the framework of this consultation, UFC Que Choisir has decided to focus solely on the mobile telephony market.

Although the present consultation does not deal with the thorny problem of the cost calculation method, UFC Que Choisir 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 France, there seems no cost difference between the different operators due to the differences in the frequency distribution. While Bouygues Télécom has in part to rely on 1800 MHz frequencies (unlike Orange or SFR, which use only the 900 MHz frequencies), which necessitates more equipment, the operator would not be really penalised. Therefore the asymmetry would not be justified in France.

However, it would seem that this is not the case elsewhere in Europe, where some operators use mainly the 1800 band, creating genuine cost distortions. In the debate on the digital dividend, it is therefore crucial to look at the effect on the cost differences in the mobile market. The national regulators need to make an optimal allocation of frequencies which will be available as to avoid additional cost distortions.

As to the effect of late entry on the costs, we would like to mention the fact that in France there will be a new UMTS licence. As such, late entry 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 amongst 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. UFC-Que Choisir very strongly backs the application of this principle as it thus indeed stimulate entry and competition as we see in France where a new player on the mobile telephony market may shortly be present.

Nevertheless, UFC Que Choisir highlights that at the present time on the French market, no player can claim a differential treatment by relying on this principle.

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 France and 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 costs

It is important to maintain asymmetry as long as the termination rates are high. However, it is essential that differential treatment is costs which lead to asymmetry, 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 Euro cent in France!

In France, asymmetry is currently nevertheless justified because of the effects of a high call termination rate. Its excessive level makes it very profitable for the leading market players, Orange and SFR, which account respectively for 45% and 35% of the market, to offer '*on net*' deals. Of course, this type of deal is of no use to the subscribers to Bouygues Télécom, whose 15% market share is too low when compared to its competitors. It has therefore been forced to create '*off net*' unlimited deals, causing a major imbalance in traffic, which generates costs which have to be offset by asymmetry.

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 to long term, '*bill and keep*' might 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 is at a level comparable to fixed termination rates a bill and keep system should be introduced.