Body of European Regulators for Electronic Communications

BEREC

BoR (11) 76

BEREC Opinion

Phase II investigation pursuant to Article 7a of Directive 2002/21/EC as amended by Directive 2009/140/EC:

Case PL/2011/1260: Revision of dispute settlement decisions concerning voice call termination on the mobile network of AERO2 sp. z o.o. in Poland

Subject matter

Amendment of the rate for voice call termination on individual mobile telecommunication networks applied by Aero2 to Telekomunikacja Polska, Polska Telefonia Komorkowa, Polkomtel and Polska Telefonia Cyfrowa, previously fixed by UKE by the means of dispute settlements procedures in December 2010.

The revision of Aero2 termination rates includes a glide path to reach symmetry with the main MNOs in January 2015.

1. Background

On 6 September 2010 the Urząd Komunikacji Elektronicznej (hereinafter UKE) notified to the European Commission the draft measures concerning the dispute settlements between a new entrant on the mobile market, Areo2 sp. z o.o (hereinafter Aero2), and the fixed incumbent operator Telekomunikacja Polska S.A (hereinafter TP), as well as the mobile network operators (MNOs) Polska Telefonia Komorkowa Sp. z o.o. (hereinafter PTK), Polkomtel S.A. (hereinafter Polkomtel) and Polska Telefonia Cyfrowa Sp. z o.o. (hereinafter PTC).

These notified measures, in which UKE proposed to impose on Aero2 a level mobile termination rates (hereinafter also MTR) of 0,57 PLN/min, were jointly assessed by the Commission under the number case PL/2010/1127. In its comments, the Commission urged UKE to fix Aero2's termination rates only for a short, transitional period and to carry out a market analysis for the termination of voice calls on AERO2's mobile network without delay. Furthermore, it invited UKE to revise and to further justify the price setting method with an aim at achieving termination rates at the level of the cost of an efficient operator and at a symmetric level for all operators.

On 9 December 2010 UKE finally adopted such decisions, confirming a level of Aero2 mobile termination rates of 0,57 PLN/min.

On 11 June 2011 UKE communicated to the parties the *ex officio* initiation of the review of the mobile termination rates set in the previous Decision.

On 11 July 2011 UKE reduced the MTR rates of two other new entrant mobile operators: CenterNet and Mobyland by modifying the bilateral inter-connection agreements.

A public consultation on the draft measure regarding Aero2's MTR was carried out from 25 August 2011 and 24 September 2011.

The draft measure was notified to the European Commission the 17 October 2011. The EC addressed a request for information to UKE on 24 October 2011, which was replied on 27 October 2011.

Pursuant Article 7a of the Framework Directive, on 17 November 2011 the Commission communicated UKE and BEREC its serious doubts regarding the consideration that the draft measure would create a barrier to the single market and its compatibility with EU law.

In accordance with article 13 of BEREC Rules of Procedure (hereinafter RoP) and the BEREC Rules of Procedure for the elaboration of BEREC Opinions in the framework of the Article 7 of the Framework Directive, an Expert Working Group (EWG) was established on 18 November 2011. The set-up of the EWG was communicated to the Commission on the same day.

A meeting took place on 28 November 2011 in Brussels where, in accordance with the BEREC RoP, BEREC met the representatives of UKE with a view to the exchange of information concerning the notification itself. A conference call with the Commission and UKE took place on 5th December.

2. Draft measure

2.1. Justification of the draft measure

The notified draft measures concern the amendment of the decisions of the President of UKE of 9 December 2010, which fixed the rate for voice call termination on individual mobile telecommunication networks applied by Aero2 in their settlements with TP, PTK, Polkomtel and PTC. For the revision of the dispute settlement decision, UKE acts at its own initiative.

According to UKE, Article 28(6) of the Polish Telecommunications Act of 16 July 2004 grants the President of UKE the general competence to *"(…) change the issued decision in cases justified by the need to ensure protection of end-user interests, effective competition, or interoperability of services."*

UKE justifies the review of its decision of December 2010 in consideration to the need to avoid distortion of competition as *"(…) higher MTR rates in the Aero2 network would give this operator a significant advantage over Mobyland and CenterNet",* whose MTR were reduced by the UKE's decisions issued in July 2011.

UKE also argues that the revision of the level of MTR defined in the dispute settlement of December 2010 are necessary in order to avoid harming the interests of PTC, PTK and Polkomtel's end users, as "*Higher MTR rates in the Aero2 network translate into higher retail fees for calls terminated in the Aero2 network*."

Furthermore, UKE invokes Article 28(1)(5b) of the Polish Telecommunications Act on ensuring non-discriminating terms for telecommunication access. According to UKE, *"due to the fact that both CenterNet and Mobyland as well as Aero2 are new entrants, in a similar market situation, introducing a schedule for coming off asymmetry (...), analogous to the schedule established for CenterNet and Mobyland, (...) is fully justified"*

UKE does not carry out a market analysis or SMP designation of Aero2. In the response to the Commission's request of information UKE states that it cannot assess the market for call termination since Aero2 has not started providing voice services yet. In this respect, UKE pointed to the opinion of the national competition authority expressed in the Sferia case[1], which based on the Polish national Competition Law considers that it would not be possible to define a market until the operator starts providing services.

On the other hand, UKE maintains that the issuance of its decision cannot be withheld until issue of the decision designating Aero2 as an undertaking having SMP. In the opinion of UKE, maintaining the MTR rate at the current level for a longer period of time would cause undue privileges for Aero2, distort competition and be disadvantageous for users.

2.2. Proposed remedies

Taking into account that *"Aero2 is an operator which is just starting business activity and beginning to invest in the development of its network",* UKE proposes the following glide path in order to achieve symmetric MTR as from 1 January 2015:

Until 31 December 2011	**1 January 2012**	**1 July 2012**	**1 January 2013**	**1 July 2013**	**1 January 2014**	**1 July 2014**	**1 January 2015**
270.12 % of the fee paid to the incumbent MNOs	PLN 0.350 per minute	PLN 0.300 per minute	PLN 0.240 per minute	PLN 0.188 per minute	PLN 0.145 per minute	PLN 0.100 per minute	Symmetry with the incumbent MNOs

According to the response to the Commission's request for information of 24 October 2011, this glide path responds to a bottom-up LRIC model based on the available data of the costs of another new operator (P4).

[1] Case notified by UKE to the Commission under the reference PL/2010/1162.

3. Assessment of the European Commission's serious doubts

3.1. Summary of the serious doubts

In its letter of serious doubts issued on 17 November 2011, the European Commission understands that, although UKE considers that its draft measures are not in application of Article 16 and does not formally invoke Article 5 of the Access Directive, the notified draft measures fall within the scope of Article 7a(1) of the Framework Directive, as they amend previous decisions taken under Article 5 of the Access Directive and aim at the imposition of obligations set out in Articles 9-13 of the Access Directive.

After examining the notification and the additional information provided by UKE, the Commission considers that the draft measures imposing regulatory obligations on Aero2, in the form of an amendment of a prior dispute settlement, may create barriers to the internal market and has serious doubts as to their compatibility with the EU law.

In particular, the Commission expresses serious doubts with regard to the:

- ***Infringement of regulatory principles and objectives set out in Article 5 of the Access Directive and Article 8 of the Framework Directive:***

  1) **UKE does not demonstrate how asymmetric MTR for Aero2 promote efficiency, sustainable competition and maximum benefit to end users**

     The Commission considers that UKE does not sufficiently justify higher MTRs for Aero2 than those applied to the four main Polish MNOs. Consequently, the proposed measures are not in line with the principles and objectives of Article 8(5) of the Framework Directive and of Article 5 of the Access Directive, which require the need to promote efficiency, sustainable competition and maximum benefit to end users.

  2) **The draft measures imposing long term price control remedies would not be reasonable and proportionate to achieving end-to-end connectivity**

     The Commission considers that UKE's plans to impose permanent price control remedies would not be in line with:

     - **Art 5.2 AD** and **Art 8.1 FD**, on the basis that prices fixed without prior SMP analysis in order to ensure interconnection can only be issued for a limited period of time and until a full market review is carried out;

- **Art 8.3 AD**, which stipulates that NRAs shall not impose the obligations set out in Art 9 to 13 of the Access Directive on operators that have not been designated with SMP; and

- **Art 15 and 16 FD**, as, according to the Commission, UKE intends to impose remedies without having first defined and analysed a market for mobile call termination in the network of AERO2, and without designating the operator as having SMP.

The Commission points out that adequate access and interconnection are already ensured by the previously adopted dispute settlement decisions (PL/2010/1127).

- ***Infringement of Article 8(5)(a) of the Framework Directive: regulatory predictability***

  The Commission considers that UKE's proposal to impose regulatory obligations in the absence of a market review, an actual dispute, or an access or interconnection problem, does not ensure regulatory predictability for market players.

- ***Creation of barriers to the internal market***

  The Commission considers that UKE's proposal to impose far-reaching price control remedies on Aero2 in the absence of its SMP designation or any other specific legal basis: (i) may limit Aero2's ability to act on the market which is – in the absence of UKE's decision to the contrary – deemed to be competitive (ii) would create legal uncertainty amongst the market players, and consequently a serious disincentive to invest in the Polish market; and (iii) would unnecessarily increase the rate of intervention of UKE, which will be resolving individual disputes at the expense of operators seeking access to mobile call termination services provided by Aero2. Such operators would be obliged to engage in time consuming negotiations concerning MTRs.

  Additionally, the Commission considers that UKE's approach of imposing price regulation for call termination in Aero2's network only with regard to voice calls originating in some, but not in other networks, may increase the costs and lower the ability of other operators and service providers to provide electronic communication services in Poland.

3.2. BEREC assessment

According to Article 7a(3) of the Framework Directive, BEREC shall issue an Opinion on the Commission notification of its serious doubts indicating whether it considers that the draft measure should be amended or withdrawn and, where appropriate, provide specific proposals to that end.

In line with such competence, after having assessed UKE's draft decision and the serious doubts raised by the Commission, BEREC expresses the following opinion:

3.2.1. On the legal grounds for the adoption of the draft decision

- ***The European Regulatory Framework***

As a general rule, according to Articles 15 and 16 of the Framework Directive and Article 8(3) of the Access Directive, **the imposition by NRAs of regulatory obligations on an undertaking shall follow the analysis of the relevant market**, taking into account the markets identified in the Commission Recommendation on relevant product and service markets, and the designation of such undertaking as having SMP on that market.

Nevertheless, Article 8(3) of the Access Directive also **recognizes particular circumstances where regulatory obligations could be imposed on undertakings not declared as having SMP**. **Cases falling with the scope of application of Article 5(1) of the same Directive are included amongst such exceptions.** The dispute settlement decision taken in 2010 (case PL/2010/1127) that is at the basis of the current notification, indeed illustrates a case where regulatory obligations could be imposed on Aero2 –for a short, transitory period– without having carried out the corresponding market analysis.

- ***Considerations of the draft measure under Article 5 of the Access Directive***

As indicated, Article 5 of the Access Directive permits imposing obligations on operators that have not been previously declared as enjoying SMP in order to ensure adequate access and interconnection. It also provides for the national regulatory authorities to intervene at its own initiative with regard to access and interconnection.

The Commission initially seems to understand in its serious doubts letter that the draft measures are proposed by UKE in application of Article 5 of the Access Directive, as UKE's notification amends a previous dispute settlement decision that was notified on the basis of Article 5 of the Access Directive (case PL/2010/1127) and that imposed obligations in order to ensure interconnection of networks.

However, UKE has not invoked Article 5 of the Access Directive in the context of the current draft notification or in the response to the request for information where the Commission explicitly inquired UKE about the legal basis of the measure. UKE refers instead to Article 8(2)(b) of the Framework Directive, regarding the need to ensure that there are no disruptions or competition limitations, and to Article 8(5) of the Framework Directive on the need to ensure non- discrimination.

In any case, it is important to underline that in this case, contrary to the situation in 2010, no undertaking has requested UKE to intervene in order to solve its inability to reach interconnection agreements through private negotiations, inability that would hinder the undertaking's entry into the market. Moreover, there is no evidence that the decision adopted in December 2010 has not been effective to ensure interconnection.

Therefore, in this context, the aim of **UKE's draft decision cannot be understood as the imposition of obligations to solve an urgent problem due to lack of access or interconnection**, as this access and interconnection had already been guaranteed by UKE's intervention in 2010. **Therefore the provisions of Article 5 of the Access Directive would not be of application to this specific case.**

Moreover, **since Aero2 has not started providing voice services yet, it does not enjoy any competitive advantage that should be corrected with urgency** by the regulator. At the same time, as already shown above, the market entry of Aero2 is possible as they already have the necessary interconnection agreements, thanks to the intervention of UKE in 2010. Thus, it is very difficult to justify the real urgency or need for an immediate intervention of UKE without the proper market analysis.

In fact, **the draft measures** amending the MTRs established in 2010 **aim at accommodating the previous MTRs to the changes in the market situation** foreseen in the long term. Such understanding of the **non-transitory character of the draft decision** is shown by the definition of a 4-year glide path. Under these circumstances, **the appropriate procedure to assess those long-term market conditions is defined in Articles 15 and 16 of the Framework Directive**.

- ***Considerations of the draft measure under Article 20 of the Framework Directive***

Article 20 of the Framework Directive on dispute resolution between undertakings grants the NRAs the power to issue a binding decision to resolve the dispute in the shortest possible time frame. The application of such **power is** however not unrestricted, but **limited to the request on either party** (Article 20(1)), to the realization of the objectives set out in Article 8 of the Framework Directive, and to the respect of the provisions of the Specific Directives.

In that sense, **Article 20 would not apply either to this case**, in the view that, although UKE is modifying a decision taken in a previous dispute settlement, the

current proceeding was initiated at its own initiative, without request of any of the parties involved.

- ***Considerations of the draft measure under Articles 15 and 16 of the Framework Directive and 8(3) of the Access Directive***

BEREC considers that **in the absence of the conditions that would justify the application of** the provisions of **Article 5 of the Access Directive and of Article 20 of the Framework Directive,** the procedure based on the analysis of the relevant market and declaration of SMP, as set out in **Articles 15 and 16 of the Framework Directive, should apply** before the imposition of long-term regulatory obligations on an undertaking.

Such procedure provides NRAs with the adequate framework for the assessment of the current and prospective competitive situation of national markets and, based on such evaluation, with the regulatory instruments for the prevention of the foreseen competitive distortions.

However, UKE proposes to impose regulatory measures without carrying out a market analysis and the determination of SMP, as set out by Articles 15 and 16.

In its draft decision and in its response to the Commission's request for information, UKE justifies the impossibility to proceed to a market analysis and SMP designation **on the basis of urgency and of the fact that Aero2 is not yet active in the retail market**.

As to the alleged urgency invoked by UKE for the modification of the Aero2's MTRs, BEREC considers that, beyond stating the need to avoid undue privileges for Aero2, distortion of competition and disadvantages for users, on one hand, and the need to satisfy the Commission's observations to the case PL/2010/1127 inviting UKE to reduce the asymmetry, on the other hand, **such pressure has not been duly demonstrated**. UKE does not sufficiently justify the harm that a delay in the issuance of this decision until designating Aero2 as an undertaking having SMP would produce into the market, especially **considering that Aero2 does not provide voice services yet**. There seems to be **time for a market analysis** as Aero2 market entry is possible and credible, but not effective yet.

Second, UKE argues that the fact that Aero2 is not active yet in the market would not allow for a market analysis given the opinion of its national competition authority which considered (in its opinion on the *Sferia* case) that the determination of the market for the purpose of ex ante regulations takes place pursuant to the national regulations of **competition law**, which **excludes the acceptance that a given market exists in case of the absence of any transactions on such market**.

To this regard, **BEREC notes that the application of ex ante regulation**, although based, according to the Regulatory Framework, on the principles of competition law, differs from the latter in the need to **take a prospective approach.** Ex ante regulation addresses lack of effective competition that is expected to persist over a given horizon[2], which means that the NRA has to take into account the foreseen developments in the market in the following regulatory period of 2-3 years. On the contrary, interventions made by Competition Authorities and applying pure Competition Law regulations are ex post and, therefore, require a previous action of an undertaking or a number of undertakings in a given market. The main reason for this difference in approach is that ex ante regulation aims at promoting competition and even creating the circumstances to make it possible where it may not exist yet, while ex post interventions aim mainly at the defence of competition. This difference further expresses the different tools applied. Thus, the application of ex ante regulation and competition law, even though based on similar principles, follow different legal regimes, pursue different objectives and, even though applying similar principles, follow different regulatory regimes. **This is the reason why the conclusions they reach in relation to the same market may not necessarily be the same, especially when sector specific regulation in electronic communications is prospective and ex ante.** In view of the above, and without prejudice to the way in which, within the context of ex ante regulation, a NRA would treat (for the purposes of market analysis and SMP designation) an operator which is not active yet in the retail market, the ex post competition regulations established for ex post interventions and to be used by the Competition Authorities for their ex post decisions do not need to be directly applicable to a case dealt with in the context of the ex-ante intervention.

Thus, in order to justify the definition of a market for Aero2, UKE could assess the likelihood that Aero2 enters into the market in the short term. As possible evidence of the intention to shortly start providing voice services, UKE could take into account the fact that Aero2, despite not being active in the retail market, has showed activity in the wholesale market. The fact that Aero2 has already taken the first steps to enter into the mobile market (it has signed interconnection agreements at wholesale level and is in possession of numbering resources) could be taken as a credible sign that it will start its activity within the next regulatory period.

As shown above, NRAs could consider an operator as active in the market (for the purposes of ex ante market analysis) when there is clear evidence that it will enter the market in the time horizon of analysis. The request of numbering resources or the initiation of interconnection agreement can be taken as indicators of such evidence. In this case, and from a forward-looking perspective, the market definition and SMP designation could be possible even in the absence of activity in the retail level.

[2] SEC(2007)1483 Explanatory Note to the Commission Recommendation on relevant markets.

On the other hand, if the market entry of Aero2 is not considered to be credible on a prospective basis and for the time of a market review period (e.g. 2 years), then the need for a modification of the MTRs established in 2010 would then lack justification. However, UKE clearly seems to consider the market entry of Aero2 as more than feasible and credible: *"Aero2 is an operator which is just starting business activity and beginning to invest in the development of its network"*.

In sum, it is up to the corresponding NRA to decide, based on the market data at their disposal, whether market entry is feasible and credible in a prospective basis and whether, as a result, a market analysis may be needed to provide certainty in the market. In this case, UKE considers necessary to review the applicable MTRs, precisely because market entry of Aero2 is considered credible and feasible. As long as UKE fails to clearly justify the reasons why it modifies the MTRs imposed on Aero2 in a long term perspective without defining and analysing the market for voice call termination on its individual mobile network nor designating Aero2 as having SMP, **BEREC concludes, in line with the Commission's serious doubts, that UKE's draft measures are not in line with Articles 15 and 16 of the Framework Directive** and Article 8(3) of the Access Directive. The Judgment of the ECJ on the case C-545/08[3], which concluded that imposing pricing remedies without carrying out a prior market analysis is a failure of fulfilment of the obligations laid down in Article 16 of the Framework Directive, would support such consideration.

3.2.2. On regulatory predictability (Article 8(5) of the Framework Directive)

According to Article 8(5) of the Framework Directive, NRAs shall promote regulatory predictability by ensuring a consistent regulatory approach over appropriate review periods.

In its serious doubts, **the Commission expresses that UKE's intention to impose price control measures in the absence of a market review, an actual dispute, or an access or interconnection problem, creates uncertainty in the market**. Non-SMP operators would be particularly affected, according to the Commission, as they would not expect to be subject to ex ante regulatory obligations.

BEREC shares such conclusion. Regulating Aero2's termination rates through an *ex officio* decision, in the absence of a pressing competition problem that would require UKE's prompt and transitory intervention until the market analysis can been carried out, indeed risks creating regulatory uncertainty for market players. Such a pressing competition problem is difficult to justify when AERO2 has not even started to provide services yet.

[3] Case C-545/08, Judgment of the Court (Third Chamber) of 6 May 2010 - European Commission v Republic of Poland.

The imposition of regulatory measures under a delimited context, the one depicted by **Articles 15 and 16 of the Framework Directive, introduces certainty as to the procedure** that has been followed by the NRA **and the conditions under which the obligations have been imposed**.

Added to the above, UKE's proposed measure of imposing price regulation for call termination in AERO2's network **only with regard to voice calls originating in some, but not in other networks, may increase the costs and lower the ability of other operators** and service providers to provide electronic communication services in Poland. Therefore this approach is susceptible of creating barriers in the single market. **Thus, BEREC shares the Commission concerns in this point.** The intention of UKE – expressed in the response to request for information – to extend in the future the same MTR proposed in this draft measure to other operators, would seem not enough to reduce such concerns.

3.2.3. On the asymmetry of MTRs proposed for Aero2

The Commission considers in its serious doubts that the draft measures would not be in line with the regulatory objectives and principles of Article 5 of the Access Directive and Article 8 of the Framework Directive, that is, the need to promote efficiency, sustainable competition and giving maximum benefits to end users.

According to the Terminations Rates Recommendation, **although asymmetric MTR may be necessary in some cases**, especially with new entrants, this asymmetry **should in principle be supported by higher unit costs**, including potential spectrum disadvantages and expected timeframe to achieve the minimum level of efficiency.

Although **UKE** proposed a glide path to reach symmetric MTRs in a 4-year timeframe, it can be agreed with the Commission that it **does not adequately justify objective cost differences that might justify asymmetry**. Again, these competition issues with long term perspective are to be tackled within the procedure of a market analysis and on the basis of solid data that can justify the regulated prices set up by the NRA.

On the other hand, it must be acknowledged that UKE reduces the asymmetry in the new glide path when compared to the previous MTRs.

3.2.4. Conclusions

On the view of the above considerations, BEREC agrees with the Commission's serious doubts in that the situation described by UKE **would not fall within the scope of Article 5 of the Access Directive, as the end-to-end connectivity was already ensured** by the decision PL/2010/1127. It should be also noted that UKE has not invoked Article 5 as the legal basis for its draft decision.

Neither the draft measures do fall within the remit of Article 20 of the Framework Directive on dispute resolution. Although the decision that is being revised and notified by UKE was initially taken in the context of a dispute settlement, the current proceeding was initiated by UKE at its own motion, without request of any of the parties involved.

In addition, since Aero2 has not started providing voice services yet, it does not enjoy any competitive advantage that should be corrected with urgency by the regulator.

Therefore, **since no exceptional circumstances** (interconnection problem, dispute resolution or urgency) that would allow a different approach **seem to be present, BEREC concludes that the provisions of Articles 15 and 16 should apply** to this specific case.

This is especially the case considering the non-transitory character of the draft decision. Provided that the amendment of the MTRs established in 2010 would aim to accommodate these MTRs to the changes in the market situation in the medium/long term, BEREC considers, in accordance to the European Regulatory Framework, that **the appropriate procedure to assess those long-term market conditions is defined in Articles 15 and 16** of the Framework Directive.

The arguments provided by UKE not to have undertaken the market analysis and the SMP designation are not sufficiently justified. On one hand, the need to act **urgently** in order to avoid distortion of competition does not seem plausible as Aero2 is not yet active in the market. On the other hand, the reference to **national ex post competition law regulations** that would impede the definition of a market in which there are no transactions yet (in this case, voice services), would not be of direct application to the ex-ante context. The definition of a market on a prospective basis is possible when market entry is credible and the NRA understands it necessary to impose ex ante regulation. The fact that UKE intends to modify ex officio the MTRs for Aero2 show that their entry in the market is certainly expected.

Being the markets for voice call termination on individual mobile networks included in the Commission Recommendation on relevant markets, the market for voice call termination of Aero2 would initially be susceptible to ex ante regulation. The *a priori* presumption of this market as non-competitive should have been considered by UKE before the imposition of regulatory obligations on Aero2.

3.3. BEREC proposals according to Article 7a of the Framework Directive

Taking into account the BEREC assessment of the Commission's serious doubts , BEREC proposes the following:

- **That UKE proceeds to undertake the market analysis and to designate Aero2 as having SMP if appropriate, in application of Article 15 and 16 of the Framework Directive**. On the basis of such analysis, UKE will be able to define the remedies required to solve the competition problem in a way that will ensure regulatory certainty for all market players.

- **Regarding the specific circumstance mentioned by UKE that Aero2 has not started yet to provide voice services in the retail market**, BEREC recalls UKE that the application of ex ante regulation differs from that of competition law in that the markets are defined prospectively. **Therefore, UKE should** analyse the specific conditions that come into play in this concrete case in order to **assess whether, from a forward-looking approach, the market definition would be possible at this point in time or whether, instead, the market analysis should be withheld until Aero2 starts its retail activity.**

  To this respect, UKE should consider the fact that the Commission accepted without comments its notification of Sferia as an operator having SMP in its voice termination network, despite the fact that it had not started its activities on such market.

- Finally, once the market has been analysed according to Article 15 and 16, **UKE should set up the level of MTR on Aero2's network according to a clear costing methodology** that specify the objective costs faced by Aero2 in the provision of termination voice services.