



EUROPEAN COMMISSION

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Bundesnetzagentur (BNetzA)
Tulpenfeld 4
53113 Bonn
Germany

For the attention of
Mr Jochen Homann
Präsident

Fax: +49 228 14 6904

Dear Mr Homann,

Subject: Case DE/2015/1806-1807: Amendments of the reference offer concerning wholesale call origination and wholesale call termination in the public telephone networks provided at a fixed location in Germany

Article 7(3) of Directive 2002/21/EC: No comments

1. PROCEDURE

On 16 November 2015, the Commission registered a notification from the German national regulatory authority, Bundesnetzagentur (BNetzA)¹, concerning amendments of the reference offer on the markets for call origination on the public telephone network provided at a fixed location² and call termination on individual public telephone network provided at a fixed location³ in Germany.

¹ Under Article 7 of Directive 2002/21/EC of the European Parliament and of the Council of 7 March 2002 on a common regulatory framework for electronic communications networks and services (Framework Directive), OJ L 108, 24.4.2002, p. 33, as amended by Directive 2009/140/EC, OJ L 337, 18.12.2009, p. 37, and Regulation (EC) No 544/2009, OJ L 167, 29.6.2009, p. 12.

² Corresponding to market 2 in the previous Commission Recommendation 2007/879/EC of 17 December 2007 on relevant product and service markets within the electronic communications sector susceptible to ex ante regulation in accordance with Directive 2002/21/EC of the European Parliament and of the Council on a common regulatory framework for electronic communications networks and services (2007 Recommendation on Relevant Markets), OJ L 344, 28.12.2007, p. 65.

³ Corresponding to market 1 in Commission Recommendation 2014/710/EU of 9 October 2014 on relevant product and service markets within the electronic communications sector susceptible to ex ante regulation in accordance with Directive 2002/21/EC of the European Parliament and of the Council on a common regulatory framework for electronic communications networks and services (Commission Recommendation 2014/710/EU), OJ L 285, 10.10.2014, p. 1. Commission européenne/Europese Commissie, 1049 Bruxelles/Brussel, BELGIQUE/BELGIË - Tel. +32 22991111

The national consultation⁴ ran from 12 October 2015 for a period of two weeks.

On 23 November 2015, a request for information⁵ was sent to BNetzA and a response was received on 26 November 2015.

2. DESCRIPTION OF THE DRAFT MEASURE

2.1. Background

The third round of market analyses of the markets for call origination on the public telephone network provided at a fixed location and call termination on individual public telephone networks provided at a fixed location in Germany was previously notified to and assessed by the Commission under cases DE/2012/1358 and DE/2012/1359⁶. At the time BNetzA notified its proposal for market definition and the assessment of significant market power (SMP).

With regard to the market for call origination, BNetzA defined a national market (i) for call origination to value-added services and (ii) for call origination plus transit and for call origination plus transit plus conversion to CS and CPS services provided at a fixed location for local, long-distance, subscriber number, international mobile calls or preset codes for CS and CPS. BNetzA proposed to designate Deutsche Telekom (DT) as having SMP on the relevant markets.

Concerning the call termination markets, BNetzA proposed to define markets for call termination on individual public telephone network at a fixed location including call forwarding. Only services allowing for the termination on the lowest interconnection level were covered by the market definition. BNetzA proposed to designate 57 operators as having SMP on their relevant markets.

The Commission had no comments as to the market definition and the SMP assessment with respect to the markets for wholesale fixed call origination and termination.

Subsequently BNetzA proposed to impose on Telekom Deutschland (DT) the following obligations on both markets⁷: (i) interconnection and conveyance obligation, (ii) co-location obligation for interconnection purposes, including the obligation to give colocation users access to facilities at all times, (iii) obligation to ensure that access agreements are based on objective criteria, are transparent, grant equally good access and meet the requirements of fairness and reasonableness, (iv) obligation to submit the access agreements to BNetzA, (v) obligation to publish a reference offer, and (vi) price control obligation.

(Recommendation on Relevant Markets), OJ L 295, 11.10.2014, p. 79.

⁴ In accordance with Article 6 of the Framework Directive.

⁵ In accordance with Article 5(2) of the Framework Directive.

⁶ C(2012) 5904.

⁷ Cases DE/2013/1429 and DE/2013/1430, C(2013) 2064.

The Commission had no comments as to the remedies chosen by BNetzA for the market for wholesale call origination. However, it opened an in-depth investigation expressing its serious doubts with regard to the methodology proposed for the calculation of termination rates on the wholesale call termination market and on 8 August 2013 issued a Commission Recommendation requesting BNetzA to amend or withdraw its draft measure concerning the price control remedy.

2.2. The notified draft measure

The currently notified draft measures provide amendments to the reference offer that aim at implementing the IP-interconnection obligation and modifying the PSTN-interconnection remedy. The proposed amendments address *inter alia* the following points: (i) migration path from PSTN- to IP-interconnection, (ii) availability of points of interconnection at different locations also for smaller operators, (iii) other details concerning migration, interconnection, configuration and infrastructure.

3. NO COMMENTS

The Commission has examined the notification and the additional information provided by BNetzA and has no comments.⁸

Pursuant to Article 7(7) of the Framework Directive, BNetzA may adopt the draft measures and, where it does so, shall communicate it to the Commission.

The Commission's position on this particular notification is without prejudice to any position it may take *vis-à-vis* other notified draft measures.

⁸ In accordance with Article 7(3) of the Framework Directive.

Pursuant to Point 15 of Recommendation 2008/850/EC⁹ the Commission will publish this document on its website. The Commission does not consider the information contained herein to be confidential. You are invited to inform the Commission¹⁰ within three working days following receipt whether you consider that, in accordance with EU and national rules on business confidentiality, this document contains confidential information which you wish to have deleted prior to such publication.¹¹ You should give reasons for any such request.

Yours sincerely,

For the Commission,
Roberto Viola
Director-General

⁹ Commission Recommendation 2008/850/EC of 15 October 2008 on notifications, time limits and consultations provided for in Article 7 of Directive 2002/21/EC of the European Parliament and of the Council on a common regulatory framework for electronic communications networks and services, OJ L 301, 12.11.2008, p. 23.

¹⁰ Your request should be sent either by email: CNECT-ARTICLE7@ec.europa.eu or by fax: +32 2 298 87 82.

¹¹ The Commission may inform the public of the result of its assessment before the end of this three-day period.