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Autorità per le Garanzie nelle
Comunicazioni (AGCOM)
Via delle Muratte, 25
I-00187 Roma
Italy

For the attention of:
Mr Corrado Calabrò
President

Fax: +39 06 696 44 933

Dear Sir,

Subject: Case IT/2008/0802: Wholesale voice call termination on individual mobile networks in Italy

Comments pursuant to Article 7(3) of Directive 2002/21/EC¹

I. PROCEDURE

On 10 October 2008, the Commission registered a notification from the *Autorità per le garanzie nelle comunicazioni* (AGCOM) concerning the market for wholesale voice call termination on individual mobile networks in Italy.

The national consultation² started on 17 June 2008 and expired after 30 days. The deadline for the Community consultation under Article 7 of the Framework Directive is 10 November 2008.

A request for information³ was sent to AGCOM on 22 October 2008. The reply was received on 27 October 2008.

¹ 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.

² In accordance with Article 6 of the Framework Directive.

³ Pursuant to Article 5(2) of the Framework Directive.

Pursuant to Article 7(3) of the Framework Directive, national regulatory authorities (NRAs) and the Commission may make comments on notified draft measures to the NRA concerned.

II. DESCRIPTION OF THE DRAFT MEASURE

The notified draft measure concerns the wholesale market for voice call termination on individual mobile networks, which corresponds to market 7 of the Commission Recommendation on relevant markets⁴. It is a second review of the market by AGCOM and it concerns four mobile network operators active in Italy.

Voice call termination is defined as a wholesale service provided by the operators in their networks regardless whether the call was initiated in the fixed or in the mobile telephone network. It also includes all incoming traffic (on-net and off-net). Calls to geographic numbers are excluded from the market definition⁵.

According to AGCOM, the relevant geographic market corresponds to the geographic coverage of each operator's network and has a national dimension.

On the basis of its market analysis, AGCOM proposes to designate H3G Italia, Telecom Italia, Vodafone Omnitel and Wind Telecomunicazioni as having SMP on their own mobile networks.

In the current notification, AGCOM intends to maintain the remedies which were imposed in both first round notifications⁶. These are in particular obligations regarding transparency, non discrimination, access to network resources, cost accounting and price control.

As to the price control obligation, AGCOM intends to impose a three year regulatory lag from 2009 to 2011⁷. The price caps suggested for Telecom Italia and Vodafone start at the per-minute rate of 7.7 eurocent/minute in July 2009, at 6.6 eurocent in July 2010 and at 5.9 eurocent in July 2011. For WIND the respective per-minute rates in eurocent are: 8.7; 7.2 and 5.9 and for H3G: 11.0; 9.0 and 7.0. At the end of the glide path the asymmetry will be at 1.1 eurocent.

⁴ 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, OJ L 344, 28.12.2007, p. 65.

⁵ Voice call termination services provided to integrated fixed/ mobile offers were included by AGCOM in market 3 of the Recommendation (IT/2008/0777). However, the imposition of remedies was proposed to be deferred until AGCOM's assessment of market 7. The Commission invited AGCOM to address the appropriate regulatory obligations with regard to these services under that market review without undue delay.

⁶ In the first notification of the market (IT/2005/0316), AGCOM designated four MNOs with SMP and imposed price control and accounting obligations only on three of them (TIM, Vodafone and WIND). On the fourth MNO, H3G, the same set of obligations was imposed in the second notification of the market (IT/2007/0779), with the difference that the price control measure was set on the basis of a "delayed approach" taking into consideration different points of reference (such as international benchmarks, the economic and financial situation of H3G, trends in MTRs in Italy, etc.).

⁷ In AGCOM's view, the three-year glide path should give operators adequate time for a transition towards other forms of remuneration for MTRs, such as "bill & keep" arrangements.

In order to determine the above MTRs, AGCOM has employed a top-down forward looking Long Run Incremental Cost model, already used in the previous notification⁸, with regulatory accounting provided by all four operators designated with SMP. AGCOM justifies the use of predominantly historic costs by the fact that mobile network assets have a relatively short lifetime and, consequently, current costs do not differ significantly from historic costs. The model does not consider as relevant some of the cost items held outside the scope of the termination service and takes into account a comparative efficiency analysis among operators.

The asymmetries among MTRs are, according to AGCOM, due to costs outside the control of operators, such as different dates of entry and, as a consequence, the frequencies licensed to the operators and the technology used on their networks. In particular, WIND and H3G operate their mobile networks in the 1800MHz frequency band (GSM) or exclusively using the 2100MHz frequency band (UMTS)⁹. As to the asymmetry in regard to H3G, AGCOM notes that this operator has not yet fully been able to develop its own economies of scale.

III. COMMENTS

On the basis of the present notification and the additional information provided by AGCOM, the Commission has the following comments:

Appropriateness of the proposed costing methodology

The Commission notes that - by taking into consideration mainly historic costs - AGCOM's proposed levels of MTRs are still high at the end of the glide-path when compared to the values applied in other Member States¹⁰.

For this reason, the Commission reminds AGCOM that according to the principle of forward looking economic efficiency, termination rates should be set on the basis of an efficient operator employing efficient technology. The Commission has in previous cases highlighted the importance of LRIC models using the current costs of an efficient operator and not historical costs, which risk overestimating the appropriate costs considerably. Operators which are compensated through the regulated wholesale charge for actual cost incurred may

⁸ AGCOM alleges that it would be useful to produce a bottom-up engineering and accounting model in order to take into account the draft Recommendation of the Commission on the treatment of fixed and mobile termination rates. This, however, due to its complexity, would require more time and procedure for participation by all market participants which would be, according to AGCOM, not compatible with this round of market analysis. AGCOM wishes to initiate a specific notification process for defining a new model for calculating MTRs, giving the maximum regard both to the guidelines laid down by the European Commission and to the experience accumulated by other national regulators.

⁹ According to AGCOM, operators using prevalently 1800MHz frequencies incur higher costs compared with operators relying exclusively or prevalently on 900MHz frequencies. This is due to the fact that – in order to cover the same geographic area – the use of 1800 MHz frequencies implies higher operating and capital costs, i.e. a higher number of BTS (Base Transceiver Station), BSC (Base Station Controller) and backhaul circuits (with lower transmission capacity) which is reflected in the level of MTRs.

¹⁰ In a number of countries the current MTRs are already below 5.9 and 7 eurocent, i.e. AGCOM's intended MTR-levels in 2011. According to the ERG (08) 41 MTR Update Snapshot, available from http://www.erg.eu.int/doc/publications/erg_08_41_mtr_update_snapshot_081020.pdf, this is the case in Cyprus (2 eurocent), Sweden (4.5 eurocent), Finland (5.2 eurocent) and Austria (6 eurocent).

have fewer incentives to increase efficiency and any resulting inefficiencies may be passed onto final consumers through higher retail prices.

It should also be noted that above-cost termination rates charged by larger operators may magnify financial disadvantages of smaller operators arising from their smaller scale and associated traffic imbalances *vis-à-vis* larger operators, which could give rise to competitive distortions between them.

Therefore, the Commission invites AGCOM to re-consider the proposed cost accounting methodology, in particular whether it is appropriate to bring the MTRs of each MNO down to the cost of an efficient operator, as soon as possible.

Asymmetry in MTRs of the Italian MNOs

Again, the Commission reminds AGCOM that termination rates should be set at the level corresponding to the costs of an efficient operator which should result in symmetric rates. Therefore, asymmetry should be adequately justified by objective cost differences and limited to a transitory period.

The Commission recognizes that, in certain exceptional cases, asymmetry might be justified by objective cost differences which are outside the control of the operators concerned. Possible justifications could be represented by objective network cost differences.

In this respect, the Commission takes note that AGCOM justifies asymmetry for H3G by its late entry and differences in spectrum assignment.

The Commission is not convinced that different dates of market entry would justify an asymmetry in the levels of MTRs even for the time after July 2011 for H3G, i.e. for more than 8 years after its market entry, and after July 2010 for WIND, i.e. for more than 11 years after the market entry of this operator.

As to the difference in spectrum assignment, AGCOM further explains that H3G incurs higher costs than other MNOs due to higher spectrum usage costs. Regarding these costs, the Commission notes that while uneven spectrum assignment may create exogenous cost differences between operators, there are costs of spectrum usage which are not traffic-related and as such should not be calculated as part of the wholesale call termination service increment.

In this respect, the Commission invites AGCOM when taking the final measure to consider only those spectrum cost differences which are traffic related.

Need for a coherent European approach for regulating wholesale mobile termination rates

Given the importance of regulating mobile termination rates effectively and in a consistent manner across the EU, and in view of the work currently undertaken by the Commission on the draft Recommendation on the regulatory treatment of fixed and mobile termination rates to arrive at a coherent cost accounting method for mobile termination, the Commission invites AGCOM to review its analysis as soon as the Recommendation applies.

Pursuant to Article 7(5) of the Framework Directive, AGCOM shall take the utmost account of the comments of other NRAs and the Commission and may adopt the resulting draft measure 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.

Pursuant to Point 15 of Recommendation C(2008)5925¹¹ 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 Commission¹² within three working days following receipt whether you consider that, in accordance with Community and national rules on business confidentiality, this document contains confidential information which you wish to have deleted prior to such publication. You should give reasons for any such request.

Yours sincerely,
For the Commission,
Fabio Colasanti
Director-General

¹¹ Commission Recommendation C(2008)5925 of 15 October 2008 on notifications, time limits and consultations provided for in Article 7 of Directive 2002/21/EC.

¹² Your request should be sent either by email: INFSO-COMP-ARTICLE7@ec.europa.eu or by fax: +32.2.298.87.82.