



Brussels, 21.4.2017  
C(2017) 2829 final

Conference of Regulators (CRC)  
Boulevard de l'Impératrice 13/15  
1000 Brussels  
Belgium

For the attention of:  
Mr. Dominique Vosters  
President

Fax: +32 2 226 88 41

Dear Mr. Vosters,

**Subject: Commission Decision concerning Case BE/2017/1973: wholesale voice call termination on individual mobile networks in Belgium**

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

## 1. PROCEDURE

On 21 March 2017, the Commission registered a notification from the Belgian national regulatory authority, Conference of Regulators (CRC)<sup>1</sup>, concerning the market for wholesale voice call termination on individual mobile networks<sup>2</sup> in Belgium.

The national consultation<sup>3</sup> ran from 14 September 2015 to 14 October 2015.

On 27 March 2017, a request for information<sup>4</sup> was sent to CRC and a response was received on 30 March 2017.

---

<sup>1</sup> 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.

<sup>2</sup> Corresponding to market 2 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 (Recommendation on Relevant Markets), OJ L 295, 11.10.2014, p. 79.

<sup>3</sup> In accordance with Article 6 of the Framework Directive.

<sup>4</sup> In accordance with Article 5(2) of the Framework Directive.

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

## **2. DESCRIPTION OF THE DRAFT MEASURE**

### **2.1. Background**

The second review of the market for wholesale voice call termination on individual mobile networks in Belgium was previously notified to and assessed by the Commission under case number BE/2010/1086<sup>5</sup>. In its decision, IBPT identified three relevant wholesale markets corresponding to the three mobile network operators (MNOs) in Belgium (Proximus, Mobistar and Base).<sup>6</sup> The geographic scope of each product market was identified to correspond to the national coverage of each mobile network concerned.

Each MNO was found to have SMP in the provision of wholesale voice call termination on their respective mobile network and imposed a set of regulatory obligations: (i) access, (ii) transparency, (iii) external non-discrimination, (iv) internal non-discrimination regarding quality of service, and (v) price control. In relation to the price control remedy, IBPT decided to make wholesale price caps symmetric and align them to the BU-LRIC level based on a hypothetical (reasonably) efficient operator (EUR 1.08 cents/min) by January 2013.

The Commission invited IBPT to consider accelerating and implementing symmetry earlier than January 2013. In addition, the Commission invited IBPT to further explain in its final measure the risks of anticompetitive discrimination in the Belgian mobile market that had motivated the regulator to impose an internal non-discrimination obligation.

### **2.2. Market definition**

The CRC examines the substitutability between mobile off-net calls to a mobile number and (i) on-net mobile calls; (ii) mobile to fixed line calls; (iii) call back calls; (iv) calls via MVNOS; (v) SMS messaging; (vi) calls to mobile using voice over IP (VoIP); and (vii) social network applications and email. The CRC concludes that there are no effective competitive constraints on mobile off-net calls at retail level and therefore that there is no justification to extend the relevant wholesale market beyond the provision of voice termination on individual mobile networks.

At wholesale level, the CRC examines the substitutability between the termination of a mobile call on an individual mobile network and (i) termination of a fixed call on an individual mobile network; (ii) termination of a call towards another operator with mobile numbers; (iii) termination on a mobile network using 2G, 3G and 4G technology; and (iv) termination of SMS messages on a mobile network. CRC concludes that only (i) and (iii) above: calls from fixed lines terminated on mobile networks and calls terminated on 2G, 3G and 4G mobile networks, respectively, can

---

<sup>5</sup> C(2010) 4508.

<sup>6</sup> The relevant wholesale markets included all technologies available at the time (2G and 3G) and excluded SMS termination and termination via GSM gateways.

be considered part of the same relevant wholesale market. According to this analysis, CRC identified eight relevant markets for wholesale call termination on the individual mobile network of the following operators:

<u>Name</u>	<u>Type of operator</u>
Proximus	MNO
Orange Belgium (Mobistar)	MNO
Telenet Group (Base)	MNO
Telenet	Full MVNO
Lycamobile	Full MVNO
Join Experience	Full MVNO
Vectone Mobile	Full MVNO
Voxbone	OTT with mobile numbers

In relation to the full MVNOs and Voxbone (an OTT operator that uses mobile numbers), CRC explains that although they do not own a mobile network, they independently determine the rates for terminating voice calls on their mobile numbers.

CRC specifies that Voxbone provides VoIP services that enable its end-users to call from and to be reached through mobile numbers.<sup>7</sup> This operator is different from pure OTTs in that it can receive a call which is directly terminated on the mobile phone of the customer using mobile numbers allocated to Voxbone by CRC. Voxbone owns an IP network which is interconnected to the mobile networks in Belgium and therefore relies on the mobile network operator of the customer to transfer the call to and from Voxbone's IP network.<sup>8</sup>

In the context of the retail market analysis, CRC concludes that the substitution of calls to mobile in circuit-switched mode by calls to mobile in packet switched mode would be insufficient to exert a competitive constraint on mobile termination rates.<sup>9</sup> At wholesale level, CRC includes the services provided by Voxbone within the relevant wholesale mobile termination market and identifies Voxbone as an SMP

---

<sup>7</sup> Voxbone also provides the same services through fixed numbers and it has also been notified as SMP operator in the market for terminating calls on fixed networks.

<sup>8</sup> In response to the RFI, CRC explained that in order to receive calls to its Voxbone mobile number, the subscriber needs to have contracted with a mobile broadband operator. The customer will generally have another phone number from this operator but this is not a prerequisite (e.g. the customer may simply use a data-only SIM card from this mobile broadband operator).

<sup>9</sup> CRC considered the following three possibilities: i) Making calls to mobile using OTT peer-to-peer applications; ii) Making calls to mobile using OTT applications that allow to reach public telephony networks (Skype Out or Viber Out) and iii) Making calls to mobile numbers attributed to a OTT provider (as it is the case of Voxbone) instead of calls to mobile numbers attributed to MNOs/MVNOs.

operator subject to regulation. In that regard, CRC explains that it is justified by the fact that Voxbone owns mobile numbers and is able to control its interconnection and the termination of calls (including the termination tariffs) on its mobile numbers.

The CRC concluded that the scope of the relevant geographic market is given by the coverage of the network of each operator.

### **2.3. Finding of significant market power**

The CRC finds that Proximus, Orange Belgium, Telenet Group, Telenet, Lycamobile, Join Experience, Vectone Mobile and Voxbone have SMP on their respective markets.

### **2.4. Remedies**

In relation to the remedies, CRC proposes to impose the following set of obligations on all operators designated with SMP: (i) access and interconnection; (ii) external non-discrimination<sup>10</sup>; (iii) transparency (with the obligation to publish a reference offer imposed only on the three MNOs); (iv) price control on all operators, which in the case of Voxbone takes the form of an obligation to provide wholesale call termination on fair and reasonable terms (rather than specified maximum regulated tariffs).

CRC considers that in the case of Voxbone the obligation to provide voice termination on fair and reasonable terms implies that the operator's rates should not exceed the maximum regulated *fixed* termination rates, as according to CRC, Voxbone's underlying costs do not exceed those of a fixed network operator.

## **3. COMMENTS**

The Commission has examined the notification and the additional information provided by CRC and has the following comments:<sup>11</sup>

### **Voxbone's market definition and price control**

The Commission points out that in the notified draft measure there appears to be an inconsistency between the retail and wholesale market definition, given that CRC has excluded calls to OTT providers with mobile numbers such as Voxbone from the relevant retail market, yet has included calls terminated on Voxbone's mobile numbers in the wholesale market.

Furthermore, in the Commission's view it is unclear whether the relevant wholesale market defined by CRC refers to calls terminated on mobile *networks* or on mobile *numbers*. The Commission understood from CRC's reply to the request for information that the relevant wholesale market is in fact comprised of the latter.

---

<sup>10</sup> CRC proposes to remove the internal non-discrimination obligation that had been imposed on Proximus in the previous notification of the market and which had been the subject of Commission's comments.

<sup>11</sup> In accordance with Article 7(3) of the Framework Directive.

The Commission therefore asks CRC to i) include in its final measure calls to OTTs with mobile numbers in the relevant retail market and (ii) clarify that the relevant wholesale market is that of calls terminated on mobile numbers.

As regard the imposition on Voxbone of the obligation to charge fair and reasonable rates which shall not be above the regulated fixed termination rate, the Commission considers this obligation to be appropriate in the context of this specific draft measure. This is because, in line with the Termination Rates Recommendation<sup>12</sup>, prices should be cost-oriented to the level of the underlying BU-LRIC costs and the costs underlying the termination service offered by Voxbone are, according to CRC, equivalent to those of terminating a call on a fixed network.<sup>13</sup>

Alternatively, CRC could consider including all of Voxbone's services (both fixed and mobile numbers) within the fixed termination market, given that it relies on its own fixed IP network (albeit it also uses mobile numbers), and provide the appropriate justifications for this alternative approach. The Commission invites CRC to consider these options in its current and future notification of the market.

### **Charge control modelling of 4G services**

The Commission notes that the LTE technology is excluded from CRC's pure BULRIC model.

In this respect, the Commission notes that the Termination Rate Recommendation specifies in Point 4 that the cost model should be based on efficient technologies available in the time frame considered by the model (i.e. market review period).

In line with its comments in case LU/2015/1712<sup>14</sup>, the Commission believes that excluding LTE technologies in the network design of the cost model could have an impact on the estimated cost of mobile voice termination. For example, the inclusion of 4G technologies may affect the radio frequencies considered or the cost of the equipment required by the hypothetically efficient operator, all of which are inputs into the BULRIC model. However, the Commission acknowledges that CRC notes that LTE is only used marginally for the provision of voice services in Belgium.

In addition, the Commission understands that CRC's cost modelling approach assumes that data services will be migrated progressively from the 2G/3G network to 4G. As a result, it seems that the model forecasts that the unit cost of voice termination increases over time. The Commission considers that such a result is counterintuitive, as one would expect voice services' costs to decrease over time due to efficiency improvements (as well as the introduction of new technologies such as VoLTE). On this, the Commission invites CRC to reconsider its approach or to provide further justification for this result of its cost model in its final measure.

---

<sup>12</sup> Commission Recommendation 2009/396/EC of 7 May 2009 on the regulatory treatment of fixed and mobile rates in the EU, OJ L 124/67, 20.5.2009, p. 67.

<sup>13</sup> [...]

<sup>14</sup> C(2015)1763.

Pursuant to Article 7(7) of the Framework Directive, CRC shall take the utmost account of the comments of other NRAs, BEREC and the Commission and may adopt the resulting draft measure; 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 2008/850/EC<sup>15</sup> 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 Commission<sup>16</sup> 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.<sup>17</sup> You should give reasons for any such request.

Yours sincerely,

For the Commission,  
Roberto Viola  
Director-General

---

<sup>15</sup> 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.

<sup>16</sup> Your request should be sent either by email: CNECT-ARTICLE7@ec.europa.eu or by fax: +32 2 298 87 82.

<sup>17</sup> The Commission may inform the public of the result of its assessment before the end of this three-day period.



EUROPEAN COMMISSION

Brussels, 2.5.2017  
C(2017) 3038 final

Institut belge des services postaux et  
des télécommunications (IBPT)  
Ellipse Building - Bâtiment C  
Boulevard du Roi Albert II, 35  
1030 Bruxelles  
Belgium

For the attention of  
Mr. Michel Van Bellinghen  
Président du Conseil

Fax: +32 2 226 88 41

Dear Mr Van Bellinghen,

**Subject: CORRIGENDUM of Commission Decision of 21/04/2017 C(2017)  
2829 final concerning Case BE/2017/1973: wholesale voice call  
termination on individual mobile networks in Belgium**

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

Please note that the above decision is amended as follows:

The following recipient, address and fax number:

*"Conférence des Régulateurs (CRC)  
Boulevard de l'Impératrice, 13/15  
1000 Bruxelles  
Belgique  
For the attention of:  
M. Dominique Vosters  
President  
Fax: +32 2 226 88 41"*

are replaced by:

*"Institut belge des services postaux et des télécommunications (IBPT)  
Ellipse Building - Bâtiment C  
Boulevard du Roi Albert II, 35  
1030 Bruxelles  
Belgium  
For the attention of  
Mr. Michel Van Bellinghen  
Président du Conseil  
Fax: +32 2 226 88 41"*

In the English version, the following sentence "*Dear Mr. Vosters*" is replaced by "*Dear Mr. Van Bellinghen*".

In section 1 the words "*Conference of Regulators (CRC)*" are replaced by "*Institut belge des services postaux et des télécommunications (IBPT)*".

Throughout the decision the reference to "*CRC*" is replaced by "*IBPT*".

Yours sincerely,

For the Commission,  
Roberto Viola  
Director-General