



До:

Агенција за електронски комуникации
ул. Димитрие Чуповски бр. 13
1000 Скопје
Република Македонија

Скопје, 07.02.2012

Предмет: Мислења и предлог измени и дополнувања во врска со нацрт верзијата на Стратегијата за работа на АЕК за периодот 2012-2016 година.

Почитувани, ВИП ОПЕРАТОР ДООЕЛ Скопје во продолжение на овој Допис Ви доставува свои Мислења и предлог измени и дополнувања по објавената јавна расправа по однос на нацрт верзијата на "Стратегијата за работа на АЕК за периодот 2012-2016 година" на веб страна на АЕК. Имајќи во предвид дека оригиналната верзија изработена од страна на "International Regulatory Affairs Consulting" е на англиски јазик и по направените консултации со одговорни лица во АЕК, за цели на практичност нашите коментари ги доставуваме исто така на англиски јазик.

Со почит,

Никола Љушев,

Генерален директор

ВИП ОПЕРАТОРО ДООЕЛ Скопје.

Comments of Vip operator:

1. General comment on timeline for providing comments on the strategy document.

Comment:

If the proposed strategy will be implemented by AEC, we could assume the structure of the Macedonian electronic communication sector will change significantly. Such a dramatic change of the regulatory framework should not be transposed based on a consultation period with such a short timeframe. For a serious evaluation of all consequences more time is necessary.

2. Article 1.1 (Introduction), Question about the validity period of the regulatory strategy document.

Vip operator's question:

As it is explained into the document, it describes the medium term regulatory strategy for the period 2012—2016 year. Vip operator is asking whether the final document is going to be fixed as guideline for AEC until 2016, or there is possibility for its amendments by AEC side in the forthcoming years? If yes, what could be the basis for its amendments? We propose such details to be part from the document, too.

3. Article 1.2 (Vision).

Vip operator's proposal amendment:

...This may lead to significant cost reductions for operators without sacrificing the effectiveness of competition if properly implemented. Also, important for cost reduction on operators side is to lower the annual fees for frequencies as well as to set rational and tolerable once-off fees for spectrum acquisitions. Annual fees should be in line at least with the average fees paid into the countries of EU and set at the level necessary to only cover actual administrative costs of AEC (Authorization Directive (2002/20/EC) Article (12) paragraph 1(a), paragraph (30) and Article (32)). According to benchmark the annual fees should be at least lowered for 50% to reach the EU average level.

Explanation:

There were few joint initiatives of the three mobile operators justifiably asking AEC to decrease the over excessive charges imposed for 1MHz in Macedonia. Namely, those initiatives/demands for reduction of the fees are in line with the results from the comparative analyses within the EU member-states that obviously show that the amount of fees charged by AEC is disputable in absolute terms. On the basis of the Rulebook on the method of calculating the annual radio frequency usage fee, the annual fee per radio frequency band in the range of 1 MHz in up to 960 MHz is 28,700 EUR, whereas for bands above 960 MHz, it amounts in 21,000 EUR. Based on the data published by Cullen International from March 2011 regarding the European countries, in the part entitled "Mobile licenses - spectrum assignments and fees", it can be concluded that in numerous countries, most of which are highly developed, annual fees are charged for the use of frequencies which are significantly lower than the ones paid by the three mobile operators in the Republic of Macedonia. Thereby, taking into consideration the status of the Republic of Macedonia as "developing country" as an additional factor, it is put into question whether the herein submitted comparison of the data is relevant and the most appropriate, i.e. whether the fees between the developed countries and the developing countries should be the basis for a comparative analysis. Thus, within the range of 900 MHz, the fee for 1 MHz per country amounts in: Denmark 15.040 EUR, Norway 13.800 EUR, Malta 13.000 EUR, Luxemburg 12.000 EUR, Sweden 5.600 EUR, Germany 5.474 EUR, Netherlands 3.360 EUR, Estonia 354 EUR, while the use of radio frequencies is free of charge in Cyprus, Greece and Lithuania.

Within the range of 1.800 MHz, the fee for 1 MHz per country amounts in: Norway 13.800 EUR, Malta 13.000 EUR, Luxemburg 12.000 EUR, Denmark 7.540 EUR, Germany 5.474 EUR, Netherlands 3.360 EUR, Sweden 2.600 EUR, Estonia 354 EUR and again, the usage fee is not paid in countries, such as Cyprus, Greece and Lithuania.

4. Article 1.3 (Structure of the medium term regulatory strategy 2012—2016):

Vip operator commenting on:

... The regulatory strategy which we are proposing needs as a first step the amendment of existing decisions to eliminate existing distortions in the electronic communications markets.
Chapter 0: .

Comments:

Vip operator would like to propose to be provided more detailed explanation of the term "distortions", as the term could lead to misleading to the readers and different conclusions by the beneficiary parties when using the document. Maybe there should be listed couple of

such distortions?! Also, instead of "Chapter 0:", a correct number of the Chapter should be set.

5. Article 2.1 (Introduction)

Vip operator's proposal for amendment:

Market 12: Wholesale mobile voice termination

Market 14: Wholesale mobile SMS termination

Explanation:

For Vip operator it is not clear why not all of the relevant markets determined by AEC are not listed to become part from the document. Thus, we propose the both Decision of AEC for the determination of the relevant markets to be considered (valid as of September 2009 and as of March 2011). Consequently at least Market 14 "Wholesale mobile SMS termination" should be part of the "Strategy12-16" as well, as market which is highly concentrated and as shown by AEC market analysis findings need urgent regulation (http://www.aek.mk/index.php?option=com_content&view=article&id=390%3A2011-08-12-09-19-11&catid=41%3Asoopstenija&Itemid=148&lang=mk). Coming from here correction should be set under the title of Market 12 indicating that it is the market dealing with voice service only.

*With this regard it should be noted, that stated within the Article 4.1.1 is also related to importance of considering Market 14: ..." There is no doubt that the expected decrease mobile termination rates for voice and **SMS** will lead to lower prices of these services and consequently to increased traffic volumes, creating massive positive welfare effects"*

6. Article 2.4 (Mobile voice wholesale and retail markets)

Vip operator's proposal for amendment:

T-Mobile and ONE cover a very high percentage¹⁵ of the population, whereas VIP has not yet rolled out its network completely and uses a national roaming agreement with T-Mobile to offer their customers service in the uncovered areas. It should be noticed that VIP currently conducts intensive investments to lower the gap of the territory coverage.

Explanation:

Having in mind the ongoing investments of Vip operator for replacing the old access network with the new one, it could be stated that the percentages of territory coverage of Vip operator with its own network will be significantly increased.

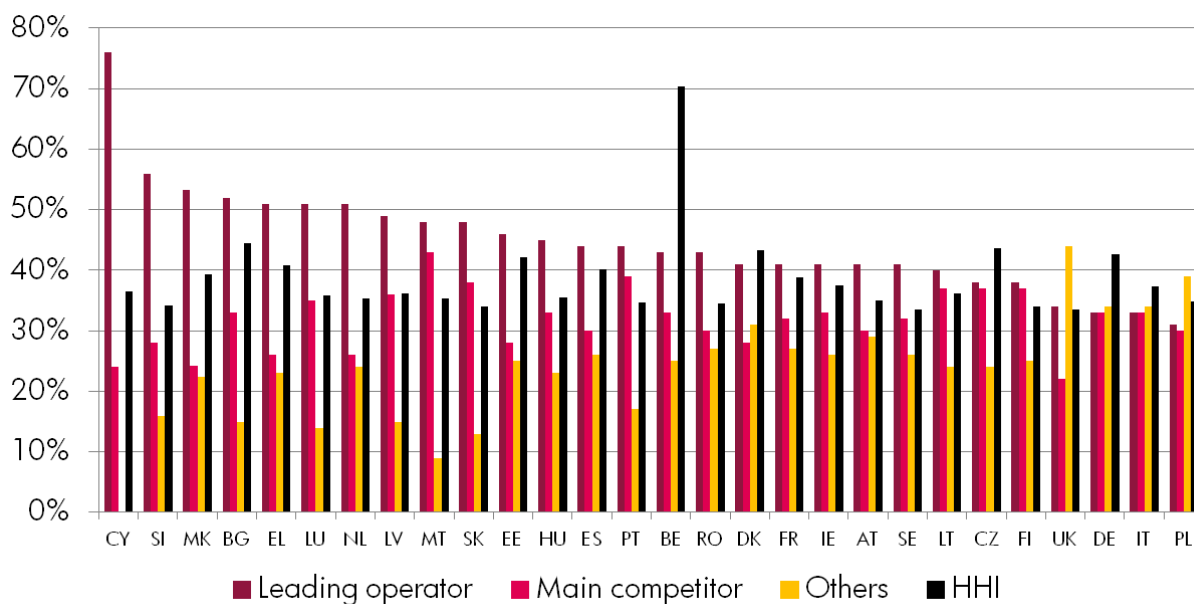
7. Article 2.4 (Mobile voice wholesale and retail markets)

Vip operator's proposal for amendment:

This leads to a situation, where the two smaller operators are approximately of the same size of around 23 % and taken together hold a smaller market share than as the incumbent operator, what causes market to have significantly high HHI index or intolerable concentration.

Explanation:

Figure 10, presented at p. 10 into the document "Digital Agenda Scoreboard 2011" (available at the link http://ec.europa.eu/information_society/digital-agenda/scoreboard/docs/pillar/electronic_communications.pdf), presents the Mobile market share based on subscribers of EU countries' leading operator, main competitor and other operators. If we include Macedonia within those figures (mobile operator's market share as of September 2011) and if we arrange the countries based on the market share of the leading operator, it follows that Macedonia owns the very high 3rd place at such unpopular scale (chart below). This indicated that indeed Macedonia has severe highly concentrated mobile market, what should be clearly stated into the strategy document and pointed as main problem of further market development.



Char1: Arranging EU Countries + Macedonia by the share of the leading mobile operators

8. Article 2.4 (Mobile voice wholesale and retail markets)

Vip operator's proposal for amendment:

... Applying the usual criteria as market share, development of market shares, interrelations between operators, financial situation etc. indicates ~~at least at first sight~~ a dominant position of T- Mobile on the mobile retail markets, especially having in mind the revenue market share.

Explanation:

Vip operator considers that not only "at first sight", but indeed by any analysis and conclusions there is un-doubtful dominant position of T-Mobile on mobile retail market, especially having in mind the high HHI index and far dominant share of the total market's revenues owned by T-Mobile, what provides various opportunities for establishing barriers to other mobile operators and conducting behavior of forcing unfair competitive advantages.

9. Article 2.5 (Structure of originating mobile traffic)

Vip operator's proposal for amendment:

The analysis of originating mobile voice traffic in Macedonia consistently shows a share of 85 % of mobile on-net traffic. This is especially concerning having in mind the dominant subscriber market share of T-Mobile (>53%), meaning that the volume of on-net traffic is highest into the network of T-Mobile, mainly due to over excessive wholesale mobile termination fees MTR paid to the T-Mobile by other two mobile operators in comparison with the traffic imbalances what causes very significant "network", "club" and "silos" effects conducted by T-Mobile side in order to protect its leading role.

Explanation:

Vip operator understands that one reasoning behind the lowering of MTRs is the extremely high on-net traffic (85%) in Macedonia, that the offer of on-net call at low rates is only possible due to the fact of cross-subsidy by high MTRs. Nevertheless, we must state that this is mainly valid for the T-Mobile as player having far bigger subscriber base than those of other small players, or it has the highest volumes of on-net traffic. Thus, we think it is expectable that pointed market distortions could be eliminated if mainly T-Mobile's MTR is

significantly lowered. Consequently we propose this amendment in order clearly to presented that the high MTRs on T-Mobile side is putting T-Mobile in the competitive advantage position, meaning that in the forthcoming years must be envisaged prolongation of the glide path with significant asymmetry between the MTRs of T-Mobile and other two mobile operators in order to eliminate as much as possible the network and club effects caused by T-Mobile's domination and far bigger subscriber base.

10. Article 2.6 (Regulation of mobile markets in Macedonia)

Vip operator's proposal for amendment:

Mobile retail markets are not regulated in Macedonia. AEK only included the mobile termination markets and the market for mobile access and call origination into it's list of markets relevant for regulation (both voice and SMS). AEK – amongst other items – regulated mobile origination rates (valid for voice and for SMS) and mobile termination rates (valid only for voice, but not for SMS).

Explanation:

Based on the argumentation given in bullet 5 above, Vip operator proposes to clearly indicate and differentiate that AEC currently only regulates termination market for voice, but not for SMS service.

11. Article 2.6 (Regulation of mobile markets in Macedonia)

Vip operator proposal for amendment:

Changing the costing methodology to “pure” LRIC will not only deliver a better approximation of the incremental costs of terminating third party traffic, but will also eliminate the market distortion created by too high MTRs that were calculated by the standard models, what is especially valid for the MTR of the leading operator T-Mobile that still ensures for it very high subscribers (>53%) and revenue market shares (65%), followed by heavy market dominance.

Explanation:

Vip operator proposes this amendments having in mind the explanation in the bullet 9 given above. Lowering the MTRs of all three mobile operators simultaneously with the pure LRIC costing, will not lead to eliminating market distortions mainly caused by the T-Mobile's domination and will definitely not strengthen the economic power of T-Mobile's competitors. Therefore this is not an adequate measure if applied to all operates simultaneously and if it will be not clearly stated that the primer focus on mid-term is lowering of T-Mobile's MTR only.

12. Article 2.6 (Regulation of mobile markets in Macedonia)

Vip operator proposal for amendment:

...This leads to a situation, where the cross subsidization of on-net calls can no longer be financed by termination revenues from other networks, especially in the case of T-Mobile as far dominant market player and the party owning the highest share from the total on-net traffic. By drastically lowering of the T-Mobile's MTR, the expectation is that smaller mobile operators will offer bundles, which do not differentiate between on-net and off-net traffic and thus neutralize the network and club effects forced by T-Mobile side.

Explanations:

As explained into the bullets 9 and 11, we could one more time questioned the positive effect mentioned if lowering the MTRs happens simultaneously at all three mobile operators. Therefore this is not an adequate measure if applied to all operates simultaneously and if it will be not clearly stated that the primer focus on mid-term is lowering of T-Mobile's MTR only, there will be no correction of pointed distortions.

13. Article 2.7.2 (Mobile Broadband Access)

Vip operator proposal for amendment:

... VIP¹⁹ offers their services on the basis of national roaming on T-Mobile's network (via 3G data sticks only).

Explanation:

Currently, Vip operator provides 3G data NR services only via data sticks.

14. Article 2.8 (Summary of wholesale and retail voice and broadband markets)

Vip operator proposal for amendment:

— Reviewing MTRs for voice

— Reviewing/adjusting existing BULRIC+ Model to allow for “pure” LRIC calculations, but keeping the asymmetrical glide path regime in favor of smaller mobile operators and putting the prime focus on lowering the MTR of T-Mobile.

Explanation:

Vip operator

The accent of the voice MTR regulation should be set on the leading mobile operator if AEC prefers to lower the high concentration of the market. In order to lower the market concentration around T-Mobile, the further voice MTR regulation should prescribe additional lowering of the MTR of the dominant mobile operator in comparison with the MTRs of the other two. The difference of the MTRs and updated glide path must prescribe the huge difference in the market shares (One and Vip together have around 47% and T-Mobile alone around 53% with regard to subscribers market share and with regard to revenue market share the disproportion is even severe: One and Vip together have around 35% and T-Mobile alone around 65%!).

It should be noted that the current glide path in force has shown sort of satisfactory results at the market development towards efficiency¹ and its logic must be copied when AEC is going to conduct its update, if we have in mind the growth of Vip operator only since it is not so far from the AEC's projection of the market shares development exposed within its draft documentation for development of its BU LRIC model, by which the existing glide path was supposed to result in June 2011 with the subscribers market share of Vip 26.05% and of T-Mobile 45.93%. The factual market share of Vip operator as of September 2011 is 24.30% and of T-Mobile is 53.32%, shows that T-Mobile indeed had much higher factual share than the predicted few months earlier (factual 53.32% in September 2011 vs. 45.93% in June 2011 as predicted by the BU LRIC model of AEC). This indicates the need of further decrease of T-Mobile's voice MTR by reutilizing the levels of MTRs asymmetry between Vip operator and T-Mobile in order to ensure more equal market shares and faster achievement of the necessary market efficiency.

With this regard, by the current market constellation the recent growth of Vip operator could not last on long-run and the growth rate would not be enough to really affect T-Mobile which is still enjoying a dominant position on the retail – just as noted in the draft strategy. Therefore, the goal of AEC's regulatory strategy should aim at breaking up this dominance by T-Mobile. This, however, will not be done by bringing down MTRs of all market players to pure LRIC. Vip operator was and still is the maverick in the Macedonian market who is responsible for making the Macedonian mobile market significantly more

> ¹ EC Recommendation 3359 defines: “**efficient operator**” = **1/number of mobile operator of public mobile communication network**, which is in position to cover the long-run incremental costs by provisioning of call termination services.

competitive and bringing retail prices down. Nevertheless, setting MTRs of all players to the level of (symmetric) pure LRIC today will therefore hurt mavericks and solely benefit the dominant operator T-Mobile to the detriment of end customers. Asymmetric MTRs have a positive effect on smaller players which are really competing on the retail market and offer lower retail prices as such operators will have very asymmetric traffic flows (i.e. outbound – see traffic flows of Vip operator). Without asymmetric MTRs such operators would simply not be able to engage in competition in a way that would benefit retail customers. Only this can guarantee that Vip operator will also in the future be able to make attractive retail offers which increase the benefit of Macedonian customers.

15. Article 2.8 (Summary of wholesale and retail voice and broadband markets)

Vip operator proposal for amendment (new bullet inserted):

— Reviewing MTRs for SMS

— Reviewing/adjusting existing BULRIC+ Model to allow for “pure” LRIC calculations

Explanation:

According to the elaborated into the strategy document (Article 4.1, “At the same step market analysis for the SMS wholesale market can be finalized by using results of a pure LRIC model for SMS termination rates.”), the regulation of the SMS wholesale MTR should be considered as important issue, too.

16. Article 2.8 (Summary of wholesale and retail voice and broadband markets)

Vip operator proposal for amendment (new bullet inserted):

— Imposing regulation of anti-competitive retail pricing on the dominant mobile operators having more than 40% subscribers and revenue market share

Explanation:

It is clear that not only wholesale regulation but also retail regulations should be imposed on the dominant mobile operator in order to prohibit conduct of anti-competitive pricing by it in order to squeeze the competition especially from high value business customer segments.

According to the explanation available at the following link http://itu-coe.ofca.gov.hk/vtm/price/lecture/Lecture_price_p6.htm, anti-competitive pricing practices include:

- i. engaging in predatory pricing;
- ii. anti-competitive price discrimination and cross-subsidization; and
- iii. price squeezing.

17. Article 2.8 (Summary of wholesale and retail voice and broadband markets)

Vip operator proposal for amendment (new bullet inserted):

— AEC should adjust its financial plans covering the revenue parts with regard to the provisions of relevant EC Directives (e.g. Authorization Directive (2002/20/EC)), ensuring that any administrative charges imposed on undertakings providing a service or a network under the general authorization or to whom a right of use has been granted shall in total, cover only the administrative costs of AEC. By this AEC should avoid charging over-excessive fees exceeding the level necessary to cover the administrative costs as until now.

Explanation:

Amendment is according to the explained within the bullet 3 above.

18. Article 2.8.1 (Rebalancing)

Vip operator commenting on the part:

... This is also true for 4G broadband access (LTE), which has to compete with too low access prices for comparable speeds in wire-bound networks.

Comments:

Vip operator fully agrees with the IRAC findings that an effective rebalancing at the retail broadband prices should be enforced if one could count on competitiveness of the mobile broadband access with the fix broadband access. Thus, in order to achieve the relevant growth of the mobile broadband penetration as in Austria, must be ensured "room" to be applied a competitive retail prices for the mobile broadband what is possible only if the dumping prices currently valid for the retail fix broadband are adequately increased at least above the cost level relevant for the broadband services provided via some of the future mobile access technologies (e.g. LTE) which are much higher comparing with the fix access technologies. Also, the rebalancing of the fix broadband pricing should also consider the fact that the average Macedonian user is not willing to pay more than 10% premium for the mobility.

19. Article 2.8.4 (Reviewing Mobile Termination Rates)

Vip operator proposal for amendment:

AEK has undertaken costs studies for mobile origination and mobile termination rates in Macedonia using a BULRIC+ model provided by Deloitte Zagreb. All the remarks on Deloitte's BULRIC+ model for fixed termination rates pertain also to mobile termination rates. This implies that the existing decision should be revised using a "pure" LRIC version of the Deloitte model. It has to be expected that MTRs will drop significantly under a "pure" LRIC approach and might induce a change of business models of mobile operators. At least the distortions induced by discriminatory on-net tariffs will be reduced or even completely abandoned. This is heavily dependent of determination of AEC to breaking up the dominance by T-Mobile what is possible only if the review of the MTRs presumes not bringing down MTRs of all market players to pure LRIC simultaneously, but with immediate lowering T-Mobile's MTR and prescribing adequate asymmetry in comparison with the MTRs of the smaller market players.

Explanation:

According to the explanation under the bullet 14 above.

20. Article 4.1 (Amendment of existing regulation of mobile termination rates)

Vip operator proposal for amendment:

As already described in Chapter 2.8.4, we ~~strongly~~ recommend updating the existing BU-LRIC + modelling for mobile termination rates to allow for "pure LRIC" calculations of mobile termination and origination rates, but not simultaneously for all mobile operators. In the medium term AEC should aim at lowering MTRs of T-Mobile as dominant market player and keep up the effective asymmetry as long as traffic flows between T-Mobile and Vip operator are as imbalanced as today.

Results of a model upgrade should be used for adjusting the existing glide path³⁰ of the mobile termination and origination rates based on pure LRIC calculations and through application of adequate MTRs asymmetry in favor of far smaller players in comparison with T-Mobile. At the same step market analysis for the SMS wholesale market can be finalised by using results of a pure LRIC model for SMS termination rates.

Explanation:

According to the explanation under the bullet 14 above.

21. Article 4.1.1 (Social welfare impacts of the amendment of existing regulation of mobile termination rates)

Vip operator proposal for amendment:

The amendment of the existing regulation of mobile MTRs in a direction of significant lowering of T-Mobile's MTR and prescribing adequate asymmetry in comparison with the MTRs of the smaller market players, must be rated as very important. With regard to the timeframe we believe that these changes should be introduced as soon as possible since the glide paths- level of the MTR of T-Mobile as foreseen in the existing regulation is already postponing those welfare effects, as already discussed in Chapter 2.6. Anyhow, as the existing business plans for year 2012 are finalized with consideration of the existing MTRs glide path, in order to ensure the planning predictability it is recommended the amendment of existing regulation of MTRs to enter into force as of first quarter of 2013.

Explanation:

According to the explanation under the bullet 14 above and based on the need for predictability of the imposed regulation. The implementation of the decisions in 2012 could significantly influence of the business plan figures for the current year which are finalized at the end of last year in accordance of the existing MTRs glide path.

22. Article 4.2 (Introducing of fast mobile broadband)

Vip operator commenting on:

As seen from Diagram 4-2 and Diagram 4-3, the number of mobile broadband accesses in Austria³¹ (as an example) has been rising much faster than the number of all fixed accesses together and has reached 50 % of all broadband accesses in March 2011. The development of mobile broadband in Austria can be seen as indicating mobile broadband future in Macedonia although there is no guarantee for extent and the timeframe of these developments in Macedonia. The Austrian experience shows a highly competitive mobile broadband market with one company (Hutchinson 3G) triggering the development of the market.

Comments:

*As stated within the Article 2.8.1 form the Strategy document "In addition and most importantly, **rebalancing** the retail access prices will definitely improve the prospects of new investment into alternative access technologies including FTTx, which can be seen as one of the access technologies being capable to deliver 50 Mb/s to large numbers of customers. This is also true for 4G broadband access (LTE), which has to compete with too low access prices for comparable speeds in wire-bound networks".*

Vip operator fully agrees with the IRAC findings that an effective rebalancing especially at the retail broadband prices should be enforced if one could count on competitiveness of the mobile broadband access with the fix broadband access. Thus, in order to achieve the relevant growth of the mobile broadband penetration as in Austria, must be ensured "room" to be applied a competitive retail prices for the mobile broadband what is possible only if the dumping prices currently valid for the retail fix broadband are adequately increased at least above the cost level relevant for the broadband services provided via some of the future mobile access technologies (e.g. LTE) which are much higher comparing with the fix access technologies. Also, the rebalancing of the fix broadband pricing should also consider the fact that the average Macedonian user is not willing to pay more than 10% premium for the mobility.

23. Article 4.2 (Introducing of fast mobile broadband)

Vip operator commenting on:

Only 5 % market share of T-Mobile moved to the two competitors. If one of these two competitors would be failing or leaving the market, the Macedonian mobile end-user market would have the structure of an asymmetric duopoly. Such a market is heavily prone to either collusion or attempts by the dominant operator to foreclose the market. A strategy for the development of mobile broadband has to take into account this special situation of the mobile market in Macedonia and has to provide competitive safeguards.

Comments:

With regard to elaborated into the bullets above e.g. 14, 19, 20, 21 and all related, this statement of the strategy document once more confirms the unavoidable facts that the goal of AEC's regulatory strategy should aim at breaking up this dominance by T-Mobile if likes to ensure fast mobile broadband growth and competitiveness of the market in general. Only 5 % market share of T-Mobile moved to the two competitors within period of more than 4 years is too less and as a fact is not promising the general welfare of the retail market for provisioning of mobile services.

24. Article 4.2.2 (Competitive safeguards)

Vip operator commenting on:

...We suggest that AEK makes a reservation of a complete set of frequencies which allow a new mobile operator to enter the market with a similar frequency endowment as the existing operator...

Comments:

Vip operator considers that good frequency policy aims not at maximizing government's revenues from the licenses awarding procedures (by frequency reservation), but to maximize efficiency and overall economic benefit. This general rule implies that as much spectrum is going to be awarded as soon as possible, the better the frequency policy it is.

High applicable annual fees creates situation when large part of the spectrum is unused (Table 4.1 from the Strategy12-16) and thus there are should not be major needs for reservation, especially for the new mobile entrant. This is also supported by the following findings of the strategy document stated into the Article 4.3.2:

..., and the second change should restrict usage fees for frequency spectrum to the costs of managing and supervising frequencies and frequency usage.

and

...If the annual frequency fees set by administrative procedures are too high compared to net cash flows this could create the situation of an unsuccessful attempt to allocate frequencies needed in the market.

Consequently, we think that a reservation of a complete set of frequencies which allow a new mobile operator to enter the market seems to be an example for an highly ineffective use of scarce resources. Mobile network show significant economies of scale. Therefore since several years a consolidation process is on the way in whole Europe and it would be highly unlikely that a fourth mobile operator will enter the small Macedonian market (proof for these are few unsuccessful international calls by AEC and the government for attracting the 4th mobile market player). Reserving frequencies for such a hypothetical case will only lead to higher costs for the existing operators and not to the constraint which is the idea behind this concept.

Thus, AEC primarily should promote further allocation of the unused parts of the spectrum through auctions and by increasing their attractiveness imposing far lower annual frequency fees than the existing. Nevertheless, the maximum what should be done with regard to limitations is ensuring not to allow over allocation of the spectrum to T-Mobile, by what Vip operator agrees with the following:

"At the same time attempts to re-monopolise have a good chance to be successful, because the largest operator would have enough spare capacity to carry the whole traffic of the market on his network at decreasing average unit costs. "

As T-Mobile is the party having far dominant revenue market share by what has the biggest purchasing power among the operators it should be forbidden to acquire over-excessively the spectrum in order to gain unfair competition advantage comparing to the parties with lower market power.

We think that especially the reservation of certain blocks within the spectrum of 800 MHz band is totally unnecessary and could lead to negative effects. This is due to the fact that available bandwidth in this area of the spectrum is 60 MHz which are barely enough for three operators as this spectrum can only be used efficiently if an operator has available 20 MHz. So, if reservation of e.g. one block of 20 MHz happens ($2 \times 2 \times 5$ MHz in 800 MHz band as mentioned within the strategy) for the need of a potential new entrant, than the competition will increase for the existing three operators and the once-off fee for the rest two blocks will be unjustifiably increased, as now three operators will bid for an amount of spectrum which is enough for only two (see e.g. Digital Dividend auction results in Germany). Thus, Vip operator is fully against of the stated at the end of Article 4.2.4

"Due to our strategic competition safeguard not all of the 800 MHz spectrum will be offered to existing operators.",

and our proposal is this part to be deleted.

Additionally, the reduction of available frequencies will also reduce infrastructure competition and investments as only two instead of three 4G networks will be rolled-out. As a potential fourth operator could always have the possibility to bid for a 4G license there is no need to artificially reduce the available spectrum now. What should, however, be of concern for AEK is that T-Mobile as the biggest operator will not be allowed to get more than 20 MHz of the Digital Dividend frequencies as this would even more reinforce T-Mobile's dominant position.

25. Article 4.2.3 (Efficient use of frequencies and level playing field)

Vip operator commenting on:

...which require efficient frequency use and allow Member States to revoke the exclusive rights for usage of the frequencies. By transposition of the Authorisation Directive, AEK is empowered to amend existing authorisations in the case of inefficient use of frequencies as specified in Art. 72 of the Electronic Communications Act 2005...

Comments:

Vip operator considers that as mobile operators are using spectrum way more efficient than other industries (e.g. broadcasters) we believe that such an analysis is okay. It is however not compatible with existing license agreements and the general law to revoke usage rights before a license expires. The amendment of the ECA should prescribes the expiration of the existing decisions for allocation of the frequencies.

Vip operator proposal for amendments:

...This means the goal of the regulator is not to establish an equal distribution of frequencies for existing mobile operators, but also should consider the obvious unequal situation of the more valuable spectrum in use by the legacy operators, result of different entry time on the market.

Explanation:

Vip operator as the last entrant on the market faces unequal and less competitive conditions by obtaining less spectrum within the attractive and costless 900 MHz bandwidth in comparison to other two mobile operators (here Vip operator has in total 50 channels and T-Mobile and One, 62 each) . Thus, Vip operator considers as necessary an adequate reallocation process should be consider for the existing/allocated spectrum parts as well in order to ensure equal access to the more valuable frequencies. This is in line, also with the stated under the Step 2 of the suggested proceedings within this Article, or:

“Periodical initiation of new frequency allocation procedures for existing and potential new mobile network operators. ”

To avoid imbalances, possible redesign to ensure equal use of the frequencies within the 900 MHz bandwidth could be achieved by allocating to each of the existing operators 58 channels or by revoking 4 channels from T-Mobile and One and allocating to Vip an additional 8 channels.

Vip operator proposal for amendments:

...— There is no risk for failed allocation procedures as it is in the case of administrative price setting of frequency usage fees, but adequate limitations to the largest mobile operator should be imposed in order to avoid misuse of its significant market power if buying over-excessive parts of the spectrum.

Explanation:

Vip operator considers that Allocating frequencies based on auctions is in line with the approach taken in most EU countries and is an adequate replacement of the conservative and inefficient existing allocation procedure (beauty contest). Nevertheless in order to eliminate any possibility for foreclosure by the dominant market player we are proposing the amendment of this paragraph to consider the limitations on his "buying" opportunities which are superior in comparison to smaller market players having inferior revenue market share.

26. Article 4.2.4 (Allocation of 800 MHz frequency spectrum)

Vip operator proposal for amendments:

... Part of Step 2 of our Strategy is to offer 800 MHz frequencies to the market to enable fast mobile broadband services in rural areas and to support these services in the cities. We expect that there will be demand for these frequencies and that they will be put to an efficient use. ~~Due to our strategic competition safeguard not all of the 800 MHz spectrum will be offered to existing operators.~~

Explanation:

As already stated above, spectrum must not be artificially reduced as this will decrease efficiency and only maximize the state budget to the detriment of mobile retail customers. This especially should be considered with regard to DD spectrum, and we propose the reservation not to be imposed on this bandwidth as highly ineffective.

27. Article 4.3 (Refarming and infrastructure and frequency sharing)

General comment of Vip operator:

Refarming is welcome in the proposed way. Vip operator just would like to stress that attention should set on the answer when is the right point of time. We think that it should be feasible as soon as possible.

*Regarding the **sharing** we would like to indicate that there should not be imposed any*

kind of limitations by AEC on the sharing models eventually utilized by the operators. Even further AEC should promote the sharing having in mind that the future does not prescribes significant revenue growth possibilities, as of what cost saving including sharing of infrastructure and spectrum is important. Consequently we would like to propose to be reconsidered the need of mentioning the exclusions under the Article 4.3.3 if there is commercial interest by involved market players.

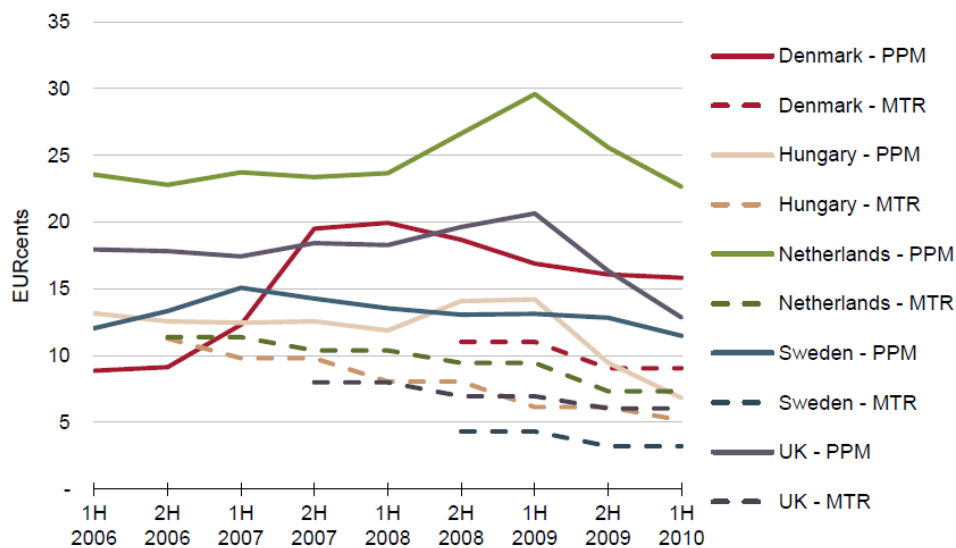
28. Article 5.1 (Bill and Keep)

General comment of Vip operator:

*The basic question is what is the value of this approach and Vip operator is **not** in favor of introduction of the BaK regime even on the long-run primarily since there are no success stories when the BaK is currently not used in any European country and. Also, we are not for if we consider the current highly unpredictable development of the market represented by high concentration around T-Mobile and uncertainty of achieving market efficiency by as much as possible equalization of the subscribers and revenue market share. Thus, as we mentioned earlier, in order to eliminate this possible pessimistic development of the market, AEC must put its mid to long-term focus on further promotion of the asymmetrical MTRs in favor of smaller market players, instead of cutting the benefits of such via imposition of BaK. Otherwise, primer negative effect will be that end user tariffs will increase and the mobile penetration rate could decline dramatically.*

Thus, we could disagree that introduction of BaK even on the long-run could significantly contribute to social welfare, since we could expect opposite if the current market concentration accompanied with traffic disproportions is still present in the future. In such case BaK will even weaker the position of the smaller operators especially from the revenue market share perspective, by what end users could barely experience better propositions. Saying different lowering of termination rates does not automatically translate into lower costs for consumers. VIP Operator believes that the switch to BaK regime will cause negative consequences on overall business of the operators of public mobile telecommunication network and the business of the Regulator as well. The transition to BaK regimes can have a profound impact on the payment regime on the retail market, so that operators in order to cover their costs on wholesale level, as no matter which regime of payment is applied, they actually exist, would led to a situation operators to start thinking in a direction in which they can subsidize their wholesale costs by increasing the retail prices. At the same time this effect is completely opposite to the current objective of the Regulator i.e. benefits for the consumers by lowering prices on retail market. Sometimes a reduction in mobile termination charges has the effect of forcing the mobile

operator to increase subscription and other retail prices to make up for the lost revenues. This phenomenon is commonly referred to as the so-called "waterbed effect".



MTR and PPM trends in five European countries [Source: Analysys Mason]

As shown in the graph above where the subject of analysis are five European countries, the retail price per minute and the wholesale price per minute do not necessarily follow the same trend. The analysis showed that 10% reduction of the wholesale termination prices led to 10% increase in retail prices. Therefore, regulators should not automatically assume that the lower MTRs the better for consumers, in particular when the MTR level is set below costs.

Other negative effect of BaK is that BaK might increase the level of cheating

The application of BaK regime may lead to increased level of fraud. Thus, in the Decision no.° 08-1176, the French regulator ARCEP explains why BaK regime was adopted at the beginning of the existence of the mobile market: "At first stages of mobile market, the highest costs incurred by mobile were to develop and deploy their networks both in terms of capacity and coverage. Traffic from fixed to mobile networks was just a small portion with respect to the total traffic originated by fixed networks, and traffic between mobile operators was managed through a BaK regime. Moreover, mobile operators had a very strong incentive to acquire new customers (first entrants) in order to achieve their scale economies and to secure a profit on their strong-fixed-costs networks. Finally, no competition yet existed between fixed and mobile operators, and convergence offers weren't yet envisaged nor commercialized ". In 2003, "Orange", "SFR" and "Bouygues asked ARCEP for the removal of BaK regime. ARCEP acknowledged this was a French system singularity, but nevertheless decided not to intervene to remove it. However, in 2004, using

of GSM portals by fixed operators was revealed, and finally led to changing the system. Under BaK regime, fixed operators were able to cut costs in way that the whole "F2M" traffic was routed through the GSM gateway, and by doing so avoid the F2M termination charge and instead take advantage of BaK interconnection between GSM operators.

Furthermore, BaK would increase the number of unwanted and nuisance calls or SMS

If the BaK regime is applied i.e. termination becomes a free-of-charge service, traffic will escalate due to unsolicited communications creating SPAM for consumers. Email provides the perfect example, because sending an email is free, about 82%8 of the total amount of messages are spam emails. This demonstrates that even a small interconnection charge would be a potential barrier to spam. The BaK regime may lead to a higher number of unwanted calls or nuisance calls because the costs of calling consumers for marketing and sales would be reduced.

As last crucial negative effect of BaK environment is the significant suffer of the QoS under the BaK. Namely, on one side the operators will have further interest to maintain the quality of "voice" service on high level, but on the other side the realization of income for the purposes of maintaining the network infrastructure will significantly decrease. Hence, no operator would invest in additional network infrastructure to improve quality "voice" service taking into account the fact that under such investment no extra income will be realized. The end result would be a degradation of quality "voice" service, so that the application of BaK regime will have more negative rather than positive impact.