Commission for
Communications Regulation

High Court Judgment on Mobile Termination Rates

Information Notice

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1. On 21 November 2012, ComReg published Decision D11/12[1] which designated six Mobile Service Providers with Significant Market Power ("SMP") and imposed a number of SMP obligations on each of them, including an obligation of cost orientation. The Mobile Service Providers in question are Hutchison 3G Ireland, Lycamobile Ireland, Meteor Mobile Communications, Telefónica Ireland, Tesco Mobile Ireland and Vodafone Ireland.

2. On 21 November 2012, ComReg also published Decision D12/12[2] which further specified the detailed nature of the cost orientation obligation imposed under Decision D11/12. In particular, Decision D12/12 directed each SMP Mobile Service Provider to ensure that its weighted average wholesale mobile termination rate ("MTR") was no more than 2.60 €cent per minute for the period from 1 January 2013 to 30 June 2013. Decision D12/12 also imposed a maximum permitted wholesale MTR of 1.04 €cent per minute on each SMP Mobile Service Provider with effect from 1 July 2013 onwards.

3. The MTR of 1.04 €cent was based on a benchmark of the MTRs imposed in seven other EU Member States in which LRIC cost models[3] for MTRs have been built. This was envisaged by ComReg as an interim solution pending the development by ComReg of a LRIC cost model for Ireland. The approach adopted by ComReg was consistent with that which the European Commission has recommended for use by all national regulatory authorities in the EU (such as ComReg) when regulating MTRs.

4. On 18 December 2012, Vodafone appealed to the High Court against Decision D11/12 (insofar as that decision imposed a cost orientation obligation on Vodafone) and also against Decision D12/12. By Order dated 14 January 2013, the proceedings were entered in the Commercial List of the High Court. The appeal was heard by the High Court over nine days between 30 April and 14 May 2013.

[1] ComReg Document No 12/124; Decision No D11/12: Market Review - Voice Call Termination on Individual Mobile Networks - Response to Consultation and Decision; published on 21 November 2012 ("Decision D11/12").
[2] ComReg Document No 12/125; Decision No D12/12: Mobile and Fixed Voice Call Termination Rates in Ireland; published on 21 November 2012 ("Decision D12/12").
[3] i.e. Bottom-up cost models based on pure long-run incremental costs.

5. In its judgment delivered on 14 August 2013, the High Court found in part in favour of Vodafone. In particular, it found that the benchmarking approach adopted by ComReg in this instance (and recommended by the European Commission) for setting MTRs was outside the scope of what is provided for in the relevant EU and Irish legislation.

6. The High Court has not yet decided on the final orders that it will make in this case. The High Court has adjourned the matter until 24 September 2013 and is expected to make its final orders in October 2013 once it has had an opportunity to hear further submissions from the parties regarding the precise form of those orders. The High Court has stated that in the interim, pending the making of its final orders, the status quo should remain (i.e. Vodafone should continue to bill other operators on the basis of a maximum MTR of 1.04 €cent per minute). The High Court noted that Vodafone's MTR payments and receipts during the interim period (i.e. between the date of the judgment and the perfection of the High Court's orders) could be made on the basis of Vodafone reserving its rights vis-à-vis other operators in relation to the effects of the final orders.

7. In light of the significance of the judgment and its potential effects on the market, and having regard to ComReg's statutory functions and objectives, ComReg is considering carefully the implications of the judgment and the next steps that it will take.