



Republic of Serbia  
**COMMISSION FOR  
PROTECTION OF COMPETITION**  
25 Savska St., 4<sup>th</sup> Floor, Belgrade  
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**REPUBLIC OF SERBIA  
REGULATORY AGENCY FOR ELECTRONIC  
COMMUNICATIONS AND POSTAL SERVICES**  
2 Palmotićeve St.  
11000 Belgrade

The Regulatory Agency for Electronic Communications and Postal Services has submitted to the Commission for Protection of Competition on October 19, 2021, under the public consultation procedure, a request for opinion on reports on the analysis of electronic communications market, specifically on:

- Draft Report on the Analysis of the Wholesale Market for Call Termination on the Public Telephone Network Provided at a Fixed Location, and
- Draft Report on the Analysis of the Wholesale Market for Call Termination on the Mobile Network.

The Council of the Commission for Protection of Competition, pursuant to Article 22 read in conjunction with Article 21(1/7) of the Law on Protection of Competition (“Official Gazette of the RS”, Nos. 51/2009 and 95/2013), at the 66<sup>th</sup> session held on November 5, 2021, delivers the following

### **OPINION**

The Council of the Commission has reviewed the Draft Report on the Analysis of the Wholesale Market for Call Termination on the Public Telephone Network Provided at a Fixed Location, and the Draft Report on the Analysis of the Wholesale Market for Call Termination on the Mobile Network, and assessed the findings and conclusions therein as acceptable. However, the Council believes that certain statements contained therein should be further substantiated and individual aspects of the reports amended, as indicated below.

However, before embarking upon the detailed analysis of the reports, the Commission would like to point out the importance of changes to the regulatory framework of the European Union for electronic communications networks and services, which took place between the Agency's two reporting periods, for the further development of the electronic communications market in the Republic of Serbia. Specifically, under the new Regulatory framework from 2018, the European Commission also adopted the new Recommendation (EU) 2020/2245 of 18 December 2020 on relevant product and service markets within the electronic communications sector susceptible to ex ante regulation, reducing the number of regulated markets from four to two. At the same time, the EC allowed the Member States or their regulatory authorities to also define other relevant product and service markets susceptible to ex ante regulation, not listed in the Recommendation, if they can prove that in their national context, the markets meet the Three criteria test.

Given the European tendencies in terms of the reduction in the number of markets susceptible to ex ante regulation, including market and technological developments that have occurred in the electronic communications sector on the market of the Republic of Serbia between the Agency's two reporting periods, *the Commission believes that more attention should be devoted in the future to analyzing potential competition on the markets concerned in the form of other technologies, as one of the potential forms of future competition on the markets concerned.* The Commission's position is that potential competition on the market for call termination on both fixed and mobile networks cannot be considered only from the perspective of the potential entry of a new operator on the market, as it is clear that such an operator will also be the operator with significant market power and have a 100% market share in its network. Potential competition on the markets for call termination on both fixed and mobile networks, according to the Commission, is primarily seen in the development of alternative services based on the new, more advanced access technology. Undoubtedly, one of those services is the OTT (over-the-top) service whose use, according to the Agency itself, will additionally increase in the future due to further technological advancement.

Regarding the **Report on the Analysis of the Wholesale Market for Call Termination on the Public Telephone Network Provided at a Fixed Location**, in the process of defining the relevant market the Agency has concluded that there is no substitution on the demand and supply side, with no potential competition on the market. Twenty-six relevant markets are established (unlike the previous reporting period when the Agency defined 35 such markets) and an equal number of operators as providers of the service concerned, each with a 100% market share in its network. The Agency has defined the operators with significant market power and, having regard to the relative power of operators and potential obstacles to competition development, has specified regulatory obligations for each of them.

What is evident, when comparing this report with the previous report on the analysis of the market concerned that covered the period from 2014-2016, is that individual findings in terms of the market definition and structure, particularly those that concern the demand substitution, differ considerably.

Concerning the relevant market definition, in so far as it examines the demand-side substitution at the retail level, the Agency has analyzed, among other things, whether a call made to a subscriber's mobile number, from the perspective of a fixed telephony subscriber, represents an alternative to the call to a fixed number. The Agency has established that calls made to other fixed network users are much cheaper than calls made to a mobile network, which is why most of the users' calls are made to fixed networks (including calls within own network). To substantiate the position, a share of outgoing fixed and mobile network traffic in the total incoming fixed network traffic is also presented, which suggested that the outgoing mobile traffic to fixed networks is slightly increasing, while a slight decrease is observed in the outgoing fixed traffic to fixed networks. Thus, it is concluded that outgoing fixed traffic to mobile

networks cannot be considered as substitute calls to fixed networks but more as complementary services, available to end-users from the same number.

The Commission could not fully agree with the Agency's claims, assessing the substitution conclusion not to be adequately drawn in so far as it relates the outgoing mobile traffic to fixed networks. The importance of this substitution for the correct assessment of potential future events on the observed relevant market derives from the facts contained in the Report, although the case might concern a one-way substitution, implying that there is a substitution of outgoing mobile traffic to fixed networks, whilst the substitution of outgoing fixed traffic to mobile networks does not exist.

In particular, having reviewed data from the 2017-2020 reporting period, especially when compared to data from the previous reporting period (2014, 2015, and 2016), it derives that both a decline in the share of outgoing fixed traffic to fixed networks and an increase in the share of outgoing mobile traffic to fixed networks, individually observed, are significant. In the period from 2014-2020, the share of outgoing fixed traffic to fixed networks dropped from 92% to 73%, a 19 pp reduction, whilst the outgoing mobile traffic to fixed networks increased 3.4 times, from 8% to 27%. The Commission notes that this trend on the electronic communications market, considering the technological progress and service innovations achieved, can be considered irreversible, as evidenced by the fact that as early as 2020, slightly less than a third of calls to fixed networks are made from mobile networks. *In light of the above, the Commission believes that in addition to the current trend indicators for outgoing and incoming traffic, the Report needs to be amended to include a projection and conclusions on the future development of outgoing and incoming traffic between fixed and mobile networks.*

In the part of the Report that concerns the demand-side substitution at the retail level, the Agency has also considered the alternative service – OTT calls, as a potential substitute. These calls, according to the Agency, may provide similar functionalities as calls made using mobile networks, with certain limitations as to the quality of voice service and necessity of both users to be logged into the same application, which implies owning a smart phone, tablet or computer. The Agency further claims that OTT services, which are presently not considered a direct replacement for traditional services in general, could however play a more important role at certain retail levels in the future due to the further technological developments and their constant expansion, which could later have an indirect impact on restrictions on wholesale markets. Based on all the above considerations, the Agency concludes that unmanaged calls via OTT applications still cannot be considered an appropriate substitute.

According to the Commission, the conclusion on the lack of a potential substitute, in this case, should be substantiated in more detail and supplemented by additional arguments. *The Commission believes that the claims from the Report need to be reinforced with appropriate indicators, which would allow for an overview of the current trend in traffic from unmanaged calls via OTT applications, and amend the Report to include a projection and conclusions on the future development of those services as a potential substitute.*

In addition to characteristics of the market itself, the Report also mentions certain developments that have occurred in the previous period on the said market in terms of the development of next-generation networks based on IP transport solutions by Telekom Srbija a.d. In view of the above, and considering the principle of ensuring predictability to business operations and keeping a level playing field for operators' activities, and that a uniform price of call termination of 0.62 din/min for all other operators with SMP on this market is previously set, by adopting a decision on December 3, 2019, the Agency has approved the price change from the Standard offer for the services of interconnection with the public fixed

communications network of Telekom Srbija a.d., equaling it to the rates of other operators whose networks are primarily based on IP technology.

Concerning the price control obligation and the implementation of the cost principle when establishing electronic communication rates, the Commission positively assesses the planned (phase) transition to a long-run average incremental cost (LRIC) model when establishing cost-based rates for call termination services in the public fixed telephone network. The Commission believes that rates based on the LRIC costing model, viewed as the latest development to cost-based modeling, could contribute to improving efficiency and encouraging competition between operators, which will reflect favorably on the price-supply ratio and therefore benefit end-users as consumers.

Regarding **Report on the Analysis of the Wholesale Market for Call Termination on the Mobile Network**, when defining the relevant market, the Agency has concluded that there is no substitution on the demand and supply side, including potential competition on the market. Furthermore, the Agency has established five relevant markets, equal to the number of operators providing the service concerned, of which two are virtual operators, and that each operator has 100% market share in its network.

Concerning the definition of the relevant market in so far as it analyzes the demand-side substitution at the retail level, the Agency has also considered the unmanaged calls via OTT applications as a potential substitute and concluded, as in the case of the wholesale market for call termination on a fixed network, that unmanaged calls via OTT applications cannot be considered to be an appropriate substitute.

The Commission agrees with the Agency's finding that the use of managed phone services will stagnate or decline in the future owing to the accelerated technological development while, on the other side, the use of OTT services for voice and messaging services will further increase. However, according to the Commission, the conclusion on the lack of a potential substitute, in this case, should be substantiated in more detail and supplemented by additional arguments. *The Commission believes that the claims from the Report need to be reinforced with appropriate indicators, which would allow for an overview of the current trend in traffic from unmanaged calls via OTT applications, and amend the Report to include a projection and conclusions on the future development of those services as a potential substitute.*

In addition to characteristics of the market itself, the Report mentions that new, lower call termination rates in the mobile network of an operator with significant market power of 1.43 din/min are applicable from January 1, 2018. The Report further mentions that the call termination rates are determined using the benchmarking methodology based on the call termination rates in neighboring countries, and that the Agency has applied, as in the previous period, the principle of symmetry, i.e., that termination rates are identical for all mobile network operators.

Concerning the price control obligation and the implementation of the cost principle when establishing electronic communication rates, the Commission positively assesses the planned (phase) transition to cost-based rates for call termination services in mobile networks, to be determined using the long-run average incremental cost (LRIC) model. Given the existing differences among mobile operators in terms of traffic trends inside and outside the network operators domain that directly impact revenues and costs from call termination, the Commission believes that rates based on the real costs of services could contribute to improving efficiency and encouraging competition between operators, which will reflect favorably on the price-supply ratio and therefore also benefit end-users as consumers.

Furthermore, *the Commission establishes that the Report, in so far as it concerns the relevant market analysis and where the Agency, among other things, analyzes and gives overviews of mutual incoming*

***traffic between three mobile operators, should be supplemented by indicators on mobile virtual network operators.*** Namely, although more than five years have passed since the registration of both mobile virtual network operators, the Draft Report gives no detail information on these undertakings that would provide an overview of their current market power, bargaining power (apart from claims that mobile virtual network operators are placed in less favorable position) and other parameters, which are considered of interest when adopting certain positions. The Commission can establish that the Agency has failed to consider differences that may exist between operators of publicly available telephone services on a mobile network in terms of individual market power, and in that way, when defining regulatory obligations, has envisaged regulatory obligations that are identical for all operators.

In light of the above, the Commission assesses that the reports concerned, supplemented with certain information, are based on principles that accord with competition principles. Accordingly, from the perspective of competencies conferred upon it by the Law, the Commission has no other objections to the provided reports.

The Commission takes this opportunity to suggest, having regard to the provision of Article 60, paragraph 2 of the Law on Electronic Communications (“Official Gazette of the RS”, Nos. 44/2010, 60/2013 – CC decision, and 95/2018 – as amended), which stipulates that the Agency will cooperate with the national competition authority during market analyses, and its previous experience in providing opinions on the Agency’s requests, that analyses reports be provided to the Commission before launching public consultations so that more time for potential suggestions and additional clarifications when drawing up reports would be allowed, in addition to delivering opinions on said analyses.

Notwithstanding the previous position, the Commission notes that it reserves the right to come to potentially different conclusions in concrete proceedings that it conducts within its powers under rules governing competition to those specified in the draft reports on market analysis, and in particular with regard to establishing relevant market(s), both the product and the geographical dimensions, whereby it is possible that a specific definition may not necessarily correspond to the definition adopted for the purposes of these reports.

**PRESIDENT OF THE COMMISSION**

*(Signed)*  
Nebojša PERIĆ