



EUROPEAN COMMISSION

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Telecommunications Office of the
Slovak Republic
Tovarenska 7
810 06 Bratislava
Slovak republic

For the attention of:
Mr. Milan Luknar

Fax: +421 2 52 932 096

Dear Mr Luknar,

SUBJECT: CASE SK/2004/0107: WHOLESALE UNBUNDLED ACCESS (INCLUDING SHARED ACCESS) TO METALLIC LOOPS AND SUB-LOOPS FOR THE PURPOSE OF PROVIDING BROADBAND AND VOICE SERVICES IN SLOVAKIA
Comments pursuant to Article 7(3) of Directive 2002/21/EC¹

I. PROCEDURE

On 11 November 2004, the Commission registered a notification by the Telecommunications Office of the Slovak Republic (“TÚSR”) concerning wholesale unbundled access (including shared access) to metallic loops and sub-loops for the purpose of providing broadband and voice services in Slovakia.

TÚSR has formally consulted only one undertaking with regard to the notified draft measure, namely Slovak Telecom a.s. (“Slovak Telecom”)².

On 16 November 2004, the Commission services sent a request for information to TÚSR. The NRA provided the requested information on 19 November 2004.

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.

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 (the “Framework Directive”), OJ L 108, 24.4.2002, p. 33.

² Although limited to Slovak Telecom, the consultation under Article 6 of the Framework Directive ran between 6 July 2004 and 5 August 2004. TÚSR however made publicly available the notified draft measure on its website.

II. DESCRIPTION OF THE DRAFT MEASURE

By decision of 28 January 2004³, TÚSR has defined, in accordance with national law⁴, all the markets listed in the Recommendation on relevant markets⁵. The current notification covers the wholesale market of unbundled access (including shared access) to metallic loops and sub-loops, which corresponds to market 11 listed in the Recommendation. TÚSR considers the relevant geographic market to be of national scope.

The criteria considered by TÚSR when reaching its provisional conclusion on SMP include: company's size and market share (TÚSR considers that Slovak Telecom has a 100% market share in the relevant market); control over unique infrastructure; existence of technological advantages; countervailing buyer power; access to financial resources; level of diversification of services; economies of scale; savings from product assortment; level of vertical integration; highly developed distribution and sales network; barriers to entry and existence of potential competition and current status of competition on the relevant market.

Based on the criteria listed above, the NRA concludes that there is no effective competition in the relevant market, and accordingly intends to designate Slovak Telecom as having SMP therein.

TÚSR proposes the imposition of the following obligations: (i) transparency (including the publication of technical specifications); (ii) non-discrimination; (iii) accounting separation; (iv) access to, and use of, specific network facilities and (v) price control, including the obligation of cost-orientation.

III. COMMENTS

The Commission has examined the notification and the additional information provided by TÚSR and has the following comments⁶:

(1) Implementation of the proposed cost orientation obligation

As for the proposed price control obligation, the Commission notes that TÚSR did not provide any details on the principles of implementation underpinning the proposed price control obligation, in terms of costing methodology and of the targeted levels of wholesale charges for full unbundling, shared access and collocation facilities.

The Commission considers that, by not specifying these elements in advance, TÚSR fails to provide adequate transparency and legal certainty for market players. For these reasons, the Commission has concerns as to whether the proposed price control obligation will be effective at addressing the lack of effective competition in the relevant market in the light of the policy objectives laid down in Article 8 of the Framework Directive⁷.

³ Published in the Official Journal of the Slovak Republic, n° 57/2004, 12.02.2004.

⁴ Act of 3 December 2003 on Electronic Communications, Section 15.

⁵ Commission Recommendation 2003/311/EC of 11 February 2003 on relevant product and services markets within the electronic communications sector susceptible for ex ante regulation in accordance with 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 (the "Recommendation"), OJ L 114, 8.5.2003, p. 45

⁶ Pursuant to Article 7(3) of the Framework Directive.

⁷ i.e., in terms of consumer benefits, enhancement of competition and development of the internal market.

The Commission recalls that, in accordance with Article 8(4) of the Access Directive⁸, the obligations imposed on SMP undertakings shall be based on the nature of the problem identified, proportionate and justified. Therefore, in order to be able to assess the compatibility of the implementing measures with the requirements of Article 8(4) of the Access Directive, the Commission invites TÚSR to notify, pursuant to Article 7(3) of the Framework Directive, the proposed implementing measures setting out the costing methodology, the wholesale charges for full unbundling, shared access and collocation facilities, and the timeframe and stages applicable for the price reductions.

(2) National public consultation

The Commission services reminds TÚSR that according to Article 6 of the Framework Directive, NRAs must conduct a national consultation on each draft measure taken in accordance with the Framework Directive or the Specific Directives which have a significant impact on the relevant market, i.e. including the market definitions, and to give all interested parties the opportunity to comment the draft measures.

Pursuant to Article 7(5) of the Framework Directive, TÚSR must take the utmost account of 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 above comments reflect the Commission's position on this particular notification, and is without prejudice to any position it may take *vis-à-vis* other notified draft measures.

Pursuant to Point 12 of Recommendation 2003/561/EC⁹ 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 Commission¹⁰ within three working days following receipt whether you consider, in accordance with Community and national rules on business confidentiality, that 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,
Neelie Kroes
Member of the Commission

⁸ Directive 2002/19/EC of the European Parliament and of the Council of 7 March 2002 on access to, and interconnection of, electronic communications networks and associated facilities (the "Access Directive"), OJ L 108, 24.4.2002, p. 7.

⁹ Commission Recommendation 2003/561/EC of 23 July 2003 on notifications, time limits and consultations provided for in Article 7 of Directive 2002/21/EC, OJ L 190, 30.7.2003, p. 13.

¹⁰ Your request should be sent either by email: INFSO-COMP-ARTICLE7@cec.eu.int or by fax: +32.2.298.87.82.