

**BEREC Opinion**

**Phase II investigation**

**pursuant to Article 7a of Directive 2002/21/EC as amended by Di-  
rective 2009/140/EC**

**Case: LV/2012/1296: Voice call termination on individual mobile  
networks**

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## EXECUTIVE SUMMARY

On 13 February 2012, the Latvian NRA (Sabiedrisko Pakalpojumu Regulēšanas Komisija, SPRK) presented to the European Commission (the Commission) its third round of the analysis of the market for voice call termination on individual networks to the Commission. SPRK proposed to designate 16 undertakings as having SMP, i.e. the four MNOs established as SMP-operators in the first and second round of the market analysis and additionally 12 MVNOs which have not been which have not been considered as SMP undertakings in the previous rounds. SPRK proposed to maintain the previously imposed obligations of access, transparency, non-discrimination, cost accounting, accounting separation and price control on three MNOs and to impose a price control in addition to the previously imposed obligations of transparency and non-discrimination on the fourth MNO (Telekom Baltija). Also, SPRK proposed to impose transparency, in terms of an obligation to publish a price list for interconnection, as well as price control obligations on the MVNOs. SPRK further proposed to impose mobile termination rates (MTRs) at the level of 0.026 LVL per minute ( $\approx$  3.7 Cent/min) on Telekom Baltija and the MVNOs. This equals the rate set for the three largest MNOs since 1 January 2012. SPRK did not impose other obligations on Telekom Baltija and the 12 MVNOs.

The Commission initiated a phase II investigation, pursuant to Article 7a of Directive 2002/21/EC as amended by Directive 2009/140/EC, with a serious doubts letter on 13 March 2012<sup>1</sup>. The Commission expressed its serious doubts as to the compatibility with EU law of SPRK's draft decision in particular with the requirements referred to in Art 8(4) of the Access Directive in conjunction with Art 8 and Art 16(4) of the Framework Directive because of the non-imposition of an access obligation. Furthermore the Commission considers that SPRK's draft measure may, create barriers to the single market.

In accordance with the BEREC rules of procedure the Expert Working Group (EWG) was established immediately with the mandate to prepare an independent BEREC opinion on the justification of the Commission's serious doubts on the case.

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<sup>1</sup> Available at [https://circabc.europa.eu/d/d/workspace/SpacesStore/2844416d-e9dd-4cc7-a8ff-3cbe4b080f31/LV-2012-1296%20Acte\\_3\\_\\_EN%2bdate%2bnr.pdf](https://circabc.europa.eu/d/d/workspace/SpacesStore/2844416d-e9dd-4cc7-a8ff-3cbe4b080f31/LV-2012-1296%20Acte_3__EN%2bdate%2bnr.pdf)

BEREC comes to the conclusion that the serious doubts of the Commission expressed in its letter of 13 March 2012 with regard to the non-imposition of an access obligation on Telekom Baltija and 12 MVNOs by SPRK are justified, because the draft measure is not compatible with the requirements referred to in Art 8(4) of the Access Directive in conjunction with Art 8 and Art 16(4) of the Framework Directive, and could create a barrier to the internal market.

BEREC therefore advises that the draft measure should be amended in terms of adding an access obligation to the remedies already imposed for Telekom Baltija and the 12 MVNOs.

## **1. Introduction**

Under Article 7 and 7a of the Framework Directive<sup>2</sup> and Article 3 (1a) of the BEREC Regulation<sup>3</sup>, one of the roles of BEREC is to deliver opinions on draft measures of national regulatory authorities (NRAs) concerning market definition, the designation of undertakings with significant market power and the imposition of remedies, and to cooperate and work together with the NRAs. Article 2 (a) of the BEREC Regulation requires BEREC to develop and disseminate among NRAs regulatory best practice, such as common approaches, methodologies or guidelines on the implementation of the EU regulatory framework.

On 13 February 2012 the European Commission (the Commission) registered a notification of the Latvian national regulatory authority, Sabiedrisko Pakalpojumu Regulēšanas Komisija (SPRK), concerning the third review of the wholesale markets for voice call termination on individual mobile networks<sup>4</sup> in Latvia for mobile network operators (MNOs) and the first review of the relevant markets for mobile virtual network operators (MVNOs), under case number LV/2012/1296. The Commission initiated a Phase II investigation with a serious doubts letter on 13 March 2012.

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<sup>2</sup> 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)

<sup>3</sup> Regulation (EC) No 1211/2009 of the European Parliament and of the Council of 25 November 2009 establishing the Body of European Regulators for Electronic Communications (BEREC) and the Office

<sup>4</sup> This market corresponds to market 7 of the Commission Recommendation of 17 December 2007 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

Under Article 7a (1) of the Framework Directive, this has the effect of preventing the adoption of the notified draft measure for a three month period from the date of the serious doubts letter. Article 7a (3) of the Framework Directive requires BEREC, within six weeks of the start of the three month period, to issue an opinion on the Commission's reasons for considering that the draft measure would create a barrier to the single market and on its serious doubts as to the compatibility of the draft measure with Community law, indicating whether it considers that the draft measures should be amended or withdrawn. BEREC may also provide specific proposals in relation to any such amendment or withdrawal. Article 7a (2) of the Framework Directive also requires BEREC to cooperate closely with the Commission and the NRA during the three month period, to identify the most appropriate and effective measure in the light of the objectives laid down in Article 8 of the Framework Directive.

An Expert Working Group (the EWG) was established on 19 March 2012 with the mandate to provide an independent expert opinion on the justification of the Commission's serious doubts on the case, in accordance with Article 7a (3) of the Framework Directive. The mandate of the EWG was to draft an opinion containing a summary of the notification and the serious doubts, the experts' analysis, clear conclusions on whether the draft regulatory measure is compatible with the EU Regulatory Framework and possible alternative proposals from BEREC.

A first set of questions was sent to SPRK on 22 March 2012. The EWG first met on 26 March 2012 in Bonn. SPRK also attended part of that meeting in order to explain the case to the EWG and provide further information and clarification in response to questions. SPRK also provided further information by email, dated 22 March, 29 March, 30 March, 2 April, 4 April and 11 April 2012. On 13 April 2012 the members of EWG also held a conference call.

A draft opinion of the EWG was finalized on 17 April 2012 and a final opinion was presented and adopted by a majority of the BEREC Board of Regulators on 24 April 2012. This opinion is now issued by BEREC in accordance with Article 7a (3) of the Framework Directive. BEREC's conclusions and recommendations can be found in chapters 3 and 4 of this opinion.

## **2. Background**

### **2.1 Previous notifications**

#### **2.1.1 First round of market analysis**

In the first round of market analysis carried out in 2006, SPRK found that effective competition does not exist in the market for mobile voice call termination (market 7 and former market 16). Three undertakings were designated to have significant market power (SMP), two GSM/UMTS operators: Latvijas Mobilais Telefons SIA, SIA Tele2, and one CDMA<sup>5</sup> operator: AS Telekom Baltija. There was a full set of remedies imposed on Latvijas Mobilais Telefons and Tele2 including access to, and use of, specific network facilities, transparency, incl. publication of a reference interconnection offer (RIO), non-discrimination, price control and cost accounting and accounting separation. On Telekom Baltija only a transparency obligation in terms of an obligation to publish a price list for interconnection and a non-discrimination obligation have been imposed.

In the letter No SG-Greffe (2006) D/204781 of 25 August 2006 the Commission commented on the notification registered under case LV/2006/0464 on 25 July 2006. The Commission urged SPRK to conduct the market analysis also with regard to the mobile network operator SIA BITE Latvija which had recently entered the market. Moreover the Commission commented with regard to effective cost accounting and invited SPRK to develop its own cost model as quickly as possible which should take into account the costs of an efficient operator.

Under case LV/2007/0574 SPRK then notified on 28 December 2006 the wholesale market for voice call termination on the individual mobile network of SIA BITE Latvija to the Commission. A transparency obligation in terms of an obligation to publish a price list for interconnection and a non-discrimination obligation were imposed. The Commission commented on this notification in the letter No. SG-Greffe (2007) D/200352 of 26 January 2007 and reminded SPRK that termination rates should be

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<sup>5</sup> CDMA 2000 is a family of 3G mobile technology standards, which use CDMA channel access, to send voice, data, and signaling data between mobile phones and cell sites.

symmetric and that asymmetry requires a justification. Nevertheless the Commission conceded that the fact that BITE Latvija has recently entered the market could be a temporarily justification.

### **2.1.2 Second round of market analysis**

Under cases LV/2010/1030-31 SPRK notified its second round of the market analysis for voice call termination on individual mobile networks to the Commission on 4 January 2010. SPRK designated four operators as having SMP, namely Tele2, Latvians Mobilais Telefons, BITE Latvija and Telekom Baltija. SPRK proposed to maintain a full set of remedies on Latvians Mobilais Telefons and Tele2 and to modify remedies of transparency and non-discrimination previously imposed on BITE Latvija by also including the obligations of access, price control and accounting separation. With regards to Telekom Baltija, SPRK proposed to maintain the previously imposed remedies, i.e. only transparency and non-discrimination obligations.

The Commission commented on this notification in letter No. SG-Grefe (2010) D/1343 of 4 February 2010. The Commission stressed the need for transparency and coherence in the notification of remedies under the EU consultation procedure and pointed out that any revision of the costing methodologies or any change of glide paths or actual price levels should be notified. Moreover, the Commission reminded SPRK that where it is intended to impose different remedies on different operators within similarly defined markets, such differential treatment should be adequately reasoned. Although operators normally have an economic incentive to interconnect, the Commission's view was that commercial agreements fail to address all potential market failures identified in termination markets. According to the Commission, under certain circumstances operators may even temporarily refuse the termination of calls in order to secure higher termination rates, especially when no price control obligation is imposed, or to foreclose the market for specific forms of interconnection. The Commission therefore invited SPRK to consider the imposition of effective access and price control obligations also on Telekom Baltija. Finally, the Commission invited SPRK to reconsider its cost accounting method and to align it with the recommended cost accounting principles in the next round of market analysis concerning the mobile call termination markets in Latvia.

## 2.2 Current notification

On 13 February 2012 SPRK notified under case LV/2012/1296 its third round of the analysis of the market for voice call termination on individual networks to the Commission. SPRK proposed to designate 16 undertakings as having SMP, i.e. the four MNOs established as SMP-operators in the first and second round of the market analysis (Tele2; Latvians Mobilais Telefons, BITE Latvija and Telekom Baltija) as well as 12 MVNOs namely SIA Amber Telecom, AS Balitcom, SIA Camel Mobile, SIA CSC TELECOM, SIA ECO Solutions, SIA INTERNETA PASAULE, SIA Master Telecom, SIA Radio Telecommunication Network, SIA Rigatta, SIA SOTUS, SIA Telegrupa Baltija and SIA Tivi. SPRK proposed to maintain the previously imposed obligations of access, transparency, non-discrimination, cost accounting, accounting separation and price control on Tele2, Latvians Mobilais Telefons and BITE Latvija. With regard to Telekom Baltija, SPRK proposed to impose a price control in addition to the previously imposed obligations of transparency and non-discrimination. SPRK proposed to impose transparency, in terms of an obligation to publish a price list for interconnection, as well as price control obligations on the MVNOs. SPRK further proposed to impose mobile termination rates (MTRs) at the level of 0.026 LVL per minute ( $\approx$  3.7 Cent/min) on Telekom Baltija and the MVNOs. This equals the rate set for the three largest MNOs since 1 January 2012.

SPRK did not impose other obligations on Telekom Baltija and the 12 MVNOs. With regard to the small market share of these undertakings, SPRK considered the imposition of further obligations would be disproportionate and would constitute an excessive burden. A non-discrimination obligation was not imposed on the MVNOs because SPRK considered this could hinder the development of new charging models, for instance “call termination at no charge” (bill and keep) by the undertakings having SMP.

The Commission requested information pursuant Article 5 (2) of the Framework Directive on 22 February 2012.

On 24 February 2012 SPRK delivered the requested information to the Commission and explained inter alia, that it did not propose to impose an access obligation on Telekom Baltija and the MVNOs because the conclusion of interconnection agree-



ments between those operators could not be regarded as essential. New entrants could reach a critical mass of users by negotiating an interconnection agreement with the three MNOs. Furthermore, the three MNOs had the access obligation to conclude interconnection agreements with all operators so that Telekom Baltija and the MVNOs could interconnect with all other operators via transit. Moreover, SPRK had not received any indications of refusals in the conclusion of interconnection agreements with Telekom Baltija or the MVNOs. Finally, SPRK noted that, even in the absence of an access obligation, it would be in a position to regulate the provision of access pursuant to the Electronic Communications Law (ESL). According to SPRK Article 36 of the ESL enables it to impose end-to-end connectivity access and interconnection obligations in a fair, proportionate and non-discriminatory manner on electronic communications operators providing access to end-users of different public electronic communications network may communicate with end-users of another public electronic communications networks. Furthermore, Article 9 of the ESL allows SPRK to amend terms of interconnection agreements between two electronic communications operators on its own initiative or following a reasoned request from a third party.

In relation to the MTRs, SPRK announced a national consultation on the glide-path for the period from 1 January 2013 till 2014.

## **2.3 Summary of the Commissions serious doubts letter**

In letter No. SG-Greffe (2012) D/4568 of 13 March 2012, the Commission commented on the appropriateness of a price control ensuring that customers derive maximum benefits in terms of efficient cost-based termination rates and also expressed its serious doubts as to the compatibility of the draft measure with European law and the creation of barriers to the single market with regard to the non-imposition of an effective access imposition.

### **2.3.1 Comments**

In its comments the Commission warns SPRK to impose a glide path from January 2013 with higher initial MTRs than the pure BU-LRIC level. The Commission requests SPRK to set the level of MTRs as of 1 January 2013 in line with the Termination

Rates Recommendation<sup>6</sup>. The Commission urges SPRK to lower MTRs without delay and impose a glide path ending on 31 December 2012 if necessary by way of interim measures.

### **2.3.2 Serious doubts**

Furthermore the Commission expresses serious doubts as to the compatibility with EU law of SPRKs draft decision in particular with the requirements referred to in Art 8(4) of the Access Directive in conjunction with Art 8 and Art 16(4) of the Framework Directive.

According to the Commission, every termination market is likely characterized by similar competition problems, namely the incentive to refuse access and to charge excessive prices. A different treatment of operators having monopoly positions in the respective termination markets would violate the above-mentioned provisions of the European Framework.

While mobile operators may in general have an economic interest to interconnect, the Commission considers that a general interconnection obligation under the Latvian legislation would not allow for a swift resolution of eventual access problems compared to a more specific access obligation imposed as a result of market analysis.

Access problems could, for example, occur in relationships where traffic is not balanced and where one of the parties could absorb higher costs of termination services (including transit via third networks) without the need to increase retail prices. Therefore, operators could delay access to their networks in an attempt to eliminate direct competitors of a similar size from the market. As there is no non-discrimination obligation on the MVNOs, there would be no safeguard to prevent SMP operators applying different terms and conditions on interconnecting partners.

Moreover, the Commission is of the opinion that SPRK's approach may create disputes rather than avoiding them. A patchwork of different access conditions resulting

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<sup>6</sup> Commission Recommendation of 7 May 2009 on the Regulatory Treatment of Fixed and Mobile Termination Rates in the EU (2009/396/EC)

from the non-imposition of an access obligation would create uncertainty amongst access seekers and therefore limit regulatory predictability. It also would lead to unnecessary regulatory interventions. The imposition of access through the resolution of individual disputes could lead to the following delays: a period for Negotiations, up to four months for resolving the dispute, a reasonable period for national consultation, and a further month for consultation at EU level. Meanwhile access seekers would have to bear higher costs for interconnection via third party networks or otherwise refrain from terminating calls to the end-users of the respective network.

Moreover the Commission is of the opinion that SPRK's draft measure may, because of the non-imposition of an access obligation, create barriers to the single market.

As Telekom Baltija and the MVNOs have SMP they are, according to the Commission, in a position to refuse access to certain operators forcing them to interconnect indirectly bearing additional costs resulting from transit services. Differential regulation of voice call termination on M(V)NOs' networks might therefore increase the costs of providing mobile services and lower the ability of other operators and service providers including those established in other Member States to provide electronic communications in Latvia.

### **3. Assessment of the serious doubts**

BEREC shares the serious doubts of the Commission, that the non-imposition of an access obligation on Telekom Baltija and the 12 MVNOs would not be based on the nature of the problem identified and would not be proportionate and justified in the light of the objectives laid down in Article 8 of the Framework Directive and as foreseen by Article 16 of the Framework Directive in conjunction with Article 8 (4) of the Access Directive.

#### **3.1 Scope of the Opinion**

BEREC considers that the Commission's comments on the appropriateness of the proposed MTRs and also the non-imposition of other remedies apart from the access obligation lie outside the scope of the present BEREC Opinion.

Article 7a (3) of the Framework Directive states, that BEREC shall issue an opinion on the Commission's notification referred to in paragraph 1 of Article 7a. According to Article 7a (1) of the Framework Directive the Commission may notify the national regulatory authority concerned and BEREC of its reasons for considering that the draft measure would create a barrier to the single market or its serious doubts as to its compatibility with community law.

From the mentioned provisions it follows that the BEREC Opinion is limited to the aspects on which the Commission expresses serious doubts about and must not comprise the comments of the Commission.

Moreover, as the serious doubts of the Commission are limited to the non-imposition of the access obligation on Telekom Baltija and the MVNOs, only this aspect - and not the non-imposition of other remedies - is subject to the assessment of BEREC.

### **3.2 Compatibility with the EU regulatory framework**

BEREC regards the non-imposition of an access obligation as not compatible with the EU regulatory framework and therefore deems the serious doubts of the Commission to be justified.

BEREC first examined if the differential treatment of mobile operators with SMP in the termination markets could be by itself an infringement of Community law (3.2.1). BEREC identified the relevant competition problem (3.2.2) and finally BEREC analysed if the imposition of an access obligation would also be proportionate under the special circumstances in Latvia (3.2.3). Finally BEREC examined if the non-imposition of an access obligation in the current case could create a barrier to the internal market (3.2.4).

#### **3.2.1 Requirement of equal treatment**

BEREC is of the opinion that it is not required by the European regulatory framework to treat all mobile termination operators uniformly with regards to remedies to be imposed.

The Commission points out in the serious doubts letter that differential regulation of voice call termination in M(V)NOs` networks where competitive conditions and competition problems are the same constitutes an infringement of Community law.

BEREC notes that it is not always necessary to use the same set of remedies towards all mobile operators with SMP to solve similar competition problems in different circumstances<sup>7</sup>. Therefore it might be the case that an identified competition problem on one market can be solved by using one set of remedies while the same set of remedies cannot be used to solve similar competition problems on other markets in different circumstances.

The Access Directive gives the NRA discretion in respect of the combination of remedies to be applied. This discretion would be undermined, if the assessment of SMP in certain parallel markets would always demand the same uniform set of remedies, while different circumstances exist on those markets. In the opinion of BEREC it is therefore important to consider every individual case to find out which remedy is to be imposed, taking into consideration the specific circumstances and ensuring that the proposed remedies are proportionate to the identified problem and non-discriminatory towards other SMP operators on parallel markets with similar competition problems. Although the standard competition problems which typically arise from SMP in termination markets include excessive pricing and the refusal to deal/the denial to interconnect, it is nevertheless necessary on each market to assess which set of remedies can be used to solve the identified competition problem.

### **3.2.2. Relevant competition problem**

BEREC considers that the non-existing access obligation on 13 wholesale mobile termination markets implies that SPRK has not, to a sufficient degree, compensated for the identified competition problems on these markets. Therefore, in agreement with the Commission, BEREC believes that an access obligation on these markets would have been justified.

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<sup>7</sup> The reference to the "different circumstances" shall clarify that even if the markets (mobile voice call termination) and the respective competition problems (denial of access) on the markets are similar, there might still exist further circumstances which differ between some of the markets and which might therefore justify not to impose a uniform set of remedies.

BEREC regards the denial of direct interconnection in combination with high transit rates a potential competition problem for the relevant mobile termination markets in Latvia.

To assess whether a remedy corresponds with a certain competition problem and hence complies with Article 8 (4) of the Access Directive, it is required to identify the relevant competition problem first.

Usually the problems in the market are already identified in the market analysis procedure.

SPRK identified in its market analysis the predominant competition problems of excessive pricing and price discrimination with regard to Telekom Baltija and the MVNOs. Based on these problems, SPRK imposed the price control and transparency obligations.

The denial of access is also a competition problem which could arise in the case of SMP in a termination market. The network operator might seek to strengthen its position in the downstream retail market(s) by denying its downstream competitors access to its upstream termination network. In doing so, the network operator with SMP on the mobile termination market might be able to foreclose potential competitors from the mobile market.

SPRK noted in its argumentation that the problem of refusal to interconnect was extremely unlikely to materialise due to the small market shares (meaning comparably lower subscriber numbers and traffic volumes) of Telekom Baltija and the MVNOs which would imply that these undertakings would have an economic interest to interconnect and not to refuse access.

The Commission also recognises in the serious doubts letter that mobile operators in general have an economic interest to interconnect. But it points also at the possibility of arising access problems.

When imposing ex ante remedies, NRAs frequently cannot actually observe a certain type of anti-competitive behaviour but will have to anticipate the appearance of a par-

ticular competitive problem based on the incentives of an SMP undertaking to engage in such behaviour.<sup>8</sup>

BEREC discussed intensely whether there could be an incentive to deny access for very small operators with few participants.

In principle a new entrant (small operator) would want to maximise its returns by gaining new subscribers and this can only be achieved by offering its subscribers a comprehensive end-to-end connectivity with all other telephony operators. Generally whereas it is vital for the new entrant to be connected to the established networks, the established operators can manage easily without interconnecting to the entrant as long as the number of the new entrants' subscribers is low enough.<sup>9</sup>

According to this general principle it could be expected that there would be limited incentive for the 12 MVNOs and Telekom Baltija, to deny interconnection towards other operators with a significant customer base i.e. the established MNOs.

While there would seem to be less incentive for small operators to deny access in relation to the established operators with a large customer base, there could be an incentive for small operators to deny access to other small-scale operators with few customers. This is because interconnection to such operators would be less valuable and by denying access, their future competitors could be potentially eliminated or their expansion significantly impeded.<sup>10</sup> A further possible motivation for a small op-

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<sup>8</sup> See Revised ERG Common Position on the approach to appropriate remedies in the ECNS regulatory framework (Final Version May 2006), p.12

<sup>9</sup> See Revised ERG Common Position on the approach to appropriate remedies in the ECNS regulatory framework (Final Version May 2006) p. 36

<sup>10</sup>BEREC, based on the serious doubts of the Commission identified a case in which - without an access obligation - a competition problem could arise from the behaviour of Telekom Baltija and the MVNOs.

In its serious doubts letter the Commission explained that access problems could come as a result of the ability of certain operators to absorb high costs resulting from imbalanced traffic (including transit via third networks). Therefore according to the Commission, operators could delay access to their network in an attempt to eliminate direct competitors of a similar size from the market.

Using the Commissions example, if an operator (Sender<sub>large</sub>) has less (unbalanced) traffic to a receiving/terminating smaller operator (Receiver<sub>small</sub>), (Sender<sub>large</sub>) is able to absorb higher costs of termination services (including transit via third network) without the need to increase retail prices. Therefore, (Receiver<sub>small</sub>) could delay access to its network in an attempt to eliminate direct competitors (Sender<sub>small</sub>) of a similar size from the market.

In such a case (Receiver<sub>small</sub>) has the possibility to raise the cost of operator (Sender) by hiding behind its transit operator (Transit), if there exists no access obligation with a commitment to direct interconnection if requested by the access seeker for (Receiver<sub>small</sub>). In this case, operator (Sender) has to buy termination plus transit from a third operator (Transit).

For (Sender) the threat towards (Receiver<sub>small</sub>) to leave the end-customers of (Receiver<sub>small</sub>) out of its reach is not an option because (Sender) needs to grant end-to-end connectivity for its customers. Its customers would not understand why the called party is not reachable from their preferred network operator.

In this situation where the price of the transit operator (Transit) is not regulated and no obligation of direct access is imposed on (Receiver<sub>small</sub>), (Receiver<sub>small</sub>) has in cooperation with (Transit) the possibility to set a high price for the bundled service for (Sender). In this cooperation the two operators can share this excessive profit taken from the transit service and (Receiver<sub>small</sub>)



erator to deny direct interconnection could be, that it spares the immediate effort and costs involved in administration and operation of multiple direct interconnections.

At the same time, it may be that demand amongst access seekers for direct interconnection to Telekom Baltija and all 12 MVNOs could be low taking economic and logistical considerations of establishing direct interconnect links into account relative to the traffic volume at stake in each case. Where an access seeker finds that it is not economically feasible to establish a direct link to a particular terminating operator it may choose to use a third party transit operator to reach that particular terminating operator. Transiting traffic via a third party operator as opposed to establishing a direct interconnection link may be a cost-effective option for small operators that do not enjoy economies of scale in terms of generated traffic. If via a direct link only very few customers can be reached the interest of other operators to gain access in terms of direct interconnection to those very small operators would be very low, as it would not be economically sustainable.

However, it is likely that, even for small operators, direct interconnection is more efficient than interconnection via transit. This is especially the case if interconnection points are in close range and/or if the transit rates are comparably high<sup>11</sup>.

In any case, as BEREC does not have knowledge of the details and the possible (in)efficiencies of direct interconnection in Latvia, the danger of Telekom Baltija and the MVNOs denying access to new entrants who ask for direct interconnection might be possible.

During the analysis of the case the EWG sent a request for more information to SPRK regarding market conditions (number of interconnection links, contracts and agreed transit rates) in Latvia, to which SPRK sent very detailed information. Based on this information BEREC carried out the following assessment of the transit market in Latvia to the extent on how it impacts on the market under investigation.

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can get with that virtually revenues for termination (MTR plus its share of the transit rate). With this mechanism (Receiver<sub>small</sub>) can leverage its SMP position from the termination market to a potential competitive transit market. This potential behaviour causes not only higher costs for the termination of (Sender), but also an attempt to eliminate direct competitors (Sender<sub>small</sub>) of a similar size from the market.

<sup>11</sup> According to a sample calculation of BEREC, taking the average transit rate in Latvia and a traffic volume of 100.000 minutes per month per 2 Mbit/s-Link as a basis, direct interconnection – assuming that a 2 Mbit/s leased line costs approximately 500 € (average price in Europe for short leased lines, inner city)- could be an economical feasible alternative.



Without an entitlement to conduct a full market analysis on the transit market which falls outside the relevant market of mobile voice call termination and is therefore out of the scope of BEREC, BEREC has found some links between transit and termination.

From SPRK's information, BEREC concluded, that transit rates in Latvia appear high; on average, twice as high as termination rates and in the most extreme case, five times higher than the termination rate.

As no evidence exists to suggest that the extremely high rates for transit in Latvia can be explained by higher network costs<sup>12</sup>, it seems that the transit operators have the possibility to charge a mobile premium for transit. This situation potentially causes higher total cost for the network operator of the calling party if it can only buy a bundle of termination and transit in order to reach the network operator of the called party. SPRK has not provided valid justification that the described problem cannot arise in the Latvian mobile voice call termination markets.

### **3.2.3 Proportionality**

BEREC is of the opinion, that the access obligation is a suitable solution for the competition problem identified under 3.2.2 (denial of access in order to eliminate smaller operators which cannot afford high termination rates) and is therefore based on the nature of the problem identified. Moreover BEREC holds that the imposition of an access obligation would not be disproportionate.

Proportionality is one of the over-arching general principles of European law. It is described as the minimum intervention required, to achieve the objective set out. In considering proportionality it is important to bear in mind that when SMP is found on an identified market some form of regulatory action is warranted. The issue is to select the most appropriate remedy to achieve an NRA's intention. When choosing the most effective remedy in order to avoid over-regulation, NRAs should focus their attention on the anti-competitive behaviour that is most likely to occur in the specific

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<sup>12</sup> In the Progress Report on the single European Electronic Communications market (15th Report) published by the Commission at last in August 2010 the delta between Single Transit and Double Transit, which is a good approximation of the cost of using the switch only once, is at a level of 0,3 Cent per minute (see Part 1, Figure 39a, p. 43).

market situation, otherwise the situation might be dealt with inadequately.<sup>13</sup> It is also recognized by the Access Directive that in an open and competitive market there should be no restrictions other than competition rules on normal commercial negotiations for access and interconnection.<sup>14</sup>

SPRK justifies its decision, not to impose an access obligation on Telekom Baltija and the 12 MVNOs, by stating that given the low market share of these new entrants, the access obligation would constitute an *'excessive burden and could create new barriers to market entry'* (section 8.3.3 and 8.3.4 of the Latvian notification).

In its reply to the Request for Information from the Commission dated 24 February 2012, SPRK elaborates further on the justification as to why it considers the access obligation as disproportionate. SPRK argues that the conclusion of interconnection agreements between these operators is not essential since new entrants can negotiate interconnection with the three MNOs (which have an access obligation) and interconnect to all other operators via transit. SPRK also states that as of the present day there were no refusals to conclude interconnection agreements with Telekom Baltija and the 12 MVNOs. Furthermore, SPRK argues that in the case of failed negotiations, SPRK can use its general legal powers to ensure end-to-end connectivity.

### **3.2.3.1 Option to interconnect via transit**

In the view of BEREC the availability of transit services cannot justify the non-imposition of an access obligation in the light of proportionality considerations.

As shown above (3.2.2.) the availability of transit services does not solve the problem of denial or delayed access. Whilst BEREC appreciates the fact that transit services are widely used as an alternative to direct interconnection in Latvia, it is of the opinion that transit services are an additional option available to access seekers to ensure end-to-end connectivity and not as a substitute for the availability of direct interconnection.

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<sup>13</sup> See Revised ERG Common Position on the approach to appropriate remedies in the ECNS regulatory framework (Final Version May 2006) p. 55/56

<sup>14</sup> See Recital (5) of the Access Directive: "In an open and competitive market, there should be no restrictions that prevent undertakings from negotiating access and interconnection agreements between themselves, in particular on cross border agreements, subject to the competition rules of the Treaty. In the context of achieving a more efficient, truly pan-European market with effective competition, more choice and competitive services to consumers, undertakings, which receive requests for access or interconnection should in principle conclude such agreements on a commercial basis, and negotiate in good faith."

### 3.2.3.2 Access obligation under national Latvian law

BEREC regards the option to rely on general connectivity provisions under national legislation not as an alternative of equal value for an SMP access obligation. BEREC examined the provisions of the ESL carefully and shares the Commission's concern that the absence of an access obligation would potentially lead to a delay in the resolution of eventual access disputes and therefore is no adequate substitute to an access obligation.

In SPRK's view, the existence of an access obligation in the ESL<sup>15</sup> would render the imposition of the access obligation disproportionate.

SPRK argued that it would be in the position to regulate the provision of access pursuant to the ESL. Article 36 of the ESL enabled SPRK to impose end-to-end connectivity access and interconnection obligations.

The imposition of an access obligation on an operator having significant market power on the basis of Section 38 of the ESL by a decision of the regulatory authority (SMP-obligation) occurs on a general level<sup>16</sup>. According to the usual practice of SPRK, the statement of the decision would plainly rule that the addressee is obliged to grant access to other network operators in order to ensure that other operators have the ability to terminate voice calls on the SMP operator network. In the decision itself no further requirements are laid down concerning the technical standards as well as the commercial and administrative terms and conditions for interconnection.<sup>17</sup>

In case that access problems arise i.e. that the SMP-operator after the imposition of the access obligation refuses access or offers access only to conditions not favorable to the access seeker, the dispute is resolved by SPRK in accordance with Section 9 of the ESL. The relevant paragraph 3 of Section 9 gives the regulatory authority the right to ascertain the conditions to be included in access and interconnection contracts.

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<sup>15</sup> See English translation of the relevant provisions of the Latvian Electronic Communications Law in the Attachment

<sup>16</sup> See e.g. SPRKs Decision No. 258 of 13. October 2006 on Tele2

<sup>17</sup> Further specifications for interconnection mainly requirements for technical interoperability are included in the Regulation on General Authorisation Regime issued by the SPRK on the basis of Section 34 of the Electronic Telecommunications Law under "IV. Specific conditions for interconnection service provider". These Provisions for being a symmetrical framework are applicable to all registered operators and are not a characteristic of an SMP access obligation.

The dispute resolution provisions of the ESL (Section 9) do not appear to specify concrete rules of procedure, although there is a time limit that could be set for negotiations of usually three months. Furthermore decisions according to Section 9 are as they are individual dispute decisions not subject to the requirement of consultation on national or EU level (see Article 5 (3) of the Access Directive in conjunction with Article 6 (1), Article 7 (3) and Article 20 of the Framework Directive).

In the event that an operator without an SMP-access obligation refuses to interconnect, the regulatory authority can also following national and Community consultation (Section 36 (5) of the ESL) impose an access obligation pursuant to section 36 (1) of the ESL and at the same time issue technical and operational regulations, which are binding to the obliged operator pursuant to section 36 (3) of the ESL. Hence going through the consultation process first would lead to a significant delay in comparison to an pre-existing SMP-access obligation. The option of interim measures, which SPRK assures BEREC it is willing to use, does not alter this assessment. Accepting the existence of this instrument as a justification for the non-imposition of an obligation, would be contradictory to an ex-ante approach.

SPRK argues, that in the case of a denial of access, it can pursuant to Article 37 (1) of the ESL oblige the operator to grant access directly without a delay and without the need for consultation. However, SPRK did not use this argumentation in its exchanges with the Commission.

Assuming that Sections 36 and 37 have the same regulatory content, the lack of consultation requirements in Section 37 could be a circumvention of the demands of the European framework i.e. Article 5 of the Access Directive in conjunction with Articles 7/7a of the Framework Directive. Furthermore, these national provisions could only oblige operators to negotiate, make an offer and conclude a contract on the basis of this offer. As these concluded contracts would be the outcome of free commercial negotiations and are not based on a regulatory obligation, contracts concluded on the basis of Section 37 would not be regulated and not be subject to revision according to Section 9.<sup>18</sup>

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<sup>18</sup> SPRK nevertheless argues that Section 37 could theoretically be applied in conjunction with Section 9 and the regulatory discretion could be exercised in applying Section 9. SPRK anyhow also admits that the norm had not been applied yet.

### 3.2.3.3 No refusal to interconnect in the past

The fact that there has been no refusal to interconnect by Telekom Baltija and the MVNOs so far is not sufficient to make an access obligation disproportionate in the view of BEREC.

SPRK argued that as of the present day it has not received any indications of a refusal by Telekom Baltija and/or the MVNOs to conclude interconnection agreements.

Moreover SPRK provided the EWG with an overview of the concluded interconnection contracts in the Latvian market. From this table BEREC identified the information that Telecom Baltija and the MVNOs had already concluded interconnection agreements on a commercial basis.

It is true that the imposition of remedies does not presuppose that an abuse of market power has actually occurred.<sup>19</sup> On the other hand, not each competition problem identified will automatically occur in a particular situation. Hence, even if a potential competition problem has been identified and a certain remedy would solve this problem, in assessing proportionality the national regulatory authority can take into account how likely it would be that the competition problem would occur in an actual market situation. Therefore the fact, that the relevant operators have not caused any access problems so far could be an indicator to the likeliness of the occurrence of the problem.

Nevertheless in this particular case, BEREC is of the opinion that the mere fact that a number of interconnection agreements have been concluded on a commercial basis, not knowing the details of the relations of the operators to each other, cannot make the imposition of an access obligation disproportionate. Predictions of future market developments are always very difficult due to uncertainty about the behavior of the market participants. In order to come to the conclusion that a measure would be disproportionate, other additional aspects would be necessary to support the lack of proportionality. However, as discussed above, in the event that an access problem materializes transit has not been shown to provide a feasible alternative in all cases and the general access obligation provided for under national law could also lead to

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<sup>19</sup> See Revised ERG Common Position on the approach to appropriate remedies in the ECNS regulatory framework (Final Version May 2006) p.25

delays. As other possible solutions have not been shown to effectively remedy the potential competition problem in its entirety, the imposition of an ex-ante access obligation as an SMP measure has to be regarded as proportionate.

#### **3.2.3.4 Imposed price control**

BEREC does not consider that the already imposed remedy of price control makes an additional access obligation disproportionate.

It could be argued that as the price control imposed on Telekom Baltija and the MVNOs is already in place, the prominent competition problem in the mobile termination market is already dealt with and to impose further obligations would be disproportionate. As mentioned before (3.2.3) when choosing the most effective remedy in order to avoid over-regulation, NRAs should focus their attention on the anti-competitive behaviour that is most likely to occur in the specific market situation.

Decisions on remedies should include, for any given problem, consideration of alternative remedies where possible, so that the least burdensome effective remedy can be selected. As shown above there exists a competition problem which is as likely to occur in the relevant markets as the competition problem of excessive pricing and therefore it is necessary to impose an access obligation additional to the price control obligation.

Moreover the tight regulation of interconnection charges may even enhance the incentive to deny access.<sup>20</sup> So the imposition of price regulation cannot make the access obligation expendable. This is all the more true, as usually in regulatory theory the price control is regarded as a necessary addendum to the access obligation, meaning that the access obligation is usually the first-choice remedy.

#### **3.2.3.5 Weight of the burden of an access obligation**

Given that the far more invasive remedy of price control is in place for Telekom Baltija and the MVNOs already, BEREC could not share the opinion of SPRK that the

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<sup>20</sup> See Revised ERG Common Position on the approach to appropriate remedies in the ECNS regulatory framework (Final Version May 2006) p. 58

comparably light (in the view of BEREC) burden of an access obligation could constitute an additional excessive intervention.

In order to assess proportionality it is also necessary to investigate how severe the burden of the relevant remedy would be for the operators in question.

The SMP firm primarily feels the burden of any given remedy including such issues as the administrative burden associated with compliance.<sup>21</sup>

Nevertheless the burden of an access obligation could be regarded in this particular case as less severe as, for example, the burden of a remedy of price control especially as there is no requirement that an interconnection obligation automatically has to result in the obligation to publish a reference interconnection offer (the obligations according to Article 9 and Article 12 exist independently from each other).<sup>22</sup>

### **3.3 Creation of barriers to the internal market**

BEREC shares the view of the Commission that it is possible that the non-imposition of the access obligation could create barriers to the internal market.

The Commission repeats its concerns that Telekom Baltija and the MVNOs can, due to their monopoly position, refuse access to other operators forcing them to interconnect indirectly. As a result it is the Commission's view that other operators would potentially have to bear higher transit costs. As this could happen also to operators established in other Member States, the non-imposition of an access obligation could create barriers to the single market.

BEREC assessed at length the incentives of the said thirteen operators to refuse direct interconnection as well as the relationship of the costs of indirect interconnection (by way of transit) to the costs for direct interconnection (see 3.2.2). BEREC found that it had not been sufficiently demonstrated by SPRK that indirect interconnection would prove a more cost effective or less burdensome option than the imposition of a direct access remedy in all cases. Furthermore, it had not been adequately shown by

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<sup>21</sup> See Revised ERG Common Position on the approach to appropriate remedies in the ECNS regulatory framework (Final Version May 2006) p. 58

<sup>22</sup> Exception is Article 9 (4) referring to wholesale network infrastructure access



SPRK that an SMP operator would not be in a position to use indirect interconnection strategically to potentially raise the costs to new market participants.

#### **4. Conclusions and Recommendations**

Based on the analysis of BEREC, BEREC comes to the conclusion that the serious doubts of the Commission expressed in its letter of 13 March 2012 with regard to the non-imposition of an access obligation on Telekom Baltija and 12 MVNOs by SPRK are justified, because the draft measure is not compatible with the requirements referred to in Art 8(4) of the Access Directive in conjunction with Art 8 and Art 16(4) of the Framework Directive, and could create a barrier to the internal market.

In particular, BEREC reaches the conclusion, that

- an access obligation would correspond with the identified competition problem of a potential denial of access by Telekom Baltija and the MVNOs especially versus other small operators and new entrants,
- the non-imposition of an access obligation is not justified for reasons of proportionality because
  - the option to interconnect via transit has not proved equally effective to address the identified competition problem,
  - the access obligation under Latvian law could lead to delays,
  - the fact that there was no refusal to interconnect in the past alone is not sufficient to justify excessiveness,
  - the more invasive remedy of price control is in place,
  - an access obligation would create no significant additional burden.

BEREC therefore advises that the draft measure should be amended in terms of adding an access obligation to the remedies already imposed for Telekom Baltija and the 12 MVNOs.



## **Appendix**

### **Relevant Sections of the Latvian Electronic Communications Law**

#### **Section 9. Rights of the Regulator**

(1) The Regulator has the following rights:

- 1) to request and receive information from electronic communications merchants within a time period specified by the Regulator, which is necessary for fulfilment of the functions of the Regulator (including also such information that contains commercial secrets), as well as also written or oral explanations received from the respective persons;
- 2) in order to fulfil its functions and to perform examinations, after warning beforehand about it, to visit premises and buildings and to access equipment, which is utilised for the provision of electronic communications services or the provision of public electronic communications networks, as well as to request the presentation of permits, certificates or other documents, which certify ownership rights or the right to utilise such objects or equipment. The rights referred to in this Clause may be delegated by the Regulator to other natural persons or legal entities after appropriately authorising such persons;
- 3) upon their own initiative, or if justifiably requested by one of the parties, to ascertain the conditions to be included in access, interconnection, common use of associated facilities, leased lines, access to data flow or unbundling of the access subscriber lines (local loops) contracts, as well as to impose what needs to be observed by one or several of the contracting parties, in order to amend or delete conditions or to agree regarding contract conditions;
- 4) to request the making of relevant amendments to access, interconnection or common use of associated facilities, leased lines, access to data flow or unbundling of the access subscriber lines (local loops) contracts already entered into, or the mutual interoperability of electronic communications networks or electronic communications services;
- 5) on its own initiative or if justifiably requested by one of the parties, to impose a time period in which negotiations regarding an access, interconnection, common use of associated facilities, leased lines, access to data flow or unbundling of the access subscriber lines (local loops) contract should be entered into. The time period specified by the Regulator may not be longer than three months from the moment of the coming into effect of a decision. In exceptional cases, the Regulator has the right to extend this time period;

- 6) to impose the requirements for ensuring the mutual interoperability of electronic communications networks or electronic communications services;
- 7) to impose the procedures by which an electronic communications merchant shall ensure services associated with use of numbering, as well as impose the time periods for the introduction of such services;
- 8) if it is necessary, to determine the procedures and time period by which an electronic communications merchant who provides voice telephony services shall ensure a possibility for end-users to receive the information regarding tariffs for calls to which the electronic communications merchant applies high-priced tariff;
- 9) to impose an electronic communications merchant a duty to publish transparent, comparable, compliant and updated information in a clear, comprehensive, easily accessible and legible manner regarding tariffs and penalty sanctions, as well as information regarding standard regulations which are applied in relation to the electronic communications services offered by such merchant and use thereof. The Regulator may determine reasonable additional requirements for the publication of information in the interests of the society;
- 10) to impose an electronic communications merchant the duty:
  - a) to inform subscribers, if any changes have occurred and the electronic communications service regarding which the electronic communications agreement has been entered into fails to ensure access for the State Fire-Fighting and Rescue Service, the State Police, the Emergency Medical Service, gas emergency service, and the Maritime Search and Rescue Co-ordination Centre of the Naval Coast Guard Service (hereinafter – Maritime Search and Rescue Service), as well as for the “112” Service, including fails to ensure the information regarding caller location,
  - b) to inform subscribers regarding all changes in conditions by which the access to electronic communications services and applications or use thereof is limited,
  - c) to provide the information regarding all procedures which have been introduced by an electronic communications merchant to measure and shape traffic so as to avoid filling or overfilling a network link, and information on how those procedures could impact on electronic communications service quality,
  - d) to publish the information regarding electronic communications services, terminal equipment and software intended for persons with disability;
- 11) to determine the procedures for joint use of associated facilities or infrastructure objects of other type, if the electronic communications merchant, who ensures the electronic communications network, in accordance with regulatory enactments has the right to install facilities on, over or under the State or private property. The conditions included in accordance with such procedures shall be objective, proportionate, transparent and non-discriminating;
- 12) to access to the information included in the Construction Information System necessary for the implementation of the Regulator’s functions;

13) to assess fraud performed using numbering and incorrect use of numbering; and

14) to determine that in the case of fraud performed using numbering or in the case of incorrect use of numbering the electronic communications merchant, to whom the right of use of the relevant numbering has been granted or transferred, has a duty to terminate immediately routing of calls and access to the relevant number.

(2) The chairperson of the Regulator or his or her authorised official is entitled to draw up an electronic communications merchant administrative violation report, which shall be examined according to the procedures specified by law.

(3) The Regulator may determine a requirement for an electronic communications merchant, who provides publicly accessible electronic communications services, that end-users who are persons with disability would be ensured:

1) access to electronic communication services equivalent to that enjoyed by the majority of end-users; and

2) possibility to use the electronic communications services available for the majority of end-users and to select an electronic communications service provider.

*[12 May 2005; 3 May 2007; 3 July 2008; 19 May 2011]*

## **Chapter VIII** **Access and Interconnections**

### **Section 36. Rights and Duties of the Regulator in respect of Access and Interconnections**

(1) In order to ensure that one public electronic communications network end-users may communicate with other public electronic communications network end-users, the Regulator has the right to fairly, proportionally and with equal treatment impose upon electronic communications merchants who ensure the necessary access to end-users, obligations in the field of access and interconnections.

(2) In order to ensure for a user the possibility of access to digital radio and digital television broadcasting services, the Regulator has the right to fairly, proportionally, transparently and with equal treatment (non-discrimination) impose that public electronic communications network operators have an obligation to ensure access to application software interfaces and electronic programme guides.

(3) In order to ensure qualitative operation of the electronic communications network, the Regulator may issue electronic communications network technical and operational regulations, which are binding to operators the duty of which is to ensure access.

(4) The electronic communications network technical and operational regulations shall be issued taking into account the principles of objectiveness, transparency, proportionality and equality (non-discrimination), the nature of the problem to be resolved, and the purpose of the regulation.

(4<sup>1</sup>) Prior to the issue of electronic communications network technical and operational regulations, the Regulator shall consult with the participants of the electronic communications market.

(4<sup>2</sup>) The Regulator may, taking into account the special conditions existing in the State, issue regulations regarding access conditions to unbundled subscriber line or its part and associated facilities and services.

(5) Prior to determination of the obligations referred to in Paragraphs one and two of this Section, the Regulator shall consult with the participants to the electronic communications network, as well as listen to the opinion of the regulators of the European Union Member States and the European Commission. The Regulator may, taking into account the opinion of the European Union Member States and the European Commission, make amendments to the applicable obligations and notify the European Commission thereof.

*[3 May 2007; 3 July 2008; 19 May 2011]*

### **Section 37. Rights and Duties of Operators in relation to Access and Interconnections**

(1) In order to ensure interoperability of electronic communications services, an operator has the right and, if such is requested by other electronic communications merchants, has also an obligation to negotiate an agreement regarding public electronic communications network access or interconnections and to enter into an access or interconnection contract.

(2) The access and interconnection regulations, which the operator offers to other electronic communications merchants, shall conform to the obligations, which have been imposed by the Regulator in accordance with this Law.

(3) Information, which the electronic communications network merchant has received before negotiations, during the process of negotiations or after the process of negotiations regarding access or interconnections may be utilised only for the purpose, which the information was provided, moreover, observing the confidentiality thereof. It is prohibited to pass on the received information to other persons (units, subsidiaries or partners), for which such information provides a competitive advantage.

(4) Two electronic communications merchants shall enter into a public electronic communications network access or interconnection contract in which shall be included all the technical, commercial and other access or interconnection provisions, including agreements which apply to opening of numbering for call routing, initiation, termination and transit tariffs of calls. The interconnection contract or amendments thereof shall be drawn up in three copies. Within ten working days after entering into the interconnection contract or amending thereof, one copy of the contract shall be submitted to the Regulator.

(5) The interconnection contract shall provide for the procedures by which call routing and access to numbers and electronic communications services is to be terminated, as well as the procedures for mutual payments in cases when fraud performed using numbering or incorrect use of numbering is detected.

*[3 May 2007; 19 May 2011]*

## **Chapter IX**

### **Obligations for Electronic Communications Merchants with a Significant Market Power in the Field of Access and Interconnection**

#### **Section 38. Obligations for Electronic Communications Merchants with a Significant Market Power in the Field of Access and Interconnection**

(1) The Regulator may impose upon an electronic communications merchant with a significant market power in the field of access or interconnection obligations and duties of transparency, equal treatment (non-discrimination), accounting separation, tariff regulation and cost accounting, and obligations in relation to the access to electronic communications networks. In exceptional cases, if the obligations previously specified fail to facilitate the competition with sufficient efficiency, the Regulator shall also impose other obligations for the electronic communications merchant for whom a significant market power has been specified in the field of access or interconnections. The Regulator shall harmonise such application of obligations with the European Commission.

(2) The Regulator in imposing upon an electronic communications merchant with a significant market power the obligations referred to in Paragraph one of this Section in the field of access or interconnection, shall observe the principles of objectiveness, transparency, proportionality and equality (non-discrimination), the nature of the problem to be resolved, and the purpose of the regulation. Prior to the taking of a decision regarding the imposition of obligations, the Regulator shall consult with the participants of the electronic communications market.

*[3 May 2007; 3 July 2008]*

#### **Section 39. Obligations of Transparency**

(1) Taking into account market survey results; the Regulator may impose, amend or withdraw the obligation of transparency in the field of access or interconnections for electronic communications merchants with a significant market power. The obligation of transparency may include communication to the public of specific information (accounting, technical and network characteristic parameters, prices and tariffs, and conditions for provision of and utilising access and interconnections), and the publication of obligations and requirements of reference offers in relation to publishable reference offers.

(2) If a duty of equal treatment has been specified for an electronic communications merchant with a significant market power, then the Regulator may request that it publishes reference offers for access, interconnection, common use of associated facilities, leased lines, access to data flow or unbundled access to the subscriber lines (local loops), in which the information included shall be separated in details, and shall ensure that the electronic communications merchants – recipients of services – do not have to pay for associated facilities or equipment that are not necessary for the requested service.

(3) An electronic communications merchant with significant market power, according to the procedures specified by the Regulator, shall publish the reference offers for access or inter-

connection, common use of associated facilities, leased lines, access to data flow or unbundled access to the subscriber lines (local loops).

(4) The Regulator has the right to:

1) impose and publish in the newspaper *Latvijas Vēstnesis* requirements in relation to the information to be included in the access, interconnection, common use of associated facilities, leased lines, access to data flow or unbundled access to the subscriber lines (local loops) reference offers and the necessary level of detail thereof;

2) impose the manner of publishing the access, interconnection, common use of associated facilities, leased lines, access to data flow or unbundled access to the subscriber lines (local loops) reference offers; and

3) impose amendments to the published access, interconnection, common use of associated facilities, leased lines, access to data flow or unbundled access to the subscriber lines (local loops) reference offers if the conditions thereof do not conform to the requirements of the Regulator.

[12 May 2005; 3 May 2007; 3 July 2008; 19 May 2011]