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Post- och Telestyrelsen
Box 5398,
102 49 Stockholm
samtrafik@pts.se

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The Second Consultation regarding the draft SMP decision for the mobile termination market.

Verizon welcomes the opportunity to comment on Post- och Telestyrelsens (PTS) draft SMP decision for the mobile termination market.¹ Verizon limits its comments to section 6.4.6 of the draft decision, where PTS opens up for the mobile operator to apply higher termination rates for calls that originate outside the EU / EEA than for those originated inside, however in a reciprocal pricing approach.

Introduction

Over the last years a growing number of EEA telecom providers have started to charge higher (mobile and fixed) termination rates for voice traffic originating outside the EEA as opposed to the regulated (cost-based) rates for traffic within it. Verizon strongly believe that such differential rates are unjustified, damaging, and may well be violating the EU telecommunications rules, general competition rules and the WTO General Agreement on Trade in Services (GATS).²

The rationale for this practice seems to be a desire to compensate for higher termination rates charged by some non-EEA providers, as a sort of "retaliation" measure. This approach is particularly questionable when applied to traffic originating in countries where rates do not seriously exceed the EEA rates or are even lower, such as the United States (US).

¹ <https://www.pts.se/upload/Remisser/2016/Samtrafik%20o%20mobil%20lric/15-4802-utkast-beslut-mobil-terminering-samrad-2.pdf>

² See enclosed additional documents developed by Verizon

This practice currently broadly materializes in two different forms. The worst form is the “fishing net” whereby all traffic originated outside the EU / EEA is subject to (significantly) increased termination rates regardless of the termination rates that are applied by the country of origin. The better of the two evils is “reciprocity”, a more targeted approach of exclusively the traffic originating from countries that themselves charge excessive termination rates, while applying the cost-based regulated rates to traffic from countries where rates do not seriously exceed the EEA rates or are even lower.

The “Fishing Net” Approach

In several countries (Croatia, Greece, Hungary, Poland, Portugal,...) mostly with the implicit or explicit support from the relevant National Regulatory Authority (NRA) and the European Commission (EC), mobile (and also sometimes fixed) operators have introduced higher than the cost-based regulated termination rates for ALL traffic originated outside the EU / EEA. .

This is an unfair and discriminatory practice, in particular when such increased rates apply to traffic from countries where termination rates do not seriously exceed the EEA rates or are even lower, the US being a typical example there. It substantially raises the costs for US providers, such as Verizon, for US originating traffic to the EEA and affects the ability to provide affordable voice services to US customers calling the EEA.

It is not only unfair, but it may also lead to an upward spiral of termination rates across the globe, where ultimately termination rates will find a new sort of equilibrium at a level far above costs and far above the current level of rates, if operators from unduly hit countries will also start increasing their (presently still low) termination rates for traffic originated from the EEA countries that have introduced higher rates, in a reaction to the increased EEA rates (and associated cost increases) that they are confronted with by the practices in some of the EEA countries. Such a scenario could also be detrimental to Swedish citizens when they call US destinations if US carriers were to increase their termination rates for traffic originated in Sweden in reaction to a similar increase the other way around for traffic originated from the US, which Swedish providers would have to reflect in their retail prices.

The “Reciprocity” Approach

PTS proposes to allow Swedish operators to charge different termination rates than those based on pure BU-LRIC for calls originating in non-EEA countries, where such termination rate exceeds the regulated rate in Sweden. Following the principle of reciprocity, Swedish operators would be allowed to charge as a maximum the termination rate implemented by the respective non-EEA telecom providers for calls originating in their non-EEA networks.

Although not in line with Verizon’s position that regulated cost-based termination rates should apply equally to traffic originated in any country in a non-discriminatory manner, such a “Reciprocity Approach” should definitely be preferred over the “Fishing Net” approach.

Some may object that such reciprocal pricing could lead to higher under the principle of “equilibrium” developed in the Game Theory. Verizon does not agree with such an objection, and believes on the contrary that it is the unrestricted “Fishing Net” model which carries the risk that “not to be targeted” carriers will retaliate and further increase their termination prices in a negative upward spiral.

Conclusion

Verizon strongly recommends that PTS does not allow differential rates based on the origination of traffic. Indeed, Verizon considers that the implementation of such differential rates are unjustified, damaging, and may well be violating the EU telecommunications rules, general competition rules and the WTO General Agreement on Trade in Services (GATS). We strongly believe that the regulated cost-based termination rates of EEA providers in principle should equally apply to traffic originated in any country, in a non-discriminatory manner.

However, if a choice must be made between two evils, we strongly prefer the suggested reciprocity approach that would only target countries that apply too high rates themselves while leaving countries with low rates untouched over the fishing net approach that would apply higher rates for any non-EEA originating traffic indifferently of what the termination rates are that these countries charge. The reciprocity approach is not only much more fair, it also strongly mitigates risks of an upward spiral of termination rates across the globe, which ultimately could also negatively affect EEA operators and EEA citizens who are making calls outside the EEA.

On behalf of Verizon Sweden AB

Åke Florestedt
Legal & Regulatory Nordics

Enclosed:

Position paper: *“Why Charging Higher than Regulated Termination Rates to Traffic Originating Outside the European Economic Area (EEA) is Not Justified.”*

Country Overview

Position paper *“The EEA’S Discriminatory Telecommunications Termination Rates Violate the General Agreement on Trade in Services”*



Why Charging Higher than Regulated Termination Rates to Traffic Originating Outside the European Economic Area (EEA) is Not Justified

Introduction

Over the last years a growing number of EEA telecom providers have been charging higher (mobile and fixed) termination rates for voice traffic originating outside the EEA as opposed to the regulated (cost-based) rates for traffic within it, and in most instances with the implicit or explicit support from the relevant National Regulatory Authority (NRA) and the European Commission (EC).

This paper outlines why such differential rates are unjustified, damaging, and may well be violating the EU telecommunications rules, general competition rules and the WTO General Agreement on Trade in Services (GATS).

The rationale for this practice seems to be a desire to compensate for higher termination rates charged by some non-EEA providers, as a sort of “retaliation” measure. This approach is particularly questionable when applied to traffic originating in countries where rates do not seriously exceed the EEA rates or are even lower, such as the United States (US).

Facts

Call termination services are interconnection services provided by telecommunications operators to other telecommunications operators. Such services allow for the completion of a call initiated on another telephone network. Call termination services can be provided for traffic originated in-country or abroad. Termination can also be provided over fixed or mobile voice networks.

Originally termination rates were regulated by the NRAs regardless of where traffic originated from. The same cost-oriented rates were mandated for all traffic, no matter where it came from.

Nonetheless, since 2014 an increasing number of EEA providers have started charging higher rates for traffic originating outside the EEA. In most cases these practices were introduced with the implicit or even explicit consent of NRAs. Some NRAs decided to limit their regulatory competence to traffic originating inside the EEA, thus implicitly allowing higher rates for traffic from elsewhere. Moreover, some NRAs explicitly allowed higher rates to be applied horizontally to traffic originating outside the EEA, as a response to high rates in some non-EEA countries.

Consequently an increasing number of EEA providers have been charging much higher rates for traffic originating outside the EEA as opposed to the regulated (cost-based) rates for traffic within it. Whilst some European providers are (rightly) exempting US originated traffic from these higher termination rates many others simply apply one higher termination rate for all traffic from outside the EEA, as is illustrated by the chart in Annex 1.



These practices result in substantial cost increases for Verizon's US originating traffic to the EEA and affect its ability to provide affordable voice services to US consumers calling the EEA.

Regulatory Analysis

The higher rates for non-EEA traffic do not appear to reflect incremental costs for termination of such traffic and there is no other fact-based justification for these higher rates. These practices may therefore well be violating EU sector specific telecommunication rules and general competition law rules as well as the GATS.

Violation of EU sector specific telecommunication rules

In most if not all EU member states NRAs have determined that mobile and fixed terminating providers have Significant Market Power (SMP) and are therefore obliged to apply cost-based rates in a non-discriminatory fashion. The calculation of the cost-based rates in most instances follows the BU-LRIC cost-methodology as recommended by the EC.

We have strong doubts that the application of differential rates depending on whether the traffic originates inside or outside the EEA complies with the principles of non-discrimination and cost-orientation.

Violation of competition law

Under EU competition law mobile and fixed providers are considered to be dominant in the termination of voice calls on their network and it may well be that the application of higher prices for traffic from outside the EEA as opposed to traffic from within the EEA will constitute an abuse of a dominant position.

The charging of higher termination rates to traffic originating outside the EEA may be considered to be excessive and discriminatory pricing, as these higher rates are clearly excessive related to the "economic value" of the service, and the underlying costs do not differ depending on the country in which the traffic originates.

Violation of GATS

The application of differential termination rates may well be in violation of the WTO GATS in three ways, which is outlined in more detail in Annex 2:

1. A key principle of the WTO and the GATS is Most Favored Nation (MFN) that prohibits measures treating the service suppliers of one Member less favorably than any other.
2. Article 5(a) of the Annex on Telecommunications requires Members to "ensure that any service supplied of any other Member is accorded access to and use of public telecommunications transport networks and services on reasonable and non-discriminatory terms and conditions".
3. The "Reference Paper" requires "major suppliers" to interconnect with rates being cost oriented, transparent, and reasonable.



Conclusion

We strongly believe that the regulated cost-based termination rates of EEA providers in principle should equally apply to traffic originated in any country, in a non-discriminatory manner.

This is even more relevant for traffic originating in countries that do not apply high(er) termination rates than in the EEA, such as the US. It would be a good step forward if cost-based rates would also apply to traffic originating from such countries as some EEA NRAs and providers have already decided.

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Annex 1 – Country Overview



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Country	Mobile (MTR) or Fixed Termination (FTR)	Surcharge in place	Surcharge in place since / as of	Surcharge applies to traffic that originates from	Surcharge allowed by NRA?	Comments
Austria	MTR	Yes	Apr 2016	Non-EEA, except US & White List	Yes, but only on a reciprocity basis	RTR draft decision would allow surcharge for calls originating in EU/EEA-countries where BULRIC model is not yet implemented
	FTR	Yes	Apr 2016	Non-EEA, except US & White List	Yes, but only on a reciprocity basis	
Belgium	MTR	Planned	Q3 2016	Non-EEA, except US & White List	Yes, by explicitly allowing differential/higher rates for non-EEA	According to Draft Market Review Decision only - Pending full BULRIC implementation
	FTR	Yes (but only _____)	Apr 2016	Non-EEA, except US & White List	Yes, by explicitly allowing differential/higher rates for non-EEA	According to Draft Market Review Decision only
Croatia	MTR	Yes	Apr 2015	Non-EEA	Yes, by only regulating rates for EEA	
	FTR	Yes	Apr 2015	Non-EEA	Yes, by only regulating rates for EEA	
Czech	MTR	Yes	Sept 2014	Non-EEA	Yes, by only regulating rates for EEA	
	FTR	Yes	Aug 2014	Non-EEA	Yes, by only regulating rates for EEA	
Denmark	MTR	No				
	FTR	No				
Finland	MTR	No				
	FTR	No				
France	MTR	Yes	Q1 2014	Non-EEA, except US & White List	Yes, but only on a reciprocity basis	
	FTR	Yes	Q1 2014	Non-EEA	Yes, but only on a reciprocity basis	_____ and _____ still applying surcharge on FTR for non-EEA including US origination. _____ and _____ exclude US _____ consider their approach in line with the market analyses of BNetzA.
Germany	MTR	Yes (but only _____)	Feb 2013	Black List (Serbia, Morocco, Russia, Turkey, Ukraine)	No	
	FTR	No				
Greece	MTR	Yes	July 2015	Non-EEA	Yes, by only regulating rates for EEA	
	FTR	Yes	Sept 2015	Non-EEA	Yes, by only regulating rates for EEA	
Hungary	MTR	Yes	Nov 2015	Non-EEA	Yes, by only regulating rates for EEA	
	FTR	No				
Ireland	MTR	No			No	regulated MTRs also apply to traffic that originates from outside the EU/EEA
	FTR	No				
Italy	MTR	Yes	Q3 2015	Non-EEA, except US & White List	Yes, by only regulating rates for EEA	Draft decision only at this stage
	FTR	No				
Lithuania	MTR	Yes	Jan 2016	Non-EEA	Under assessment	
	FTR	Yes	Jan 2016	Non-EEA	Under assessment	
Netherlands	MTR	No				
	FTR	No				
Poland	MTR	Yes	Apr 2016	Non-EEA	Yes, by only regulating rates for EEA	
	FTR	No			Yes, by only regulating rates for EEA	
Portugal	MTR	Yes	Sept 2015	Non-EEA	Yes, by only regulating rates for EEA	
	FTR	No				
Romania	MTR	No				
	FTR	No				
Spain	MTR	No				
	FTR	No				
Sweden	MTR	No				
	FTR	No				
United Kingdom	MTR	No				
	FTR	No				

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EEA: European Economic Area = European Union + Iceland, Lichtenstein, Norway (Switzerland membership not ratified)

Norway	MTR	Planned	Not before Apr 2016	Non-EEA	Yes, by only regulating rates for EEA	According to Draft decision only
	FTR	Planned	Not before Apr 2016	Non-EEA	Yes, by only regulating rates for EEA	According to Draft decision only
Switzerland	MTR	Yes	Dec 2015	Black List (countries that surcharge Swiss mobile)	Under assessment	
	FTR	No				



The EEA'S Discriminatory Telecommunications Termination Rates Violate the General Agreement on Trade in Services

Introduction

- One main cost component of connecting an international circuit from the United States to another country is the rate a foreign telecommunications operator charges a U.S. operator to "terminate" the call on the foreign operator's network and deliver it to the local consumer.
- The U.S. Trade Representative (USTR) has identified telecommunications termination rates as a foreign trade barrier imposed by European Union (EU) and European Economic Area (EEA) countries (hereinafter EEA).
- According to USTR, "several suppliers in EU Member States . . . are charging higher rates for the termination of international traffic originating outside the EU, or in some cases outside the European Economic Area . . . than for international traffic between sovereign states within the EU or EEA." These differential rates "do not appear to reflect incremental costs for termination of such traffic."
- The EEA's actions violate the GATS in three ways:
 - A fundamental principle of the WTO and the GATS is Most Favoured Nation (MFN). MFN (Article II) prohibits measures treating the service suppliers of one Member less favourably than any other.
 - Article 5(a) of the Annex on Telecommunications requires Members to "ensure that any service supplied of any other Member is accorded access to and use of public telecommunications transport networks and services on reasonable and non-discriminatory terms and conditions."
 - The Telecommunications Services Reference Paper, adhered to by all EEA countries, requires (Section 2.2) "major suppliers" to interconnect with rates being cost oriented, transparent, and reasonable.

Facts

- The (EU), its Member States and (EEA) countries are signatory Members of the WTO General Agreement on Trade in Services (GATS), and [took no relevant exemptions in the GATS telecom markets to these commitments.](#)
- A critically important telecommunications service here is cross-border termination, where networks of one service supplier are connected to another service supplier in a different country. Termination sometimes occurs between service suppliers of two EEA nations; in other cases, it occurs between a service supplier terminating traffic in an EEA country that originated outside the EEA, such as from the United States.
- A growing number of EEA carriers are charging higher (mobile and fixed) termination rates for telephone traffic originating outside the EEA as opposed to the regulated (cost-based) rates for traffic within it.
- This imbalance began with price increases in late 2014; additional increases have taken effect in 2015 and 2016.

- The EEA's rates clearly discriminate, contrary to the Annex's obligation that Members continue to ensure "access and use" of telecom networks on "reasonable and non-discriminatory terms."
- EEA Member States cannot justify higher rates for traffic originated outside the EEA. The fact that some countries, mostly in Africa, are charging very high termination rates does not excuse rate increases for the rest of the world. Nor does the absence of CLI on some foreign-originated calls increase the cost of routing, as certain EEA operators have claimed. There has been no cost or other fact-based analysis justifying the higher tariffs.
- Further clarifying the point, Annex 5(b) says "each Member shall ensure that service suppliers of other Members have access to and use of any public telecommunications transport network or service offered within or across the border of that Member" (emphasis added). See also *Mexico Case*, WT/DS204/R, ¶ 7.288.

The EEA's Actions Also Violate the Reference Paper on Basic Telecommunications

- The [Reference Paper](#), adhered to by the relevant parties here, specifically addresses cross-border interconnection between different suppliers of telecommunications networks (Section 2.1) (*Mexico Case* WT/DS204/R ¶ 5.48, 5.52).
- The Reference Paper requires (Section 2.2) "major suppliers" to interconnect:
 - At any technically feasible point;
 - Under non-discriminatory terms;
 - Including technical standards, and costs, no less favorable than provided to itself or to non-affiliated providers;
 - With rates being cost oriented, transparent, and reasonable.
- Many if not all of the terminating EEA carriers have been recognized under local law as having "significant market power", i.e., being "major suppliers." As set forth above, the terms of the cross-border interconnection are patently discriminatory.
- USTR made this very point in its [NTE Report](#), noting although EEA countries agreed to ensure "a major supplier is not able to gain an unfair competitive advantage from terminating foreign or competitive calls," several suppliers were charging higher rates for international termination despite the absence of any differences in incremental cost.
- As a result, the Members in which Verizon is seeking to interconnect are nullifying and impairing U.S. benefits under the Reference Paper by permitting different prices for EEA and non-EEA interconnection.
- Further, Members are likely using higher rates on non-EEA originated traffic to prolong low interconnection rates within the EEA – which could be considered anti-competitive cross-subsidization, forbidden by Section 1.2(a) of the Reference Paper.

Conclusion

- We believe that the EU/EEA's actions violate the GATS, Annex 5 and the Telecommunications Reference Paper.
- USTR already is aware of the issue and identified it as a concern in both in 2015 and again in 2016.
- The EU should remedy this situation rapidly to avoid the need to raise it further as a trade issue.