

**RÉSULTATS PUBLICS DE LA CONSULTATION PUBLIQUE NATIONALE  
DU 28 FÉVRIER 2017 AU 28 MARS 2017**

**PORTANT SUR L'ANALYSE RELATIVE AU MARCHÉ DE LA FOURNITURE EN GROS DE TERMINAISON D'APPEL  
VOCAL SUR RÉSEAUX MOBILES INDIVIDUELS  
(MARCHÉ 2/2014)**

**LUXEMBOURG, LE 18 AVRIL 2017**

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**SECTEUR COMMUNICATIONS ÉLECTRONIQUES**

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Le présent document clôture le processus de la consultation publique nationale du 28 février 2017 au 28 mars 2017 portant sur l'analyse relative au marché de la fourniture en gros de terminaison d'appel vocal sur réseaux mobiles individuels (Marché 2/2014).

En application de l'article 4(3) du règlement 13/168/ILR du 21 août 2013 relatif à la procédure de consultation instituée par l'article 78 de la loi du 27 février 2011 sur les réseaux et les services de communications électroniques, l'Institut tient à rappeler qu'il tient exclusivement compte des commentaires qu'il a reçus **durant la période de la consultation et qui se rapportent directement et uniquement au projet en question**.

Ainsi, tout commentaire reçu après ce délai, ou qui ne se rapporte pas strictement au projet soumis à une consultation publique ne saurait être pris en compte et ne fera donc **l'objet d'aucune publication** de la part de l'Institut.

L'Institut a reçu une contribution de la part de :

- Entreprise des postes et télécommunications (« EPT ») ;
- NV Verizon Belgium Luxembourg S.A. .

Le fait d'inclure ces commentaires dans ce document ne signifie nullement que l'Institut approuve ou désapprouve les opinions exprimées. L'Institut n'a pris en compte que les commentaires qui se rapportaient à l'étude en question. Les parties ne se rapportant pas au sujet spécifique qui étaient inclus dans les contributions n'ont pas été publiés.



Institut Luxembourgeois de  
Régulation  
Monsieur Luc Tapella  
Directeur  
17, rue du Fossé  
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Version non- confidentielle

**Dossier traité par :** Département Régulation Télécom  
& Analyse économique en collaboration avec les départements  
compétents de POST Technologies

**N.réf. :** T/2016/1298/R11  
**V.réf. :** /

Luxembourg, le 14 mars 2017

**Objet :** Réponse à la consultation publique portant sur le marché 2/2014

Monsieur le Directeur,

En date du 28 février 2017, l'ILR a lancé, à la suite de l'entrée de l'opérateur Eltrona Interdiffusion sur le marché de la téléphonie mobile, une consultation publique portant sur le marché de la fourniture en gros de terminaison d'appel vocal sur réseaux mobiles individuels (2/2014). Cette nouvelle consultation publique constitue une réanalyse de la situation sur ce marché, l'ILR ayant déjà réalisé une consultation publique du 21 novembre au 21 décembre 2016.

Etant donné que la seule modification apportée au document de consultation publique de fin 2016 consiste en l'ajout de l'opérateur Eltrona Interdiffusion à la liste des opérateurs qualifiés de « puissants » par l'ILR, POST n'a pas de commentaire particulier à formuler quant à ce nouveau document soumis à consultation et reproduit par conséquent ci-après la prise de position transmise à votre Institut par courrier en date du 16 décembre 2016.

### 1. Contexte général

Tout comme il l'avait fait dans le cadre du 2<sup>ème</sup> cycle d'analyse portant sur le marché 7/2007, l'ILR entend fixer un plafond tarifaire calculé en fonction des coûts pur LRIC d'un opérateur générique efficace au Luxembourg pour la prestation de terminaison d'appel. Alors que le plafond actuellement en vigueur s'élève à 0,97 ct€/min, l'ILR propose de l'abaisser 0,8924 ct€/min, soit une baisse de 8,00%.

### 2. Aspects méthodologiques et tarifaires

D'un point de vue méthodologique, l'ILR a mis à jour son modèle de coûts « pur LRIC », également utilisé lors du précédent cycle d'analyse du marché de la terminaison d'appel sur réseau mobile, sur base des données et informations récoltées auprès des opérateurs dans le cadre des précédentes étapes de cette analyse de marché.

**Annexe(s) :** /

- **Modèle de coûts**

Cette méthode de modélisation des coûts en « pur LRIC », selon laquelle seuls les coûts évitables sont pris en compte à l'exclusion des coûts communs, vise principalement à déterminer un prix en dessous duquel une tarification peut se transformer en une vente à perte. A la différence de la méthodologie « LRIC plus », l'approche « pur LRIC » ne tient absolument pas compte des coûts communs encourus par l'opérateur pour la terminaison sur son réseau mobile d'appels provenant d'autres réseaux.

Tout comme elle l'avait avancé dans ses contributions relatives au 2<sup>ème</sup> cycle d'analyse du marché dont il est ici question, POST est d'avis que l'application d'un modèle de coûts « pur LRIC » va bien au-delà de la finalité poursuivie par la régulation et est manifestement disproportionnée en ce qu'elle ne permet pas aux opérateurs de recouvrer les coûts réellement encourus dans le cadre de la prestation de terminaison d'appels sur leur réseau mobile. La mise en œuvre d'une approche « LRIC plus », permettant une allocation d'une partie des coûts qui ne sont pas directement liés au seul trafic de terminaison, serait ainsi à ses yeux plus appropriée.

- **Plafond tarifaire de 0,8924 ct€/min**

S'agissant du nouveau plafond tarifaire proposé par l'ILR, le niveau de 0,8924 ct/min placerait le Luxembourg à un niveau inférieur à celui en vigueur dans d'autres pays européens, dont la Belgique (1,18 ct/min), l'Espagne (1,09 ct/min), la Grèce (1,081 ct/min) et l'Italie (0,98 ct/min). Cela alors même que ces pays ont une taille incomparable à celle du Grand-Duché, bénéficiant ainsi d'économies d'échelles d'un autre niveau que celles dont bénéficient les opérateurs luxembourgeois. Notons par ailleurs que les tarifs précités sont eux également issus d'une méthodologie « LRIC pur ». Une différence méthodologique ne saurait donc expliquer ces niveaux plus élevés.

Ce niveau toujours plus faible des frais de terminaison mobile, alors même que les réseaux de téléphonie mobile nécessitent des investissements continus et conséquents afin de répondre aux besoins croissants des utilisateurs, notamment en termes de bande passante, risque de rendre difficilement finançables de tels investissements sans hausse des tarifs sur le marché de détail. Le consommateur final pourrait ainsi pâtir de la régulation tarifaire du marché de gros de la terminaison mobile, effet inverse de l'effet recherché par l'ILR.

Cela est d'autant plus le cas lorsque le plafond tarifaire sur le marché de gros ne permet plus aux opérateurs de recouvrer les coûts réels de terminaison mobile.

- **Analyse des Wholesale Commercial Costs (CCAdd)**

S'agissant des coûts commerciaux additionnels (CCAdd) que l'ILR entend prendre en compte en supplément des coûts de réseau alloués à la terminaison d'appels, POST se félicite que l'ILR ait adapté sa méthodologie afin de la rendre conforme aux recommandations de la Commission européenne, mais regrette néanmoins que l'ILR n'ait considéré que les seuls coûts de ressources humaines nécessaires à la fourniture des services de terminaison de gros sur réseau mobile. En effet, partant du constat que les opérateurs n'avaient pas été en mesure d'identifier quelle part de leurs autres coûts

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supportés dans le cadre de la terminaison d'appel (licences, facturation, maintenance, administration) relevait de la terminaison fixe et quelle part relevait de la terminaison mobile, l'ILR a décidé d'exclure purement et simplement l'intégralité de ces coûts alors qu'il aurait convenu d'en considérer une partie, sur base d'une estimation. Cette non-prise en compte aboutit de fait à un plafond tarifaire rendant impossible la couverture du véritable niveau de coûts encourus par un opérateur, aussi efficace soit-il.

Enfin, il s'avère que le régulateur n'a pas intégré, dans sa modélisation, de revalorisation des coûts de ressources humaines, aussi bien dans les coûts commerciaux additionnels que dans les OPEX, ces derniers étant en partie composé de coûts de main d'œuvre. Les coûts de ressources humaines sont donc supposés stables sur les 3 années sur lesquelles porte la modélisation (2017, 2018 et 2019), cela alors même que le Luxembourg se distingue des autres pays européens par le mécanisme d'indexation des salaires.

Cette stabilité des coûts RH est d'autant plus infondée qu'une nouvelle tranche indiciaire sera déclenchée début 2017 selon les dernières prévisions du STATEC, avec pour conséquence que le niveau des coûts RH considérés par l'ILR sera inférieur à la réalité avant même que le nouveau plafond tarifaire n'entre en vigueur. Cela étant, POST demande à l'ILR de bien vouloir intégrer un taux de revalorisation des coûts de ressources humaines en phase avec l'évolution des salaires au Luxembourg afin que la spécificité luxembourgeoise que constitue le mécanisme d'indexation des salaires soit prise en compte dans la modélisation compte tenu de l'évolution du coût de la vie. Cette adaptation est d'autant plus justifiée qu'un opérateur hypothétique efficace serait lui-aussi soumis à l'obligation d'indexer les rémunérations de ses salariés en cas de déclenchement d'une nouvelle tranche indiciaire.

- **Différentiation des tarifs de gros en fonction de l'origine des appels**

POST se félicite que l'ILR prévoit dans son projet de Règlement de différencier les tarifs de gros pour les prestations de terminaison d'appel sur réseau mobile pour les appels en provenance des pays ne faisant pas partie de l'EEE. En ce qui concerne l'obligation de fournir au régulateur des informations concernant le trafic émis vers ou reçu des opérateurs situés en dehors de l'EEE, POST propose de prévoir comme périodicité de fourniture de ces informations une base annuelle et non pas semestrielle, ceci pour des raisons d'organisation de collecte des données dans les systèmes.

- **Résultats des simulations réalisées par l'ILR (Réunion du 02/12/2016)**

Conformément aux modalités d'accès au modèle communiquées par l'ILR dans le cadre de cette consultation publique, POST a sollicité et obtenu une réunion en date du 02 décembre 2016 dans le but de tester la sensibilité du modèle de coûts de l'ILR à certains paramètres. Les résultats de ces simulations ont été consignés dans le compte-rendu de réunion rédigé par l'ILR.

Si, de manière générale, les résultats des simulations semblent cohérents aux yeux de POST, un résultat en particulier ne lui apparaît pas plausible. Il s'agit du résultat sortant du modèle pour un trafic voix et un trafic data représentant des volumes définis dans le scénario de base de l'ILR (cf. table 1 ci-dessous issu du compte-rendu transmis par l'ILR).

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En effet, alors que le scénario 1 correspondant à la prise en compte de seulement 1% des volumes voix et data du scénario de base de l'ILR aboutit à un MTR de [REDACTED], le scénario aboutit à un MTR de [REDACTED]. Au vu de ce qui s'apparente à une incohérence de résultats, POST demande à l'ILR de bien vouloir vérifier qu'il ne s'agit pas d'une erreur de retranscription dans le compte-rendu du résultat issu du modèle et, si tel n'est pas le cas, de lui expliquer les facteurs expliquant un tel résultat.

**a. Volume du trafic (chapitre 4.1.4)**

Table 1 : Modification du volume du trafic – Effets sur le coût de terminaison d'appel mobile [source: ILR, modèle de coûts mobile, 2016]

2016			
Nom du scénario	Trafic voix total	Trafic Data total	MTR [cents/min]
Ref. ILR TA	100%	114%	0.8924
Scénario 1	1%	1%	0.1828
Scénario 2	100%	1%	0.4737
Scénario 3	1%	100%	0.6009
Scénario 4	20%	20%	0.4426
Scénario 5	40%	40%	0.4165

Source : ILR\_Compte-rendu de la réunion de simulation du 2 décembre 2016 à l'ILR.

Par ailleurs, POST est d'avis que la durée de vie prévue par l'ILR pour certains éléments de réseau est trop élevée par rapport à la situation réelle du terrain ce qui, par le biais d'amortissements moindres par rapport à ce qu'ils devraient être, se traduit par un MTR inférieur à celui qui serait obtenu en prenant les véritables durées de vie.

POST renvoie ainsi aux tableaux 11 et 12 ci-dessous repris du compte-rendu de l'ILR. Le scénario 1 présenté au tableau 12 reprend les durées de vie effectivement d'application chez POST. En le comparant au scénario de base retenu par l'ILR (Ref ILR TA), on s'aperçoit d'une différence :

- de 3 années pour les équipements suivants : BSC Hardware, RNC Hardware, RNC ports, PCU BSC, SGSN, GGSN ;
- d'une année pour d'autres équipements : MSC call server, Media Gateway, les ports, HLR, AUC, SMSC et l'IN.

Comme cela apparaît au tableau 11 ci-dessous, cette surestimation des durées de vie se traduit par une diminution du MTR de l'ordre de [REDACTED]. Cela étant, POST demande à l'ILR de bien vouloir reconsidérer les durées de vie prévues pour ces équipements dans son modèle afin que celles-ci reflètent la situation prévalant réellement sur le terrain.



Table 11 : Résultats concernant la modification de la durée de vie des éléments de réseau [source: ILR, modèle de coûts mobile, 2016]

2016	
Nom du scénario	MTR [€cents/min]
Ref ILR TA	0.8924
Scénario 1	0.9207

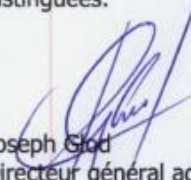
Source : ILR\_Compte-rendu de la réunion de simulation du 2 décembre 2016 à l'ILR.

Table 12 : Modification de la durée de vie des éléments de réseau [source: ILR, modèle de coûts mobile, 2016]

Network asset	Ref ILR TA	Scénario 1
Sites	18	18
Equipment	8	8
TRX/Carrier	8	8
BSC Site	18	18
RNC Site	18	18
BSC Hardware	8	5
BSC Software	5	5
RNC Hardware	8	5
RNC Software	5	5
BSC Ports	8	5
RNC Ports	8	5
PCU BSC	8	5
MSC Call server	8	7
Media Gateway	8	7
Ports	8	7
Core Sites	18	18
HLR	8	7
AUC	8	7
EIR	6	6
LER/LSR	8	8
SMSC	8	7
SGSN	8	5
GGSN	8	5
IC Interface	8	8
Network Mngt Sys	8	8
IN	6	5
Aggregation sys	8	8
Aggregation sys port	8	8
Radio links	8	8

Source : ILR\_Compte-rendu de la réunion de simulation du 2 décembre 2016 à l'ILR.

En vous remerciant par avance pour la suite favorable que vous voudrez bien réserver à nos doléances et en vous assurant que les équipes de POST se tiennent à la disposition des vôtres pour toute question complémentaire quant aux éléments développés ci-avant, je vous prie d'agréer, Monsieur le Directeur, l'expression de mes salutations les plus distinguées.

A handwritten signature in blue ink, appearing to be 'Joseph Glod', written over the typed name.

Joseph Glod  
Directeur général adjoint

3/17/2017

RE: Draft market analysis decision MTR / response Verizon - Glangé Steve

## RE: Draft market analysis decision MTR / response Verizon

Eijberts, Charlotte A <charlotte.eijberts@nl.verizon.com>

Fri 17/03/2017 15:17

To: analyse-marches <analyse-marches@ilr.lu>;

Cc: Rosendaal, Rob <rob.rosendaal@nl.verizon.com>;

Categories: Analyse de Marche; M2; Tours\_03

📎 3 attachments

2016.10.20 Letter to BEREC.PDF; Verizon position paper on termination rate differentiation - September 2....pdf; 2016.12.16 VZ

Observations LU MTR.PDF;

Dear Sir/Madam,

On behalf of NV Verizon Belgium Luxembourg SA (Verizon), I hereby resend our response to the consultation related to ILR's 3rd Round Market Review / Wholesale call termination on individual mobile networks. The new version of the draft market analysis decision did not give rise to alterations in our previous response. This response does not contain any confidential information.

It goes without saying that, if needed, I would be happy to discuss our response in more detail during a meeting or a conference call.

Kind regards,

**verizon**✓

Charlotte Eijberts  
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**From:** Eijberts, Charlotte A  
**Sent:** Friday, December 16, 2016 5:32 PM  
**To:** Glangé Steve (Steve.Glange@ilr.lu); 'tom.mannes@ilr.lu'; 'Besch Jérôme'  
**Cc:** Rosendaal, Rob; Hugueny, Pascal  
**Subject:** Draft market analysis decision MTR / response Verizon

Dear Mr. Mannes, Mr. Glangé and Mr. Besch,

On behalf of NV Verizon Belgium Luxembourg SA (Verizon), I hereby send you our response to the consultation related to ILR's 3rd Round Market Review / Wholesale call termination on individual mobile networks. This response does not contain any confidential information.

<https://webmail.ilr.lu/owa/#viewmodel=ReadMessageItem&ItemID=AAMkAGY1NjhmNGNmLWFjMDMtNDkwMS04NDI4LTEzOGJmYWUwOWY2NQBL...> 1/2



3/17/2017

RE: Draft market analysis decision MTR / response Verizon - Glangé Steve

For the sake of completeness, I will also send this message (excluding annexes) by fax to the general number of ILR.

It goes without saying that, if needed, I would be happy to discuss our response in more detail during a meeting or a conference call.

Yours sincerely,

**verizon**✓

Charlotte Eijberts  
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<https://webmail.ilr.lu/owa/#viewmodel=ReadMessageItem&ItemID=AAMkAGY1NjhmNGNmLWFjMDMtNDkwMS04NDI4LTEzOGJmYWUwOWY2NQBL...> 2/2



## **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.

*September 2016*

## Annex 1 – Country Overview



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 BURIC 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	Q4 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 BURIC implementation
	FTR	Yes (but only Proximus)	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
Bulgaria	MTR	Yes	Jul 2016	Non-EEA	Under assessment	Lower surcharge for US origination from Vivacom BTC and Mtel
	FTR	Yes	Jul 2016	Non-EEA	Under assessment	Lower surcharge for US origination
Croatia	MTR	Yes	Apr 2013	Non-EEA	Yes, by only regulating rates for EEA	
	FTR	Yes	Apr 2013	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				
Estonia	MTR	Yes	Jun 2016	Non-EEA	Under assessment	
	FTR	TBC	TBC	TBC	Under assessment	
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	Orange and BouygTel still applying surcharge on FTR for non-EEA including US origination. SFR and Free exclude US
Germany	MTR	Yes (but only E+ and O2)	Feb 2013	Black List (Serbia, Morocco, Russia, Turkey, Ukraine)	No - but BNetzA might allow operators to block traffic from specific countries under certain conditions, with prior approval	E+ & O2 consider their approach in line with the market analyses of BNetzA; MTR Market Review currently underway
	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				
Latvia	MTR	Yes	July 2016	Non-EEA	Under assessment	
	FTR	Yes	July 2016	Non-EEA	Under assessment	
Lithuania	MTR	Yes	Jan 2016	Non-EEA	Under assessment	
	FTR	Yes	Jan 2016	Non-EEA	Under assessment	
Luxembourg	MTR	No				
	FTR	No				Introduction of surcharge considered under ongoing 3rd round Market Review
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				
Slovenia	MTR	Yes	Jun 2016	Non-EEA	Under assessment	Lower surcharge for US origination from Telekom Slovenije (PTT)
	FTR	Yes	Jun 2016	Non-EEA	Under assessment	Lower surcharge for US origination from Telekom Slovenije (PTT)
Spain	MTR	No	sept-16	Non-EEA, except US & Canada	Under assessment	Surcharge applied by Orange Mobile Spain only to date
	FTR	No				
Sweden	MTR	No			No	regulated MTRs also apply to traffic that originates from outside the EU/EEA
	FTR	No			No	regulated FTRs also apply to traffic that originates from outside the EU/EEA
United Kingdom	MTR	No				
	FTR	No				
EEA: European Economic Area = European Union + Iceland, Lichtenstein, Norway (Switzerland membership not ratified)						
Bosnia	MTR	Planned		TBD		
	FTR	Planned		TBD		
Norway	MTR	Planned		Non-EEA	Yes, by only regulating rates for EEA	
	FTR	Planned		Non-EEA	Yes, by only regulating rates for EEA	
Switzerland	MTR	Yes	Dec 2013	Black List (countries that surcharge Swiss mobile origination - US exempt)	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.



- EEA termination rates for traffic originating outside the EEA have risen to as much as € 0.3450 (Portugal Mobile). By comparison, the average termination rate for traffic from the EEA to US is € 0.003. There is no cost justification for the higher termination rates on non-EEA originated traffic.
- The Office of the United States Trade Representative has singled out this discrimination in 2015 and again in 2016. Unequal termination charges “raise concerns” about the EU’s compliance with GATS and the Telecommunications Annex, see [USTR 2015 Section 1377 Report](#) at 11-14, and “appear to endorse, explicitly or implicitly, a two-tier approach to the termination of international traffic”, in violation of the Reference Paper, see [USTR 2016 National Trade Estimates \(NTE\) Report](#) at 165.

## Arguments

### ***These Discriminatory Interconnection Rates Violate GATS Article II MFN***

- Differential interconnection rates are *prima facie* evidence of disparate treatment of GATS Members, in violation of MFN treatment, nullifying and impairing the benefits of other WTO Members.
- Interconnection is a basic telecommunications service covered by GATS Article II. See *Mexico – Measures Affecting Telecommunications Services*, [WT/DS204/R](#), ¶¶ 7.277-88 (April 2, 2004) (where principal issue concerned Telecom Reference Paper) (hereinafter “*Mexico Case*”).
- The EEA’s actions constitute “measures” under Art I(3) of the GATS:
  - The European Commission’s Recommendation on Fixed and Mobile Termination Rates ([2009/396/EC](#)) required harmonization and common cost-based approach for setting termination rates within the EU, while omitting any mention of external rates. This is itself a “measure”, to the extent it failed to prevent violations of MFN.<sup>1</sup>
  - Following that, some national EU telecoms regulators (Croatia, Czech, Portugal, Poland, etc.) - with the implicit consent of the European Commission - approved clear “measures” i.e. termination rates less favorable for traffic originated outside the EEA than the regulated (cost-based) rates for traffic originated inside the EEA.

### ***The EEA’s Actions Violate Article 5 of the Annex on Telecommunications***

- The EEA’s actions also violate Article 5(a) of the [Annex on Telecommunications](#), which 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 term ‘non-discriminatory’ is understood to refer to most-favored-nation and national treatment as defined in the Agreement, as well as to reflect service-specific usage of the term to mean “terms and conditions no less favorable than those to any other user of like public transport networks or services under like circumstances.” (Telecom. Annex, Art. 5(a) n.15.)

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<sup>1</sup> Under GATT and GATS precedent, a “measure” also encompasses a Member’s failure to act to prevent a violation. *Guatemala – Cement*, [WT/DS60/AB/R](#), ¶ 69 n.47 (Nov. 2, 1998) (GATT) ([a] measure can . . . be an omission or a failure to act on the part of a Member.) (citations omitted). Similarly, “de facto” actions can constitute a measure. *European Commission – Biotech Products*, [WT/DS291/R](#), ¶ 4.254 (Sep. 20, 2006) (panel report).

- 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.

September 2016

BEREC  
BEREC Chair Dr. Wilhelm Eschweiler  
Zigfrida Annas Meierovica boulevard 14  
LV-1050 Riga  
Latvia

Amsterdam, 20 October 2016,

Dear Dr. Eschweiler,

Until recently National Regulatory Authorities (NRAs) in the European Union (EU) have successfully managed to reduce rates for voice calls terminated on fixed and mobile networks. Unfortunately, over the last couple of years, an increasing number of NRAs have allowed operators to charge higher differential termination rates for calls originating outside the European Economic Area (EEA) than the cost-oriented rates that must be charged for calls originating inside the EEA. This approach appears to be aimed at addressing the discrepancy between the termination rates paid and received by European operators when they exchange traffic with operators in some specific countries outside the EEA.

As a result a growing number of European operators (fixed and mobile) are now charging such differential rates for calls originating outside the EEA. This includes operators in Belgium, Bulgaria, Croatia, the Czech Republic, Estonia, France, Greece, Hungary, Italy, Latvia, Lithuania, Poland, Portugal and Slovenia. In most instances these operators not only charge these differential rates for calls originating in countries where operators also charge high termination rates but also for calls originating in countries where operators historically charge very low termination rates, such as the United States (US). For Verizon this has resulted in substantial cost increases for its US originating traffic to the EEA, which we consider completely unjustified.

Verizon believes that these practices are not compliant with EU telecommunication and EU competition rules or with the General Agreement on Trade in Service (GATS). They should therefore be stopped and forbidden. The attached Verizon position paper provides more background on why we believe this to be the case.

Unfortunately so far there is an inconsistent approach among NRAs across Europe. NRAs have adopted conflicting positions that result in an unpredictable and fragmented approach across the EU leaving operators like Verizon in legal



uncertainty. Indeed a small group of NRAs rightfully forbids differentiation on the basis that regulated rates must apply to all traffic irrespective of where the call originates. A second and growing group of NRAs however allows differentiation without restrictions while a third group of NRAs only allows differentiation on the basis of reciprocity. Finally, one NRA recently decided that differentiation as such is not allowed but that operators might block traffic from specific countries under certain conditions and having received prior NRA approval.

Although the European Commission, with the support of BEREC, recently strongly opposed a proposal from Austrian NRA TKK for allowing differentiated rates within the EU, so far they have not taken any official views on differentiation of rates for non EEA originating calls.

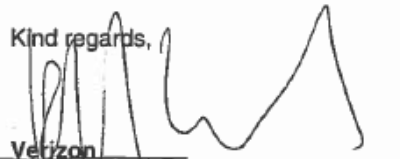
In light of BEREC's mission to ensure high-quality regulation of electronic communications markets and a consistent application of the EU regulatory framework, we encourage BEREC to work towards consistent positions across its members, particularly when these members may well act in breach of not only the EU telecommunications framework but also EU competition rules and even the GATS. These positions moreover negatively impact the development of the European internal market.

We note that BEREC's 2015 work programme included an action item to define the regulatory perspective on termination of calls originated outside the EEA. As we have not seen the deliverables, perhaps this item should be completed in 2016 or early 2017 to clarify the situation.

In line with our exchanges in Bonn, Verizon looks forward to hearing BEREC's feedback on its position on the regulatory treatment of calls originating outside the EEA, taking into account the EU telecommunication rules, EU competition rules and the GATS.

Please don't hesitate to contact us to discuss the matter further with you and your BEREC experts.

Kind regards,



Verizon

Rob Rosendaal

Executive Director Regulatory and Government Affairs Europe

**Attachment:** Verizon Position Paper "Why Charging Higher than Regulated Termination Rates to Traffic Originating Outside the European Economic Area (EEA) is Not Justified"

## Verizon reaction to ILR Troisième Tour d'Analyse des Marchés

### Fourniture en gros de terminaison d'appel vocal sur réseaux mobiles individuels (2/2014)

16 December 2016

#### I. INTRODUCTION

1. NV Verizon Belgium Luxembourg SA (**Verizon**) welcomes the opportunity to respond to the consultation related to ILR's 3rd Round Market Review / Wholesale call termination on individual mobile networks [*« Troisième Tour d'Analyse des Marchés – Fourniture en gros de terminaison d'appel vocal sur réseaux mobiles individuels (2/2014) »*].
2. Verizon welcomes the fact that ILR is applying the pure BULRIC methodology to calculate the applicable mobile termination rates. By doing so, ILR is rightfully following the Recommendation of the European Commission<sup>1</sup>. In the view of Verizon this strengthens the European internal market, while diminishing thresholds of international (mobile and fixed) operators to enter the European and/or national (Luxembourgish) market.
3. Verizon limits its further comments to the circumstance that ILR creates the possibility for mobile network operators in Luxembourg to apply higher termination rates for calls that originate outside the EU / EEA compared to the calls originating within the EU / EEA. This has been laid down in section 10.4 of the consultation document ("*10.4 Obligations liées à la récupération des coûts et au contrôle des prix*"), and more precisely subsection "*10.4.2 Etendue de l'obligation*".
4. Below, Verizon first discusses the legal framework (**II.A**), and the principles connected to cost based regulation (**II.B**). We then elaborate on the different forms of differentiation (**II.C**). In the third paragraph (**III**) remarks are made on the proposal with regard to reporting. The conclusions can be found in Paragraph **IV**.

#### II. DIFFERENTIATION OF TERMINATION RATES IS UNJUSTIFIED

##### A. Applicable legal framework

5. 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 the Area. Verizon strongly believes that such differential rates are unjustified, damaging, and are violating the EU telecommunications rules, general competition rules and the WTO General

<sup>1</sup> Commission Recommendation of 7 May 2009 on the Regulatory Treatment of Fixed and Mobile Termination Rates in the EU (2009/396/EC).

Agreement on Trade in Services (GATS). Hereinafter Verizon only focuses on the EU telecommunication rules.

6. The European Telecoms Regulatory Framework in our view does not support differentiation between rates for call originating inside versus outside the EEA. This has been made clear in the Explanatory Note, in which the European Commission states: *"In line with a technology-neutral approach, the wholesale fixed termination market comprises termination on PSTN and IP networks, and the wholesale mobile termination market comprises all mobile network topologies, (...) and, if appropriate, any other networks operated in the Member States (...). It includes call termination irrespective of where the call originates (national, international, fixed and mobile)."*<sup>2</sup> (Underlining added). This determination is clear and applies ubiquitously to calls originating outside the EEA. For this reason, Verizon deems the proposal of ILR to differentiate a violation of the objectives of the Framework.
7. Verizon has further substantiated this point in the Position Paper (attached). We also made our point of view known to BEREC. The letter to BEREC that we wrote in this regard is also attached.

#### **B. Cost based regulation**

8. The European Regulatory Framework lays down that a market analysis decision is built upon three "cornerstones", (in short) (i) the market definition, (ii) (possible) finding of Significant Market Power and (iii) (possibly) remedies. In the case of the market for mobile termination, the market definition is bound to each terminating operator's network. The terminating operator is considered to have SMP. Cost-based rates regulation and non-discrimination obligations are deemed to be proportionate and necessary to remedy (possible) competition concerns.
9. ILR proposes to apply cost-based rates regulation, while allowing differentiation. It must be noted that termination services are agnostic regardless of where the call originates. Consequently, (cost based) price regulation can only take the costs of the service provided by the dominant operator into account, irrespective from where the calls originate. The European regulatory system of applying cost regulation does simply not allow for an exemption based upon the costs that operators outside the EEA charge for the termination of calls. The proposal of ILR to allow differentiation is infringing the European Telecoms Regulatory Framework.

#### **C. Forms of differentiation**

10. In general, differentiation of termination rates 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 "least bad" of the two evils is "reciprocity", a more targeted approach exclusively addressing the traffic originating in countries that themselves charge higher termination rates than the regulated cost-based rates set in the country where the traffic terminates, while applying the cost-based regulated rates to traffic from countries where rates are at par

<sup>2</sup> Explanatory Note accompanying the document Commission Recommendation on relevant product and service markets within the electronic communications sector, 9 October 2014, SWD(2014) 298, p. 28.



with the in-country regulated rates or below. If we understand it correctly ILR is in favor of the second approach.

11. Regardless of its form, differentiation boils down to an unfair and discriminatory practice, in particular with the “fishing net” approach when such increased rates even apply to traffic from countries where termination rates do not seriously exceed the regulated EEA rates or are even lower, the US being a typical example. It substantially raises the costs for US providers, such as Verizon, for US originating traffic to the EEA (incl. Luxembourg) and affects the ability to provide affordable voice services to US customers calling the EEA (incl. Luxembourg).
12. 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.

#### **The “Reciprocity” Approach**

13. If we understand correctly ILR intends to use the “reciprocity” approach and to allow operators to charge different termination rates than those based on pure BU-LRIC for calls originating in non-EEA countries, where termination rates exceed the level of the regulated Luxembourg rate.<sup>3</sup> In such an approach the differentiated rate may never exceed the termination rate that is applied in the country where the traffic originates.
14. ILR justifies this approach referring to the circumstance that the imbalance between the costs regarding certain destinations is significant. ILR notes that “[f]or these destinations, which vary from one operator to another, the Institute considers that it is justified and necessary for operators to have the possibility to charge another termination tariff so that the existing financial imbalance weakens.” ILR refers to Chapter 6 of its draft decision for further support with regard to the financial imbalance. Verizon questions the impact of this imbalance. From Chapter 6 it follows that the two largest destinations for outgoing calls are China and the US, countries that apply low and non-differentiated termination rates. On the basis of a “reciprocity” approach differentiation of rates for traffic originating in this type of countries would not be allowed. Verizon therefore strongly requests ILR to reassess the actual imbalance for these countries and to clarify that differentiation will never be allowed for traffic originating in countries that apply rates at par or below the regulated Luxembourg rates, such as the US.
15. 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, we prefer such a “reciprocity” approach over the “fishing net” approach. As we said, it is the least worse of two evils. Verizon notes that ILR chose not to repeat this statement in the highlighted red conclusion of the paragraph. For the sake of clarity, Verizon requests ILR to explicitly add that differentiation will only be allowed on a reciprocal basis, in order to prevent any (possible future) discussion to this regard.

<sup>3</sup> This approach is also supported e.g. by the French NRA ARCEP.

16. Some may object that such reciprocal pricing could lead to higher prices 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” approach which carries the risk that “not to be targeted” carriers will retaliate and further increase their termination prices in a negative upward spiral.

**Plus BULRIC / Transit providers**

17. Against the background of the principle of reciprocity, ILR also identifies two situations in which higher rates are being charged than the rates as regulated in Luxembourg. ILR states that also for these situations it (apparently) wishes to address the financial imbalance. ILR distinguishes :
- (i) EEA-countries in which the NRA applies the Plus BULRIC model;<sup>4</sup>
  - (ii) “transit operators with a presence in Europe”<sup>5</sup>.
18. The approach of ILR has invoked questions on the side of the Verizon. With regard to these categories we refer to the general principles as meant under the European Telecoms Regulatory Framework and Union law in general. We will elaborate further on this.
19. With regard to the first category, ILR notes that it is not necessary to allow differentiation, and thus reverts from applying the principle of reciprocity. ILR deems the imbalance not to be significant. It further notes that the imbalance should be resolved soon due to further harmonization in the EU.<sup>6</sup> Verizon wonders how this approach relates to the earlier approaches of the Commission. The Commission has in a similar circumstance decided that “every differentiation of termination based on the origin of the call is unjustified as the termination of a call appears to be technically and economically the same service, independent of whether the call originates in an EEA country that applies a pure BU-LRIC or another costing approach.”<sup>7</sup> (underlining added) It seems to Verizon that ILR does not have the competence to allow for differentiation traffic originating within the EEA, even if it would want to allow this.
20. Also with regard to the second category (ii) above Verizon is left with questions. As ILR allows differentiation with regard to non-EEA originating traffic (indirectly) terminated by the transit operator with a presence in Europe, Verizon wonders if ILR could be said to restrict the freedom to provide services and thereby possibly unjustly invoking frontiers within the EEA. This might also infringe the non-discrimination principle as provided in Article 8(5)(b) of the Framework Directive. Verizon questions whether ILR has the competence to allow differentiation in the second category.

<sup>4</sup> Draft MA-decision MTR, Para. 403.

<sup>5</sup> Draft MA-decision MTR, Para. 405.

<sup>6</sup> Draft MA-decision MTR, Para. 403.

<sup>7</sup> Commission Recommendation of 25 July 2016, in accordance with Article 7a of 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”) in Case AT/2016/1846: Wholesale call termination on individual public telephone networks provided at a fixed location in Austria and in Case AT/2016/1847: Wholesale voice call termination on individual mobile networks in Austria, TKK, C(2016) 4674 final, para. 46 and further.

### III. ADDITIONAL REGULATORY REPORTING REQUIREMENT

21. In item (410) of the consultation document, ILR indicates its intention to impose to SMP operators an additional obligation to report information on traffic volumes exchanged with countries outside the EEA and prices applied, on a regular basis twice a year.
22. Verizon believes that this requirement should only apply to providers that differentiate rates and not to providers that apply the regulated rate to all traffic no matter where it comes from. We also believe that ILR should apply a threshold, for example of [x] million euro of voice revenues per year, as it would create a disproportionate burden for providers that only have a relatively small voice business in Luxembourg. Item (414) should be amended accordingly.

### IV. CONCLUSIONS

23. Verizon strongly recommends that ILR does not allow differential rates based on the origination of traffic. Verizon considers that the implementation of such differential rates are unjustified, damaging, and may well be violating general competition rules and the WTO General Agreement on Trade in Services (GATS). The EU telecommunications rules are being infringed as (i) the European Commission does not foresee in differentiation based upon the origin of traffic in its Explanatory Memorandum and (ii) the European Telecoms Regulatory Framework does not leave room for non-costs based factors when imposing cost based remedies.
24. ILR seems to be willing to allow differentiation but only on a reciprocal basis. Verizon also strongly prefers a "reciprocity" approach that only targets countries that apply too high rates themselves while leaving countries with low rates (such as the US) untouched over an unrestricted approach in which every country outside the EEA could be targeted. The "reciprocity" approach is not only much fairer, it also strongly mitigates risks of an upward spiral of termination rates across the globe. **We however request ILR to make it somewhat more explicit in the decision that differentiation will indeed only be allowed on a reciprocal basis; hand in hand with a clarification that what matters is not the question whether there is a traffic volume imbalance between countries but whether there is an imbalance in the level of the applicable termination rates.**
25. Verizon questions whether the suggested for transit operators with a presence in Europe, by which non-EEA operators could circumvent differentiation, does not constitute a restriction to the freedom to provide services as meant under Union law which possibly cannot be justified.
26. Finally, we recommend that additional regulatory reporting requirements should only be imposed on operators that decide to differentiate rates for certain countries outside the EEA and not for operators that do not differentiate. We also believe a threshold should be introduced to avoid the reporting creates a disproportionate burden for relatively small providers.

\* \* \* \*



**Enclosed:**

Letter to BEREC, 20 October 2016.

Position paper, *Why Charging Higher than Regulated Termination Rates to Traffic Originating Outside the European Economic Area (EEA) is Not Justified*, September 2016, plus Annexes.

Annex 1: Country Overview.

Annex 2: Position paper, *The EEA'S Discriminatory Telecommunications Termination Rates Violate the General Agreement on Trade in Services*, September 2016.