



Experience and Results of EU Market Analysis System

SEE Observatory Forum 4, Istanbul, November 8 & 9, 2007

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Outline

- Background on Market Analysis procedure
- Current status
- Experience in two markets
 - Fixed call termination (market 9)
 - Mobile call termination (market 16)
- Review proposals due November 13, 2007

Market Analysis

1. Definition of relevant product/service market & geographic scope
2. Competition assessment & identification of SMP operators
3. Imposition of remedies on SMP operators

Step 1 – Market Definition

- › European Commission Recommendation on Relevant Markets
- › Three criteria test
 - › High and non-transitory entry barriers
 - › Market does not tend towards effective competition over time
 - › Competition law not sufficient to regulate market
- › Analysis of demand- and supply-side substitutability of products/services at retail and wholesale level

Recommendation on Relevant Markets – Retail markets

1. Access to fixed network for residential customers
2. Access to fixed network for business customers
3. Fixed local & national calls for residential customers
4. Fixed international calls for residential customers
5. Fixed local & national calls for business customers
6. Fixed international calls for business customers
7. Leased lines (up to and including 2 Mbps)

Recommendation on Relevant Markets - Wholesale markets

8. Fixed call origination
9. Fixed call termination on individual networks
10. Fixed transit services
11. Local loop unbundling (copper loops only)
12. Wholesale broadband access
13. Terminating segments of leased lines
14. Trunk segments of leased lines
15. Mobile access and call origination
16. Mobile voice call termination on individual networks
17. International roaming on public mobile networks
18. Broadcasting transmission services

Step 2 – Competition Assessment

- › Significant Market Power (SMP) based on competition law concept of dominance
 - › *An undertaking that either individually, or jointly with others, enjoys a position of economic strength affording it the power to behave to an appreciable extent independently of competitors, customers and ultimately consumers*
- › Single firm dominance
 - › Market share (usually above 40%)
 - › Other criteria
- › Collective dominance - Few cases, difficult to prove

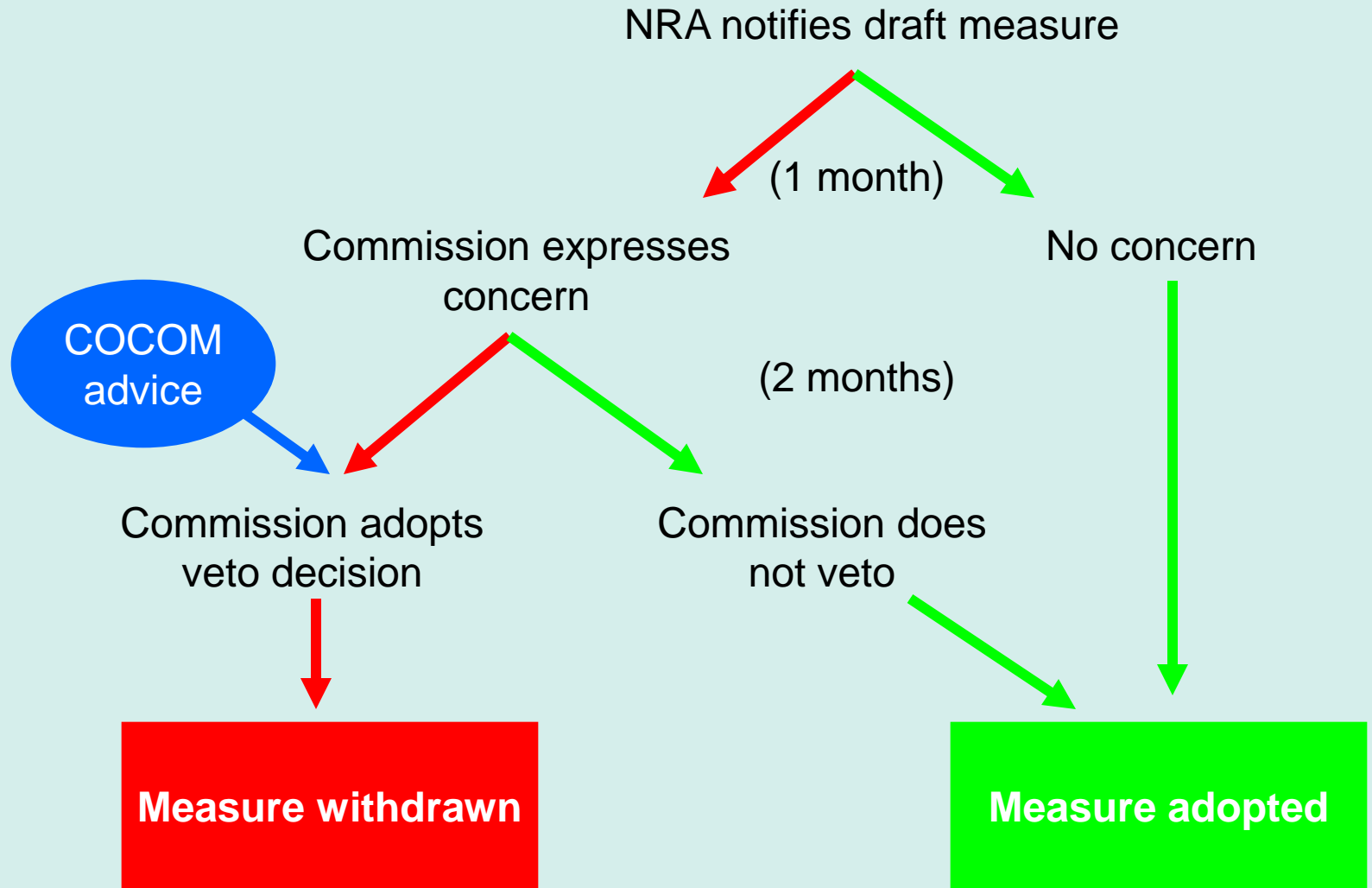
Step 3 – Selection of Remedies

- › Regulation of retail services only where wholesale regulation not sufficient
- › Menu of wholesale obligations listed in Access Directive
 - › Transparency (Article 9)
 - › Non-discrimination (Article 10)
 - › Accounting separation (Article 11)
 - › Access (Article 12)
 - › Price control and cost accounting (Article 13)

Step 3 – Selection of Remedies

- › Retail obligations, examples listed in Universal Service Directive (Article 17)
 - › Prohibition of excessive/predatory pricing
 - › No undue preference to specific end-users
 - › Not unreasonably bundle services
 - › Retail tariff regulation (price cap, control of individual tariffs, cost orientation of tariffs)
 - › Cost accounting where retail tariff regulation
- › Minimum set of leased lines (Article 18)
- › Carrier Selection / Pre-Selection (Article 19)

Article 7 Notification Procedure



European Commission Veto

- › Applies to:
 - › Market definitions deviating from Recommendation
 - › Designation (or not) of SMP operators
 - › NO veto over remedies

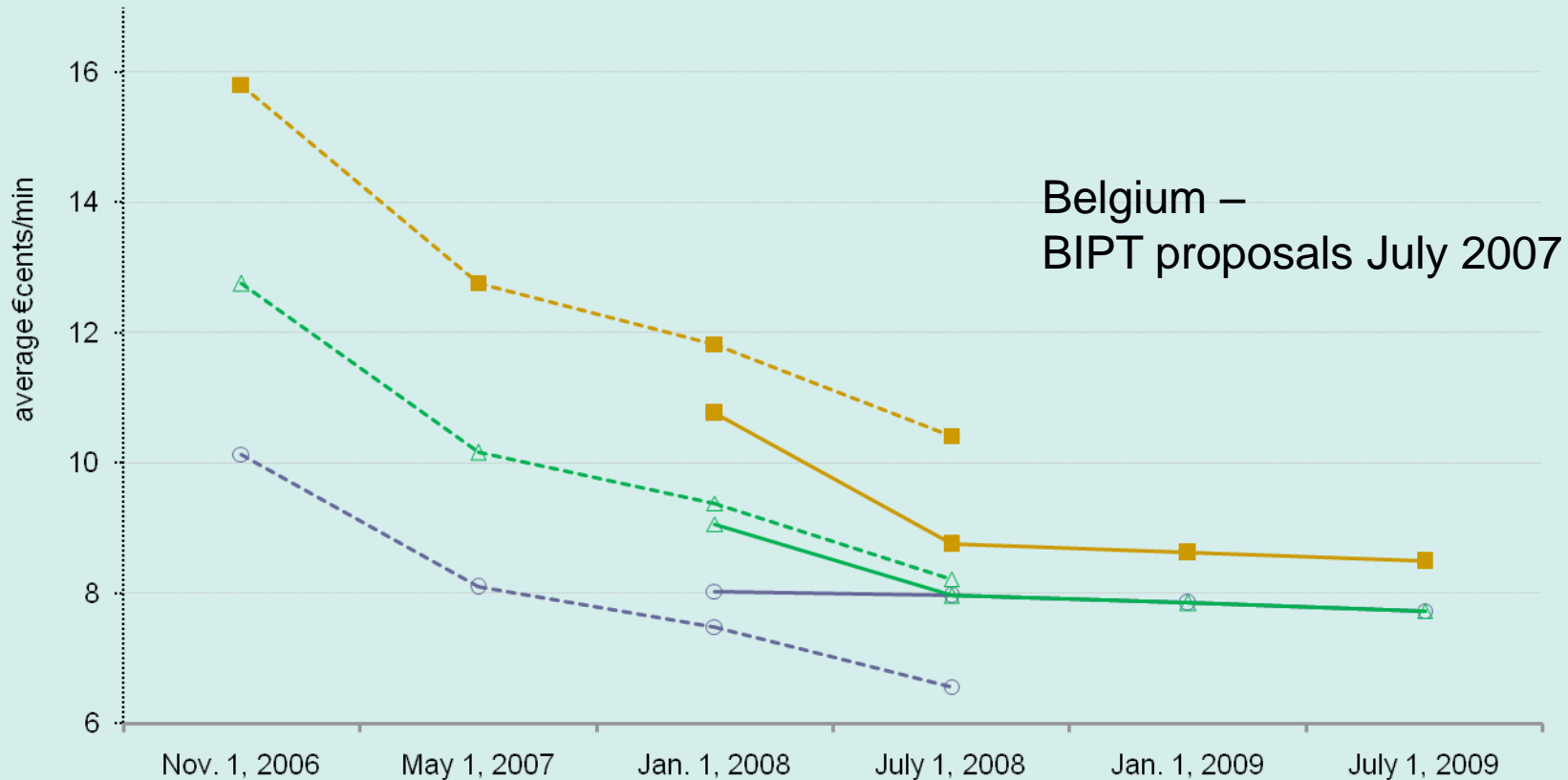
First Round of Market Analysis – Summary

- › Most EU-25 NRAs finished or near to finishing
- › Lower completion rate for Markets 17 & 18
- › No SMP in Markets 3-6, 10, 14 & 15 in some countries, but no universal trend
- › Divergence in detail of remedies imposed by NRAs, in particular cost orientation & price control
- › Number of NRAs started second round, some near to finishing

Fixed Call Termination – How to regulate Alternative Network Operators?

No reciprocity	Strict reciprocity
Charges of (all) ANOs are not regulated: DK, FI, IE, LU, CH	ANOs' charges equivalent to incumbent's current charges (unless explicitly proved higher cost-base allowing higher charges):
Charges of ANOs are regulated based on incumbent's current charge plus X per cent/eurocent mark-up: BE, DE	AT, NO, SE (before NRA decision overturned by court), UK
<i>'Delayed reciprocity'</i> (version 1) – ANOs' rates will fall into line with the incumbent's rate at end of a glide path: IT, IE (proposed), LU (proposed)	
<i>'Delayed reciprocity'</i> (version 2) – ANOs' rates are set at incumbent's rates X years before (plus Y% mark-up), but no convergence to reciprocity over time: FR (Neuf Telecom case), GR, NL, PT, ES	

Asymmetry of MTRs – Belgium



—○— Belgacom Mobile (from July 2008)

—△— Mobistar (from July 2008)

—■— Base (from July 2008)

- -○- - Belgacom Mobile (1st decision)

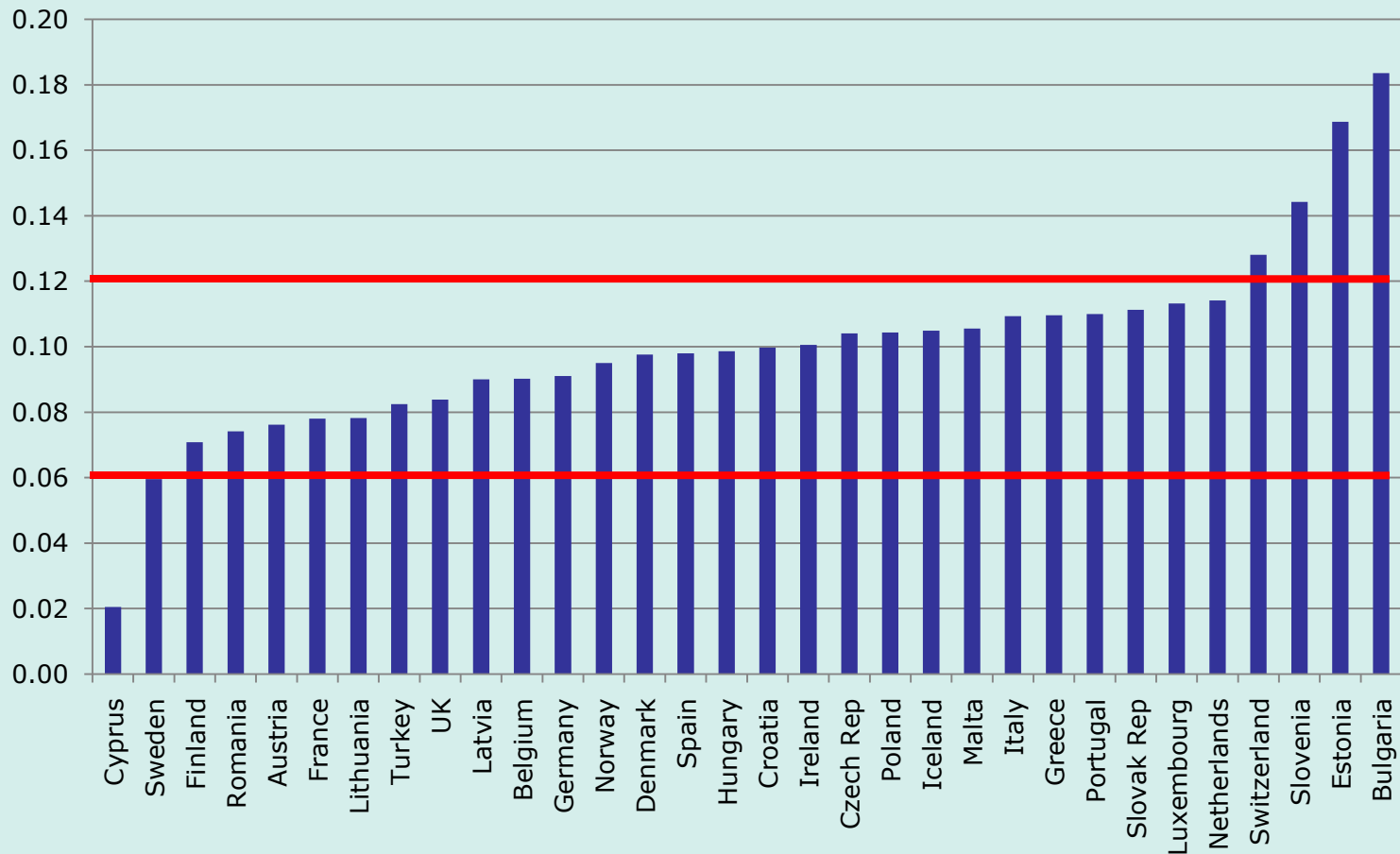
- -△- - Mobistar (1st decision)

- -■- - Base (1st decision)

Asymmetry of MTRs – European Commission's view

- › MTRs should reflect cost of an efficient operator
- › Asymmetries should only reflect cost differences outside control of operator
 - › Network costs (e.g. due to radio spectrum assignment, 900 vs.1800 MHz)
 - › Later market entry (and therefore lower economies of scale)
- › Asymmetries should be phased out over time

Average MTR per country July 2007 (€/min)



Source: ERG MTR Snapshot (ERG (07) 61)

Harmonised approach to setting MTRs across Europe?

- › European Commission
 - › Concern about Single Market
 - › Why do operators in some Member States pay substantially higher MTRs than in others?

- › ERG Best Practices on cost orientation and international benchmarking (due 2Q 2008):
 - › Cost accounting system, including relevant costs for mobile call termination and allocation of costs
 - › Best practices to develop top-down and bottom-up cost models
 - › Best practices on using international benchmarking to set MTRs

Mobile / Fixed Asymmetry – Should MTRs converge with fixed termination rates?

- > ARCEP Chairman July 2007:
 - > MTR reductions have stopped in number of European countries and remain at level far above fixed termination
 - > *“No longer objective reasons for MTRs to be set at a significantly different level to fixed termination rates”*
 - > Impact on competition: high MTRs limit use of fixed-to-mobile calls in favour of mobile-to-mobile calls by consumers

- > ERG draft Common Position on symmetry of call termination charges (due December 2007)

European Commission's Review Proposals – November 13, 2007

- › Revised Recommendation on relevant markets
 - › Shorter list of markets (7 rather than 18), and changes to definition of some remaining markets
 - › In practice, most NRAs will still have to analyse more than 7
 - › Less important for SEE countries at early phase of liberalisation

- › Bigger changes not until 2010. Proposals on the table include
 - › Market analysis notifications “*on demand*” only
 - › Functional separation as “*remedy of last resort*”
 - › Commission veto over remedies
 - › European Authority to give opinion on Phase 2 cases