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Voice terminating regulation

The current regulation of fixed and mobile voice termination is laid down in the market analysis decision of 7 July 2010. This decision is still under appeal but nevertheless the imposed regulations and price caps apply.

Link to the decision (in Dutch)

http://www.opta.nl/nl/actueel/alle-publicaties/publicatie/?id=3224

Price caps

This decision sets the following price caps for fixed and mobile voice termination on regional (and local) level (see decision annex A, page 185). These rates apply to all operators assigned with SMP (see table 1 of the decision).

	2010 H2	2011 H1	2011 H2	1 Januari 2012 – 1 September 2012	from 1 September 2012
FTR (regional)	0,71	0,71	0,72	0,54	0,36
FTR (local for KPN fixed)	0,50	0,52	0,53	0,45	0,36

FTR price caps in euro cent per minute. These caps apply to both peak and off-peak time of day. The caps include the cost of call set-up, so no separate charge for call set-up is allowed.

	7 - 7- 2010 to 1 - 9 - 2010	1 - 9 - 2010 to 1 -1 - 2011	1 - 1 - 2011 to 1 - 9 - 2011	1 - 9 - 2011 to 1 - 9 - 2012	from 1 - 9 - 2012
MTR (regional)	5,6	5,6	4,2	2,7	1,2
MTR T-Mobile until 1 September 2010	7,1				

MTR price caps in euro cent per minute. These caps apply to both peak and off-peak time of day. The caps include the cost of call set-up, so no separate charge for call set-up is allowed.

Service	Unit	Price cap
Monthly charges		
Monthly cost for interconnection independent of number of gates and locations	Euro / month	2.000
E1 (2Mbit/s) interconnection gate	Euro / month	64
Co-location		
Footprint (per 2m2) (including energy, airco and cabinet)	Euro / month	339

Price caps for auxiliary facilities needed for fixed and mobile interconnection for voice termination

Summary

This is an unofficial translation of section 1.2 of the decision. Please note this translation is not legally binding.

When an end-user of fixed and mobile telephony who is connected to the network of provider A, wants to make a call to another end-user who is connected to the network of another provider B, the conversation has to be routed over both networks A and B. Both networks (A and B) must then be connected to each other directly or indirectly. The routing of the conversation over the network of provider B to the end-user receiving the call, is the call termination service. The service is delivered to provider A by provider B. Fixed and mobile call termination are therefore services which providers with a fixed or mobile telephony network deliver in order to route a call to a number that is connected via their network either directly or indirectly. This service is purchased by other providers of telephony, who typically also offer call termination themselves for traffic connected to their own networks. Accordingly, these are services that are purchased mutually by providers from each other.

Increasing convergence between fixed and mobile

Fixed and mobile call termination are services that the Commission has recorded in the recommendation regarding relevant markets that must be examined by national regulators in order to determine whether there is SMP. In previous market analyses, the markets for fixed termination on the one hand, and mobile call termination on the other, have been examined separately by OPTA, resulting in separate market analysis decisions for fixed and mobile call termination, respectively. However, the retail markets for fixed and mobile services in general and telephony in particular grow increasingly towards each other: increased convergence is involved. This convergence has been taking place for a few years already and is expected to strengthen even more in the coming years. Based on this, OPTA considers that a combined analysis of fixed and mobile call termination is currently necessary, resulting in equivalent commitments for fixed and mobile call termination providers. The importance of equivalent regulation is also endorsed by the Commission in its recommendation of 7 May 2009, concerning the regulation of call termination prices.

The termination bottleneck

For an end-user (caller) intending to call a specific person on most fixed numbers (geographic, 088-, 084/087-, 112- and 14xy- en 116xyz-numbers) and all mobile numbers (06-numbers), there is no or barely any alternative (or substitute), and the call termination service on the individual network of the relevant number forms a necessary building block to establishing the call. The relevant person (called user) that the caller wants to reach, simply is often not available on another number – via another network. For this reason, providers of call termination on these numbers benefit from a monopolistic position. Accordingly, there is often said to be a (monopolistic) bottleneck for call termination (termination bottleneck). Due to this monopoly, providers have an incentive and an opportunity to charge monopolistic fees. This maximizes their own profit and simultaneously increases the expenses of competitors in retail markets that must purchase call termination, which weakens their competitive position. In this manner, the knife cuts both ways for providers. The monopolistic fees are determined mainly by the (utility) value derived by callers from their calls. This utility value is much higher than the cost price of a call termination. A monopolistic fee for call termination will therefore be much higher than the cost. In the present decision,

OPTA concludes that there is a real risk of excessively high prices.

Providers commonly purchase call termination mutually. That makes it necessary to verify whether buyer power prevents the SMP of the termination providers. The dominance analysis and the examinations forming the basis, indicate that negative effects of the monopoly position of termination providers are not prevented by buyer power. All providers have SMP, and can exploit this position without regulation by charging exceptionally high rates for call termination.

The fact that termination is purchased mutually by providers is an important element in the analysis. Fixed providers purchase fixed termination from each other, and mobile providers purchase mobile termination. Fixed providers also purchase mobile call termination and the reverse. This makes it crucial, as indicated before, that fixed and mobile termination is regulated in an equivalent way. Otherwise, the balance of competition between fixed and mobile providers and services will be disrupted.

Competition on the retail market could ensure that the high income on call termination, which would be attainable in the absence of regulation, is at least partly mitigated by competition on the retail market, through lower prices for, specifically, subscriptions. This is referred to as the waterbed effect. With a waterbed effect, higher termination prices result in a change in the retail price structure: minute rates are increased and subscription rates are decreased. Without the waterbed effect, or with a partial waterbed effect, high termination prices also result in a general increase of the retail prices. In other words, an increase of the weighted average of minute rates and subscription rates.

OPTA assumes during this analysis, that this waterbed effect is present and possibly even complete. The regulation that will eventually be considered suitable must be consistent with various extends in which this waterbed effect may occur. That means that the regulation that is eventually considered suitable, will be suitable regardless of whether or not the waterbed effect is incomplete. With a complete waterbed effect, the negative effects of high termination prices for end-users is less than with an incomplete waterbed effect. With a complete waterbed effect, the negative effects are also more cautious (smaller effects). Nevertheless, there are significant negative effects even when the waterbed effect is complete. With an incomplete waterbed effect, the negative effects of higher termination prices for end-users, are larger.

Competition problems and effects

Assuming a complete waterbed effect, the negative effects of SMP on termination are primarily the following. The first result is mainly high or excessively high prices (and in a lesser degree access obstructions) in an inefficient retail pricing structure. The higher termination prices are expenses that are passed on in higher retail minute rates. This disrupts an efficient use of subscriptions and minutes by end-users, and is disadvantageous for them.

Secondly, high or excessively high termination prices, and access obstructions result in a disruption of the competition between providers on the secondary retail markets. The cause of this is that providers have various positions and concerns. Some providers find it important to have a situation where all providers have low termination prices. Other providers find it more important to have high termination prices. Without regulation of termination prices, the latter concern will dominate. Providers with interest in high prices will charge high prices, causing other providers to then increase their termination prices as well. This is harmful to providers with an interest in having all providers use low termination prices. That disrupts and reduces the degree of competition on the secondary retail markets. This increases the retail prices and reduced the options on the retail markets, which is disadvantageous for end-users.

Thirdly, the high fixed termination prices result in profit margin squeeze, which is especially detrimental for the position of carrier preselect (CPS) providers. This is detrimental for the competition on the retail markets for fixed telephony, resulting in higher retail prices and less options. This is disadvantageous for end-users.

Fourthly, high or excessively high termination prices, when the waterbed effect is incomplete, result in a general increase of the retail prices. In other words, in this case it causes an increase of the weighted average of both the subscription prices and minute rates. With a complete waterbed effect, it only involves a change of the retail pricing structure with higher minute rates and lower subscription prices.

Fifthly, high fixed prices for interconnection in the context of fixed and mobile call termination result in scale benefits on the transit market. Included under fixed prices: prices that do not depend on traffic (are not minute dependent). It may involve once-off prices with the establishment of interconnection and fixed monthly prices for this interconnection. These prices result in fixed expenses for a transit provider. This increases the scale benefits and reduces the degree of competition on the transit market. This increases the prices in the transit market and this increase will be passed on in higher prices on the retail markets for telephony. This is disadvantageous for the end-user.

Appropriate remedies, price caps

Considering the fact that there is a real risk of excessively high termination prices, there is also a real risk of the abovementioned detrimental effects. In order to prevent these detrimental effects, OPTA considers the regulation of fixed and mobile call termination of all providers necessary. The most important element of this regulation is the price regulation, or imposing a price ceiling for fixed termination, and a price ceiling for mobile termination. An equal price ceiling applies for all fixed providers, and an equal price ceiling for all mobile providers, or: symmetric price regulation. OPTA considers symmetric price regulation to be crucial and necessary to prevent disruptions in the competition between fixed providers and between mobile providers. These price ceilings are based on the efficient cost price. This is a continuation of the current situation. The difference from previous decisions is the method of cost allocation based on which this efficient cost price is established. In the previous market analysis decision, the price ceiling for mobile termination was based on a form of self-regulation proposed by mobile providers, which was 1,4 cents above the efficient cost price established in a cost model. In that cost model, expenses were accounted proportional to call termination whereby expenses that are not purely incremental, are also accounted proportional to termination. In other words, not only the extra expenses caused exclusively by the termination service were allocated proportionally to termination; but also, other expenses that share termination with other services delivered by providers. In the previous market analysis decision for fixed call termination, the price ceiling was based on the efficient cost price, based on the cost accounting system of KPN. In this methodology too, both the incremental and non-incremental expenses are accounted proportionally.

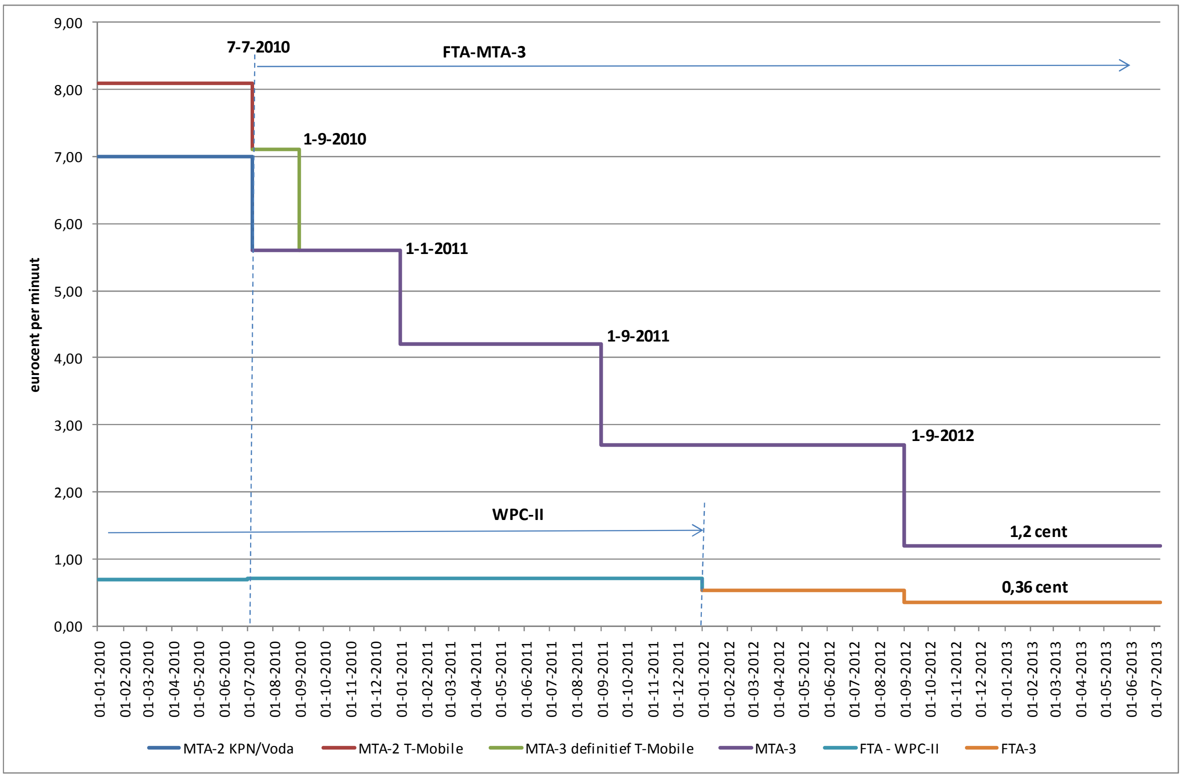
In this decision, OPTA finds that, at present, a price regulation based on a cost price where only the incremental expenses are accounted, should be opted for. OPTA considers price regulation based on this cost price methodology necessary to entirely prevent the detrimental effects of an inefficient retail price structure. An efficient retail price structure only originates with wholesale level (termination) prices that lie on or below the incremental cost price are used. Higher termination prices will result in higher retail minute rates, whereby end-users will make less calls. Other established problems and detrimental effects are addressed by this price regulation. The methodology where only the incremental expenses are accounted is also recommended by the Commission, and is known as the “pure BULRIC” methodology. BULRIC is short for Bottom-Up Long-Run Incremental Costs. The Commission considers this methodology correct, considering the specific characteristics of termination markets where the services are mutually purchased together by providers. The Commission indicates that, for the termination market, prices based on incremental costs stimulate the efficient production and consumption, and minimize the potential disruption of competition.

The incremental cost price for mobile call termination is established at 1.2 cents per minute (cost price in 2012/2013), currently the price ceiling is 7 cents per minute for KPN and Vodafone, and 8.1 cents for T-Mobile. The cost price for mobile termination with regard to the previous regulation period has dropped considerably. Important reasons are that more mobile calls are made and an increasing use of mobile data-services is involved. As a result the fixed expenses of the network are distributed over more services. Due to these scale benefits, the costs per minute drop. The altered cost methodology, where for example only the incremental costs are accounted, also causes a cost drop.

Glide paths

For mobile termination OPTA considers it appropriate to implement a gradual adjustment (glide path) suitable for the price ceilings with three more or less equal steps to this final level. This means a step-by-step reduction from the current 7 cents to 5.6 cents, 4.2 cents, 2.7 cent and eventually 1.2 cents on 1 September of 2010, 1 January 2010, 1 September 2011 and 1 September 2012, respectively. For fixed call termination, the incremental cost price is established at 0.36 cents per minute (cost price in 2012/2013). Currently, the price ceiling is approximately 0.70 cents per minute.

For fixed termination, OPTA considers it suitable to use the current ceilings that have been established in the former WPC-IIa-decision until the end of 2011. In addition to the fact that these fixed termination ceilings have been recorded in a former decision until the end of 2011, it is also important that a reduction of fixed call termination is less urgent, as long as the difference between fixed and mobile termination prices does not exceed the final suitable difference between both price ceilings at the end of the regulation period and long run. The final difference between the fixed and mobile price ceilings amounts to 0.84 cents per minute (1.2 minus 0.36). On 1 January 2012 OPTA considers a reduction of the fixed termination period to 0.54 cent as being suitable, followed by a reduction to the final level of 0.36 cents on 1 September 2012. These glide paths are reflected graphically.



FTR and MTR glide paths for the regulatory period from 7-7-2010 foreseen to 7-7-2013

Appropriate remedies, access and transparency, price caps for auxiliary facilities
Next to price regulation, OPTA also considers access and transparency obligations necessary for all providers of fixed and mobile call termination to address the established competition problems. These obligations must prevent providers of termination that have regulated prices, from obstructing the purchase of access, and thereby attempting to exploit their market force other than through excessively high prices for termination. Unlike the former market analysis decision for mobile call termination, OPTA also considers it suitable to impose price regulation concerning mobile auxiliary facilities. That means that price ceilings apply for auxiliary facilities (interconnection), such as telephony gates where clients of termination can connect their network, and co-location, necessary for buyers of termination to install their own equipment when they connect their network to the network of the call termination providers. For fixed call termination, the prices of these accompanying facilities were already regulated based on the former market analysis decisions. The regulation of fixed and mobile call termination is thereby also completed similarly on this component.

OPTA finds that these obligations prevent all formerly mentioned problems and detrimental effects. The best guarantee for an optimal (efficient) retail price structure originates with wholesale prices on or below the incremental costs. This is expected to result in more use of minutes, or more calls. The disruptions in the competitive relationships between providers with interest in high or low termination prices are prevented. The risk of margin squeeze for CPS-providers is prevented. This is good for the competition on fixed telephony and eventually for the end-users. If an incomplete waterbed effect is involved, the weighted average of all retail prices drop. By regulating the prices of auxiliary facilities, high prices for these services are prevented. This results in more competition on transit services (call transit between networks), lower prices for transit services and, eventually, lower retail prices for fixed and mobile telephony. All of the above is good for the end-users and the competition.

Effect on mobile relative to fixed

An important aspect of the abovementioned adjustment of the price ceiling for fixed and mobile termination is that mobile termination prices – both in an absolute and in a relative sense – drop more than the fixed termination rates. This effect, in itself and considered with regard to the current situation, is positive for the fixed end-users and providers, and (in itself with regard to the current situation) negative for the mobile end-users and suppliers. This effect follows from the application of equivalent regulation for fixed and mobile termination. OPTA currently considers this equivalent regulation necessary. That also means that, in OPTA's opinion, this effect is appropriate. OPTA emphasizes that this is a relative effect in comparison with the existing situation. Separate from this existing situation, one cannot state that the imposed regulation is positive for the fixed sector and negative for the mobile. The regulation is actually equivalent for fixed and mobile. The relative effect with regard to the existing situation is mainly caused because the cost price of mobile termination has dropped even more over recent years than that of fixed termination, and due to the application of equivalent cost methods for both fixed and mobile termination.

Regulatory period

The obligations imposed in this decision will come into force on 1 August 2010 for a planned regulation period of three years.