

**DISPLAY OF REASONS FOR THE PROJECT OF
DECISION OF THE PRESIDENT OF THE
NATIONAL REGULATORY AUTHORITY FOR COMMUNICATIONS
ON INTERCONNECTION WITH THE PUBLIC MOBILE TELEPHONY NETWORK
OPERATED BY S.C. "MOBIFON" – S.A. / S.C. "ORANGE ROMANIA" S.A.**

During the last years, the European Commission and the regulatory authorities from the E.U. Member States have expressed an increasing interest towards the market behavior of the mobile telephony public networks operators, especially with respect to the level of the call termination tariff in mobile networks. Therefore, the majority of the regulatory authorities decided that these tariffs are unreasonably high compared to the afferent costs and searched for means to intervene in order to eliminate these malfunctions determined by the lack of effective competition on the market. For this purpose, to mobile networks operators designated as having significant power on the (whole sale) "interconnection market" have been imposed obligations of non-discrimination and unconditioned granting of interconnection, as well as the obligation to set out cost oriented tariffs. In order to impose to the operators designated as having significant market power on this market the obligation of cost oriented tariffs, the regulatory authorities imposed the progressive reduction of the tariffs until the development of cost calculation methods. In certain countries, as for example Great Britain, such model has already been finalized, providing information on the level of the efficient costs of the interconnection service for call termination.

The National Regulatory Authority for Communication (hereinafter referred to as *ANRC*) intends to ensure effective competition on the electronic communications market, taking all necessary measures in order to prevent the abuses of operators having significant power on the market. Therefore, *ANRC* imposes to electronic communications mobile networks operators S.C. "Mobifon" - S.A. and S.C. "Orange Romania" – S.A. obligations of transparency, non-discrimination, accounting separation, provision of certain services and granting access to certain facilities, as well as establishing cost oriented tariffs with respect to interconnecting their public mobile telephony networks to the public electronic communications networks installed, operated, controlled or made available by other operators for call termination.

Imposing the obligation of transparency is absolutely necessary in order to create the conditions for the implementation of the non-discrimination principle, allowing the operators as well as the regulatory authority to monitor whether this principle is observed by the operators having significant power.

Imposing the obligation of non-discrimination is intended to avoid the abuse of market power, by eliminating the effects of the different negotiation forces between the parties to the process of negotiating the interconnection agreements. Non-discrimination involves the provision of equal contractual conditions under similar circumstances, to the own operations or the members of the same group as well as to the other operators.

Imposing the obligation of accounting separation falls within the transparency (especially when the separate accounting reports are published) as well as the non-discrimination scopes, by emphasizing the situations when operators with significant power make discrimination between the conditions offered to their own operations conducted on the retail market and the conditions offered to other operators on the wholesale market ("crossed subsidies").

The obligation of establishing cost oriented tariffs is intended to prevent the use of monopolistic power when establishing excessive tariffs that might lead to unjustified incomes to the monopolistic operator (inefficiency in allocation) or to the crossed subsidy of activities on the retail market, thus resulting in a behavior against competition on the respective market. The effect of such behavior against competition is perceived by the users of the other electronic communications networks who are obliged to pay tariffs that include the surplus paid by the operator on the wholesale market as well as by the operators of these networks whose competitive capacity is affected by cost increase. Moreover, communication between users connected to different networks is discouraged and the growth of the market concentration degree is favored.

In the absence of relevant book-keeping data provided by the operators of public mobile telephony networks, ANRC considers the present level of the tariffs as being discriminating and not cost oriented, opinion also confirmed by the studies of other regulatory authorities from the EU member states. These studies prove the fact that the interconnection tariff calculated based upon a LIRC model is located under the threshold of 10 Eurocents/min. Within this meaning, the regulatory authority from Great Britain - OFTEL - developed (after consulting the public mobile telephony networks operators and other operators on the electronic communication market) a calculation model for the LRIC¹ interconnection tariffs, whose results confirm that the cost oriented tariffs of call termination in the GSM 900 mobile networks are placed between 8.7 and 9.4 Eurocents/min (these tariffs include a significant surplus determined by the network externality taken into consideration).

Moreover, between S.C. „Mobifon”- S.A. and S.C. „Orange Romania”-S.A., operators of public mobile telephony networks, there is in force an interconnection agreement establishing the tariffs for the calls initiated in one of these networks and terminated in the other network at 10 USD cents/min during the peak hours. The means of establishing this tariff (namely, a commercial agreement between two parties with similar negotiation power) indicate that this tariff is sufficient for the recovery of the call termination in a GSM 900 mobile telephony network costs. Therefore, the interconnection tariffs presently charged by S.C. „Mobifon”- S.A. and S.C. „Orange Romania” – S.A. to the operators S.N.Tc. „Romtelecom”-S.A., S.C. „Cosmorom”-S.A. and S.C. „Telemobil”-S.A. are considered to be discriminating as compared to the tariffs charged between S.C. „Orange Romania”-S.A. and S.C. „Orange Romania” S.A. as there do not exist any objective conditions that may justify the difference between these tariffs.

Tariffs currently charged by S.C. „Mobifon”- S.A. and S.C. „Orange Romania ” – S.A. for call termination in their own networks are the following :

Calls initiated in the network:	Tariff for call termination in S.C. „Orange Romania”- S.A. network (during peak hours) - USD cents/minute -	Tariff for call termination in S.C. „Mobifon”- S.A. network (during peak hours) - USD cents/minute -
MOBIFON	10	-
ORANGE ROMANIA	-	10
ROMTELECOM	12	12
COSMOROM	11	11
TELEMOBIL	12	12

¹“Review of the charge control on calls to mobiles” – Oftel, September 26, 2001

ANRC decision to gradually reduce the interconnection tariff has been taken considering the international practice as well as the arguments in favor of approaching a minimum, proportional, transparent, and predictable regulation in order to achieve the objective of encouraging investments fostering the development of the electronic communication networks and the services provided through these networks. For this purpose, the regulatory authority from Great Britain – OFTEL decided, based upon a cost-benefit study, that in case of mobile telephony public networks, the step-by-step implementation of the tariff reduction plan is to be preferred to the one-step tariff reduction, from the social benefit standpoint.

Adopting the step-by-step tariff reduction towards a real cost oriented level provides the operators with the possibility to gradually adjust their business plans, according to the obligations imposed by *ANRC*.