

BT response to Ofcom question on EU Delegated Acts on Eurorates

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Non confidential

Comments should be addressed to:
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Ofcom question

On 25 August 2020, the European Commission (EC) published a draft Delegated Act to be made under Article 75 of the European Electronic Communications Code. The draft Act, which must be finalised and adopted by 31 December 2020, specifies the termination rates that will apply to fixed and voice calls within the European Union (“Eurorates”). It also includes a proposal that if one of two specified conditions is satisfied, CPs within the European Union must charge termination rates for voice calls from third countries aligned with Eurorates (“the Eurorate Proposal”).

To ensure you are able to take the Delegated Act into account in your response, as a respondent to our Wholesale Voice Market Review consultation, we are offering you the opportunity to comment on the Eurorate Proposal from the European Commission, including whether it has an impact on your views on Ofcom’s proposal, set out at paragraphs 6.86 – 6.102 of the Wholesale Voice Market Review consultation, to introduce a reciprocity condition for termination charges for international calls. Please provide reasons and evidence in support of your views.

BT response

- 1.1. We welcome the opportunity that Ofcom has provided to comment on the Eurorate proposal and its potential impact on Ofcom measures on termination rates for international and roaming calls.
- 1.2. Even with the introduction of the Eurorates Delegated Act, BT’s opinion remains that a reciprocity condition for both fixed and mobile call termination, and for all international calls (EEA and non-EEA) will deliver the best outcome for UK consumers. A reciprocity regime will allow UK operators to respond to rate increases from non-EEA countries and/or EEA countries (were the UK not be included in the Annex list). As such BT welcomes Ofcom’s proposal to introduce reciprocity.
- 1.3. We believe that UK is likely to meet at least one (or both) conditions set out in the Delegated Acts on the Eurorates proposal:
 - **Condition 1.4b:** We consider that the UK has an equivalent termination rate regime to the EU based on BU-LRIC cost standard. This would ensure UK operators, and their customers, would not be charged above Eurorates. As such UK should be part of the list of countries published in the proposal’s annex. Nonetheless, this is still uncertain as the final version of the Delegated Acts has not yet been finalised.
 - **Condition 1.4a:** BT/EE could satisfy this condition although this will require setting termination rates to track Eurorates part way into the next charge control period, as the UK rates will be likely to be higher than the Eurorates towards the end of the period.
- 1.4. There are two key aspects that we would welcome further clarity on:
Firstly, in circumstances where EU/EEA operators exceed the max Eurorates:
 - i. What ability would UK operators have to respond to EU/EEA operators price increases, should these take place?
 - ii. What dispute mechanisms would be available in these circumstances?
- 1.5. Secondly, whilst the Eurorates proposal only requires one condition to be met, we believe reliance on 1.4a would present an additional issue which we would welcome clarification on:
 - i. In the scenario where only **one** UK operator chooses not to track Eurorates. Could this be interpreted by European counterparts to be able to legally charge above Eurorates **all** UK MNOs?
- 1.6. In order to achieve a low termination rate scenario with EEA and non-EEA countries, Ofcom should ensure that the reciprocity principle is retained as part of its Wholesale Voice Market Review proposals and that it should seek to clarify as soon as possible with EU counterparts whether UK falls within the Annex list under condition 1.4b.

Appendix A EU Delegated acts relevant paragraphs

Art 1

Articles 4 and 5 shall also apply to calls originating in third countries and terminating in the Union where **one of the two following conditions is met:**

(a) where a provider of voice termination services in a third country applies to calls originating in the Union, mobile or fixed voice termination rates equal or lower than the maximum termination rates set out in Articles 4 or 5 respectively, for each year and each Member State, on the basis of rates applied or proposed by providers of voice termination services in third countries to providers of voice termination services in the Union; or

(b) with regard to all calls originated in a third country and terminated in the Union, when:

(1) the Commission determines that, on the basis of information provided by that third country, voice termination rates for calls originating in the Union and terminating in that third country are regulated in accordance with principles equivalent to those set out in Article 75 of Directive (EU) 2018/1972 and Annex III thereto; and

(2) that third country is listed in the Annex to this Regulation

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