

Pursuant to Article 14, paragraph 4, Article 128, paragraph 2 and Article 130, paragraph 1 of the Electronic Communications Act (Official Gazette 73/08, hereinafter: the ECA), Article 5, Article 12, paragraph 1, item 5, Article 57, paragraphs 2 and 5 of the Telecommunications Act (Official Gazette 122/03, 158/03, 60/04 and 70/05, hereinafter: the TA), Article 8 of the Ordinance on network access and interconnection (Official Gazette 185/03, hereinafter: the Ordinance) and Article 202 of the General Administrative Procedure Act (Official Gazette 53/91, 58/93 and 103/96, hereinafter: GAPA), concerning the procedure of accounting separation and cost accounting, the Council of the Croatian Post and Electronic Communications Agency (hereinafter: the Agency's Council), at its session held on 18 November, passed the following

DECISION

I The company HT-Hrvatske telekomunikacije Plc, Zagreb, Savska cesta 32, is ordered to implement accounting separation and cost accounting in the manner and within deadlines stipulated by the document "Instructions on accounting separation and cost accounting".

II The document "Instructions on accounting separation and cost accounting" is a constituent part of this Decision.

III This Decision shall be published in the Official Gazette.

Explanation

The Council of the Croatian Telecommunications Agency (in accordance with Article 131 of the ECA, the legal predecessor of the Council of the Croatian Post and Electronic Communications Agency, hereinafter: the CTA Council) published on 17 December 2007 a List of relevant markets, operators and telecommunications service providers with significant market power on relevant telecommunications markets (class: 344-01/07-01/939, reg.no: 376-11-1), pursuant to the CTA Council Decision passed on 14 September 2006 (class: 344-01/06-01/220, reg. no: 376-06-12) and on 30 March 2007 (class: UP/I-344-01/06-01/916, reg.no: 383-07-20).

In carrying out its regulatory tasks, the Croatian Telecommunications Agency (hereinafter: the CTA) has initiated the "Accounting Separation and Cost Models" project, in that on 16 July 2007, a meeting was held with the representatives from HT-Hrvatske telekomunikacije Plc (hereinafter: HT), at which the representatives were introduced to the dynamics of the implementation, initial phases of the project implementation, drawing up of document for public consultation, putting the document up for public consultation and passing the Decision on the manner of implementation of accounting separation and cost accounting.

The CTA has drawn up "Accounting Separation and Cost Accounting" (hereinafter: the Document), a document for public consultation, wherein proposals and recommendations concerning the manner of implementation of accounting separation and cost accounting by operators of fixed telecommunications network with significant market power were stated. The CTA has included HT in the process of drawing up the Document, in that it

communicated all significant facts to HT and enabled the company to make statements about them and to submit all necessary documents, materials and proposals it considered important for the drawing up of the Document via electronic mail and in three working meetings held on 20 May, 13 June and 20 June 2008.

The ECA entered into force on 1 July 2008, stipulating in Article 128, paragraph 2 that all regulatory obligations imposed on or prescribed for operators with significant market that were in force until the date of the entry into force of the ECA shall remain in force and shall be applied until the termination of the procedures referred to in Article 52 of the ECA and the imposition, keeping, amendments or withdrawal of regulatory obligations to operators with significant market power pursuant to the provisions of the ECA. In Article 130, paragraph 1 the ECA stipulates that all procedures initiated in accordance with the provisions of the GAPA shall be finished in accordance with the provisions of the GAPA and with regulations passed pursuant to the GAPA.

In the time period between 15 August and 15 September 2008, the Croatian Post and Electronic Communications Agency (hereinafter: the Agency; in accordance with Article 131 of the ECA, the legal successor of the Croatian Telecommunications Agency) held public consultation on its website on the topic "Accounting Separation and Cost Accounting", in that operators and all interested parties were invited to state their opinions and to comment on the Document.

During public consultation, comments from the following operators were submitted to the Agency: VIPnet Ltd, Iskon Internet Plc and HT. The initial comments from HT were rejected by the Agency, as they were submitted with the mark "confidential", thus missing the point of public consultation and preventing the implementation of the principle of transparency. Subsequently, HT submitted comments to the Agency where only a part of the data was marked "confidential". These were accepted by the Agency and were published on the Agency's web site.

Upon finishing public consultation, with the purpose of eliminating vagueness and providing additional information, the Agency held meetings with HT on 20 October, 22 October and 24 October 2008, in order to implement the instructions from the Document as successfully as possible. On 6 November 2008, the Agency published answers to the submitted comments on its web site.

In the Decision passed on 17 December 2007, the Agency's Council declared HT the operator with significant market power on the relevant market of public voice service in fixed telecommunications networks, on the interconnection market and leased telecommunications lines market. By declaring HT the operator with significant market power, the legislator by force of law stipulates in Article 57, paragraph 2 of the TA: "The operators or service providers with significant market power on the relevant telecommunications market must separate, with respect to structure and accounting, business activities in different relevant telecommunications markets for the purpose of ensuring the transparency of the flow of telecommunications services and payments between those relevant telecommunications markets on which they perform their business operations", and in paragraph 5 of the same

Article the legislator explicitly states that the Agency's Council shall determine by resolution the way of separating the business activities of operators with significant market power with respect to their organization and accounting, and other details in connection with that separation.

Moreover, Article 63, paragraph 12 of the TA prescribes that *the Agency must ensure that the systems of monitoring expenses, which are used by operators on the relevant market, are suitable for application of the principle of transparency and cost-orientation in the pricing of services for end users. The way of monitoring of costs shall be determined by a decision passed by the Agency's Council.*

Pursuant to the provisions of the TA, the Ordinance stipulates in Article 8, paragraph 2: *The operators or service providers with significant market power on the relevant telecommunications market, offering services of interconnection with other operators, must separate the accounting of their business activities with reference to interconnection, including interconnection services provided for their own needs, as well as for the needs of other operators, and other business activities, for the purpose of identifying all elements of cost, with the basis of their calculation and the detailed attribution methods used, related to activities of interconnection, including an itemised breakdown of fixed asset and structural costs“.*

By structural separation and separate accounting of costs for telecommunications services provided by operators with significant market power, legal obligation shall be met for the purpose of preventing subsidizing of one telecommunications service from another on the relevant markets on which the operators have been declared operators with significant market power. Accounting separation denotes separating operator's activities into separate business activities or services for the needs of the accounting, so that the system of separate accounts would enable the implementation of the principle of non-discrimination, and of equal market conditions allowing for the development of competition and entrance on the market of new operators.

The purpose of the introduction of cost accounting is to ensure equal, transparent criteria and competition-encouraging criteria, which should be applied by the operator in the distribution of costs for the provided services. Cost accounting refers to a set of rules and procedures ensuring the distribution of costs, income, assets, obligations and capital to separate activities and services, taking into account direct and indirect costs.

The system of cost accounting facilitates the implementation of the obligation of accounting separation and assessment of cost-orientation of prices, with the purpose of preventing unfair cross-subsidy, determining too high or too low prices and non-efficient behaviour from the declared operator.

Precisely with the purpose of ensuring and encouraging efficient and sustainable market competition on the telecommunications market, and with the purpose of ensuring the transparency of the flow of telecommunications services and payment between relevant telecommunications markets on which the operators and telecommunications service

providers with significant market power carry out their business activities, the Agency's Council has, in carrying out its regulatory tasks within its competence, pursuant to Article 57, paragraphs 2 and 5, Article 5 and Article 12, paragraph 1, item 5 of the TA, Article 8 of the Ordinance, Article 14, paragraph 4, Article 128, paragraph 2 and Article 130, paragraph 1 of the ECA and in accordance with Article 202 of the GAPA, resolved as in this Decision.

INSTRUCTION ON LEGAL REMEDY:

Appeals against this Decision are not admitted, but administrative dispute may be initiated before the Administrative Court of the Republic of Croatia within 30 days from the date of the Decision's receipt.

Class: 130-01/06-01/09

Reg.no: 376-11-18

Zagreb, 18 November 2008

President of the Agency's Council

Gašper Gačina, BSc