Christian Salbaing
Deputy Chairman

Hutchison Europe

5th March 2009

Dr Elfriede Solé
Telekom-Control-Kommission
Mariahilferstr. 77-79
1060 Vienna
Austria

Dear Dr Solé

It was a pleasure to meet you Tuesday to discuss the importance Hutchison places on its investments in Austria and, consequently, our concern with the draft Decision on mobile termination rates (MTRs).

As I explained, the position of our **3** Group businesses towards MTRs is the same in all the countries in which we operate. As new entrants in our markets we typically face high termination rates that make it difficult for us to compete with the incumbents and that lead to us subsidising these operators through net interconnection payments. The situation in Austria is a particularly acute example of this. With MTRs of 5.72 €cents, it is impossible for us to match the incumbent's pre-pay call prices of 4 €cents. We simply cannot and do not compete in that segment of the market. And now that our MTR is the same as all the incumbent operators ("symmetry") at a level significantly above cost (MTRs are 5.72 €cents, three times the RTR's estimate of efficient cost of 1.87 €cents) we are in the position of subsidising them through interconnection payments.

The competitive harm to new entrants from high (that is, above cost) termination rates is now widely recognised, including by the European Commission, the European Regulators Group (ERG) and by national regulators. The European Commission notes, in its draft Recommendation, that, "*If new entrants pay a regulated termination charge in excess of actual cost they effectively give a transfer to the large network*", and gives this as one of the reasons for recommending that regulators bring MTRs down to true cost within the next 3 years.

We share the Commission's conclusion that, ultimately, the best way of tackling the problem of high MTRs is to bring them down to the level of cost.

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This is the approach the **3** Group businesses have advocated and it is one we believe will benefit consumers as well as competition, by taking away an artificial floor that keeps retail prices for calling a mobile high.

However, in most of the markets we operate, including Austria, MTRs are not yet at cost. Whilst MTRs remain high it is important that regulators deal with the competition distortions that arise. We do <u>not</u> ask for special treatment from regulators, but rather an approach that offsets the competition distortion and allows us to compete on a level playing field. It is particularly important that regulators do not create a situation in which the new entrant finds itself subsidising its large, incumbent rivals. This is the worst possible outcome for the new entrant and for long term competition.

This is why the draft Decision on MTRs is such a concern to us. The original glide path was far from perfect for **3** Austria – it led to symmetric MTRs at a rate significantly above RTR's own estimate of efficient cost. Nevertheless, our interest is in getting a pragmatic solution for the future that allows us to compete effectively. What we find difficult to understand is the proposal in the draft Decision to <u>retrospectively</u> introduce symmetry 6 months earlier than in the original glide path and at a rate that is still significantly above cost.

As we explained in the meeting, the only impact of introducing symmetry at 5.72 €cents from July 2008 is to regulate a subsidy from **3** Austria to its incumbent rivals. Mobilkom' MTR is unchanged and those of T-Mobile and Orange are only slightly reduced. The Decision would require **3** Austria to pay a subsidy of <u>€3.86</u> million to its competitors. Since the change is in the past, there is no benefit to customers. They will not get cheaper prices for the calls they have already made. And we are not able to retrospectively amend our price plans to amortise the impact on our bottom line of this *ex post facto* change. There is, however, an impact on competition, and it is an adverse impact. It reduces the money we have available in 2009 to compete. In contrast, our large competitors will get a windfall payment from us that they can use to compete against us. This cannot be in the long term interests of the Austrian mobile market nor of Austrian consumers. I urge you to rethink this proposal before reaching a final decision.

The original glide path is not ideal for us, but, in the interests of finding a pragmatic solution that allows us to compete, we are focusing on the future and how we can best ensure MTRs in Austria come down quickly to the level of true cost. In this I believe we share the same goals. I would be pleased to help you to achieve that objective in whatever way I can, and I know Bert Thoma and his Team also stand ready to help.

Hutchison is committed to the Austrian market and to building sustainable businesses there. We believe Austrian consumers have benefitted from the entry of 3 Austria into the market and they will continue to do so if we can find regulatory solutions that remove competitive distortions and create a level competitive playing field. In this regard, please let me know if I can be of any assistance.

Thank you again for seeing us on Tuesday

Yours sincerely

Christian Salbaing
Deputy Chairman
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Herrn Dr. Georg Serentschy
Rundfunk und Telekom Regulierungs-GmbH
Mariahilferstr. 77-79
1060 Vienna
Austria

Dear Dr Serentschy

It was a pleasure to meet you again after such a long time. I was also pleased to have the opportunity to explain the importance Hutchison places on its investments in Austria and, consequently, our concern with the draft Decision on mobile termination rates (MTRs).

As I explained, the position of our **3** Group businesses towards MTRs is the same in all the countries in which we operate. As new entrants in our markets we typically face high (that is, above cost) termination rates that allow incumbents to exploit their on-net calling base and so make it difficult for us to compete, and that lead to us subsidising these operators through net interconnection payments. The situation in Austria is a particularly acute example of this. With MTRs of 5.72 €cents, it is impossible for us to match the incumbent's pre-pay call prices of 4 €cents. We simply cannot and do not compete in that segment of the market. Now that we have symmetric MTRs at a level significantly above cost (in fact, 3 times cost - 5.72 €cents compared to the efficient cost of 1.87 €cents) we are in the position of subsidising them through interconnection payments.

The competitive harm to new entrants from high termination rates is now widely recognised, including by the European Commission, the European Regulators Group (ERG) and by national regulators. The European Commission notes, in its draft Recommendation, that, "*If new entrants pay a regulated termination charge in excess of actual cost they effectively give a transfer to the large network*", and gives this as one of the reasons for recommending that regulators bring MTRs down to true cost within the next 3 years.

We share the Commission's conclusion that, ultimately, the best way of tackling the problem of high MTRs is to bring them down to the level of cost.

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This is the approach the **3** Group businesses have advocated and it is one we believe will benefit consumers as well as competition, by taking away an artificial floor that keeps retail prices for calling a mobile high.

However, in most of the markets we operate, including Austria, MTRs are not yet at cost. Whilst MTRs remain high it is important that regulators deal with the competition distortions that arise. We do not ask for special treatment from regulators, but rather an approach that offsets the competition distortion and allows us to compete on a level playing field. It is particularly important that regulators do not create a situation in which the new entrant finds itself subsidising its large, incumbent rivals, through interconnection payments. This is the worst possible outcome for the new entrant and for long term competition.

This is why the draft Decision on MTRs is such a concern to us. The original glide path was far from perfect for **3** Austria – it led to symmetric MTRs at a rate significantly above RTR's own estimate of efficient cost. Nevertheless, our interest is in getting a pragmatic solution for the future that allows us to compete effectively. What we find difficult to understand is the proposal in the draft Decision to retrospectively introduce symmetry 6 months earlier than in the original glide path and at a rate that is still significantly above cost.

The only impact of introducing symmetry at 5.72 €cents from July 2008 is to regulate a subsidy from **3** Austria to its incumbent rivals. Mobilkom's MTR is unchanged relative to the original glide path and those of T-Mobile and Orange are only slightly reduced. The Decision would require **3** Austria to pay a subsidy of €3.86 million to its competitors. Since the change is in the past, there is no benefit to customers. They will not get cheaper prices for the calls they have already made. And we are not able to retrospectively amend our price plans to amortise the impact on our bottom line of this *ex post facto* change. There is, however, an impact on competition, and it is an adverse impact. It reduces the money we have available in 2009 to compete. In contrast, our large competitors will get a windfall payment from us that they can use to compete against us. This cannot be in the long term interests of the Austrian mobile market nor of Austrian consumers. I urge you to rethink this proposal before reaching a final decision.

The original glide path is not ideal for us, but, in the interests of finding a pragmatic solution that allows us to compete, we are focusing on the future and how we can best ensure MTRs in Austria come down quickly to the level of true cost. Not only would this be good for competition, but it would lead to lower retail prices for Austrian consumers and is consistent with best practice in Europe, as set out in the Commission's draft Recommendation and already being adopted by other regulators. In this I believe we share the same goals. I would be pleased to help you achieve the objective of MTRs at cost in whatever way I can, and I know Bert Thoma and his Team also stand ready to help.

In the meeting your officials raised specific questions about our earlier submissions to your consultation process and about the calculation of the subsidy to incumbents. Bert and his team will write to you separately to answer those questions.

Hutchison is committed to the Austrian market and to building sustainable businesses there. We believe Austrian consumers have benefitted from the entry of **3** Austria into the market and they will continue to do so if we can find regulatory solutions that remove competitive distortions and create a level competitive playing field. In this regard, please let me know if I can be of any assistance.

Thank you again for seeing us on Tuesday.

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