



OFFICE FOR COMMUNICATIONS
PRINCIPALITY OF LIECHTENSTEIN

Evaluation of the Comments received in the National Consultation on the Analysis of Fixed Termination Markets

**Wholesale markets for call termination on individual public telephone
networks provided at a fixed location (M1-2016)**

Vaduz, 9 September 2020

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1. Principles of Market Consultation

In case the Office for Communications (Amt für Kommunikation, hereinafter referred to as "AK") intends to take special regulatory measures that are expected to have a substantial impact on the market in question, it shall announce this intention to interested parties in accordance with Art. 24 (1) of the Communications Act (KomG) and give them the opportunity to comment within a reasonable period of time. To this end, the Office has launched a public consultation pursuant to Art. 46 KomG in conjunction with Art. 24 (1) (a) RKV.

The consultation procedure pursuant to Art. 24 (1) and Art. 46 (1) KomG for the purpose of market analysis is a non-contentious administrative procedure of its own. It serves to review the competitive conditions and to promote transparency through the early and public discussion of the market analyses and measures planned by the AK. A distinction must be made between the consultation procedure at hand and the subsequent contentious proceedings with regards to the means of special regulation according to Art. 23 (1) KomG, within which the AK imposes individual, concrete "obligations by decree (measures of special regulation)" on an undertaking with market power.

Based on Art. 40 KomG, the AK therefore published the consultation version of the document "[Analysis of the fixed network termination markets in Liechtenstein](#)" on 18 May 2020 on the AK website under the [heading Consultations](#)¹. In order to inform the market participants as comprehensively as possible, the AK also published a draft of the ruling in the annex of the consultation document, in order to also show the expected regulatory measures, to which the recipients of the ruling would be obliged. Furthermore, the AK informed the operators as well as the EFTA Surveillance Authority about the consultation by e-mail on the same day (see Annex 2).

As a rule, all statements are published on the AK website, unless they are subject to a confidentiality obligation, whereby the decision whether a statement is published in full, in part or not at all lies solely with the AK. The comments received will be taken into account in the further processing of the market analysis, as far as they are of importance in the opinion of the AK. According to Art. 47 (1) KomG, "*participation in a public consultation [...] shall not give rise to any further legal claims*".

2. Procedure of the Consultation

The AK invited interested parties in the context of a public consultation to submit comments both on specific consultation questions (see Annex 1) and on other contents of the consultation document. The AK also held an information event in the form of a video conference on 10 June 2020 to discuss specific questions.

¹ available at <https://www.llv.li/inhalt/118827/amtsstellen/marktanalysen-mobilterminierung-und-festnetzterminierung>

Subsequently, on 15 June 2020, the AK informed the registered providers about the main topics of the video conference by electronic mailing (see Annex 3). In this communication, the AK requested comments on the topic of uniform regulation of the termination rate with regard to the country of the network of call origination: "The topic '*Uniform termination rates independent of the place of origin*' currently seems to be the only topic to the AK in which different views could exist among the market participants. Therefore, the AK requests the market participants to clearly present and substantiate their positions in statements on this topic and to describe the effects on the operator as well as on the Liechtenstein market as a whole."

The AK received comments within the deadline from

- Salt (Liechtenstein) AG
- Telecom Liechtenstein AG

The operators are hereinafter referred to as "Salt" and "TLI". Copies of the submissions of the operators can be found in Annex 4.

3. Evaluation of the Comments

The relevant elements of the comments received are discussed below. Quotes from the submissions are marked in italics. Recurring topics and answers to the consultation questions will be assessed by the AK in a separate section.

From the non-inclusion of a specific argument or the non-explicit contradiction no agreement or consent of the AK on these points can be derived. The AK has directly included, in the final version of the market analysis document at the relevant points, the arguments and feedback on the consultation questions worthy of consideration.

The submitted substantive comments are - as far as they are not subject to legitimate confidentiality interests - published in the original text in Annex 4 well as on the AK [website](#).² For data protection reasons, the AK removed or blackened out trade and business secrets (if applicable) and all handwritten signatures in the published documents.

3.1 Salt

Salt's submission was received in due time on 23 June 2020. It did not contain any content that had to be blackened out for reasons of confidentiality.

Topic:

- In its submission, Salt supports the setting of a single termination rate for all calls, regardless of the origination point or A-number, both mobile and fixed.

² available at <https://www.llv.li/inhalt/118827/amtstellen/marktanalysen-mobilterminierung-und-festnetzterminierung>

There is no further reasoning or justification regarding the impact on Salt or on the market. The AK deals with this topic in Chapter 3.3.

3.2 Telecom Liechtenstein

The submission of TLI was received in due time on 26 June 2020.

Topics:

- TLI argues in favour of a *limitation of validity for calls from EEA countries* because it is *not the end users but mainly foreign telecom companies that benefit from the reduction and because there are no longer any international reachability problems due to termination rates*.
- *The underlying LRIC cost model does not take into account the actual costs which, in the case of Telecom Liechtenstein, mainly result from the small size of the market and the associated disadvantageous cost structure. Therefore, Telecom Liechtenstein aims at the entrepreneurial flexibility of termination rates for non-EEA countries, with Switzerland being particularly relevant. The aim is to ensure a reasonable relationship to Swiss termination rates by a voluntary reduction in order to guarantee a sustainable business model in the future by cost recovery.*

The AK states the following:

- Limitation of validity for calls from EEA countries:
It is clear from the TLI's comments that TLI is commenting about restricting the regulation of tariffs to calls originating in EEA countries. The AK deals with this topic in Chapter 3.3.
- LRIC cost model, no consideration of the actual costs, small market:
Market size-related adaptations of the cost-based determination of termination rates cannot be made despite the small size of the Liechtenstein market. In this context, the EFTA Surveillance Authority's 2011 Termination Recommendation is very clear with the pure BU LRIC approach and the requirement of an efficient (model) operator, i.e. the efficient termination rate has to be determined without taking into account market size. It should also be noted that the "LRIC cost model" referred to by TLI does not exist for any operator in Liechtenstein. The Termination Recommendation clearly states that termination rates must be based on a pure BU LRIC cost accounting model or, in case of lack of resources, on benchmarking with EEA countries using their own pure BU LRIC cost accounting models. As stated in the market analysis by the AK, only the second way is size-compatible - both because of the effort for the operators and the regulatory authority.

3.3 Determination of a Uniform Termination Rate Regardless of the Origination Point

Consultation and Comments

In its comments, the operator Salt argued in favour of an application of the regulated termination rate independent of the place of origination. TLI, on the other hand, opted for a restriction to calls originating in an EEA country. No operator provided a justification.

AK has asked several times for reasons to be given for the statements³ and also mentions this as a formal requirement in the consultation document⁴. The AK regrets that none of the operators provided these reasons, which are necessary for a well-founded decision making of the AK. As a result, the statements of both operators lose significantly in weight and present themselves merely as unfounded requests. The AK was therefore obliged to look for other arguments and justifications for one or the other solution.

EEA Legal Developments and International Comparison

Since the consultation of the present market analysis, significant developments have taken place with regard to the uniform European regulation of termination rates by means of a delegated legal act on the basis of the Code⁵, which will enter into force in the EU Member States on 21 December 2020.

Under Article 75 of the Code, the European Commission will adopt, by 31 December 2020, a delegated act setting an EU-wide maximum ("eurorate") level for voice call termination rates. This act is also of major importance for the EEA, as it will also apply in Liechtenstein once the procedure for its incorporation into the EEA Agreement is completed.

The draft delegated act, which the Commission made available for public consultation on its "Have your say" website on⁶ 25 August to 22 September 2020, indicates that the single eurorate will apply only to calls originating and terminating within the EEA.

In the accompanying Staff Working Document, the Commission states that as of June 2020, 26 of the 27 Member States⁷ of the Union already explicitly exempt the termination of calls

³ In the consultation document on p. 4; in the e-mail of 15 June 2020 on the information event of 10 June, see Annex 3; in telephone calls with fixed network operators inviting consultation

⁴ Chapter "Principles of consultation": "... the opinions must be justified and backed up by specific information".

⁵ DIRECTIVE (EU) 2018/1972 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 11 December 2018 on the European Electronic Communications Code, available at <https://eur-lex.europa.eu/legal-content/DE/TXT/PDF/?uri=CELEX:32018L1972&from=EN>

⁶ abrufbar unter <https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/1958-Voice-call-termination-rates-in-the-EU-Eurorates->

⁷ Austria, Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Greece, Hungary, Italy, Latvia, Lithuania, Luxembourg, Malta, Poland, Slovenia, Slovakia and Sweden do not regulate fixed termination for calls made outside the Union; France, Germany, Ireland, the Netherlands, Portugal, Romania and Spain allow operators to freely negotiate

originating outside the Union from price regulation (19 countries) or allow operators (7 countries) to set termination rates - under conditions.

This is a significant development compared to the state of knowledge at the time of the consultation. The AK was aware from a BEREC report⁸ and from the Austrian Decision M 1.1/15-46⁹ at that time that about half of the European regulatory authorities apply a different regulatory treatment of calls originating outside the EEA.

In recitals 8 and 9 of the draft delegated act, the Commission sets out its considerations leading to this regulation, which applies only to EU/EEA internal originating calls, as follows:

- Regulated voice termination rates should apply to calls originating and terminating in the Union, because if calls originating in third countries and terminating in the Union are included, there is a risk that the objectives of this Regulation, in particular the objectives of the integration of the internal market, may be undermined where third country operators charge termination rates that are higher than the euro rate or where such termination rates are not regulated according to cost efficient principles.
- The combination of low regulated termination rates for calls terminated in the Union and high and not cost-effective termination rates for calls to operators in third countries would likely lead to higher termination rates for calls originating in the Union and terminated in third countries, with negative effects on retail tariffs in the Union and on the cost structure of operators in the Union.
- The varying degrees of exposure of Union operators to calls terminated by those third country operators that charge high and not cost-effective termination rates would create imbalances in the cost structure of Union operators due to factors beyond the control of the operators themselves.
- This would be likely to prevent the emergence of pan-European retail offers including calls to certain countries outside the Union, as calls to these countries are subject to higher termination rates, which could have a negative impact on consumers and in particular businesses in the Union.
- It would also distort competition, since the asymmetric effects of high termination rates for calls terminated in countries outside the Union would lead to different competitive conditions for different operators in the Union, which would ultimately also distort investment capacity and incentives to invest throughout the Union (both investment in operators and investment by operators).
- All these effects would clearly run counter to the objectives of the Regulation, which are to promote the integration of the internal market by removing distortions between operators due to termination rates that are significantly higher than costs.

termination rates, subject to certain conditions, typically that the rates should not be higher than those charged by their non-EU counterparts.

⁸ Report BoR (16) 164 of 6 October 2016, intended for internal use and not publicly available, available at https://berec.europa.eu/eng/document_register/subject_matter/berec/reports/6483-overview-of-the-regulatory-treatments-of-termination-rates-for-voice-calls-originated-outside-the-eea-and-their-impacts-on-cross-border-traffic-and-settlements

⁹ available at https://www.rtr.at/de/tk/M_1_1_15/M_1-1_15_Bescheid_%C3%84nderung_MTR_A1_final_ohne_ZV.pdf

The Commission's reasoning focuses on the two-sidedness of the termination relationship between interconnected network operators and examines the (negative) consequences for EU operators if the third country counterpart does not charge regulated tariffs according to the same cost-oriented principles. The Commission found not only distortions to the detriment of the operators concerned, but also disadvantages for the development of the internal market.

Conclusion

In the consultation, the AK was in principle of the opinion that the termination rates should cover the costs of the product "termination". These are the same, regardless of whether a call originates within the EEA or outside the EEA. From this perspective, a differentiation would be neither necessary nor useful.

At the same time, however, it must be taken into account that a regulated termination rate applicable to calls from EEA and non-EEA countries could create a disadvantageous situation for Liechtenstein operators. This is due to the fact that operators from third countries, including in particular Swiss operators, are often free to set their termination rates at a much higher level. This could therefore create a situation where Liechtenstein operators are exposed to massive asymmetry of termination rates. This would then have to be passed on to end users, which would of course have a negative impact on them¹⁰.

Such adverse situations could be limited by restricting the regulation of termination rates to calls originating in the EEA. This would allow Liechtenstein operators to agree with operators outside the EEA on higher rates or to reciprocally (symmetrically/reciprocally) agree rates regulated in Liechtenstein.

As indicated above, the Staff Working Document accompanying the draft delegated act¹¹ stated that as of June 2020, 26 of the 27 Member States of the Union already exempt the termination of calls originating outside the Union from rate regulation or allow operators to set termination rates under certain conditions. The statement of BEREC available to the AK on the draft of the delegated act shows that differentiated termination rates for calls originating outside the EU are in line with the principles formulated by BEREC.

A clear basic regulatory principle is that regulatory decisions must be forward-looking. This avoids inefficiencies on the part of both operators and authorities.

In view of the practice, already implemented by almost all EU regulatory authorities, that regulated termination rates are only applicable to calls originating within the EU, and due to the fact that the delegated act is to be incorporated into the EEA Agreement and thus the termination rate regulation will be applicable in Liechtenstein in accordance with the delegated act, the AK aligns the Liechtenstein termination regulation in the same way with

¹⁰ The Commission states in recital 9 of the draft delegated act: "The combination of low regulated termination rates for calls originating in the Union and high and not cost-effective termination rates for calls to operators in third countries would be likely to lead to higher termination rates for calls originating in the Union and terminated in third countries, with negative effects on retail tariffs in the Union and on the cost structure of operators in the Union. »

¹¹ The draft delegated act is available at <https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/1958-Voice-call-termination-rates-in-the-EU-Eurorates->

foresight. I.e. the termination rate will only be regulated for calls originating within the EEA; in case of calls originating outside the EEA, operators are free to negotiate and agree termination rates freely. This is the only way to ensure that market uncertainties are avoided, that the efforts on both the operator and the AK side remain as low as possible and that the transition from the termination rate regulation foreseen as of 1 January 2021 to the follow-up regime of the delegated act can be carried out easily and without major changeover efforts on the part of the operators.

Annex 1 Consultation Questions and Responses from Operators

Consultation Question 1

Question:

Do you support the establishment of a single termination rate to be applied to all calls regardless of their origin? If not, what are your arguments?

Salt:

Salt is in favour of setting a single termination rate for all calls, regardless of the origination point or A-number, both mobile and fixed.

TLI:

Given that it is mainly foreign telecoms operators rather than end-users that benefit from the reduction and that there are no longer any international reachability problems due to termination rates, Telecom Liechtenstein is clearly in favour of limiting the validity of calls from EEA countries.

Annex 2 Information on the Consultation of the Market Analysis of Fixed Termination

The information on the consultation of the market analysis of fixed network termination was posted on the AK website on 18 May 2020 and sent to the registered providers and operators.

Von: Amt für Kommunikation
Gesendet: Montag, 18. Mai 2020 16:09
An: Amt für Kommunikation
Cc: Giorgetta Silvio
Betreff: Konsultation der Marktanalysen Mobilterminierung bzw. Festnetzterminierung und der vorgesehenen Regulierungsmassnahmen (Frist für Stellungnahmen: 26. Juni 2020)

Sehr geehrte Damen und Herren

Das Amt für Kommunikation (AK) unterzieht Liechtensteins Mobil- und Festnetzterminierungsmärkte einer neuen Marktanalyse.

Dazu hat das AK die Marktanalysen für die Mobil- bzw. Festnetzterminierung erstellt, welche nun zur Konsultation bereitstehen.

Aufgrund des Eintrags Ihres Unternehmens im Melderegister informiert Sie das AK über diese Konsultation und lädt Sie zu einer Stellungnahme ein.

Kapitel 1 Management Summary gibt Ihnen einen Überblick und informiert insbesondere über die Terminierungspreise im europäischen Vergleich, über die vom AK gewählte Festlegungsmethode und die neu ab 1. Januar 2021 vorgesehenen Höchstwerte für Terminierungspreise. Die Darstellung der Marktentwicklung finden Sie in Kapitel 4, die Festlegung der Terminierungspreise finden Sie in Kapitel 10.

Im Anhang 4 enthalten ist die Verfügung als Rumpfdokument mit den gemäss aktuellem Arbeitsstand vorgesehenen Massnahmen („Spruch“).

Die Konsultationsdokumente können Sie von der [Webseite des AK](#) (Navigation: Marktanalysen ⇒ Konsultationen ⇒ Laufende Konsultationen) durch Download beziehen.

Das AK nimmt Ihre **Stellungnahme bis Freitag, 26. Juni 2020** gerne entgegen, zu den spezifischen Konsultationsfragen des AK (zusammengefasst in Anhang 5) oder zu anderen Themen der Marktanalysen und vorgesehenen Massnahmen, und ersucht Sie, in Ihrer Stellungnahme klarzustellen, auf welche Marktanalyse (Mobil oder Festnetzterminierung) Ihre Aussagen sich beziehen. Stellungnahmen sind per E-Mail an die Adresse info.ak@lv.li oder mittels [Formular für sichere Übermittlung von Daten](#) (s. unten) an das AK zu senden. Bei Fragen steht Ihnen Herr Silvio Giorgetta, silvio.giorgetta@lv.li, Tel. +423 236 64 86 gerne zur Verfügung.

Zur Besprechung spezifischer Fragen, die Sie vor Abgabe einer Stellungnahme klären möchten, wird das AK für interessierte Anbieter eine Informationsveranstaltung durchführen, über Termin und Veranstaltungsmodus wird das AK in Bälde informieren. An dieser Informationsveranstaltung wird das AK auch ausführlich über die (Europa-)rechtlichen Vorgaben zur Kostenberechnung informieren.

Freundliche Grüsse

Silvio Giorgetta

Konsultationsdokument - Download: <https://www.lv.li/inhalt/118827/amtsstellen/marktanalysen-mobilterminierung-und-festnetzterminierung>

Sichere Übermittlung von Daten: https://formulare.lv.li/formserver_AK/start.do?generalId=AK_SUE

Annex 3 Summary of the Information Event of 10 June 2020

The summary of the information event was sent to the registered operators and suppliers on 15 June 2020, who also received information on the procedure of the consultation.

Von: Amt für Kommunikation

Gesendet: Montag, 15. Juni 2020 08:04

An: Amt für Kommunikation

Betreff: Zusammenfassung Informationsanlass zu Marktanalyse und Regulierung der Mobil- und Festnetzterminierung

Sehr geehrte Damen und Herren

Das AK möchte sich bei den aktiv teilnehmenden Betreibern und Anbietern für ihren Input in der Videokonferenz bedanken und alle Marktteilnehmer kurz über Themen informieren, die während der Videokonferenz zur Sprache kamen.

- Symmetrische Terminierungspreise
Teilnehmer der Videokonferenz votierten, dass die Terminierungspreise symmetrisch festgelegt werden sollen, so wie im Konsultationsdokument vom AK vorgesehen. Nur so könne sichergestellt werden, dass die Absenkung der Terminierungspreise tatsächlich auch international sichtbar werde. Die Vergangenheit habe gezeigt, dass bei verschiedenen Terminierungspreisen letztlich nur der Höchstwert international wahrgenommen bzw. in Vorleistungstarifen eingerechnet werde.
- Einheitliche Terminierungspreise unabhängig vom Originierungsort
Als weiteres Votum wurde eingebracht, dass die Terminierungspreise einheitlich und unabhängig vom Originierungsort gelten sollen, also gleich für Anrufe aus EWR Ländern und aus nicht-EWR-Ländern. Das AK führte aus, dass die vorgesehene Regulierung des Konsultationsdokuments einen einheitlichen Terminierungspreis vorsieht, das AK jedoch auch Kenntnis von anders lautenden Standpunkten und Regulierungen in Europa hat.
- Regulierung auf Basis des delegierten Rechtsaktes
Es wurde die Frage aufgeworfen, ob die Terminierungsregulierung erst dann durchgeführt werden könnte, wenn der delegierte Rechtsakt der Europäischen Kommission in Liechtenstein rechtskräftig werde. Das AK führte aus, dass die Übernahme in das EWR Abkommen und somit ins Liechtensteinische Recht eine nicht absehbare Dauer habe.

Das Thema „Einheitliche Terminierungspreise unabhängig vom Originierungsort“ scheint dem AK zZt das einzige zu sein, in dem unter den Marktteilnehmern verschiedene Ansichten vorhanden sein könnten. Deshalb ersucht das AK die Marktteilnehmer, in Stellungnahmen zu diesem Thema ihre Standpunkt klar darzulegen, zu begründen und die Auswirkungen auf den Betreiber wie auch auf den Standort Liechtenstein insgesamt darzustellen.

Beachten Sie bitte für Ihre Stellungnahme den 26. Juni als Eingabefrist. Für Fragen stehe ich Ihnen gerne weiter zur Verfügung.

Freundliche Grüsse

Annex 4 Comments from Operators

Salt

Salt.

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Balzers, 23. Juni 2020

Konsultation zur Analyse der Mobil- sowie Festnetzterminierungsmärkte

Sehr geehrte Damen und Herren,

Wir nehmen Bezug auf Ihr Schreiben vom 18. Mai 2020 und bedanken uns für die gebotene Gelegenheit, dazu Stellung zu nehmen. Fristgerecht möchten wir von dieser Gelegenheit Gebrauch machen und übersenden Ihnen hiermit unser Anliegen bezüglich den Terminierungspreisen, wie bereits an der Online-Besprechung vom 10. Juni 2020 erläutert.

Wir befürworten ganz klar die Festlegung eines einheitlichen Terminierungspreises für alle Anrufe unabhängig vom Originierungsort bzw. unabhängig der A-Nummer, dies sowohl für Mobil- wie auch im Festnetz.

Wir ersuchen Sie höflich um Berücksichtigung unseres Anliegens und stehen Ihnen für allfällige Rückfragen gerne zur Verfügung.

Mit freundlichen Grüssen

Telecom Liechtenstein

KONSULTATION FESTNETZTERMINIERUNG:

Konsultationsfrage 1: Einheitliche Fixed Terminierungspreise unabhängig vom Originierungsort

Aufgrund der Tatsache, dass nicht die Endkunden sondern im Wesentlichen ausländische Telekommunikationsunternehmen von der Absenkung profitieren und es keinerlei internationale Erreichbarkeitsprobleme aufgrund der Terminierungspreise mehr gibt spricht sich Telecom Liechtenstein ganz klar für eine Beschränkung der Gültigkeit für Anrufe aus EWR Ländern aus.

Das zugrunde liegende LRIC-Kostenmodell nimmt keine Rücksicht auf die tatsächlichen Kosten welche im Falle von Telecom Liechtenstein vor allem aus der Kleinheit des Marktes und der damit verbundenen nachteiligen Kostenstruktur herrühren.

Daher strebt Telecom Liechtenstein die unternehmerische Gestaltbarkeit der Terminierungspreise für nicht-EWR-Länder an, wobei insbesondere die Schweiz relevant ist. Ziel ist es ein vernünftiges Verhältnis zu den Schweizer Terminierungspreisen durch eine freiwillige Absenkung zu gewährleisten um in Zukunft ein nachhaltiges Geschäftsmodell durch Kostendeckung zu gewährleisten.

KONSULTATION MOBILTERMINIERUNG: