Brussels, 28 October 2020
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Amt für Kommunikation
9490 Vaduz
Principality of Liechtenstein

For the attention of:
Dr. Rainer Schnepfleitner
Director

Dear Dr. Schnepfleitner,

Subject: Market for wholesale call termination on individual public telephone networks provided at a fixed location in Liechtenstein

Market for wholesale voice call termination on individual mobile networks in Liechtenstein

Article 7(3) of Directive 2002/21/EC (Framework Directive)[1]: No comments

I. PROCEDURE

On 5 October 2020, the EFTA Surveillance Authority ("the Authority") received notifications of draft national measures in the field of electronic communications pursuant to Article 7 of the Framework Directive from the Liechtenstein national regulatory authority, *Amt für Kommunikation* ("the AK"). The draft national measures concern the market for wholesale call termination on individual public telephone networks provided at a fixed location and the market for wholesale voice call termination on individual mobile networks in Liechtenstein[2].

The notification became effective on the same day.

National consultation was carried out, pursuant to Article 6 of the Framework Directive, during the period 18 May 2020 to 26 June 2020.

[1] Directive 2002/21/EC of the European Parliament and of the Council of 7 March 2002 on a common regulatory framework for electronic communications networks and services, OJ L 108, 24.4.2002, p. 33 (as amended by Regulation (EC) No 717/2007, OJ L 171, 29.6.2007, p. 32 and Regulation (EC) No 544/2009, OJ L 167, 29.6.2009, p. 12) as referred to at point 5 cl of Annex XI to the EEA Agreement and as adapted to the Agreement by Protocol 1 ("the Framework Directive").

[2] Corresponding to markets 1 and 2 of the EFTA Surveillance Authority Recommendation of 11 May 2016 on relevant product and service markets within the electronic communications sector susceptible to *ex ante* regulation in accordance with the Act referred to at point 5cl of Annex XI to the EEA Agreement (*Directive 2002/21/EC of the European Parliament and of the Council on a common regulatory framework for electronic communications networks and services*); adopted by Decision No 093/16/COL, OJ L 84, 30.3.2017, p. 7, ("the 2016 Recommendation").

The period for consultation with the Authority and the national regulatory authorities ("NRAs") in the EEA States pursuant to Article 7 of the Framework Directive expires on 5 November 2020.

II. DESCRIPTION OF THE DRAFT MEASURE

II.1. Background

Wholesale call termination on individual public telephone networks provided at a fixed location

The AK's previous review of the market for wholesale call termination on individual public telephone networks provided at a fixed location ("fixed termination") in Liechtenstein was notified to the Authority on 25 March 2010[3]. The AK considered that fixed termination comprised the transmission of voice traffic from the last interconnection-capable exchange to the subscriber. The market covered the termination of voice calls on individual fixed networks and included voice as well as fax and modem dial-up connections with the exception of dial-up connections to the internet. Termination services by means of Voice over Broadband ("VoB") were included in the market, while termination services by means of Voice over Internet ("VoI") were excluded. The relevant geographic market was considered as the whole territory of Liechtenstein. The AK designated Telekom Liechtenstein ("TLI") as an operator with significant market power ("SMP"). At the time, TLI was the only operator providing fixed termination services in Liechtenstein. In its analysis, the AK took into account barriers to market entry, non-existence of competition and lack of countervailing buying power.

The AK imposed on TLI the following set of remedies: (i) access to network facilities and network functions; (ii) price control and cost accounting; (iii) obligation of transparency and publication of a reference offer; (iv) obligation of non-discrimination; and (v) accounting separation. With regard to price control remedies, the AK concluded that fixed termination rates ("FTRs") should be oriented to the costs of an efficient operator based on historic full cost accounting and supported by international benchmarking of termination rates. The Authority had no comments on the notification.

On 22 June 2017[4], the AK notified to the Authority its review of the cost accounting model for TLI that concerned *inter alia* the fixed termination market. The Authority urged the AK to avoid any further delays in the implementation of cost-efficient termination rates in Liechtenstein and, in line with the Authority's 2011 Termination Rates Recommendation[5], to notify those rates without any further delay.

Wholesale voice call termination on individual mobile networks

The last review of the market for wholesale voice call termination on individual mobile networks ("mobile termination") was notified by the AK to the Authority on 26 April 2011[6]. As regards the relevant product market, the AK concluded that the network of each individual operator constituted a distinct product market, regardless of the technology used (both 2G and 3G networks were included). The relevant geographic market was considered as the whole territory of Liechtenstein. The AK proposed to designate all active mobile network operators ("MNOs") providing mobile termination with SMP on their respective markets, i.e. Mobilkom Liechtenstein AG; Orange (Liechtenstein) AG, Swisscom FL6 and Alpcom AG7. The main criteria considered by the AK when reaching

[3] Case 66392.
[4] Case 80869.
[5] EFTA Surveillance Authority Recommendation of 13 April 2011 on the Regulatory Treatment of Fixed and Mobile Termination Rates in the EFTA States ("the 2011 Termination Rates Recommendation").
[6] Case 63627.

its conclusion on the SMP designation were: market shares (each operator has 100% market share on its own network), entry barriers, lack of countervailing buyer power and lack of potential competition.

The AK imposed on the SMP operators the following set of obligations: (i) access to network facilities and network functions; (ii) price control and cost accounting; (iii) obligation of transparency and publication of a reference offer; and (iv) obligation of non-discrimination. In relation to the price control remedy, the AK proposed the introduction of a glide path towards a target maximum mobile termination rate ("MTR") which corresponded to a weighted average of the MTRs (applicable on 1 January 2011) of three Swiss MNOs. With regard to the chosen benchmark, the AK deemed it appropriate to set the MTRs of MNOs active in Liechtenstein based on the MTRs in Switzerland, due to the competitive situation on the retail market, where the Swiss MNOs competed directly for customers with the Liechtenstein operators.

The Authority commented *inter alia* on: (i) the appropriateness of the proposed price control mechanism, inviting the AK to use a benchmark based on the average termination rates in those EEA States that apply cost accounting methodologies designed to set efficient MTRs and, by doing so, reduce termination rates to a level reflecting the cost of an efficient operator, and (ii) the need for a coherent EEA approach to regulating wholesale termination rates, urging the AK to take utmost account of the 2011 Termination Rates Recommendation in its next review of the termination markets in 2012, as envisaged by the AK.

II.2. Market definition

In both relevant wholesale markets, the AK concludes that the network of each individual operator constitutes a distinct product market, regardless of where the call originates and regardless of the telephony network technology used. The relevant geographic market is the entire territory of Liechtenstein.

II.3. Finding of significant market power

In its analysis, the AK relies on the following criteria: (i) market shares (each individual fixed and mobile network operator has a 100% market share in its own termination market measured in minutes of termination traffic); (ii) barriers to market entry; (iii) lack of potential competition; and (iv) lack of countervailing buying power.

The AK designates the following operators with SMP:

(i) for fixed termination: Telecom Liechtenstein AG[7], Backbone Solutions AG[8] and Nexphone AG[9] as SMP operators on their respective fixed termination markets in Liechtenstein; and

(ii) for mobile termination: Telecom Liechtenstein AG, Salt (Liechtenstein) AG and Swisscom (Switzerland) AG as SMP operators on their respective mobile termination markets in Liechtenstein.

II.4. Regulatory remedies

[7] TLI is active at both retail and wholesale levels of the telephony market. In addition to the retail level, from 2019 it offered wholesale access to the public telephone network via VoIP (wholesale VoIP).

[8] Backbone Solutions entered the market in 2019 with VoIP wholesale services but without its own subscribers.

[9] Nexphone entered the market with VoIP wholesale services but without its own subscribers in 2020.

The AK intends to impose the following set of remedies on each of the fixed and mobile network operators designated with SMP:

- Access obligation: Obligation to provide direct and indirect interconnection to its fixed or mobile telephony network for the termination of voice calls;
- Price control by means of cost-oriented prices of an efficient operator;
- Transparency obligation and an obligation to publish a reference interconnection offer;
- Internal and external non-discrimination obligation with regard to the quality of the interconnection and an external non-discrimination obligation with regard to the termination charges.

Concerning the price control obligations, the AK intends to set symmetrical termination rates for all SMP operators, in accordance with Recommendations 1 and 11 of the 2011 Termination Rates Recommendation. The AK is of the opinion that the introduction of a pure BU LRIC cost accounting model in Liechtenstein would be disproportionate. The AK, therefore, intends to make use of the exemption provided for in the Recommendation and apply international benchmarking against 23 EEA States[10].

The proposed maximum FTR of 0.09 CHF centimes per minute (around 0.08 €cent) is based on a simple average of the benchmark rates, whereas the proposed maximum MTR of 0.77 CHF centimes per minute (around 0.72 €cent) is based on a weighted average of the benchmark rates.

Both proposed termination rates would be excluding VAT and would apply only to calls originated within the EEA as of 1 January 2021[11].

The AK will review both the FTRs and MTRs every 3 years, as long as the European Electronic Communications Code ("the Code")[12] and the delegated legal act in accordance with Art. 75 of the Code have not been incorporated into the EEA Agreement. This is without prejudice to the possibility for market players to request a review in advance for important reasons.

III. NO COMMENTS

The Authority has examined the notified draft measure and has no comments.

IV. FINAL REMARKS

On a procedural note, the Authority recalls that any future amendments to, or more detailed implementation of, the draft remedies consulted on in the current notification will require re-notification in accordance with Article 7(3) of the Framework Directive.

[10] For fixed termination: Austria, Belgium, Bulgaria, Cyprus, Czech Republic, Germany, Denmark, Greece, Spain, France, Croatia, Hungary, Ireland, Italy, Luxembourg, Malta, Netherlands, Norway, Portugal, Romania, Sweden, Slovenia, Slovakia. For mobile termination: Austria, Belgium, Bulgaria, Cyprus, Czech Republic, Germany, Denmark, Greece, Spain, France, Croatia, Hungary, Ireland, Italy, Luxembourg, Malta, Netherlands, Norway, Poland, Portugal, Sweden, Slovenia, Slovakia.

[11] The rate currently in place amounts to 2.90 CHF centimes per minute for both fixed and mobile termination.

[12] Directive (EU) 2018/1972 of the European Parliament and of the Council of 11 December 2018 establishing the European Electronic Communications Code (Recast) Text with EEA relevance; OJ L 321, 17.12.2018, p. 36–214.

Pursuant to Article 7(5) of the Framework Directive, the AK shall take the utmost account of comments of other regulatory authorities and the Authority. It may adopt the resulting draft measure and, when it does so, shall communicate it to the Authority.

The Authority's position on the current notification is without prejudice to any position the Authority may take in respect of other notified draft measures.

Pursuant to Point 15 of the Procedural Recommendation[13], the Authority will publish this document on its eCOM Online Notification Registry. The Authority does not consider the information contained herein to be confidential. You are invited to inform the Authority within three working days[14] following receipt of this letter if you consider, in accordance with EEA and national rules on confidentiality, that this letter contains confidential information which you wish to have deleted prior to publication. You should give reasons for any such request.

Yours sincerely,

Gabrielle Somers Deputy Director Internal Market Affairs Directorate	Emily O'Reilly Deputy Director for Competition Competition and State Aid Directorate

This document has been electronically authenticated by Emily OReilly, Gabrielle Somers.

[13] EFTA Surveillance Authority Recommendation of 2 December 2009 on notifications, time limits and consultations provided for in Article 7 of the Act referred to at point 5cl of Annex XI to the Agreement on the European Economic Area (Directive 2002/21/EC of the European Parliament and of the Council on a common regulatory framework for electronic communications networks and services), as adapted by Protocol 1 thereto, OJ C 302, 13.10.2011, p. 12, and available on the Authority's website at https://www.eftasurv.int/internal-market/notifications-and-applications/ecom-notifications ("the Procedural Recommendation").

[14] The request should be submitted through the eCOM Registry, marked for the attention of the eCOM Task Force.