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Amt für Kommunikation  
9490 Vaduz  
Principality of Liechtenstein

For the attention of:  
Dr. Rainer Schnepfleitner  
Director

Dear Dr. Schnepfleitner,

**Subject: Call origination on the public telephone network provided at a fixed location in Liechtenstein**

**Article 7(3) of Directive 2002/21/EC (Framework Directive)<sup>1</sup>: No comments**

## I. PROCEDURE

On 2 July 2021, the EFTA Surveillance Authority (“the Authority”) received a short notification of a draft national measure 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”). It concerns the market for call origination on the public telephone network provided at a fixed location in Liechtenstein<sup>2</sup>.

The notification became effective on the same day.

National consultation was carried out, pursuant to Article 6 of the Framework Directive, during the period 31 May 2021 to 15 June 2021. 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 2 August 2021.

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<sup>1</sup> 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”).

<sup>2</sup> Corresponding to market 2 of the EFTA Surveillance Authority Recommendation of 5 November 2008 (Decision No 688/08/COL) on relevant product and service markets within the electronic communications sector susceptible to ex ante regulation in accordance with the Framework Directive, OJ C 156, 9.7.2009, p.18 (“the 2008 Recommendation”).

## II. DESCRIPTION OF THE DRAFT MEASURE

### II.1. Background

The market for call origination on the public telephone network provided at a fixed location in Liechtenstein was previously notified to the Authority on 25 March 2010<sup>3</sup>. At the time, the AK considered that the market comprised the transmission of voice and data traffic from subscribers to the first interconnection-capable local exchange of the originating network. The relevant market covered voice as well as fax and modem dial-up connections. Origination services by means of Voice over Broadband (“VoB”) were components of the market, while origination services by means of Voice over Internet (“VoI”) were not. The market included the origination services of all subscriber network operators. The AK designated Telekom Liechtenstein AG (“TLI”) as an operator with significant market power (“SMP”) and imposed the following set of remedies: (i) access, (ii) price control and cost accounting, (iii) transparency, (iv) non-discrimination, and (v) accounting separation. The Authority did not have comments on the notification.

In its Decision of 13 October 2017<sup>4</sup>, the AK reviewed the cost accounting model of TLI that would serve as the basis to set TLI’s tariffs in markets 1-3 and 5 of the 2008 Recommendation. Furthermore, in its Decision of 22 February 2019<sup>5</sup>, the AK set, *inter alia*, wholesale rates for access via Voice over Internet Protocol (“VoIP”) using a retail-minus markdown derived from TLI’s cost accounting model. The Authority commented on the AK’s delay in imposing these remedies and the need to conduct the next market review in a timely manner. Subsequently, in November 2019<sup>7</sup> the AK notified terms and conditions of TLI’s VoIP reference offer.

### II.2. The notified draft measure

According to the AK, both mobile and fixed connections are included in the same market, irrespective of the underlying technology used<sup>8</sup>. The market has been defined as national in scope.

Moreover, the AK considers that the following markets are relevant for the assessment of the competitive situation in the telephony market in Liechtenstein: (i) Access to the public telephone network at a fixed location for residential and non-residential customers (market 1 of the 2008 Recommendation)<sup>9</sup>, (ii) Call origination on the public telephone network provided at a fixed location (market 2 of the 2008 Recommendation)<sup>10</sup>, (iii) Wholesale call termination on individual public telephone networks provided at a fixed

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<sup>3</sup> Notified to and assessed by the Authority under Case No 66392.

<sup>4</sup> Notified to and assessed by the Authority under Case No 80869.

<sup>5</sup> Notified to and assessed by the Authority under Case No 82985.

<sup>6</sup> Call-by-call and carrier pre-selection services were in use from 2000-2015 when they ceased to exist due to the market exit of Alpcom and Mobilkom. As of 2015, the demand from ISPs for VoIP services increased replacing wholesale access to older technology - PSTN (analogue) or ISDN.

<sup>7</sup> Notified to and assessed by the Authority under Case No 84344.

<sup>8</sup> According to the AK, a significant proportion of fixed line users possess at least one mobile subscription and those customers tend to make use of minutes included in their mobile packages before paying for a fixed connection. However, the AK emphasises that, even if mobile connections were excluded from the relevant market, the conclusion of the analysis would remain the same.

<sup>9</sup> Following the market analysis in 2009 TLI was obliged to provide carrier selection and carrier preselection, as well as wholesale line rental (“WLR”). In 2019, the AK decided to replace the WLR obligation by an obligation to offer VoIP wholesale connection. The latter obligation does not require origination, termination or transit services. Currently VoIP services are provided by three wholesale operators.

<sup>10</sup> The wholesale origination service became obsolete with the introduction of the regulated VoIP wholesale service, which includes access and connections.

location (market 1 of the 2016<sup>11</sup> Recommendation)<sup>12</sup>, (iv) Wholesale (physical) network infrastructure access (including shared or fully unbundled access) at a fixed location (market 4 of the 2008 Recommendation)<sup>13</sup>, (v) Wholesale broadband access (market 5 of the 2008 Recommendation)<sup>14</sup> and (vi) Wholesale market for physical access to network infrastructures for high-capacity transmission routes in the core network in Liechtenstein (the market is not included in the Authority's 2008 and 2016 Recommendations)<sup>15</sup>.

The AK explains that the relatively small size of Liechtenstein's telecommunications market is characterised by a large number of service providers. In addition to the incumbent TLI, since 2019 there are two other providers active on the market, offering exclusively wholesale VoIP services - Backbone Solutions and Nexphone. Voxphone also acts as a reseller of VoIP wholesale services and offers VoIP services to end customers. Vestra ICT operates in the end customer market with bundled offers. The share of legacy landline telephone connections (analogue, ISDN) is decreasing rapidly and is only partially replaced by IP-based telephone connections. The AK foresees that, by the end of 2022, the analogue and ISDN connections will disappear from the market. The number of IP connection lines was 73% at the end of 2020 (55% in 2019). Alternative providers offer telephony connections via own broadband service as well as VoIP wholesale services. The market share of alternative providers has almost doubled since 2016, most recently from 12% to 22%. TLI's share in the VoIP market amounts to 70% compared to a 30% share of the alternative providers.

The increasing competition has resulted in a decrease of prices for VoIP services. Whilst TLI charged CHF 20.00 for a basic bundle including VoIP services in 2016, the price gradually decreased to CHF 12.00 and, with the entry of Backbone Solutions in 2019, the price dropped to CHF 5.00. In 2020, the alternative providers offering VoIP services out of bundle charged between CHF 3.00 and CHF 5.00.

### II.3. Three-criteria test

The AK conducts a three criteria test to assess the competitive situation in the market and the potential need for regulation.

#### First criterion - the presence of high and non-transitory structural, legal or regulatory barriers to entry

The AK observes that there are no persistent and significant barriers to market entry of a structural, legal or regulatory nature. The absence of barriers is due to competition in the upstream market for wholesale VoIP services and due to the regulated non-discriminatory access to passive network infrastructure (local loops) of TLI, which ensures access to end customers. Since 2016, TLI is obliged to provide access to VoIP telephony. With the entrance in 2019/2020 of two other VoIP providers, Backbone Solutions and Nexphone, there are currently three providers offering VoIP services. In addition, the number portability regulation enabling customers to switch freely between providers strengthens competition and contributes to lowering entry barriers.

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<sup>11</sup> 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 Framework Directive; adopted by Decision No 093/16/COL, OJ L 84, 30.3.2017, p. 7, ("the 2016 Recommendation").

<sup>12</sup> Obligations related to interconnection and termination rates for calls originating from the EEA were imposed on the SMP fixed operators TLI, Backbone Solutions and Nexphone by the AK's Decision of 4 November 2020.

<sup>13</sup> The AK designated Liechtensteinische Kraftwerke ("LKW") as an SMP operator and obliged it, *inter alia*, to provide physical access and access to associated services to subscriber connections in the copper, cable television ("CATV") and fibre-optical access networks.

<sup>14</sup> TLI was obliged, *inter alia*, to provide bitstream access and access to other associated services.

<sup>15</sup> LKW was obliged to provide access to passive infrastructure in the core network, access to the unbundled wavelength channels in the core network, as well as access to associated services.

Therefore, the AK considers that the first criterion is not fulfilled.

Second criterion - a market structure which does not tend towards effective competition within the relevant time horizon, having regard to the state of infrastructure-based and other competition behind the barriers to entry

Furthermore, the AK states that since the entry of new fixed telephony providers, the prices are decreasing considerably. In addition, the majority of households with fixed line connections have mobile subscriptions and users prefer to make use of minutes included in their mobile packages. The high number of new providers (currently there are 8 active providers for a total market of 12,000 connection lines) proves that there is effective competition in the market. The total market share of alternative providers with regard to the number of VoIP connections amounts to 30% (and 22% for all connection types) and is expected to grow further, while TLI's share is decreasing. Finally, the AK emphasises that the rapid deployment of fibre in Liechtenstein entails that old telephony and coax connections will be dismantled in a short period of time.

As a result, the AK finds that the second criterion is also not fulfilled.

Third criterion - competition law alone is insufficient to adequately address the identified market failure(s)

The AK considers, that, due to the absence of a competition authority in Liechtenstein and the fact that all potential problems would need to be solved by national courts or the EFTA Surveillance Authority, competition law is not sufficient to address market failures.

Therefore, the third criterion is met.

Based on the above findings, the AK concludes that the retail voice call market, which is related to the fixed origination market, is competitive and the three criteria are not cumulatively met. Moreover, the AK underlines that there is no demand for the wholesale services of fixed network origination, since the existing obligations became obsolete in 2014.

As a result, the AK proposes to immediately lift the regulatory obligations imposed on TLI in the call origination market.

### **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 measures consulted on in the current notification will require re-notification in accordance with Article 7(3) of the Framework Directive.

Pursuant to Article 7(5) of the Framework Directive, the AK may adopt the draft measure and, when it does so, it 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<sup>16</sup>, 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<sup>17</sup> 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,

Valgerður Guðmundsdóttir  
Deputy Director for Transport  
Internal Market Affairs Directorate

Emily O'Reilly  
Deputy Director for Competition  
Competition and State Aid Directorate

*This document has been electronically authenticated by Emily O'Reilly, Valgerdur Gudmundsdottir.*

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<sup>16</sup> EFTA Surveillance Authority Recommendation of 2 December 2009 on notifications, time limits and consultations provided for in Article 7 of the Framework Directive, OJ C 302, 13.10.2011, p. 12, and available on the Authority's website at <http://www.eftasurv.int/media/internal-market/recommendation.pdf> ("the Procedural Recommendation").

<sup>17</sup> The request should be submitted through the eCOM Registry, marked for the attention of the eCOM Task Force.