

Brussels, 29 September 2022
Case No: 89151
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Amt für Kommunikation
9490 Vaduz
Principality of Liechtenstein

For the attention of:
Dr. Rainer Schnepfleitner
Director

Dear Dr. Schnepfleitner,

Subject: Access to the public telephone network at a fixed location for residential and non-residential customers

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

I. PROCEDURE

On 1 September 2022, the EFTA Surveillance Authority ("ESA") received a 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"), concerning the market for access to the public telephone network at a fixed location for residential and non-residential customers in Liechtenstein².

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 to 22 June 2022.

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"). On 24 September 2021, the EEA Joint Committee adopted Decision ("JCD") No 275/2021 incorporating Directive (EU) 2018/1972 of the European Parliament and of the Council of 11 December 2018 establishing the European Electronic Communications Code (Recast), as corrected by OJ L 334, 27.12.2019, p. 164 and OJ L 419, 11.12.2020, p. 36 ("the Code"), into the EEA Agreement. Directive (EU) 2018/1972 will repeal, *inter alia*, the Framework Directive. However, until JCD No 275/2021 enters into force, the Framework Directive remains applicable.

² Corresponding to market 1 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").

The period for consultation with ESA and the national regulatory authorities ("NRAs") in the EEA States, pursuant to Article 7 of the Framework Directive, expires on 3 October 2022.

II. DESCRIPTION OF THE DRAFT MEASURE

II.1. Background

The market for access to the public telephone network at a fixed location for residential and non-residential customers in Liechtenstein was previously notified to ESA on 30 November 2009³. At the time, the AK considered that the market comprised analogue and digital access to the public telephone network via self-operated twisted pair copper and fibre optic networks, unbundled local loops, leased lines and CATV networks, as well as access provided using voice over broadband ("VoB"). The AK designated Telecom Liechtenstein AG ("TLI") as an operator with significant market power ("SMP") and imposed on it the following set of remedies: (i) retail price controls; (ii) accounting separation and cost accounting; (iii) cost-oriented carrier selection ("CS") and carrier pre-selection ("CPS") access; (iv) the obligation to provide a wholesale line rental ("WLR") product based on the retail-minus cost approach. ESA commented on the inclusion of VoB connections in the market definition and on the exclusion of VoB connections from the obligation to provide CPS services.

In its Decision of 13 October 2017⁴, 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 2019⁵, the AK set, *inter alia*, wholesale rates for access via Voice over the Internet Protocol ("VoIP")⁶ using a retail-minus markdown derived from TLI's cost accounting model. ESA commented on the AK's delay in imposing those remedies and the need to conduct the next market review in a timely manner.

Subsequently, in November 2019⁷, the AK notified terms and conditions of TLI's VoIP reference offer. ESA had no comments on the notification.

II.2. The notified draft measure

In line with its previous market analysis, the AK defines a nationwide market comprising telephone connections at fixed locations with numbers for fixed network services of the Liechtenstein numbering plan, which enable calls to be received and made via the public telephone network. Fixed network telephone connections are defined in a technology neutral manner and include residential and non-residential (business) customer connections. The AK also finds that mobile telephony connections are not substitutes for fixed telephony connections (notably due to significant price differences and divergent consumer usage of the respective services) and are therefore excluded from the relevant market.

Moreover, the AK considers that the following markets are relevant for the assessment of the competitive situation in the market for access to the public telephone network at a fixed

³ Notified to and assessed by ESA under Case No [66391](#).

⁴ Notified to and assessed by ESA under Case No [80869](#).

⁵ Notified to and assessed by ESA under Case No [82985](#).

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

⁷ Notified to and assessed by ESA under Case No [84344](#).

location for residential and non-residential customers in Liechtenstein: (i) wholesale call termination on individual public telephone networks provided at a fixed location (market 1 of the 2016 Recommendation⁸); (ii) wholesale (physical) network infrastructure access (including shared or fully unbundled access) at a fixed location (market 4 of the 2008 Recommendation¹⁰); (iii) wholesale broadband access (market 5 of the 2008 Recommendation¹¹); and (iv) wholesale market for physical access to network infrastructures for high-capacity transmission routes in the core network in Liechtenstein (this market is not included in ESA's 2008 and 2016 Recommendations)¹².

According to the AK, over the past years fixed telephony connections have been constantly declining in Liechtenstein (-7% to -10% yearly in the years 2019 to 2021), whereas broadband connections have been steadily increasing (+3% to +5% yearly between 2019 and 2021). At the end of 2021, only 49% of households and workplaces still had a fixed telephony connection (down from 94% in 2010).

The AK explains that the relatively small size of Liechtenstein's retail fixed telephony market is characterised by a large number of service providers. In addition to the incumbent TLI, 8 alternative operators are active on this market: Hoi Internet, li-life web+it, M-Tech, Speedcom, Supranet, TV-COM, Vestra ICT and Voxphone. All 9 providers offer VoIP services, whereas TLI also still offers legacy landline connections (analogue and ISDN), which are however decreasing quickly¹³. Except for Voxphone¹⁴, all alternative operators offer VoIP telephony services via their own broadband connections and VoIP wholesale services, usually bundled with internet connections. At wholesale level, TLI has a 35% market share (2020 figures) and operates alongside Backbone Solutions and Nexphone, which are wholesale-only operators, and Voxphone, which acts as a reseller of wholesale VoIP services (i.e. it does not own any VoIP infrastructure).

The AK further submits that, while in the last market analysis TLI was still a monopolist on the retail market, its market share has been falling steadily since the first market entries in 2016. Although at the end of 2021 TLI still had a 71% market share (66% in the VoIP market), its market share has declined every year since 2016, when it was 99% (97% for VoIP only). At the same time, the market share of alternative operators has grown from 1% in 2016 to 29% at the end of 2021 (from 3% to 34% if only VoIP is considered).

Moreover, at the time of the last market analysis, most of TLI's telephone connections were still offered at a monthly fee of CHF 25.25 (analogue), CHF 39.80 (ISDN-Light) and CHF 53.75 (ISDN-Basis), while in 2016 TLI still charged CHF 20.00 for VoIP services in a basic bundle. The market entries from 2016 onwards have however led to marked price

⁸ 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").

⁹ 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.

¹⁰ 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.

¹¹ TLI was obliged, *inter alia*, to provide bitstream access and access to other associated services.

¹² 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.

¹³ Out of all fixed telephony connections, the share of VoIP connections was 86% at the end of 2021 (compared to 7% in 2010). The AK expects that analogue and ISDN connections will disappear by the end of 2023.

¹⁴ Voxphone offers VoIP telephony services by connecting end users through internet connections provided by a different service provider.

reductions, so that VoIP telephone connections in a bundle are now available for CHF 3.00 to CHF 5.00 per month.

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 barriers to entry

The AK observes that there are no longer persistent and significant barriers to market entry of a structural, legal or regulatory nature. The absence of barriers is mainly due to effective competition in the upstream market for wholesale VoIP services, as well as to regulated access to the passive network infrastructure (local loops) of LKW, which ensures access to the retail market. The AK considers that those factors give potential new retail service providers without their own VoIP infrastructure, a sufficient, barrier-free basis for entry, and providers already active in the market (and end users) sufficient countervailing power for the provision of competitive retail offerings. In addition, the introduction of number portability in 2018 enabled customers to switch freely between providers, thereby strengthening competition and further lowering entry barriers.

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

The AK states that the high number of retail service providers proves that there is effective competition in the market. As mentioned above, the combined market share of alternative operators in terms of VoIP connections amounted to 34% at the end of 2021 (and 29% for all connection types) and is expected to grow further, while TLI's share has been steadily decreasing over the past years and is expected to fall below 50% within the next 3-5 years. Furthermore, the AK observes that the market entry and expansion of alternative operators has led to a sharp and constant decrease in prices for fixed telephony connections over the past years. According to the AK, those price reductions, together with the high number of alternative operators and a steady loss of market share for TLI, clearly indicate that the latter cannot behave independently of its competitors or customers.

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

Third criterion – the application of competition law alone would not adequately address the market failure(s) concerned

Since the three criteria need to be met cumulatively for regulation to be justified, and the first two criteria were found not to be fulfilled, the AK does not assess the third criterion.

Conclusion

Given that the three-criteria test is no longer fulfilled, the AK proposes to immediately lift the regulatory obligations imposed on TLI in the market for access to the public telephone network at a fixed location for residential and non-residential customers in Liechtenstein.

III. NO COMMENTS

ESA has examined the notified draft measure and has no comments.

IV. FINAL REMARKS

On a procedural note, ESA 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 shall take the utmost account of comments of other regulatory authorities and ESA. It may adopt the resulting draft measure and, when it does so, shall communicate it to ESA.

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

Pursuant to Point 15 of the Procedural Recommendation¹⁵, ESA will publish this document on its eCOM Online Notification Registry. ESA does not consider the information contained herein to be confidential. You are invited to inform ESA within three working days¹⁶ 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,



Filip Ragolle
Deputy Director for Competition & Regulation
Competition and State Aid Directorate

¹⁵ 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 ESA's website, [here](#) ("the Procedural Recommendation").

¹⁶ The request should be submitted through the eCOM Registry, marked for the attention of the eCOM Task Force.