



SUMMARY NOTIFICATION FORM FOR THE
“WHOLESALE MARKET FOR PHYSICAL ACCESS TO NETWORK INFRASTRUCTURES
FOR HIGH CAPACITY TRANSMISSION ROUTES IN THE CORE NETWORK”

in accordance with the Recommendation of the EFTA Surveillance Authority of 2 December 2009 on notifications, time limits and consultations provided for in 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 I thereto.

SECTION 1

Market definition

Please state where applicable:

1.1	<i>The relevant product/service market. Is this market mentioned in the Recommendation on relevant markets?</i>	Section / Paragraph
	The relevant product market is the wholesale market for physical access to network infrastructures for high capacity transmission routes in the core network.	3.4.4
	In the Office for Communications' (<i>Amt für Kommunikation, hereinafter "AK"</i>) understanding this means access to <ul style="list-style-type: none"> - dark fibre and/or unlit optical fibre cables or - to an unused wavelength unbundled optical/lambda channel of an optical fibre cable in a core. It concerns the physical access to the passive network infrastructure on the wholesale level.	3.2
	This market is not contained in the recommendation on relevant markets. Nevertheless AK came to the conclusion, that the market should be considered for ex ante regulation after conducting the three criteria test.	3.4.2
1.2	<i>The relevant geographic market</i>	
	The relevant geographic market is the territory of Liechtenstein.	

1.3	<i>A brief summary of the opinion of the national competition authority, where provided</i>	
	There is no national competition authority in Liechtenstein.	
1.4	<i>A brief overview of the results of the public consultation to date on the proposed market definition (for example, how many comments were received, which respondents agreed with the proposed market definition, which respondents disagreed with it);</i>	
	<p>AK conducted a national consultation from 24 April 2013 to 7 June 2013.</p> <p>Comments were submitted by the following undertakings:</p> <ul style="list-style-type: none"> – Liechtensteinische Kraftwerke – Newsnet Internet Services AG – Telecom Liechtenstein AG – TON Total Optical Networks Anstalt – UPC Cablecom GmbH – Wasser- und Elektrizitätswerk Buchs. <p>All responses are published on the AK's website, because none of them was subject to confidentiality.</p> <p>None of the respondents disagreed with the proposed market definition.</p> <p>A Summary of the responses is provided in a separate document alongside this notification.</p>	<p>1.3</p> <p>AK's Website</p> <p>Summary of responses in the national consultation</p>
1.5	<i>Where the relevant market is different from those listed in the Recommendation on relevant markets, a summary of the main reasons justifying the proposed market definition by reference to Section 2 of the Authority's Guidelines of 14 July 2004 on market analysis and the assessment of significant market power under the regulatory framework for electronic communications networks and services, and the three main criteria mentioned in recitals 6 to 14 of the Recommendation on relevant markets and Section 2.2 of the Explanatory Note accompanying the corresponding Commission's Recommendation on relevant markets.</i>	
	<p>Liechtenstein is functionally separated: The undertaking running the network is not a vertically integrated full service provider and is not active on the retail customer markets. The network-provider (owned by the State) is the only provider operating a (core) network in the complete country.</p> <p>AK conducted the three-criteria-test and all three criteria are fulfilled:</p>	<p>2 and 3.4.2</p> <p>3.4.2</p>

	<ul style="list-style-type: none"> - Liechtenstein has to date not experienced any general duplication of optical fibre routes in the core network by alternative operators. This lack of alternative infrastructure can be traced back on the one hand, to the low market potential and traffic volume and corresponding income on these routes and, on the other hand, especially to the high line construction sunk costs linked to such a duplication, which represent persistent barriers to entry onto this market. For these reasons, the AK also does not expect any duplication of the core network infrastructure in the foreseeable future. - Consequently, it can be ascertained that on the wholesale market for the physical access to network infrastructure for high capacity transmission routes in the core network, no tendency toward (self-sustaining) competition exists and that in the anticipated period under consideration in this market analysis the high and persistent market entry barriers will continue to exist. - The lack of an independent competition authority in Liechtenstein and the fact that any legal action in accordance with general EEA competition law has to be brought before the ordinary national courts or the EFTA Surveillance Authority – should it have jurisdiction – coupled with the probable requirement of an ongoing and detailed intervention in cases of competition problems on this market (and especially to combat the problem of excessive prices) make it obvious that general competition law is inadequate for successfully countering potential competition problems on this market. 	
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SECTION 2

Designation of undertakings with significant market power

Please state where applicable:

2.1	<p><i>The name of the undertakings designated as having, individually or jointly, significant market power. Where applicable, the name of the undertakings considered no longer to have significant market power.</i></p> <p>Liechtensteinische Kraftwerke (LKW)</p>	Section / Paragraph
2.2	<p><i>The criteria used to designate an undertaking as having significant market power, individually or jointly, or not.</i></p> <ul style="list-style-type: none"> - Market Shares - Market entry barriers; <ul style="list-style-type: none"> o Control over infrastructure not easily duplicated; 	<p>4.2</p> <p>4.4</p> <p>4.4.2</p>

	<ul style="list-style-type: none"> ○ Economies of scale, scope and concentration; ○ Sunk costs; – Countervailing buying power; – Behaviour on the market in general. 	4.4.3 4.4.4 4.5 4.6
2.3	<i>The name of the main undertakings (competitors) active in the relevant market.</i>	
	UPC Cablecom GmbH TV-COM AG	
2.4	<i>The market shares of the undertakings mentioned above and the basis for calculation of market share (e.g. turnover, number of subscribers).</i>	
	According to the number of fibre optical cables the market shares are: <ul style="list-style-type: none"> - UPC: 0.33% - TV-COM: 0.41% 	
	<i>Please provide a brief summary of:</i>	
2.5	<i>The opinion of the national competition authority, where provided;</i>	
	Not applicable. Cf point 1.3 above	
2.6	<i>The results of the public consultation to date on the proposed designation(s) as undertakings having significant market power (e.g., total number of comments received, numbers agreeing/disagreeing).</i>	
	None of the respondents disagreed with the finding of SMP for LKW	

SECTION 3

Regulatory obligations

Please state where applicable:

3.1	<i>The legal basis for the obligations to be imposed, maintained, amended or withdrawn (Articles 9 to 13 of Directive 2002/19/EC (Access Directive));</i>	Section / Paragraph
	Obligations to be imposed: <ul style="list-style-type: none"> – Granting physical access (Art. 12) – Price Control (Art. 13) – Accounting Separation (Art. 11) – Non discrimination (Art. 10) – Publication of reference offer (Art. 10) – Transparency (Art. 9) 	6.10 and 7 6.4 and 7.1 6.5 and 7.2 6.6 and 7.3 6.7 and 7.5

3.2	<i>The reasons for which the imposition, maintenance or amendment of obligations on undertakings is considered proportional and justified in the light of the objectives laid down in Article 8 of Directive 2002/21/EC (Framework Directive). Alternatively, indicate the paragraphs, sections or pages of the draft measure where such information is to be found;</i>	
	See market analysis	Chapters 6, 7 and 6.9
3.3	<i>Where the remedies proposed are other than those set out in Articles 9 to 13 of Directive 2002/19/EC (Access Directive), please indicate what 'exceptional circumstances' within the meaning of Article 8(3) of that Directive justify the imposition of such remedies. Alternatively, indicate the paragraphs, sections or pages of the draft measure where such information is to be found.</i>	
	N/A	

SECTION 4

Compliance with international obligations

In relation to the third indent of the first subparagraph of Article 8(3) of Directive 2002/19/EC (Access Directive), please state where applicable:

4.1	<i>Whether the proposed draft measure intends to impose, amend or withdraw obligations on market players as provided for in Article 8(5) of Directive 2002/19/EC (Access Directive);</i>	Section / Paragraph
	Not applicable	
4.2	<i>The name of the undertaking(s) concerned;</i>	
	Not applicable	
4.3	<i>What international commitments entered into by the EFTA State are to be met.</i>	
	Not applicable	