

Brussels, 19 December 2014
Case No: 76506
Event No: 731851

EFTA SURVEILLANCE
AUTHORITY

Amt für Kommunikation
9490 Vaduz
Principality of Liechtenstein

For the attention of:
Mr. Kurt Bühler
Director

Dear Mr. Bühler,

Subject: Case No 76506 – Markets for wholesale (physical) network infrastructure access (including shared or fully unbundled access) at a fixed location in Liechtenstein and for wholesale physical access to network infrastructures for high-capacity transmission routes in the core network in Liechtenstein – Remedies – Rates and technical details for regulated products and services (LLU, shared access and collocation)

Comments pursuant to Article 7(3) of Directive 2002/21/EC¹

I. Procedure

On 28 November 2014, the EFTA Surveillance Authority (“the Authority”) registered three draft measures from the Liechtenstein national regulatory authority, *Amt für Kommunikation* (“the AK”), concerning the wholesale markets for (physical) network infrastructure access (including shared or fully unbundled access) at a fixed location² and for physical access to network infrastructures for high-capacity transmission routes in the core network in Liechtenstein.³ The draft measures consist of (1) rates for regulated products and services (local loop unbundling (“LLU”)), shared access, collocation, cable television (“CATV”)-Network and cable ducts, (2) Standard Offer (technical details)

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 5cl of Annex XI to the EEA Agreement and as adapted to the Agreement by Protocol I (“the Framework Directive”).

² Corresponding to market 4 of 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 (“Recommendation on relevant markets”).

³ This market is not included in the Recommendation on relevant markets.

regarding LLU and shared access as well as (3) Standard Offer (technical details) regarding collocation.⁴

The notifications became effective on the same day. National consultation was carried out, pursuant to Article 6 of the Framework Directive, in the period from 26 November 2014 to 10 December 2014.

The period for consultation with the Authority and the national regulatory authorities (“NRAs”) in the EEA States under Article 7 of the Framework Directive expires on 29 December 2014.

Pursuant to Article 7(3) of the Framework Directive, the Authority and the EEA NRAs may make comments on notified draft measures to the NRA concerned.

II. DESCRIPTION OF THE DRAFT MEASURES

II.1. Background

The last full review of the market 4 was notified to and assessed by the Authority in 2009.⁵ The market consisted of the wholesale provision of physical access via shared or fully unbundled access to the twisted pair copper access network, to the CATV access network, and to the optical fibre access network, including self-supply.

The last review of the market for wholesale physical access to network infrastructures for high-capacity transmission routes in the core network in Liechtenstein was notified to and assessed by the Authority in 2013.⁶ The market consisted of the provision of physical access to network infrastructures for high-capacity transmission routes in the core network, including access to unlit or dark optical fibres, to an unbundled wavelength channel of a fibre-optic cable or to supporting services such as collocation, as well as to available civil engineering infrastructure in the core network.

In both markets, the AK designated *Liechtensteinische Kraftwerke* (“LKW”) as an operator with significant market power (“SMP”) and imposed a set of remedies, which included the obligations to provide access, external non-discrimination, transparency, accounting separation and price control (cost-oriented prices, based on historic full cost accounting and benchmarking) as well as the publication of a reference offer.

In September 2014, the Authority was notified of and assessed⁷ a draft measure approving the cost accounting model of LKW as a first step in setting concrete cost-oriented prices for the provision of wholesale physical access and the necessary associated services. The AK underlined that the measure approved only the structure and the system of LKW’s cost accounting model.⁸ The actual costs, revenues and the resulting rates would be subject to further assessment in an upcoming draft measure.

⁴ The draft measures on both Standard Offers have been made available to the Authority by means of the short notification forms pursuant to Point 6(c) of the EFTA Surveillance Authority Recommendation of 2 December 2009 on notifications, time limits and consultations provided for in Article 7 of the Framework Directive, as adapted by Protocol 1 thereto, OJ C 302, 13.10.2011, p.12 (“the Procedural Recommendation”).

⁵ See the Authority’s letter of 28 July 2009 under Case No 65648.

⁶ See the Authority’s letter of 16 December 2013 under Case No 74682.

⁷ See the Authority’s letter of 6 October 2014 under Case No 75908.

⁸ In its comments’ letter, the Authority underlined the importance of a timely enforcement of remedies and urged the AK not to accumulate further delays in this regard. Further, as to the forthcoming notification of wholesale tariffs, the Authority urged the AK, when notifying the resulting wholesale tariffs, to provide a

II.2. Current notification

The current draft measures concern the obligations of transparency, price control (cost-oriented prices, based on historic full cost accounting and benchmarking) as well as the publication of a reference offer.

Based on the cost accounting model approved under the AK's recent decision⁹ as well as its budget figures and estimates, LKW has calculated new cost-oriented rates for LLU, shared access and collocation. In its draft decision, the AK verifies that the rates calculated by LKW conform to the approved cost accounting model.

(1) Rates for regulated products and services (LLU, shared access and collocation, CATV-Network and cable ducts)

The monthly **rates for LLU** will decrease in comparison to the currently applicable tariffs. LKW is to apply the following prescribed rates as of 1 January 2015:

Fully unbundled local loop (copper)	Until 31 December 2014 (per month in CHF)	As of 1 January 2015 (per month in CHF)	Change
2-wire	16	13.3	-17%
4-wire	28	23.3	-17%
6-wire	40	33.3	-17%
8-wire	52	43.3	-17%
10-wire	64	53.3	-17%
12-wire	76	63.3	-17%
16-wire	100	83.3	-17%
Shared access	0	0/ 13.30 ¹⁰	.

The set-up fee for a fully unbundled line is set at CHF 185.00 and for shared access at CHF 147.00.

For **collocation**, the following monthly fees are envisaged to be endorsed:¹¹

Collocation	Until 31 December 2014 (per month in CHF)	As of 1 January 2015 (per month in CHF)	Change
1/1 Rack (rackspace) incl. feasibility study	557.60	450.00	-19%
½ Rack (rackspace) incl. feasibility study	418.20	340.00	-19%
1/3 Rack (rackspace) incl. feasibility study	278.80	230.00	-18%

clear elaboration of each of the steps involved and the underlying principles, as well as of the details and suitability of the benchmarks taken into consideration.

⁹ As notified to the Authority under Case No 75908.

¹⁰ If a voice telephony service has already been set up and is in operation for the purpose of shared access, no (additional) monthly rate is due for the use of the higher frequency spectrum for high bit-rate services. In cases in which voice telephony services are not used, the monthly rental fee is set as above.

¹¹ Further tariffs (for the CATV-Network as well as ducts and dark fibre) are specified in Attachment 1 to the present draft measure.

1 Height unit (HU) incl. feasibility study	40.00	30.00	-25%
Space (gross space of closed room/sealed space)	25.00	18.00	-28%

According to the AK, when compared to the tariffs of other EEA Member States,¹² the prescribed tariffs are in the upper range. The AK explains this by the small size of Liechtenstein and the low set-up volumes due to a demonstrable lack of economies of scale and scope. Therefore, the AK considers the tariffs to be reasonable and justified. Furthermore, the AK assumes that the approved price structures, due to the reductions in the monthly rates, will have a positive overall impact on the market and thus on the products offered to retail customers.

(2) Standard Offers (technical details) regarding LLU and shared access as well as

(3) Standard Offer (technical details) regarding collocation

With regard to the above-mentioned Standard Offers, the AK envisages to set terms and conditions applying, *inter alia*, to the process of ordering and fulfilments, the necessary technical information, different forms of extended service levels and the technical details of escalation processes.

The AK further notes that, as regards market 4, the current draft measures are proportionate and justified as no significant changes have occurred in the relevant market since the last review in 2009. Moreover, according to the AK, all asserted current or potential competition problems still exist and LKW remains the sole undertaking in Liechtenstein that provides public communications networks throughout the whole of the territory, in both the access network domain and the core network.

III. Comment

The Authority has examined the draft measure and has the following comment:

Timely enforcement and effectiveness of remedies

The Authority notes that the AK's first-round review of market 4 dates back to 2009. Consequently, the AK has accumulated a delay of five years between its first-round review and the present notification enforcing the remedy of cost-oriented prices imposed in 2009.

The Authority recalls that if a NRA considerably delays the enforcement of the remedies imposed on the SMP undertaking, this may harm competition on those markets and reduce legal certainty for market participants with regard to the applicable regulatory conditions. Market players need to have a consistent and up-to-date overview of the prevailing regulatory and competitive conditions to determine their business and investment choices with respect to entry and/or expansion in electronic communications networks and services markets across the EEA and within the individual EEA Member States.

¹² The AK uses as benchmark data a monthly survey of the German regulatory authority, the BNetzA, dated 3 April 2013 on rates for fully unbundled local loops. According to this data, the Liechtenstein rates were fourth from the top, after Finland, Sweden and Norway.

Against this background and the significance of the LLU wholesale prices, the Authority reminds the AK of its obligation to regularly monitor the relevant market and enforce the regulatory remedies without undue delay in its future reviews.

Further to the above comment, and also with regard to future reviews of market 4, the Authority notes the guidance available to the AK concerning the relevant market, including the Commission Recommendation 2010/572/EU of 20 September 2010 on regulated access to Next Generation Networks (NGA),¹³ and the Commission Recommendation of 11 September 2013 on consistent non-discrimination obligations and costing methodologies to promote competition and enhance the broadband investment environment.¹⁴

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.

Pursuant to Article 7(5) of the Framework Directive, the AK is required to take utmost account of the comments of the Authority and of any other regulatory authorities. It may adopt the resulting draft measure and, where it does so, must 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, the Authority will publish this comments' letter on its eCOM Online Notification Registry. The Authority does not consider the information contained in this letter to be confidential. However, the AK is invited to inform the Authority within three working days¹⁵ following receipt of this letter if it considers, in accordance with EEA and national rules on confidentiality, that this letter contains confidential information which the AK would like to have deleted prior to publication. The AK should provide reasons for any such request.

Yours sincerely,

Ólafur/Jóhannes Einarsson
Director
Internal Market Affairs Directorate

Gjermund Mathisen
Director
Competition and State Aid Directorate

¹³ OJ L 251, 25.9.2010, p.35, referred to at point 26(l) of Annex XI to the EEA Agreement.

¹⁴ OJ L 251, 21.09.2013, p. 13.

¹⁵ The request should be submitted through the eCOM Registry or by e-mail to Ecom@eftasurv.int, marked for the attention of the eCOM Task Force.