

Brussels, 28 July 2009
Case No: 65648
Event No: 523759

Amt für Kommunikation
9490 Vaduz
Principality of Liechtenstein

Attention: Mr Kurt Bühler, Director
Fax +4232366489

Dear Mr Bühler,

Subject: Wholesale (physical) network infrastructure access (including shared or fully unbundled access) at a fixed location

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

I PROCEDURE

On 30 June 2009, the EFTA Surveillance Authority (“the Authority”) registered a notification from the Liechtenstein Office for Communication *Amt für Kommunikation* (AK), pursuant to Article 7(3) of the Framework Directive 2002/21/EC, relating to the Liechtenstein wholesale local access. The analysis corresponds to market 4 in the list of markets contained in the Annex to the Authority’s Recommendation on relevant product and service markets within the electronic communications sector susceptible to *ex ante* regulation in accordance with the Framework Directive (“the Recommendation on relevant markets”).²

The notification consisted of the following documents:

- Cover letter (Event No 523118)
- Summary Notification Form (Event No 523119)
- Analysis of the physical access market (Event No 523109)
- Summary of responses received in the national consultation (Event No 523110) – available in German only

¹ Directive 2002/21/EC of the European Parliament and of the Council on a common regulatory framework for electronic communication networks and services (“Framework Directive”) OJ L 108, 24.4.2002, p.33, as referred to at point 5cl of Annex XI to the EEA Agreement and as adapted to the Agreement by Protocol 1.

² EFTA Surveillance Authority Recommendation of 5 November 2008 on relevant product and service markets within the electronic communications sector susceptible to *ex ante* regulation in accordance with Directive 2002/21/EC of the European Parliament and of the Council on a common regulatory framework for electronic communication networks and services, adopted by Decision No 688/08/COL, OJ C 156 of 9.7.2009, p. 18.

The Office for Communication conducted three national consultations: first between 25 April 2008 and 27 June 2008, in which 6 responses were received.³ On 3 November 2008 the Office for Communication invited interested parties to a further two-week consultation on the second revision of the market analysis, which was drafted based on the previous statements received; feedback was received from Liechtensteinische Kraftwerke (LKW) and Telecom Liechtenstein AG (TLI) acknowledging the consulted market analysis without further material comments. Finally, a third consultation took place between 7 April 2009 and 15 May 2009. In the latter consultation, the following respondents submitted observations: LKW, TLI, Orange (Liechtenstein) AG and Wasserversorgung Liechtensteiner Underland (WLU). Since there is no competition authority in Liechtenstein, no opinion has been provided.

Pursuant to Article 7(3) of the Framework Directive, national regulatory authorities (“NRAs”) within the EEA as well as the Authority may make comments on notified draft national measures to the NRA concerned.

The EEA consultation period under Article 7 of the Framework Directive expires on 30 July 2009.

II DESCRIPTION OF THE DRAFT MEASURE

II.1 Product market definition

The relevant product market concerns the wholesale market for physical access to network infrastructure. The market comprises shared or fully unbundled access to the twisted pair copper access network, to the cable television (CATV) access network, and to the optical fibre access network. It includes self-supply.

The product market definition is in principle not limited to any specific technology.

II.2 Geographic market definition

The relevant geographic market is the territory of Liechtenstein.

II.3 Assessment of significant market power (“SMP”)

AK designated LKW as the only dominant undertaking on the relevant market. This was based on the following indicators: market shares, control over infrastructure that is not easily duplicated, vertical integration, countervailing buying power, barriers to market entry and a number of auxiliary criteria.

Since 1 January 2007, the twisted pair copper access network formerly owned by Liechtenstein Telenet AG (LTN) is owned and operated by LKW.⁴ On the supply-side (i.e. with external third party offers) it is solely LKW that is providing wholesale unbundled access to the copper network, given that it is the only provider who owns an (ubiquitous) twisted pair copper access infrastructure. Since there is no other operator that is operating a twisted pair copper access network, LKW has a 100% share of the market.

As regards in particular market shares, LKW has a market share of 92.5% based on all physical access to network infrastructure at fixed locations (incl. CATV and optical fibre)

³ From ABILA AG, ICT AG, Liechtensteinische Kraftwerke, MTtel AG, Newsnet AG, Swisscom (Schweiz) AG and Telecom Liechtenstein AG. A summary of responses is available on AK’s website http://www.llv.li/pdf-llv-ak-lie_marktanalyse_entbuendelung_m11_2.fassung.pdf

⁴ As a result of a restructuring transaction between LTN and LKW, the latter acquired *i.a.* the twisted pair copper access network mentioned here. LTN was merged with Telecom FL giving origin to TLI, which was incorporated in January 2008.

and a 100% market share considering only twisted pair copper and optical fibre respectively. Nationally, Matt Antennentechnik AG has a market share of 7.5% of all physical network accesses and of 20-22% of all access provided over CATV networks. However, it operates its CATV network exclusively in the municipalities of Eschen and Mauren and, therefore, cannot act as a nationwide supplier of alternative physical access across the whole of Liechtenstein. The regulator considers that this operator does not have significant market power due to its currently low market shares and the limited geographic availability of its offering.

II.4 Regulatory remedies

AK intends to impose the following specific obligations on LKW:

- Provision of physical access and associated services upon reasonable request to subscriber connections in the copper, CATV and fibre-optical access networks. The applicability of this obligation is however suspended, i.e. it would enter automatically into force in case LKW would become active in the retail market;
- Price controls by means of cost-oriented prices, based on historical full cost accounting; and benchmarking as an ancillary measure; and accounting separation as an ancillary measure;
- External non-discrimination;
- Approval and publication of a reference offer;
- Transparency obligation.

III COMMENTS

The Authority has examined the notification and has no comments.

IV FINAL REMARKS

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

Pursuant to Article 7(5) of the Framework Directive, AK may adopt the resulting draft measure and, if it does so, shall communicate the final measure to the Authority.

The Authority's position on this particular notification is without prejudice to any position the Authority may take *vis-à-vis* other notified draft national measures.

Pursuant to point 12 of the Authority's Article 7 Recommendation,⁵ 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 following receipt of this letter whether you consider

⁵ EFTA Surveillance Authority Recommendation of 14 July 2004 on notifications, time limits and consultations provided for in Article 7 of 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 193/04/COL, OJ L 113 of 27.4.2006, p. 10.

that, in accordance with EEA and national rules on confidentiality, this document contains confidential information which you request to be deleted prior to such publication. You should give reasons for any such request. The request should be submitted through the eCOM Registry or by facsimile to +32 22 86 18 00, for the attention of the eCOM Task Force.

Yours sincerely



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Director
Internal Market Affairs Directorate



Tormod S. Johansen
Acting Director
Competition and State Aid Directorate