

Brussels, 28 July 2009  
Case No: 64717  
Event No: 523450

Amt für Kommunikation  
9490 Vaduz  
Principality of Liechtenstein

Attention: Mr Kurt Bühler, Director  
Fax +4232366489

Dear Mr Bühler,

**Subject: Wholesale broadband access in Liechtenstein**

**Comments pursuant to Article 7(3) of Directive 2002/21/EC<sup>1</sup>**

## **I PROCEDURE**

On 30 June 2009, the EFTA Surveillance Authority (“the Authority”) registered a notification pursuant to Article 7(3) of the Framework Directive 2002/21/EC from the Liechtenstein Office for Communication *Amt für Kommunikation* (“AK”), relating to the Liechtenstein wholesale broadband access. The analysis corresponds to market 5 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”).<sup>2</sup>

The notification consisted of the following documents:

- Cover letter (Event No 523120)
- Summary Notification Form (Event No 523121)
- Analysis of the broadband market (Event No 523111)
- Summary of responses received in the national consultation (Event No 523112) – available in German only

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<sup>1</sup> 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.

<sup>2</sup> 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 two national consultations: the first one between 25 April 2008 and 27 June 2008, in which 7 responses were received<sup>3</sup>, and the second one between 7 April 2009 and 15 May 2009. In the latter consultation, the following respondents submitted observations: Liechtensteinische Kraftwerke ("LKW"), Telecom Liechtenstein AG ("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 is the wholesale market for broadband access. The market comprises non-physical or virtual network access including bit-stream access at a fixed location. It includes self-supply.

The product market definition is in principle not limited to any specific technology. However, the question of inclusion of cable television ("CATV") networks has been left open, since it does not have any consequences for the designation of significant market power in the present market analysis. Only broadband access *via* mobile networks is excluded from the market definition, but further development will be kept under consideration.

### **II.2 Geographic market definition**

The relevant geographic market is the territory of Liechtenstein.

### **II.3 Assessment of significant market power ("SMP")**

TLI is the sole undertaking disposing of a ubiquitous broadband access infrastructure. In addition, Matt Antennentechnik AG/TVcable.li Anstalt provides broadband access *via* their CATV network in two municipalities and UPC Austria GmbH is the only alternative provider offering broadband access based on unbundling.

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

As regards in particular market shares, TLI has 97.5% of the market based on the total number of broadband connections (incl. CATV) and a 100% market share considering only DSL broadband connections. Matt Antennentechnik AG/TVcable.li Anstalt have a market share of 2% and UPC Austria GmbH of 0.5%.

### **II.4 Regulatory remedies**

AK intends to impose the following specific obligations on TLI:

<sup>3</sup> 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-auswertung\\_stellungnahmen\\_zur\\_konsultation\\_m5.pdf](http://www.llv.li/pdf-llv-ak-auswertung_stellungnahmen_zur_konsultation_m5.pdf).

- Provision of wholesale broadband access and associated services upon reasonable request, in particular bit-stream access, naked DSL access and resale products;
- Price controls by means of cost-oriented prices and margin squeeze tests as an ancillary measure;
- Accounting separation;
- Internal and 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,<sup>4</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 following receipt of this letter whether you consider 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



Hallgrímur Ásgeirsson  
Director  
Internal Market Affairs Directorate



Tormod S. Johansen  
Acting Director  
Competition and State Aid Directorate

<sup>4</sup> 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.