



SUMMARY NOTIFICATION FORM

MARKET 4: Wholesale market for physical access

In accordance with Recommendation No 193/04/COL of the EFTA Surveillance Authority 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, OJ L113, 27.4.2006, p.10.

SECTION 1

Market definition

Please state where applicable:

1.1	<i>The affected relevant product/service market. Is this market mentioned in the Recommendation on relevant markets?</i>	Section / Paragraph
	<p>The relevant product market is the wholesale market for (physical) network infrastructure access (including shared or fully unbundled access) at a fixed location.</p> <p>In the Office for Communication's (<i>Amt für Kommunikation; AK</i>) assessment, the market comprises all physical access to the twisted pair copper access network, to the CATV access network, and to the optical fibre access network. The market includes self-supply.</p> <p>In particular, the following services form part of the market:</p> <ul style="list-style-type: none">– <u>Twisted pair copper access network</u>: full unbundling, partial unbundling and shared use of the copper loop;– <u>Optical fibre access network</u>: physical/optical unbundling, wavelength unbundling (shared access);– <u>HFC cable TV distribution network</u>: frequency/channel	Chapter 3.2 and 3.3

	<p>unbundling (shared access).</p> <p>The market notified corresponds to market 4 in the EFTA Surveillance Authority's (ESA) Recommendation on relevant markets.</p>	
1.2	<p><i>The affected relevant geographic market;</i></p> <p>The relevant geographic market is the territory of Liechtenstein.</p>	Chapter 3.4
1.3	<p><i>A brief summary of the opinion of the national competition authority where provided;</i></p> <p>There is no national competition authority in Liechtenstein.</p>	Chapter 1.9
1.4	<p><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> <p>AK conducted several national consultations as follows:</p> <ul style="list-style-type: none"> – 1st consultation 30/04 – 04/07 2008 (6 responses); – 2nd consultation 03/11 – 18/11 2008 (2 responses); – 3rd consultation 07/04 – 15/05 2009 (4 responses). <p>None of the respondents disagreed with the proposed market definition.</p> <p>The responses are published in full on AK's website, to the extent they have not been labelled confidential by the originator.</p> <p>Summaries of the responses and AK's reply are provided in separate documents alongside this notification.</p>	<p>Chapter 1.3</p> <p>Summaries of national consultations</p>
1.5	<p><i>Where the defined relevant market is different from those listed in the Recommendation on relevant markets, a summary of the main reasons which justified the proposed market definition by reference to Section 2 of the Authority's Guidelines on the definition of the relevant market and the assessment of significant market power, and the three main criteria mentioned in recitals 12 to 19 of the Recommendation on relevant markets.</i></p> <p>Not applicable.</p>	

SECTION 2

Designation of undertakings with significant market power

Please state where applicable:

2.1	<p><i>The name(s) of the undertaking(s) designated as having individually or jointly significant market power.</i></p> <p><i>Where applicable, the name(s) of the undertaking(s) which is (are) considered to no longer have significant market power;</i></p>	Section / Paragraph
	AK designates Liechtensteinische Kraftwerke (LKW) as singly dominant undertaking on the relevant market.	Chapter 4.2 to 5.1
2.2	<p><i>The criteria relied upon for deciding to designate or not an undertaking as having individually or jointly with others significant market power;</i></p>	
	<p>AK relied chiefly on the following indicators for SMP:</p> <ul style="list-style-type: none"> - Persistently high market shares; - High barriers to market entry by reason of high sunk costs and the subadditivity of costs. No contestable market; - Control over infrastructure not easily duplicated (in the absence at the same time of countervailing buyer power); <p>A number of auxiliary criteria have been assessed in addition.</p>	Chapter 4.2 to 5.1
2.3	<p><i>The name of the main undertakings (competitors) present/active in the relevant market;</i></p>	
	LKW is the sole undertaking disposing of an ubiquitous fixed access network. Matt Antennentechnik AG operates a CATV network geographically limited to 2 municipalities and a potential reach of about one fifth of the total population.	Chapter 2.1 and 3.2.3
2.4	<p><i>The market shares of the undertakings mentioned above and the basis of their calculation (e.g., turnover, number of subscribers).</i></p>	
	LKW disposes of a 92.5% market share based on number of access lines in all relevant physical access infrastructures (Copper + Fibre + CATV).	Chapter 4.2
	<i>Please provide a brief summary of:</i>	
2.5	<p><i>The opinion of the national competition authority, where provided;</i></p>	
	Not applicable. Cf. point 1.3 above.	

2.6	<i>The results of the public consultation to date on the proposed designation(s) as undertaking(s) having significant market power (e.g., total number of comments received, numbers agreeing/disagreeing).</i>	
	None of the respondents disagreed with AK's finding on SMP in this market.	Summaries of national consultation

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
	<p>Based on Art. 23 para. 1 KomG AK intends to impose the following specific obligations on LKW:</p> <ul style="list-style-type: none"> – Provision of physical access and associated services upon reasonable request to subscriber connections in the copper, CATV and fibre-optical access networks, in the form of a measure with conditions precedent (Art. 12 AD; Art. 23 para. 1 lit. d KomG and Art. 37 para. 1 VKND); – Price controls (Art. 13 AD; Art. 23 para. 1 lit. d KomG and Art. 38 para. 1 VKND) by means of cost-oriented prices, based on historical full cost accounting; Benchmarking (Art. 38 para. 2 VKND) as an ancillary measure; – Accounting separation (Art. 11 AD; Art. 36 VKND) as an ancillary measure. – External non-discrimination (Art. 10 AD; Art. 34 VKND); – Approval and publication of a reference offer (Art. 9 para. 2 AD; Art. 34 para. 3 and Art. 35 VKND); – Transparency obligation (Art. 9 AD; Art. 35 VKND). 	Chapter 7 and 8
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</i>	

	<i>Directive 2002/21/EC (Framework Directive).</i> <i>Alternatively, indicate the paragraphs, sections or pages of the draft measure where such information is to be found;</i>	
	See market analysis.	Chapter 7.4
3.3	<i>If the remedies proposed are other than those set out in Articles 9 to 13 of Directive 2002/19/EC (Access Directive), please indicate which are the 'exceptional circumstances' within the meaning of Article 8(3) thereof which 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>	
	Not applicable.	

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(s) of the undertaking(s) concerned;</i>	
	Not applicable.	
4.3	<i>Which are the international commitments entered into by the EFTA State that need to be respected.</i>	
	Not applicable.	