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Brussels, 18 December 2009
Case No: 66391
Event No: 539086

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Amt für Kommunikation
9490 Vaduz
Principality of Liechtenstein

Attention: Mr Kurt Bühler, Director
Fax +4232366489

Dear Mr Bühler

Subject: Retail access to the public telephone network at a fixed location for residential and non-residential customers

Comments pursuant to Article 7(3) of Directive 2002/21/EC (Framework Directive)¹

I PROCEDURE

On 30 November 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 Directive 2002/21/EC (Framework Directive), relating to the Liechtenstein retail access to the public telephone network at a fixed location for residential and non-residential customers. The analysis corresponds to market 1 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 Directive 2002/21/EC (Framework Directive) (“the Recommendation on relevant markets”).²

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 notification consists of the following documents:

- Cover letter (Event No 538439)
- Summary Notification Form (Event No 538443)
- Market analysis (Event No 539083)
- Summary of responses received in the national consultation (Event No 538595) – available in German only

The Office for Communication conducted national consultation between 7 April 2009 and 29 May 2009, in which eight responses were received.³ An additional limited consultation on the issue of inclusion of Voice over Broadband (“VoB”) into the relevant product market and the non-imposition of a carrier pre-selection (“CPS”) requirement for VoB access was conducted between 3 November 2009 and 13 November 2009. Since there is no competition authority in Liechtenstein, no opinion has been provided.

Pursuant to Article 7(3) of the Directive 2002/21/EC (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 December 2009.

II DESCRIPTION OF THE DRAFT MEASURE

II.1 Product market definition

The relevant product market is the retail market for access to the public telephone network at a fixed location for residential and non-residential customers. This narrowband access provides the possibility to make and receive telephone calls and related services at fixed locations. The market encompasses analog and digital access to the public telephone network via self-operated twisted pair copper and fibre optic networks, unbundled local loops, leased lines and CATV networks. Access provided using voice over broadband forms also part of the market.

II.2 Geographic market definition

The relevant geographic market is the territory of Liechtenstein.

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

AK designates Telecom Liechtenstein AG (“TLI”) as dominant undertaking on the relevant market.

AK relied chiefly on the following indicators for SMP: market shares; barriers to market entry and control over infrastructure that is not easily duplicated. A number of auxiliary criteria have been assessed in addition.

As regards in particular market shares, considering that TLI is the sole undertaking providing narrowband access to the public telephone network at fixed locations, it disposes of a 100% market share based on the number of fixed access connections.

³ From Cablecom GmbH, Liechtensteinische Kraftwerke (LKW), Mobilkom (Liechtenstein) AG, Orange (Liechtenstein) AG, Swisscom (Schweiz) AG, Telecom Liechtenstein AG (TLI), UPC Austrai GmbH, Wasserversorgung Liechtensteiner Unterland (WLU). Non-confidential versions of all responses are available on AK's website:

http://www.llv.li/pdf-llv-ak-auswertung_stellungnahmen_nationale_konsultation_zu_m1.pdf

II.4 Regulatory remedies

AK intends to impose the following specific obligations on Telecom Liechtenstein AG:

- **Retail price controls:** The obligation to obtain prior approval of cost-oriented retail prices and of the general business terms and conditions for access services (both as services individually and as parts of a product bundle) to the public telephone network at a fixed location (obligation at the retail level).
- **Accounting separation and cost accounting:** For the prevention of impermissible cross-subsidisation and relocation of costs between regulated and unregulated branches, the obligation to separate its costs and revenues in relation to the present market from the other products it offers and to break them down according to the markets specified in the Announcement on market definition through use of a cost accounting system (accompanying regulatory measure).
- **Cost-oriented carrier selection (CS) and pre-selection (CPS) access:** The obligation to provide, on a cost-oriented basis, indirect access by means of carrier selection and carrier pre-selection through use of access codes for all connections to the public telephone network at a fixed location (obligation at the wholesale level). For reasons of proportionality, AK abstains for the time being from the imposition of a requirement to ensure carrier pre-selection on VoB connections.
- **Provision of wholesale line rental (WLR) product based on retail-minus cost basis:** The obligation to provide a wholesale product for the resale of the subscriber line connection by third parties, applying a retail-minus cost approach (obligation at the wholesale level).

III COMMENTS

The Authority has examined the notification and has the following comments:

- **Inclusion of VoB connections in the relevant market definition**

The Authority concurs with the view referred to in the notified market analysis in that despite broadband connections being also capable of facilitating delivery of telephone services, customers generally will not switch from a narrowband to a broadband connection for the sole purpose of accessing voice services. Consumers switch from narrowband to broadband connections primarily to get access to higher speed Internet services.⁴

AK has carried out an assessment of the degree of substitutability of voice access based on VoB connections with traditional voice connections, and has come to the conclusion that these services belong to the same market. AK concludes that the VoB connections are a fully functional replacement of the traditional connections, are marketed accordingly by TLI, and perceived as substitutes by end-users in Liechtenstein. Furthermore, AK refers to the costs of an all-IP connection, which are comparable or cheaper than the costs of obtaining a separate voice and broadband connection. AK concludes that there are no barriers to switching from a conventional to a VoB-based voice connection, noting,

⁴ European Commission's comments letter in Case DE/2009/0897.

fundamentally, that DSL-only offerings (so-called “naked DSL”) are available in the Liechtenstein market.

On the basis of AK’s conclusions, the Authority does not contest its decision to include VoB connections in the definition of the relevant market.

- **Exclusion of VoB connections from the obligation to provide carrier pre-selection services**

AK has considered whether to include the VoB connections among the services subject to the carrier pre-selection obligation. As acknowledged by AK, the market definition and the principle of technological neutrality require in principle that VoB connections also be included under the services subject to this obligation.

According to AK, the necessary technical and administrative arrangements enabling carrier pre-selection on VoB connections do not currently exist. The incumbent TLI has declared that the implementation costs for such a facility would amount to approximately 800,000 CHF, and considers therefore that a carrier pre-selection obligation on VoB connections would not be proportionate.

AK concludes, as a result of the comparison between the expected operative and implementing costs and the potential number of expected carrier pre-selection customers, currently and over the next 2-3 years, that these costs are indeed not proportionate.⁵ AK refers to a trend in other EEA States showing that the number of CPS customers is subject to a sharp decline.

The Authority takes note of the view of AK that Article 19 of the Universal Service Directive 2002/22/EC, which sets out the imposition of the obligation to provide access to interconnected operators by means of pre-selection on undertakings having SMP should be interpreted in light of Article 17(2) of the same Directive, as well as Article 8(1) of the Framework Directive 2002/22/EC. This implies that any obligation under consideration must comply with the requirement of proportionality. An assessment of the proportionality of the measure is necessary before it can be imposed. In view of the considerable cost estimate and the current low number (albeit growing) of carrier pre-selection service contracts and in particular of VoB connections, the Authority agrees that the imposition of such an obligation would not meet the proportionality requirement at this point in time.

Although the Authority does not contest the current conclusions of AK, it encourages AK to follow through on its commitment to closely monitor the situation in the market, and especially its intention to hold a public consultation on the cost estimate submitted by the incumbent TLI. In the context of a forward looking perspective, the Authority encourages AK to review its decision with regard to the imposition of an obligation to provide CPS on VoB connections on the basis of the following: (i) the outcome of the public consultation mentioned above; and (ii) the possibility for the competitive conditions in the retail access market to evolve at a rapid pace, in particular with regard to the current trend of increase of the share of VoB connections of the total number of telephony access lines.

⁵ According to figures available to AK, by the end of 2008 there were 485 “Connecta” VoB connections, a 2.5% of all voice connections at fixed location, albeit growing relatively strongly (at the end of 2007 there were 155 connections). At the same time, by the end of 2008 only 15.5% of all voice connections had a pre-selection service enabled.

Moreover, the Authority notes that despite the exclusion of VoB connections from the carrier pre-selection in the proposed measure TLI will remain subject to carrier selection obligation on its VoB connections.

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 initial notification will require their re-notification in accordance with Article 7(3) of Directive 2002/21/EC (Framework Directive).

Pursuant to Article 7(5) of Directive 2002/21/EC (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 15 of the Authority's Article 7 Recommendation,⁶ 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 Asgeirsson
Director
Internal Market Affairs Directorate



Per Andreas Bjørgan
Director
Competition and State Aid Directorate

⁶ EFTA Surveillance Authority Recommendation of 2 December 2009 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 493/09/COL of 2 December 2009, not published yet. The Recommendation is available on the Authority's website: <http://www.eftasurv.int/media/internal-market/recommendation.pdf>