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EFTA SURVEILLANCE  
AUTHORITY

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**Amt für Kommunikation**  
**9490 Vaduz**  
**Principality of Liechtenstein**

Attention: Mr Kurt Bühler, Director

Dear Sirs,

**Subject: Wholesale market for call origination on the public telephone network provided at a fixed location (Market 2)**

**Wholesale market for call termination on individual public telephone networks at a fixed location (Market 3)**

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

## **1 PROCEDURE**

On 25 March 2010, the EFTA Surveillance Authority (the “Authority”) received and registered notifications from the *Amt Für Kommunikation (Liechtenstein Office for Communication)* pursuant to Article 7(3) of Directive 2002/21/EC (the “Framework Directive”), relating to (i) the wholesale market in Liechtenstein for call origination on the public telephone network provided at a fixed location; and (ii) the wholesale market in Liechtenstein for call termination on individual public telephone networks at a fixed location (the “Notifications”). The analyses correspond to Markets 2 and 3 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>

<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, 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

The Notifications consist of the following documents:

- Cover letters (Event Nos 551386 and 551392)
- Summary Notification Forms (Event Nos 551835 and 551394)
- Market 2 analysis (Event No 551388)
- Market 3 analysis (Event No 551391)
- Summaries of responses received in the national consultation (Event Nos 551387 and 551397)

The Office for Communication carried out national consultation between 27 April 2009 and 30 June 2009, and an additional limited consultation from 22 January 2010 to 19 February 2010; eight responses were received.<sup>3</sup>

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

The EEA consultation period under Article 7 of the Framework Directive expires on 26 April 2010.

## 2 DESCRIPTION OF THE DRAFT MEASURE

### 2.1 Product market definition

The relevant product markets are defined as:

- (i) *Market 2*: wholesale market for call origination on the public telephone network provided at a fixed location. Call origination comprises the transmission of voice and data traffic from subscribers to the first interconnection-capable local exchange of the source network. The relevant market covers voice as well as fax and modem dial-up connections. Origination services by means of Voice over Broadband (VoB) are components of the market, while origination services by means of Voice over Internet (VoI) are not. The market includes the origination services of all subscriber network operators.
- (ii) *Market 3*: wholesale market for call termination on the public telephone network provided at a fixed location. Call termination comprises the transmission of voice traffic from the last interconnection-capable exchange to the subscriber. The market covers the termination of voice calls in an individual fixed network. The market includes voice as well as fax and modem

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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.

<sup>3</sup> From ICT-Center AG; Liechtensteinische Kraftwerke (LKW); Mobilkom (Liechtenstein) AG; Orange (Liechtenstein) AG; Swisscom (Schweiz) AG; Telecom Liechtenstein AG (TLI); MTtel AG; Wasserversorgung Liechtensteiner Unterland (WLU). Non-confidential versions of the responses are available on the Office for Communication's website: <http://www.llv.li/amtsstellen/llv-ak-marktanalysen/llv-ak-marktanalysen-konsultationen.htm>.

dial-up connections with the exception of dial-up connections to the internet. Termination services by means of Voice over Broadband (VoB) are components of the market, while termination services by means of Voice over Internet (VoI) are not.

## 2.2 Geographic market definition

*Market 2:* the relevant geographic market is the entire territory of Liechtenstein.

*Market 3:* the relevant geographic market is the geographical area over which Telecom Liechtenstein AG's (TLI) network extends.

## 2.3 Assessment of significant market power ("SMP")

The Office for Communication designates the sole provider, TLI, as an undertaking with significant market power (SMP) in both Markets 2 and 3.

*In Market 2,* TLI is currently the only provider of fixed network call origination on the present market. TLI therefore has a 100% market share. The Office for Communication is of the view that the relevant market is characterised by considerable barriers to market entry, that TLI has control over infrastructure that is not easily duplicated, and that there is a lack of countervailing buying power.

*As regards Market 3,* wholesale termination services can only be provided by the provider to whose network the subscriber is connected; therefore, each network operator has a monopoly in call termination in its own network. Currently, only TLI provides fixed network termination services in Liechtenstein. It has a 100% market share in its fixed network termination market. The Office for Communication is of the view that Market 3 is characterised by insurmountable barriers to market entry and non-existence of potential competition. It also considers that there is a lack of countervailing buying power.

The Office for Communication has not deviated from the market definitions set out in the Annex to the Authority's Recommendation on Relevant Markets.

## 2.4 Remedies

The Office for Communication intends to impose the following obligations.

### Market 2

- **Access to network facilities and network functions:** TLI will be required to grant access (direct or indirect interconnection) to the public telephone network at a fixed location for the origination of voice and data calls.
- **Price control and cost accounting:** the obligation that origination rates are oriented to the costs of an efficient operator based on historic full cost accounting and supported by benchmarking of the origination rates.
- **Obligation of transparency:** duty on TLI to publish and update a Reference Interconnection Offer on its website.
- **Obligation of non-discrimination:** internal and external non-discrimination obligation in relation to the price and quality of the interconnection.

- **Accounting separation**

Market 3

- **Access to network facilities and network functions:** TLI will be required to grant access (direct or indirect interconnection) to the public telephone network at a fixed location for the termination of voice calls.
- **Price control and cost accounting:** the obligation that call termination rates be oriented to the costs of an efficient operator based on historic full cost accounting and supported by international benchmarking of the termination rates.
- **Obligation of transparency:** duty on TLI to publish and update a Reference Interconnection Offer on its website.
- **Obligation of non-discrimination:** internal and external non-discrimination obligation in relation to the price and quality of the interconnection.
- **Accounting separation**

### 3 COMMENTS

The Authority has examined the Notifications and has no comments.

### 4 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 Notifications will require re-notification in accordance with Article 7(3) of the Framework Directive.

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

The Authority's position on the Notifications is without prejudice to any position the Authority may take in respect of other notified draft national measures.

Pursuant to point 15 of the Authority's Recommendation on Article 7,<sup>4</sup> 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, you are invited to inform the Authority within three working days following receipt of this letter if you consider, in accordance with EEA and national rules on confidentiality, that it contains confidential information which you would like to be deleted prior to publication. You should provide reasons for any such request. The request should be submitted through the eCOM Registry or by facsimile to +32 2 286 1800, marked to the attention of the eCOM Task Force.

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<sup>4</sup> 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>

Yours faithfully,



Ólafur Valsson

Acting Director

Internal Market Affairs Directorate



Per Andreas Bjørgan

Director

Competition and State Aid Directorate