



Ihr Schreiben
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Aktenzeichen
731.3 / 2020-1136

Sachbearbeitung
GISI

Vaduz
18 September 2023

SUMMARY NOTIFICATION FORM FOR

Market 3a: Wholesale local access provided at a fixed location

in accordance with the Recommendation of the EFTA Surveillance Authority of 2 December 2009 on notifications, time limits and consultations (2011/C 302/05) provided for in the Act referred to at point 5cl of Annex XI to the Agreement on the European Economic Area (Directive 2002/21/EC of the European Parliament and of the Council on a common regulatory framework for electronic communications networks and services), as adapted by Protocol I thereto.

SECTION 1

Market definition

Please state where applicable:

1.1	<i>The relevant product/service market. Is this market mentioned in the Recommendation on relevant markets?</i>	Section / Paragraph
	The relevant product market comprises the wholesale market for physical access to subscriber lines provided locally at fixed locations. The market notified corresponds to market 3a in the EFTA Surveillance Authority's Recommendation on relevant markets.	Chapter 5.2.1
1.2	<i>The relevant geographic market;</i>	
	The relevant geographic market is defined as the entire national territory of Liechtenstein. This is in line with the authorisation to provide and operate electronic communications networks and to offer electronic communications services on Liechtenstein territory after notification in accordance with Art. 43 KomG.	Chapter 5.3.1

	The spatial definition also results from the actual geographical extent of the SMP operator's network infrastructure, which is justified in Art. 10 let. a KomG on the minimum range of services of the universal service in combination with the vertical separation of the telecommunications market in Liechtenstein: "The provision of a local loop at any reasonable fixed location to enable the provision of electronic communications services in accordance with let. b and c".	
1.3	<i>A brief summary of the opinion of the national competition authority, where provided;</i>	
	There is no national competition authority in Liechtenstein.	
1.4	<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>	
	AK conducted a national consultation on the market analysis from 18 July to 28 August 2023. The summary of and reply to the 9 responses received in the national consultation is attached. The respondents did not comment on the market definition.	cf. attachment
1.5	<i>Where the relevant market is different from those listed in the Recommendation on relevant markets, a summary of the main reasons justifying the proposed market definition by reference to Section 2 of the Authority's Guidelines of 14 July 2004 on market analysis and the assessment of significant market power under the regulatory framework for electronic communications networks and services, and the three main criteria mentioned in recitals 6 to 14 of the Recommendation on relevant markets and Section 2.2 of the Explanatory Note accompanying the corresponding Commission's Recommendation on relevant markets.</i>	
	Not applicable.	

SECTION 2

Designation of undertakings with significant market power

Please state where applicable:

2.1	<p><i>The name of the undertakings designated as having individually or jointly significant market power.</i></p> <p><i>Where applicable, the name of the undertakings considered no longer to have significant market power;</i></p>	Section / Paragraph
	AK designates the operator Liechtensteinische Kraftwerke ("LKW") as having significant market power on the defined market in Liechtenstein.	Chapter 6.3, Appendix 1: cf. recipient on title sheet of draft decision and ruling #2
2.2	<p><i>The criteria used to designate an undertaking as having significant market power, individually or jointly, or not;</i></p>	
	<p>AK relied chiefly on the following indicators for significant market power:</p> <ul style="list-style-type: none"> - Market shares (monopoly: constant 100% market share); - Insurmountable barriers to market entry; lack of potential competition; - Clear incentives to charge excessive prices; and - Lack of countervailing buying power. 	Chapter 6
2.3	<p><i>The name of the main undertakings (competitors) active in the relevant market;</i></p>	
	Besides the operator Liechtensteinische Kraftwerke, there are no other main undertakings active in the relevant market.	Chapter 4.3 – Table 4, Chapter 6.2.1
2.4	<p><i>The market shares of the undertakings mentioned above and the basis for calculation of market share (e.g. turnover, number of subscribers).</i></p>	
	The operator Liechtensteinische Kraftwerke has a 100% market share, based on the monopoly position of its network infrastructure.	Chapter 4.3, Chapter 6.1.3

2.5	<i>A brief summary of the opinion of the national competition authority, where provided;</i>	
	Not applicable. Cf. point 1.3 above.	
2.6	<i>The results of the public consultation to date on the proposed designation(s) as undertakings having significant market power (e.g. total number of comments received, numbers agreeing/disagreeing).</i>	
	<p>AK conducted a national consultation on the market at hand from 18 July to 28 August 2023.</p> <p>The summary of and reply to the 9 responses received in the national consultation is attached.</p> <p>The respondents did not comment on the proposed designation as undertaking having significant market power.</p>	cf. attachment

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(1) KomG, AK intends to impose the following specific obligations on the operator Liechtensteinische Kraftwerke designated as having significant market power in Section 2.1:</p> <ul style="list-style-type: none"> – Access obligation: Obligation to grant physical access to subscriber lines provided locally at fixed locations as well as access to cable ducts and to ancillary services, in particular physical access to core network fibre optic and services in central offices (Art. 12 AD¹; Art. 37 VKND); 	7.6.4, Appendix 1: Ruling #3.a

¹ Directive 2002/19/EC of 7 March 2002 on access to, and interconnection of, electronic communications networks and associated facilities (Access Directive)

	<ul style="list-style-type: none"> – Obligation to base the charges on the costs of an efficient operator, based on an approved top-down cost accounting model. (Art. 13 AD; Art. 38 VKND); – Obligation of equal treatment with regard to charges and quality of access services (Art. 10 AD; Art. 34 VKND); – Transparency obligation: Obligation to publish and update an approved reference offer on the operator's website which includes the necessary technical, operational and pricing elements; and obligation to provide the Office for Communications with all information required for cost control and monitoring of the non-discrimination obligation in a transparent manner (Art. 9 AD; Art. 35 VKND); – Obligation of accounting separation (Art. 11 AD; Art. 36 VKND) 	<p>7.6.6, Appendix 1: Ruling #3.f</p> <p>7.6.5 Appendix 1: Ruling #3.b</p> <p>7.6.2 Appendix 1: Rulings #3.c, #3.d</p> <p>7.6.3 Appendix 1: Ruling #3.e</p>
3.2	<p><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 Directive 2002/21/EC (Framework Directive).</i></p> <p><i>Alternatively, indicate the paragraphs, sections or pages of the draft measure where such information is to be found</i></p>	
	See draft measure.	Chapter 7.6
3.3	<p><i>Where the remedies proposed are other than those set out in Articles 9 to 13 of Directive 2002/19/EC (Access Directive), please indicate what "exceptional circumstances within the meaning of Article 8(3) of that Directive 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></p>	
	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 of the undertakings concerned;</i>	
	Not applicable.	
4.3	What international commitments entered into by the EFTA States are to be met.	
	Not applicable.	