



EUROPEAN COMMISSION

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**Subject: Case LV/2006/0540: Wholesale broadband access
Article 7(3) of Directive 2002/21/EC¹: No Comments**

Dear Madam,

I. PROCEDURE

The notification was received from the national regulatory authority of Latvia, *Sabiedrisko Pakalpojumu Regulēšanas Komisija* (SPRK), on 10 November 2006, covering the market for wholesale broadband access in Latvia.

The deadline for the Community consultation is 11 December 2006. The national consultation² was carried out earlier.

On 24 November 2006, the Commission services sent a request for information to SPRK, a response was received on 1 December 2006. On 5 December SPRK submitted further information.

¹ Directive 2002/21/EC of the European Parliament and of the Council of 7 March 2002 on a common regulatory framework for electronic communications networks and services (“Framework Directive”), OJ L 108, 24.4.2002, p. 33.

² In accordance with Article 6 of the Framework Directive.

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

II. DESCRIPTION OF THE DRAFT MEASURE

II.1 Market definition

SPRK notes that there are almost no wholesale broadband access transactions in Latvia³. SPRK therefore analyses the competitive situation on the downstream market in order to instruct on the need to regulate the wholesale broadband access. SPRK notes that in any event demand in the wholesale market is derived from the demand in the retail market.

On the basis of a substitutability assessment from the demand-side and the supply-side, including a comparison of the quality and prices of various products, SPRK concludes that the relevant market at retail level covers xDSL products (including VDSL), cable-based solutions⁴, fixed wireless solutions and wired solutions based on Ethernet protocol. SPRK excludes PLC solutions and satellite solutions from the relevant market as they are not being used to provide bidirectional data streams in Latvia.

Given the low degree of fixed network penetration in Latvia (28% in 2004), SPRK examines whether mobile broadband solutions can substitute xDSL services. SPRK concludes that mobile broadband solutions may act as a substitute in terms of quality but not in terms of price. SPRK finds that mobile broadband solutions are normally priced according to the transmitted volumes (compared to xDSL services which tend to be offered at a flat rate) and costs are much higher than costs in case of xDSL access.

SPRK considers the geographic scope of the relevant market to be national.

II.2 Finding of significant market power (“SMP”)

SPRK indicates that the broadband access market in Latvia is relatively small (179,520 access lines on 31 December 2005) but is growing rapidly. There is a high number of suppliers on the market (124 companies). The largest operator is the incumbent SIA Lattelekom with a market share just below 50%. The rest of the market is highly fragmented with the second largest operator, SIA BALTICOM, holding a market share of just above 5%. Lattelekom is the only operator offering xDSL services; the remaining operators provide broadband access mainly on the basis of Ethernet solutions and cable.

SPRK considers that there are a number of elements, which indicate that competition in the market is currently not efficient and sustainable. SPRK is concerned that market growth will slow down and the market share of Lattelekom will increase. These concerns are based inter alia on consolidation trends whereby smaller operators are disappearing

³ In the second half of 2005, there were two operators providing together wholesale broadband access services over 146 access lines representing a value of 90.000 LVL.

⁴ SPRK only investigates substitutability between xDSL-based access and cable-based access at retail level but does not investigate substitutability between both products at wholesale level. Also, SPRK does not provide evidence of the technical and economic feasibility for cable operators to offer facilities equivalent to bitstream access. However, the inclusion of cable-based services in the analysed market does not have an impact on the final SMP finding (exclusion of cable from the relevant market would only reinforce the SMP finding) nor on the scope of the remedies imposed.

from the market or being acquired by Lattelecom and technical limitations of Ethernet solutions outside urban areas. SPRK also notes that barriers to expansion are lower for Lattelekom due to its control over the largest access network in Latvia. Finally, SPRK notes that neither retail nor wholesale customers have countervailing buying power and that SIA Lattelekom is in a more advantageous position than other companies as it bundles wholesale broadband access with voice and other services.

On the basis of the above, SPRK designates SIA Lattelekom as having SMP on the wholesale broadband access market in Latvia.

II.3 Regulatory remedies

On the basis of the above, SPRK proposes to impose the following obligations on SIA Lattelekom:

- Requirement to provide wholesale broadband access at reasonable request⁵
- Transparency, including a requirement to publish a reference offer
- Non-discrimination
- Accounting separation
- Price control and cost accounting⁶

III. NO COMMENTS

The Commission has examined the notification and the additional information provided by SPRK and has no comments.

The Commission's position on this particular notification is without prejudice to any position it may take vis-à-vis other notified draft measures.

Pursuant to Article 7(5) of the Framework Directive, SPRK may adopt the resulting draft measure and, where it does so, shall communicate it to the Commission.

⁵ In its answer to the Commission's request for information, SPRK specifies that it intends to impose provision of access at both DSLAM and IP level.

⁶ In its answer to the Commission's request for information, SPRK specifies that it imposes cost accounting on the basis of the Fully Distributed Cost (FDC) and Current Cost Accounting (CCA) methodologies.

Pursuant to Point 12 of Recommendation 2003/561/EC⁷ the Commission will publish this document on its website. The Commission does not consider the information contained herein to be confidential. You are invited to inform the Commission⁸ within three working days following receipt whether you consider that, in accordance with Community and national rules on business confidentiality, this document contains confidential information which you wish to have deleted prior to such publication. You should give reasons for any such request.

Yours faithfully
For the Commission
Philip Lowe
Director General

⁷ Commission Recommendation 2003/561/EC of 23 July 2003 on notifications, time limits and consultations provided for in Article 7 of Directive 2002/21/EC, OJ L 190, 30.7.2003, p. 13.

⁸ Your request should be sent either by email: INFSO-COMP-ARTICLE7@ec.europa.eu or by fax: +32.2.298.87.82.