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Sabiedrisko Pakalpojumu
Regulēšanas Komisija (SPRK)

Brīvības ielā 55
LV-1010 Rīga
Latvia

For the attention of:
Ms. Valentina Andrejeva
Chairperson

Fax: +371 67 097 277

Dear Ms Andrejeva,

Subject: LV/2009/0995: Wholesale (physical) network infrastructure access (including shared or fully unbundled access) at a fixed location

Article 7(3) of Directive 2002/21/EC:¹ No comments

I. PROCEDURE

On 13 October 2009, the Commission registered a notification from the Latvian regulatory authority, Sabiedrisko Pakalpojumu Regulēšanas Komisija (the SPRK), concerning the second-round review of the market for wholesale (physical) network infrastructure access (including shared or fully unbundled access) in Latvia.

The national consultation² ran from 12 August 2009 and lasted one month. The deadline for the Community consultation under Article 7 of the Framework Directive is 13 November 2009.

On 22 October 2009 the Commission services sent a request for information³ to the SPRK and the response was received on 27 October 2009.

Pursuant to Article 7(3) of the Framework Directive, national regulatory authorities

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.

³ In accordance with Article 5(2) of the Framework Directive.

(NRAs) and the Commission may make comments on notified draft measures to the NRA concerned.

II. DESCRIPTION OF THE DRAFT MEASURE

II.1. Background

The market for wholesale unbundled access (including shared access) to metallic loops and sub-loops for the purpose of providing broadband and voice services in Latvia was previously notified to, and assessed by the Commission under case LV/2006/0539.

In the previously notified draft measure, the SPRK proposed to exclude services offered through wireless solutions, power line communication solutions, end-to-end fibre loop products (Fibre to the Home) and suggested that broadband resale services are not part of the market. It further identified SIA Lattelekom as having significant market power (SMP) and proposed remedies of access, transparency, non-discrimination, accounting separation, price control and cost accounting. As to price control, the SPRK proposed a fully distributed costing approach using current cost accounting (FDC CCA).

II.2. Market Definition

The relevant market⁴ as defined by the SPRK includes the provision of local loops and sub-loops (including full and shared access) between end-user premises and the local exchange over copper and fibre. Based on a supply and demand-side substitution analysis, the SPRK considers that wireless solutions, power line communication solutions, solutions based on coaxial cable and broadband resale services are not part of the market.

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

II.3. Findings of significant market power (SMP)

Following the SPRK's previous notification of the market for wholesale unbundled access (including shared access) to metallic loops and sub-loops at the end of 2006, one undertaking has concluded an agreement with SIA Lattelekom on unbundled access to local loops. According to the SPRK, one more undertaking is in the process of negotiating access to SIA Lattelekom's unbundled loop and a third undertaking has signalled interest. However, to date the implementation of local loop unbundling (LLU) in Latvia has not yet started⁵. Therefore, the SPRK – like in its previous notification of the relevant market - carries out an analysis of the downstream retail markets for voice telephony services provided at a fixed location so as to ascertain the necessity for wholesale regulation.

The SPRK considers in its analysis the following criteria: market shares, barriers to entry, control of significant infrastructure and absence of countervailing buyer power.

⁴ Corresponding to market 4 of Commission Recommendation 2007/879/EC of 17 December 2007 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 communications networks and services, OJ L 344, 28.12.2007, p. 65, (the Recommendation).

⁵ SPRK explains that it has not received any complaints from alternative operators on the conditions and prices for access to SIA Lattelekom's unbundled loop.

On the basis of the criteria listed above and notably the high market share of the incumbent on the related retail markets for fixed voice telephony services (above 90 % in terms of revenues)⁶, the SPRK designates the incumbent, SIA Lattelekom, as having SMP on the relevant wholesale market.

II.4. Regulatory Remedies

On the basis of the above, the SPRK concludes that there is no need to modify or withdraw the obligations already imposed on SIA Lattelekom and, hence, proposes to sustain the following obligations:

- Requirement to provide wholesale unbundled access at reasonable request;
- Transparency, including a requirement to publish a reference unbundling offer;
- Non-discrimination;
- Accounting separation;
- Price control and cost accounting⁷.

III. NO COMMENTS

On the basis of the present notification and the additional information provided by the SPRK, the Commission has no comments.⁸

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

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 Point 15 of Recommendation 2008/850/EC,⁹ 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 Commission¹⁰ within three working days following receipt whether you consider that, in accordance with Community and national rules on business confidentiality, this document contains

⁶ SPRK explains that the slow take up of LLU is due to the existence of alternative infrastructures (wireless and cable network access) and to the mobile penetration in Latvia which is today around four times higher than that of fixed networks which is below 30%.

⁷ SPRK clarifies that the proposed cost orientation obligation continues to be based on FDC CCA methodologies. Given the almost non-existent take-up of unbundled local loop access in Latvia, the SPRK deems the cost to develop a long-run incremental cost (LRIC) model to be disproportionate to the anticipated outcome. SPRK informs that since 2004 it has continuously benchmarked the LLU tariffs against those in other EU Member States and found them to be in line with price levels in the EU. SPRK also reiterates that it has received no complaints with regard to the currently imposed wholesale regulation, either during the regulatory period or in the frame of the national consultation on the currently proposed draft measure.

⁸ Pursuant to Article 7(3) of the Framework Directive.

⁹ Commission Recommendation 2008/850/EC of 15 October 2008 on notifications, time limits and consultations provided for in Article 7 of Directive 2002/21/EC, OJ L 301, 12.11.2008, p. 23.

¹⁰ Your request should be sent either by email: INFSO-COMP-ARTICLE7@ec.europa.eu or by fax: +32 2 298 87 82.

confidential information which you wish to have deleted prior to such publication.¹¹ You should give reasons for any such request.

Yours faithfully,
For the Commission,
Philip Lowe
Director-General

¹¹ The Commission may inform the public of the result of its assessment before the end of this three-day period.