

Notice published pursuant to Article 27(4), Chapter II of Protocol 4 to the Agreement between the EFTA States on the establishment of a Surveillance Authority and a Court of Justice (the 'Surveillance and Court Agreement') in Case 61114 — Liechtensteinische Kraftwerke Anstalt and Telecom Liechtenstein AG

(2008/C 118/13)

1. INTRODUCTION

1. The EFTA Surveillance Authority (the 'Authority') has received a set of commitments formally endorsed by Liechtensteinische Kraftwerke Anstalt ('LKW') and Telecom Liechtenstein AG ('Telecom Liechtenstein') formerly Liechtenstein TeleNet AG, in the course of an investigation pursuant to Article 53 of the EEA Agreement into the telecommunications markets of the Principality of Liechtenstein.
2. By publishing this notice the Authority intends to market test the proposal of LKW and Telecom Liechtenstein for commitments, which are designed to address the Authority's competition concerns expressed in its preliminary assessment in this case. Subject to the results of this market test, the Authority intends to adopt a decision pursuant to Article 9(1) of Chapter II, Protocol 4 to the Surveillance and Court Agreement on the implementation of the rules on competition laid down in Articles 53 and 54 of the EEA Agreement. Such a decision would render binding the commitments offered by LKW and Telecom Liechtenstein. The decision would not conclude whether or not there had been or still was an infringement.

2. SUMMARY OF THE CASE

3. On 1 December 2006, the Authority received a complaint against LKW, Telecom Liechtenstein and the Principality of Liechtenstein alleging that an agreement concluded between Telecom Liechtenstein and LKW on 11 July 2006, aimed at restructuring the telecommunications markets in Liechtenstein (the 'Consolidation Contract') had as its object or effect the elimination of all competition between the LKW and Telecom Liechtenstein.
4. LKW is a 100 % State-owned electricity and telecommunications undertaking in Liechtenstein. LKW is established as a public law company. It supplies energy and also provides telecommunications infrastructure services.
5. Telecom Liechtenstein is a 100 % State-owned telecommunications operator in Liechtenstein which provides a range of communications and multimedia product offerings at the retail and wholesale level. Telecom Liechtenstein is established as an incorporated company.
6. Following the Consolidation Contract, at the infrastructure level LKW wholly owns the network infrastructure in Liechtenstein (in nine out of eleven municipalities). LKW offers wholesale access to its electronic communications network infrastructure to Telecom Liechtenstein and third party providers. Telecom Liechtenstein offers wholesale access to third party service providers using its infrastructure and retail supply of voice telephony, internet, and audio-visual services.
7. On 19 December 2007, the Authority adopted a preliminary assessment focussing on two elements of the Consolidation Contract and their effects on competition on the telecommunications markets of Liechtenstein. This document was a preliminary assessment within the meaning of Article 9(1) of Chapter II, Protocol 4 to the Surveillance and Court Agreement.
8. The preliminary assessment considered that a so-called strategic alignment provision, which requires the two companies to discuss network infrastructure development and requires LKW to achieve the network infrastructure requirements of Telecom Liechtenstein may restrict competition. The preliminary assessment concluded that this provision may operate as an obstacle or foreclose existing competitors or new entrants by making access to the markets more difficult. The preliminary assessment also expressed the concern that provisions in the Consolidation Contract pursuant to which LKW and Telecom Liechtenstein commit not to compete with each other for an unlimited time ('non-competition clause') restricted competition on the telecommunications markets in Liechtenstein.

3. COMMITMENTS

9. LKW and Telecom Liechtenstein replied to the preliminary assessment of the Authority and offered to abide by a set of commitments, which are designed to address the Authority's concerns. These commitments are briefly summarised below and are published in German on the website of the Authority at:
<http://www.eftasurv.int/fieldsofwork/fieldcompetition/>
10. The key elements of the commitments are as follows.
 - LKW and Telecom Liechtenstein shall remove the clause in the Consolidation Contract setting forth the terms of their strategic alignment.
 - With regard to network development planning, LKW commits to regularly (at least once annually) ascertain the requirements of all service providers as regards network infrastructure.
 - LKW commits to consolidate the requirements of all market participants (which shall not be binding upon LKW) in a network plan which shall have the aim of providing non-discriminatory access to all market participants.
 - LKW and Telecom Liechtenstein shall remove the non-competition clause.

4. INVITATION TO COMMENT

11. The Authority intends, subject to the outcome of this market test, to adopt a decision under Article 9(1) of Chapter II, Protocol 4 to the Surveillance And Court Agreement declaring the proposed commitments to be binding on LKW and Telecom Liechtenstein. To this end it invites interested third parties to submit any comments on the proposed commitments within one month of the publication of this notice.
12. Interested third parties are also requested to submit a non-confidential version of their comments, in which business secrets and other confidential passages are replaced by a non-confidential summary or by the words '(business secret)' or '(confidential)'. LKW and Telecom Liechtenstein may be granted access to the non-confidential versions of the comments received or of a summary thereof.
13. Comments should be sent to the following address, mentioning the reference 'Case 61114 — LKW/Telecom Liechtenstein': e-mail to: registry@eftasurv.int or letter/fax to:

Competition and State Aid Directorate
EFTA Surveillance Authority
Rue Belliard 35
B-1040 Brussels
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