

## **Opinions on reports of regulatory authorities**

By acting on requests of regulatory authorities, the Commission enacted four opinions whose short summary and content are presented below.

**Summary of the request:** On May 22, 2017, the Commission received a letter from the Regulatory Agency for Electronic Communications and Postal Services requesting the Commission to issue an opinion during the public consultations, pursuant to the provisions of Article 60(2) of the Law on Electronic Communications and Article 3 of the Protocol on Cooperation concluded between the Agency and the Commission, on the compliance with regulations governing competition of the Report on the market review: Wholesale broadband access – Market 5.

**Issued opinion:** The Commission issued opinion based on a review of individual segments of the Report, in which has particularly considered different findings and conclusions in relation to findings and conclusions presented in the previous Report. In this respect, the Commission also provided a general remark, seeing that the electronic communications market is a dynamic market, that Reports (regardless of markets falling under ex-ante rules) should also contain a comparative analysis in relation to the previous reports and derived conclusions. The Commission concluded that the retail level demand for ADSL service is still such that it requires the wholesale broadband access market review, particularly considering their mutual dependency, while in terms of features of the wholesale broadband internet access market has identified a difference in terms of conclusions relating to the existence of potential competition (non-existing, according to the previous Report, while somewhat present in accordance with the assessment provided in the Report reviewed during the ongoing public consultations).

The Commission positively assessed the analysis pertaining to the naked DSL service, for the first time included in the Report on the analysis of Market 5, and provided a suggestion that statements in relation to the service concerned need to be additionally clarified, in terms of findings on the technical capabilities to introduce the service in question on the entire territory of the Republic of Serbia, particularly in case of potential existence of specific restrictions. Considering the interest of operators to introduce this service on the wholesale level, the Commission assessed that the Report should contain a more detailed clarification of the nature of demand for this particular service, in order to assess the profitability and feasibility of its introduction. A specific conclusion relating to Telekom Srbija ad commitment is assessed as particularly useful by the Commission, stipulating that that in addition to offering VDSL technology for internet access to retail users, operators who are using or planning to use these services should be equally and non-discriminatory treated, that is, be offered a set of standard services under equal conditions corresponding to those established for own needs, needs of affiliated parties or partners.

As a final assessment, the Commission stated that the Report on the Market 5 analysis is founded on principles which comply with regulations governing competition, while remarking that without prejudice to the presented opinion, the Commission retains the right that in concrete proceedings conducted within the scope of established competences and in accordance with regulations governing competition, also derive potentially altered conclusions relative to those presented in the opinion, particularly when defining the relevant markets, either in the production or geographic dimension, whereby is possible that specific definition does not fully correspond to the definition adopted for the review purposes.

**Summary of the request:** On Nov 3, 2017, the Commission received a letter from the Regulatory Agency for Electronic Communications and Postal Services requesting the Commission to issue an opinion during the public consultations, pursuant to the provisions of Article 60(2) of the Law on Electronic Communications and Article 3 of the Protocol on Cooperation concluded between the Agency and the Commission, on the compliance with regulations governing competition of the Report on the market review: Wholesale market for call origination on the public telephone network provided at a fixed location - Market 2, and the Report on the market review: Wholesale market for call termination on the public telephone network provided at a fixed location –Market 3.

**Issued opinion:** In accordance with the Commission’s opinion, it is assessed that the Reports on the market reviews for Market 2 and Market 3 are founded on principles which comply with regulations governing competition, provided that in relation to the Report on the market review for Market 2 the Commission presented a suggestion on the need to provide a more detailed clarification on the mutual dependency of the call origination service and the retail call services provided at a fixed location. Such suggestion is provided in relation to the Agency’s assessment following the implementation of the “Three criteria test”, pursuant to which is established that on the observed market still exist certain structural and economic barriers to entry, but nevertheless asserted that such market will continue to develop and move towards the establishment of effective competition, that being the reason for Market 2 not falling under ex ante regulations.

**Summary of the request:** On Dec 5, 2017, the Commission received a letter from the Regulatory Agency for Electronic Communications and Postal Services requesting the Commission to issue an opinion during the public consultations, pursuant to the provisions of Article 60(2) of the Law on Electronic Communications and Article 3 of the Protocol on Cooperation concluded between the Agency and the Commission, on the compliance with regulations governing competition of the Report on the market review: Retail access to the public telephone network at a fixed location – Market 1, and the Report on the market review: Wholesale market for voice call termination on mobile network – Market 7.

**Issued opinion:** Considering the established trends and structural changes on the market, as well as the assessment on the potential state of competition, the Commission established that findings and conclusions presented by the Agency in the Report on the review of Market 1 are acceptable. With respect of the Report on the review of Market 7, the Commission assessed as acceptable the findings and conclusions presented in the report, but stated that it continues to believe that some statements need to be additionally clarified. This relates in particular to the virtual mobile operators, as well as the pricing methodology for the voice call termination on mobile network of an operator with considerable market power. In accordance with the Commission’s opinion, the Reports on the market review of Market 1 and Market 7, with certain amendments, are based on principles which comply with regulations governing competition. Considering the provision of Article 60 of the Law on Electronic Communications that regulates Agency’s cooperation with competent competition authority when conducting market analysis, as well as previous experiences in relation to opinions submitted to the Agency following their request, the Commission proposed that reports on conducted analysis need to be submitted to the Commission on the part of the Agency prior to the opening of public consultations, so that more time would be allowed for potential suggestions and additional clarifications during the analysis preparation and issuing opinions in relation to those documents.

In addition to specific findings concerning each of the analyzed markets, the Commission provided a general remark stating that it retains the right to derive potentially different conclusions relative to those presented in the opinion on market review reports, particularly when defining the relevant markets, either in the production or geographic dimension, in concrete proceedings conducted within the scope of established competences and in accordance with regulations governing competition, whereby is possible that specific definition does not fully correspond to the definition adopted for the market review purposes.

**Summary of the request:** At the request of the Energy Agency of the Republic of Serbia, the Commission conducted an analysis of submitted Draft report on the need to regulate electricity guaranteed supply prices and the Draft report on the need to regulate prices of capacity reserve for system services of secondary and tertiary control, and in accordance with entrusted competences has presented assessments in relation to the submitted documents.

**Issued opinion:** When reviewing reports submitted, the Commission paid particular attention to Chapter 3 – Achieved level of competitiveness on the electricity retail market in Serbia in 2016, while when analyzing the Draft report on the need to regulate prices of capacity reserve for system services of secondary and tertiary control, the Commission directed attention to Chapter 2 – Achieved level of competitiveness on the national electricity market, particularly to subchapter “Achieved level of competitiveness on the market of capacity reserve for system services of secondary and tertiary control“. All observations and suggestions of the Commission are fully adopted by the Energy Agency and introduced into the final versions of reports, published on the Agency’s website.