



Republic of Serbia
**COMMISSION FOR
PROTECTION OF
COMPETITION**
25/IV Savska Street, Belgrade
Number: 9/0-02-338/2022-2
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**REPUBLIC OF SERBIA
REGULATORY AGENCY FOR ELECTRONIC
COMMUNICATIONS
AND POSTAL SERVICES**
Dragan Pejović, director
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SUBJECT: Opinion of the Commission for the Protection of Competition at the request of the Regulatory Agency for Electronic Communications and Postal Services No. 1-03-3483-3/21-4 dated March 1, 2022

the Commission for the Protection of Competition (hereinafter referred to as: the Commission), on March 3, 2022 received a notice from the Regulatory Agency for Electronic Communications and Postal Services (hereinafter: the Agency) stating that the Agency published on its website an invitation to experts and the general public to submit an opinion within the public consultations regarding the Draft report on the analysis of the wholesale market of central access provided at a fixed location for mass market products (hereinafter: the Report).

According to the information specified in the said notice, the Agency conducted the market analysis procedure in order to continuously monitor the situation on the subject market in the territory of the Republic of Serbia.

Referring to the provisions of Article 60, paragraph 2 of the Law on Electronic Communications, as well as to the provisions of Article 3 of the Protocol on Cooperation, entered into by and between the Agency and the Commission, a request was made that the Commission, by the deadline for submitting opinions within the public consultation procedure, ie by April 7, 2022, submits an opinion on whether the report on the analysis of the relevant market, as well as regulatory obligations, for which the report concluded may be assigned to an operator with significant market power in the relevant market, is in accordance with regulations protection of competition.

After reviewing the subject analysis, based on Article 21, paragraph 1. of the Law on Protection of Competition (“Official Gazette of the Republic of Serbia”, number 51/09 and 95/13), the Commission Council at its 78th session held on April 4, 2022 brings the following

OPINION

The Council of the Commission considered the draft report on the analysis of the wholesale market of central access that is provided at a fixed location for products for the mass market, and evaluated the findings and conclusions contained in the report as acceptable, but believes that some statements need to be further explained and the reports supplemented in certain aspects, as noted below.

Findings of the analysis in the part concerning the characteristics of the retail broadband internet access market in the Republic of Serbia in the period 2018-2020 are not significantly different compared to the findings from the previously conducted analysis of the said market for the period 2015-2018. The trend regarding the representation of technologies continued, where it was concluded that the number of subscribers who access the Internet via xDSL technology is falling, while the number of subscribers who access the Internet via the operator's CDS network (cable distribution network) and optical networks in FTTH and FTTB architecture is increasing over the years.

Furthermore, the participation of operators in the retail market of fixed broadband Internet access in 2020, measured by the number of subscribers, is presented in the Report in Figure 9, and it can be concluded that there were no significant changes in the individual market share by operators compared to the previous period, but changes were noted in the operator's shares due to the acquisitions carried out in the period 2018-2020. The above data represent participation at the retail level and only when it comes to fixed broadband access. The analysis states that a trend of increasing use of mobile phones for broadband access was observed and an increase in the number of users of mobile internet services provided by three mobile operators in Serbia as well as one virtual mobile operator was noted. At the same time, this segment was analyzed separately and only the distribution of mobile broadband Internet access subscribers according to purpose was provided (mobile broadband subscribers for data and voice services, followed by data services and subscribers who accessed the Internet via dedicated USB modems), while stating that the total number of active mobile broadband users was 6.5 million. However, the participation of operators in this segment, measured by the number of users, was not presented. It can be assumed that in the coming period it will be very realistic to include this segment in the definition of the broadband Internet access market, bearing in mind that according to what was stated in the Report, there is a real possibility to use certain technologies to realize the capacity of mobile networks comparable to the capacities which are offered in fixed broadband networks.

As far as the wholesale central access market is concerned, there are no significant changes compared to the findings in the previous analysis. The analysis of the relevant market in the service dimension was carried out by examining substitution on the demand and supply side at the retail level, and in connection with the above, substitution on the supply and demand side was analyzed at the wholesale level. It was concluded that the wholesale market of central access consists of the bitstream access service, which can be realized through the network of copper coins and xDSL technology, hybrid optical-coaxial networks of CDS operators (HFC networks) and optical cables in the FTTx network architecture, and which is offered to the own company, as an inseparable part of services at the retail level for their own users and user operators, in order to be able to offer services on the retail market to end users who are not connected to their access network, as well as that the relevant geographic market is the territory of the Republic of Serbia. The conclusion about the relevant market, that is, the wholesale market of central access, does not differ from the conclusion in the previous analysis. Furthermore, the Agency measures the so-called

"theoretical wholesale market", by including in the number of subscribers on the observed wholesale market the offer to the own company of all operators, which results from the number of subscribers on the retail market, in order to assess their market potential at the wholesale level. The market shares of the operators in the wholesale market of central access are presented in Figure 20 in the Report. Following the examination and other criteria for determining the operator with significant market power (hereinafter: SMP), the Agency is able to conclude that the operator Telekom Srbija a.d. owns an individual SMP on the wholesale market of central access and thereby determines its regulatory obligations.

It was stated that the operator SBB DOO, which in the previous analysis was declared together with Telekom as an operator with SMP, can provide wholesale broadband access services through connections made through a hybrid optical-coaxial cable network, but this operator had no requests from the user operator in the observed period, for enabling the provision of broadband Internet access services. It is further stated that user operators could hypothetically request access from the operator SBB DOO, however, this would imply certain adjustments and investments due to the transition to the bitstream access service via the HFC network. The analyzed wholesale market, in the light of the aforesaid dimensioning, would be useful to supplement with determining criteria and explanations for changing the conclusion from the previous analysis, and we assume that they relate primarily to the lack of demand for the said service from the operator SBB DOO, as well as to technical and geographical limitations of the HFC networks.

On the basis of the above, the Commission is of the opinion that the Report was prepared in accordance with the principles of competition protection, with the fact that it believes that it would be useful to further clarify certain statements, as previously stated. In line with the above, and in terms of competence entrusted thereto by the Law, the Commission has no other objections in relation to the submitted report.

Without prejudice to the opinion expressed, the Commission notes that it reserves the right to draw possible conclusions in specific proceedings within its competences, in accordance with the regulations governing competition protection, in relation to those set out in the Report, and in particular with regard to the determination of the relevant market, either in the product or in the geographical dimension, where it is possible that a specific definition does not coincide in all respects with the definition adopted for the purposes of the Report.

PRESIDENT OF THE COMMISSION

Nebojša Perić, m.p.