



Republic of Serbia
**COMMISSION FOR
PROTECTION OF
COMPETITION**

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**Republic of Serbia
REGULATORY AGENCY FOR ELECTRONIC
COMMUNICATIONS
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On December 30, 2021, as part of the public consultation procedure, the Regulatory Agency for Electronic Communications and Postal Services submitted to the Commission for Protection of Competition a Request for an opinion on the Draft Report on Analysis of the Wholesale Market for Local Access to Network Elements, provided at a fixed location.

Council of the Commission for Protection of Competition, pursuant to Article 22 paragraph 1, item 7 of the Law on Protection of Competition (“Official Gazette of the Republic of Serbia”, 51/2009 and 95/2013), at its 71st meeting held on January 11, 2022, passes the following

OPINION

The draft report on the analysis of the wholesale market for local access to network elements provided at a fixed location (hereinafter: the Draft report) contains acceptable findings and conclusions, but some allegations need to be further explained and in certain aspects the report needs to be supplemented, as explained below.

According to the request of the Regulatory Agency for Electronic Communications and Postal Services (hereinafter: the Agency), the market analysis procedure was conducted in order to continuously monitor the situation on the market in the territory of the Republic of Serbia, in order to identify changes in relation to the previously performed analysis of the relevant market.

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 for Protection of Competition (hereinafter: The Commission), a request was made that the Commission, by the deadline for submitting opinions within the public consultation procedure, ie by January 6, 2021, submits an opinion on whether the report on the analysis of the relevant market, published on the Agency's website, 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.

Having analyzed the draft report, the Commission was able to conclude the following.

First of all, it was established that its drafting took into account the latest recommendations of the European Commission as of 18 December 2020 on relevant markets for products and services in the field of electronic communications subject to *ex ante* regulation in accordance with EECC. When determining the relevant market of products, ie services, the Agency observed the substitution of services on the demand side at the retail level, as well as the substitution on the demand and supply side at the wholesale level, and made a conclusion on the relevant market at the wholesale level. The analysis primarily covered the technological substitutability of the observed services. The Agency concluded that the relevant geographic market for the wholesale service is of local access to network elements provided at a fixed location in the territory of the Republic of Serbia. The Draft Report analyzes 12 criteria for determining significant market power (hereinafter: SMP), as well as the potential impediments for the development of the market competition. At the end, the obligations of the SMP operator are listed, and a conclusion is drawn.

As a general statement, the Commission states that the Agency in the Draft Report largely referred to either the Recommendations of the European Commission, as of September 20, 2010 on regulated access to Next Generation Access Networks (2010/572 / EU) or the Explanatory Memorandum, but without actual presentation of the situation and possible assessment of future events in the territory of the Republic of Serbia.

Namely, in item 3.1.1. of the "Wholesale inputs for a fixed broadband service", the Agency notes that operators wishing to provide broadband-based services to their end-users have the option of either building a network to provide such transmission channels or purchasing wholesale local access or bitstream access services to reach end-user locations that they serve. However, at the same time, it is stated that wholesale services of disaggregated and broadband access are primarily differentiated according to their passive (physical) and active (non-physical) nature, different level of flexibility they provide to operators when it comes to forming a retail service, as well as according to the location where access is provided, and notes that due to the above, these services still belong to different relevant markets and can be considered as complementary services and not as substitutes.

According to the Commission's view, the introductory part concluded that there was no substitution at the wholesale level, so that further analysis of these services could not lead to different results, whereby comparative data on how many operators currently use one of the mentioned wholesale services and the reasons why they opted for it were not presented.

Also, in item 3.1.2 of the "Technological development in the market of disaggregated (local) access and broadband (central) access", the Agency noted that the transition to NGA networks (new generation networks), especially FTTH, consequently reduces the need to use infrastructure based on copper pair, and operators can initiate procedures withdrawal of this type of infrastructure. In this part, the Commission noted that in presenting its conclusions, the Agency referred mainly to the Explanatory Memorandum. Based on the above, the Commission assessed that NGA networks can essentially compete with the service of full and shared detailed access to the local loop, with the lack of concrete conclusions when this could possibly be expected in the Republic of Serbia. In addition, in connection with the above, we are of the opinion that the Draft Report should be supplemented with data explaining the reasons why

the relevant networks of operators are not adapted to provide access at the wholesale level, and technical and commercial conditions needed to adapt them.

In item 3.1.4.1 of the the Draft report, the Agency stated that the service of unbundled access to the local loop is provided only by the operator Telekom Srbija a.d., which holds a 100% share in the wholesale market in question. In the same item, on page 34, Figure 10 is provided - Using the service of unbundled access to the local loop for the purpose of enabling voice service, ie broadband Internet access. The comment provided by the Agency, states the following: "Based on the image provided, it can be noted that in the previous period, unbundled local loops were in most cases used for the purpose of providing broadband access service together with voice service. In the past period, the scope of this service was very small and in 2020 it amounted to a total of 146 unbundled approaches to the local loop for the provision of broadband access services, as well as for the provision of broadband access services together with voice service." Compared to 2016, when there were a total of 149 unbundled approaches to the local loop (Report on the analysis of the wholesale market of local access to network elements provided at a fixed location: December 2017 - April 2018), it can only be stated that a reduction in the scope of this service has ensued. Given that the Draft Report does not contain data on the total number of available loops, as well as the number of submitted and realized requests for unbundled access to the local loop, the Commission considers that the Draft Report should be supplemented with indicators in the observed period.

Having analyzed the relevant service market, in item 3.2.4, the Agency was able to conclude that no appropriate substitute is available for the wholesale service of unbundled access to the local loop. On page 49 of the Draft report, which refers to the demand substitution on the wholesale level, the Agency stated the following: "In accordance with the above, the Agency concludes that the wholesale service of active (virtual) local access (*virtual unbundling*), which can be provided using optical cables in FTTC architecture using VDSL *vectoring* technology, optical networks in FTTH / FTTB architecture and through networks of CDS operators also in FTTC architecture, in technological terms it represents a substitute for the service of unbundled access to the local loop. However, this type of service is not currently offered by any operator, and the Agency will continue to monitor further developments and technological trends related to this service and take appropriate steps in a timely manner to improve competitiveness." The Commission further states that in this part of the Draft Report, the Agency mostly referred to the Explanatory Memorandum, and estimates that there are no concrete conclusions when the said service could possibly start being provided in the Republic of Serbia, i.e. what conditions need to be met.

Based on all the above, the Commission is of the opinion that the Draft Report was made in accordance with the principles of competition protection, but however believes that it is necessary to make additions to the above data and in accordance with the principles of competition protection. Other than that and in terms of the competencies entrusted to it by the Law, the Commission has no other objections in relation to the submitted Draft Report.

To that end, and in the light of the provision of Article 60, paragraph 2 of the Law on electronic communications ("Official Gazette of the Republic of Serbia", nos. 44/2010, 60/2013 – CC decision, 62/2014 and 95/2018 – state law), which defines the cooperation of the Agency with the competent authority for the protection of competition in the course of market analysis, as well as in the light of the previous experience in the provision of opinions upon the Agency's requests, for the reports on conducted analysis to be submitted to the Commission, prior to the commencement of the public consultation

procedures, so as to leave more time for possible suggestions and additional explanations, in the actual course of drafting of analysis and giving opinions thereto.

Without prejudice to the above opinion, 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 Draft Analysis Report on market analysis, 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 these reports.

PRESIDENT OF THE COMMISSION

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