

## **Commission opens an in-depth investigation of Estonian wholesale broadband access markets**

Today, the European Commission opened an in-depth investigation into the Estonian Telecoms Regulators (ECTRA) analysis of the broadband wholesale markets in Estonia, the wholesale local and central access markets, raising concerns about the national regulatory authority's definition of the relevant geographic market that should continue to be regulated.

The European Electronic Communications Code and the new Recommendation on relevant markets, which are applicable since December 2020, emphasize the importance for national regulatory authorities to appropriately define the relevant geographic market, by taking into account, inter alia, the degree of infrastructure competition, in accordance with the principles of competition law.

The Estonian regulator (ECTRA), indeed, proposes to remove ex-ante regulation from two municipalities where Telia's retail market shares are particularly low. However, outside of these areas, ECTRA concludes that the different parts of the country should continue to be regulated in a uniform manner.

The Commission observes that the draft measure notified by ECTRA does not contain an analysis of the degree of infrastructure competition in the different areas of the country and considers that, at this stage, ECTRA has not provided sufficient evidence and analysis to support regulating the entire national market, with the exception of the two municipalities. On the basis of the elements provided by ECTRA, the Commission noted potentially significant differences between rural and urban areas that may affect the level of infrastructure based competition. For example, in the capital city of Tallinn, alternative operators managed to deploy their own infrastructure and gain relatively high and stable market shares, but this may not be the case in other parts of the country. The Commission therefore has serious doubts on the definition of the geographic market.

As a consequence, the Commission also questions ECTRA's finding that the incumbent operator Telia has significant market power (SMP) on the relevant market as defined by the NRAs, since in the Commission's view ECTRA has not sufficiently established the ability of Telia to act independently of its competitors and customers throughout the entire country and in particular in Tallinn. Furthermore, the Commission also has serious doubts with regard to the product market definition as proposed by ECTRA.

The decision to open an in-depth investigation does not prejudice what should be the outcome of ECTRA's analysis. In light of this, and without pre-judging the market assessment as explained above, the Commission also provided comments on the regulatory remedies proposed by ECTRA. In that regard, the Commission observed that, with the possible exception of duct access, regulated wholesale products are very rarely used by alternative operators. The Commission therefore asked ECTRA to ensure that where, on the basis of an appropriate analysis, the imposition of remedies would be found to be justified, ECTRA should ensure both their proportionality and effectiveness. The Commission also called on ECTRA to consider a more flexible approach regarding the regulation of

fibre prices in (non-competitive) areas where Telia face a demonstrable retail price constraint from operators, which have deployed their own networks.

### **Next Steps**

The Commission has two months to discuss the draft measure with ECTRA, in close cooperation with the Body of European regulators (BEREC). At the end of the Phase II investigation period, the Commission may either lift its reservations or issue a veto decision under Article 32 of the Code. During this period, ECTRA will not be able to adopt a final measure regarding both wholesale access markets.

The Commission's serious doubts letter opening the in-depth investigation will be available [here](#).

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