EFTA SURVEILLANCE AUTHORITY

Brussels, 21 October 2016
Case No: 79589
Document No: 822547

Póst- og Fjarskiptastofnun
Sudurlandsbraut 4
108 Reykjavik,
Iceland

For the attention of:
Mr. Hrafnkell V. Gíslason
Managing Director

Dear Mr. Gíslason,

Subject: Market for call origination on the public telephone network provided at a fixed location and Market for call termination on individual public telephone networks provided at a fixed location - Remedies – Tariff determination via benchmarking

Comments pursuant to Article 7(3) of Directive 2002/21/EC (Framework Directive)[1]

I. PROCEDURE

On 27 September 2016, the EFTA Surveillance Authority (the "Authority") received a notification of a draft national measure in the field of electronic communications pursuant to Article 7 of the Framework Directive from the Icelandic national regulatory authority, *Póst- og Fjarskiptastofnun* (the "PTA"), concerning the determination by means of a benchmark of tariffs for wholesale call origination and call termination on public telephone networks provided at a fixed location.[2]

[1] Directive 2002/21/EC of the European Parliament and of the Council of 7 March 2002 on a common regulatory framework for electronic communications networks and services, OJ L 108, 24.4.2002, p. 33 (as amended by Regulation (EC) No 717/2007, OJ L 171, 29.6.2007, p. 32 and Regulation (EC) No 544/2009, OJ L 167, 29.6.2009, p. 12), as referred to at point 5cl of Annex XI to the EEA Agreement and as adapted to the Agreement by Protocol 1 (the "Framework Directive").

[2] Corresponding to markets 2 and 3 of the EFTA Surveillance Authority Recommendation of 5 November 2008 (Decision No 688/08/COL) on relevant product and service markets within the electronic communications sector susceptible to ex ante regulation in accordance with the Framework Directive, OJ C 156, 9.7.2009, p.18 ("the 2008 Recommendation"). By Decision No 093/16/COL of 11 May 2016, the Authority adopted a revised Recommendation on relevant product and service markets within the electronic communications sector susceptible to ex ante regulation in accordance with the Framework Directive (publication pending) ("the 2016 Recommendation"). However, pursuant to its Article 5, the 2016 Recommendation is without prejudice to *i.a.* regulatory obligations adopted by the national regulatory

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The notification became effective on the same day.

A national consultation was carried out, pursuant to Article 6 of the Framework Directive, during the period from 11 August 2016 to 1 September 2016.

On 11 October 2016, a request for information (Document No 821822) was sent to the PTA, and a response was received on 14 October 2016 (Document No 822437).

The period for consultation with the Authority and the national regulatory authorities ("NRAs") in the EEA States pursuant to Article 7 of the Framework Directive expires on 27 October 2016.

Pursuant to Article 7(3) of the Framework Directive, the Authority and the EEA NRAs may make comments on notified draft measures to the NRA concerned.

II. DESCRIPTION OF THE DRAFT MEASURE

II.1. Background

The PTA's second review of the wholesale market for call origination on the public telephone network provided at a fixed location in Iceland (market 2) and the wholesale market for call termination on individual public telephone networks provided at a fixed location in Iceland (market 3) was notified to and assessed by the Authority under Case No 72796.[3]

Following that review, the PTA adopted its Decision no. 36/2012, in which *Síminn hf.* ("Siminn") was designated as a provider with significant market power ("SMP") on both markets 2 and 3 respectively and Siminn, Vodafone, Nova ehf. ("Nova"), *Símafélagið ehf.* ("Simafélagið") and *Hringdu ehf.* ("Hringdu") were designated with SMP on market 3.

Specific obligations were imposed on all SMP operators. On the market for wholesale call origination, Siminn was obliged to provide access, including resale access in case of demand. Further, the PTA imposed on Siminn obligations of non-discrimination (both with respect to pricing as well as to interconnection and resale access), transparency and the publication of a reference offer, accounting separation and price control on the basis of a benchmark against termination rates in EEA States using the bottom-up long-run incremental cost model approach ("BU-LRIC"). On the market for wholesale call termination, the PTA obliged the SMP operators, in addition to obligations of access, non-discrimination, transparency and accounting separation, to apply a symmetrical termination rate, calculated by the PTA on the basis of a benchmark against termination rates in EEA States using the pure long-run incremental cost model ("pure LRIC").

As recommended in the Authority's Recommendation on termination rates,[4] the PTA established symmetrical termination rates in its Decision No. 36/2012 for Siminn,

authorities prior to its adoption. As the notified draft measure is foreseen in the PTA´s Decision No. 36/2012, the 2016 Recommendation has no impact on the notified draft measure.

[3] See the Authority's "no comments" letter on 6 December 2012 (Document No 654378). In the current notification, the PTA notes that it is currently re-analysing markets 2 and 3/2008 and expects a final decision to be adopted before the end of 2016.

[4] See EFTA Surveillance Authority Recommendation of 13 April 2011 on the Regulatory Treatment of Fixed and Mobile Termination Rates in the EFTA States.

Simafelagið, Nova and Hringdu. It further established a requirement for a minimum of 5 EEA States to constitute the basis of the benchmark for the price control obligation. The PTA would carry out the benchmarking exercise on an annual basis during the period of validity of the Decision, but the first instance for determining the tariffs was set for 1 July 2013 and subsequently annually from 1 January 2014.

Following a ruling from the Appellate Committee for Electronic Communications and Postal Affairs on 29 November 2012 concerning the date of entry into force of rates for wholesale call termination on individual mobile networks, the PTA considered it appropriate to postpone its benchmarking calculation for market 3 until a majority of EEA States had adopted termination prices in fixed-line telephone networks in accordance with the Authority´s Recommendation on the regulatory treatment of termination rates.

Consequently, the PTA only carried out its first benchmarking calculation in 2015 and notified its draft measure to the Authority on 15 June 2015. By letter of 15 July 2015 (Document No 763024), the Authority commented on the PTA´s late implementation of the price control remedies foreseen for both markets in the PTA´s Decision No 36/2012 and, in the case of market 3, the late implementation of the Authority´s Recommendation on termination rates entailing a delayed implementation of cost efficient termination rates for the benefit of consumers.

II.2. Current notification

II.2.1 Call origination on the public telephone network provided at a fixed location

In the current draft measure, the PTA has carried out the annual benchmarking comparison on the basis of 10 EEA NRAs which by June 2016 had adopted decisions on call origination rates based on the BU-LRIC, the LRIC+[5], the LRAIC[6] or the LRAIC+[7] methodology.[8] The resulting average amounts to ISK 0.50/minute and constitutes a maximum price cap (excluding VAT) which will apply to Siminn.[9] The PTA intends the rate to be applicable from 1 January 2017 until 31 December 2017.

The PTA notes that by June 2016, no NRAs had adopted final decisions on the call origination rates for 2017. Accordingly, the PTA has only considered call origination rates applicable in 2016.

The 10 NRAs, which according to the PTA have adopted decisions on the call origination rates based on the BU-LRIC, the LRIC+, the LRAIC or the LRAIC+ methodology and which are taken into account by the PTA for its benchmarking calculation, are as follows:

[5] Marked up long run incremental cost.

[6] Long run average incremental cost.

[7] Marked up long run average incremental cost.

[8] One comparator country, *i.e.* Luxembourg, has been added since the PTA´s previous benchmark calculation.

[9] No connection charge or breakdown into day, night or weekend rates is foreseen.

Comparator NRAs	Cost methodology	Call origination rate in ISK/minute[10]
Denmark	BU-LRAIC	0.37
Italy	BU-LRAIC	0.20
Croatia	BU-LRAIC+	0.13
Luxembourg	BU-LRAIC+	0.61
Malta	BU-LRAIC+	0.37
Norway	BU-LRAIC+	0.49
Slovakia	BU-LRIC+	0.48
Sweden	BU-LRIC	0.24
Czech Republic	BU-LRIC+	1.60
Germany	BU-LRAIC+	0.49

II.2.2 Call termination on individual public telephone networks provided at a fixed location

In the current draft measure, the PTA has carried out the annual benchmarking comparison on the basis of 17 EEA NRAs which by June 2016 had adopted decisions on fixed termination rates ("FTRs") based on the pure BU-LRIC methodology. The reference is for single transit where appropriate and for the rate per minute of a three-minute call. The PTA notes that it has not taken the FTRs applicable in France, Ireland and the United Kingdom into consideration, because in these countries no price control on single transit calls has been fixed.[11]

The resulting average amounts to ISK 0.14/minute and constitutes a maximum price cap (excluding VAT) which will apply equally to all SMP operators.12 The PTA intends the rate to be applicable from 1 January 2017 until 31 December 2017.

The PTA has taken account of FTRs applicable in 2017, where a formal decision on the FTRs was adopted by June 2016.

The 17 NRAs, which according to the PTA have adopted decisions on FTRs based on a pure BU-LRIC methodology and which are taken into account by the PTA for its benchmarking calculation, are as follows:

[10] The PTA has indicated that comparator call origination rates are based on information available on the European Commission´s CIRCABC Information Resource Centre, the ESA eCOM Notification Registry and Cullen International, as well as information published on the websites of the relevant NRAs. For the calculation of the call origination rates in ISK, the PTA used the Central Bank of Iceland´s mid-rates for the second quarter of 2016.

[11] In response to the request for information sent by the Authority on 11 October 2016, the PTA has provided the specific sources of information on which the exclusion of these countries from the benchmarking calculation is based.

[12] No call setup charge or breakdown into day, night or weekend rates is foreseen.

Comparator NRAs	FTR in ISK/minute[13]
Austria	0.17
Bulgaria	0.36
Denmark	0.08
Greece	0.08[14]
Italy	0.06
Croatia	0.09
Lithuania	0.18
Luxembourg	0.20
Malta	0.06
Norway	0.09[15]
Romania	0.20
Slovakia	0.17
Slovenia	0.12
Spain	0.11
Sweden	0.10
Czech Republic	0.15
Hungary	0.18

III. COMMENTS

The Authority has examined the notified draft measure and has the following comment:

Market review timing

The Authority notes that the PTA´s latest reviews of markets 2 and 3 date back to 2012 and observes that if an NRA does not analyse the relevant markets at regular intervals, or if the enforcement of imposed remedies on SMP undertakings is considerably delayed, competition on the affected markets may be harmed, and legal certainty for the market participants may be reduced.

In this context, the Authority urges the PTA to respect the foreseen timeline for the analysis and notification of markets 2 and 3, in line with the PTA´s obligations under the EEA regulatory framework.

[13] The PTA has indicated that comparator FTRs are based on information available on the European Commission´s CIRCABC Information Resource Centre, the ESA eCOM Notification Registry and Cullen International and BEREC benchmarking reports, as well as information published on the websites of the relevant NRAs. For the calculation of the rate in ISK, the PTA used the Central Bank of Iceland´s mid-rates for the second quarter of 2016.

[14] The rate will apply in 2017.

[15] *Idem.*

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IV. FINAL REMARKS

On a procedural note, the Authority recalls that any future amendments to, or more detailed implementation of, the draft remedies consulted on in the current notification will require re-notification in accordance with Article 7(3) of the Framework Directive.

Pursuant to Article 7(5) of the Framework Directive, the PTA shall take the utmost account of comments of other NRAs and the Authority. It may adopt the resulting draft measure and, when it does so, shall communicate it to the Authority.

The Authority's position on the current notification is without prejudice to any position the Authority may take in respect of other notified draft measures.

Pursuant to Point 15 of the Procedural Recommendation[16], the Authority will publish this document on its eCOM Online Notification Registry. The Authority does not consider the information contained herein to be confidential. You are invited to inform the Authority within three working days[17] following receipt of this letter if you consider, in accordance with EEA and national rules on confidentiality, that this letter contains confidential information which you wish to have deleted prior to publication. You should give reasons for any such request.

Yours sincerely,

Ólafur Jóhannes Einarsson
Director
Internal Market Affairs Directorate

Emily O´Reilly
Deputy Director for Competition
Competition and State Aid Directorate

[16] EFTA Surveillance Authority Recommendation of 2 December 2009 on notifications, time limits and consultations provided for in Article 7 of the Act referred to at point 5cl of Annex XI to the Agreement on the European Economic Area (Directive 2002/21/EC of the European Parliament and of the Council on a common regulatory framework for electronic communications networks and services), as adapted by Protocol 1 thereto, OJ C 302, 13.10.2011, p.12, and available on the Authority's website at http://www.eftasurv.int/media/internal-market/recommendation.pdf ("the Procedural Recommendation").

[17] The request should be submitted through the eCOM Registry, marked for the attention of the eCOM Task Force.

Brussels, 2 November 2016
Case No: 79589
Document No: 824692

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108 Reykjavik,
Iceland

For the attention of:
Mr. Hrafnkell V. Gíslason
Managing Director

Dear Mr. Gíslason,

Subject: Corrigendum of the comments letter Document No 822547 of 21 October 2016 related to Case No 79589: Market for call origination on the public telephone network provided at a fixed location and Market for call termination on individual public telephone networks provided at a fixed location - Remedies – Tariff determination via benchmarking

Comments pursuant to Article 7(3) of Directive 2002/21/EC (Framework Directive)[1]

Please note that the decision is corrected as follows:

Under section II.1, the sentence:

> *"Further, the PTA imposed on Siminn obligations of non-discrimination (both with respect to pricing as well as to interconnection and resale access), transparency and the publication of a reference offer, accounting separation and price control on the basis of a benchmark against termination rates in EEA States using the bottom-up long-run incremental cost model approach ("BU-LRIC")"*

is modified as follows:

> *"Further, the PTA imposed on Siminn obligations of non-discrimination (both with respect to pricing as well as to interconnection and resale access), transparency and the publication of a reference offer, accounting separation and price control on the basis of a benchmark against origination rates in EEA States using the bottom-up long-run incremental cost model approach ("BU-LRIC")".*

[1] Directive 2002/21/EC of the European Parliament and of the Council of 7 March 2002 on a common regulatory framework for electronic communications networks and services, OJ L 108, 24.4.2002, p. 33 (as amended by Regulation (EC) No 717/2007, OJ L 171, 29.6.2007, p. 32 and Regulation (EC) No 544/2009, OJ L 167, 29.6.2009, p. 12), as referred to at point 5cl of Annex XI to the EEA Agreement and as adapted to the Agreement by Protocol 1 (the "Framework Directive").

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Yours sincerely,

Ólafur Jóhannes Einarsson	Emily O´Reilly
Director	Deputy Director for Competition
Internal Market Affairs Directorate	Competition and State Aid Directorate