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Brussels, 23 October 2015
Case No: 77998
Document No: 776266

EFTA SURVEILLANCE AUTHORITY

Póst- og Fjarskiptastofnun
Sudurlandsbraut 4
108 Reykjavik,
Iceland

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

Dear Mr. Gíslason,

Subject: Wholesale market for voice call termination on individual mobile networks in Iceland

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

I. PROCEDURE

On 29 September 2015, 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 wholesale market for voice call termination on individual mobile networks.[2]

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 to 1 September 2015.

On 14 October 2015, a request for information[3] (Document No 776264) was sent to the PTA, and a response was received on 15 October 2015 (Document No 776429).

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[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 market 7 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").

[3] Pursuant to Article 5(2) of the Framework Directive and Point 13 of the Authority's Procedural Recommendation (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

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 29 October 2015.

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. Previous notifications

The last benchmarking exercise carried out by the PTA was notified to and assessed by the Authority under Case No 76066. The PTA carried out the benchmarking comparison on the basis of 18 NRAs which, by 1 July 2014, had adopted a final decision stipulating a cost-efficient target mobile termination rate ("MTR" or "termination rate") based on the BU-LRIC (Bottom-Up Long-Run Incremental Cost) model. The resulting average amounted to ISK 1.52/minute and constituted a maximum price cap (excluding VAT) which was to apply equally to all operators having significant market power ("SMP") from 1 January 2015 to 31 December 2015.

On 23 June 2015, the PTA notified its fourth-round review of the wholesale market for voice call termination on individual mobile networks in Iceland, which the Authority assessed under Case No 77567.[4] Subsequently, the PTA adopted the notified measures under Decision no. 20/2015 designating the mobile network operators ("MNOs") *Siminn hf*, *Fjarskipti efh*, *Nova efh*, *IMC Ísland efh/Alterna* and the mobile virtual network operator ("MVNO") *365 miðlar ehf* as having SMP on their respective markets[5] and imposed *i.a.* a price control obligation based on the benchmarking method[6] applying the following criteria:

- The MTRs shall be decided on an annual basis and completed by 1 November in the year preceding their applicability;
- Only the MTRs decided by EEA NRAs on the basis of a pure BU-LRIC model will be taken into account;
- The comparison will be based on prices resulting from conclusions on MTRs which are available in April of the year, when the benchmarking exercise is made;
- Only MTRs subject to a formal decision by a NRA will be taken into account; and
- The resulting MTR shall not be higher than the average in those EEA States that fulfil the criteria mentioned above.

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 I 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.

[4] See the Authority's no comments letter of 23 July 2015 (Document No. 763795).

[5] See section II.2 of the Authority´s no comments letter of 23 July 2015 for a detailed description of the PTA´s market definition.

[6] According to the PTA, it is not in a position to develop a pure BU-LRIC cost model for the relevant markets in the coming years due to a lack of resources and specialised knowledge. The PTA notes further that it does not have the option of using assistance from BEREC under the current framework.

II.2. Regulatory remedies

In the current draft measure, the PTA has carried out the annual benchmarking comparison on the basis of 21 EEA NRAs which, by April 2015, had adopted decisions on MTRs based on the pure BU-LRIC model. The resulting average amounts to ISK 1.40/minute and constitutes a maximum price cap (excluding VAT), which will apply equally to all SMP operators. The PTA intends the MTR to be applicable from 1 January 2016 until 31 December 2016.

According to the PTA, the annual decision-making process as regards MTRs results in a stable and predictable operating environment for the market participants. Additionally, the PTA observes that due to unstable price levels and currency exchange rate in Iceland over the past years, it is not considered reasonable to determine the MTRs for periods longer than one year as such an approach is likely to result in large changes.

The 21 NRAs, which according to the PTA have adopted MTR decisions based on a pure BU-LRIC model and which are taken into account by the PTA for its benchmarking exercise, are as follows:

Comparator NRAs[7]	MTR in ISK/minute[8]
Austria	1.19
Belgium	1.74
United Kingdom	1.39
Bulgaria	1.43
Denmark	1.19
France	1.15
Greece	1.63
Italy	1.45
Croatia	1.23
Luxembourg	1.43
Malta	0.60
Norway	1.43
Portugal	1.88
Poland	1.55
Romania	1.42
Slovakia	1.81
Slovenia	1.68
Spain	1.61
Sweden	1.29
Czech Republic	1.46
Hungary	0.82

[7] The comparator countries added since the PTA´s previous benchmark are Luxembourg, Norway and Hungary.

[8] In its reply to the Authority´s Request for Information, the PTA has indicated that the comparator MTRs are based on information available in comments´ letters from the European Commission to NRAs, on information at Cullen International and in one case from a final decision taken by an NRA. For the calculation of the MTR in ISK, the PTA uses the Central Bank of Iceland´s mid-rates for the second quarter 2015.

III. COMMENTS

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

Need to ensure an appropriate application of the benchmarking methodology

The Authority's Termination Rates Recommendation[9] recognises that in exceptional circumstances, *i.e.* where an NRA is not in a position, in particular due to limited resources, to develop and finalise a pure BU-LRIC model, the NRA may use an alternative approach, such as benchmarking, provided that the outcome does not exceed the average of the termination rates set by NRAs on the basis of a pure BU-LRIC cost model.[10]

Further to the above, the Authority welcomes the PTA's approach to benchmarking only against those countries where termination rates were decided on the basis of a pure BU-LRIC model. At the same time, the Authority observes that benchmarking calculations should, where possible, be based on forward-looking MTRs applicable in the same reference period as the MTR which is proposed in the current draft measure. Otherwise, a delay will occur before the MTRs resulting from the application of pure BU-LRIC models are taken into account by the PTA in its benchmarking calculation.[11]

Against this background, the Authority invites the PTA to review the MTRs used in the benchmarking calculation and, where possible, instead of using MTRs applicable in 2015, to use the forward-looking MTRs applicable as of 1 January 2016, provided that the PTA's criterion of a formal decision adopted by 1 April 2015 is fulfilled.[12]

As regards the sources of information relied on for the application of the benchmarking methodology, the Authority observes that the PTA has mainly relied on information available in comments′ letters from the European Commission and at Cullen International.[13] The Authority recalls that information used in the benchmarking calculation should be taken from the final decisions adopted by the NRAs in their respective EEA States. The Authority therefore reminds the PTA to verify whether the information relied on in its benchmarking calculation accurately reflects the actual (final) decisions adopted by the NRAs in each case.

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.

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

[10] Point 12 of the Termination Rates Recommendation.

[11] See, for example, cases EE/2012/1305 and EE/2014/1568.

[12] As an example, reference is made to Ofcom′s Mobile call termination market review 2015-18, published on 17 March 2015 in which MTRs for each of the years 2016 through 2017 have been determined.

[13] See *supra* 8.

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Pursuant to Article 7(5) of the Framework Directive, the PTA shall take the utmost account of comments of other regulatory authorities 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, 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[14] 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

Guðlaugur Stefánsson
Acting Director
Competition and State Aid Directorate

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