POST AND TELECOM
ADMINISTRATION
IN ICELAND

Draft Decision no. xx/2015

Wholesale tariff for call termination in individual mobile phone networks
(Market 7)

29 September 2015

Table of Contents

1 Introduction

In accordance with the Decision of the Post and Telecom Administration (PTA) no. 20/2015 from 31 July 2015 on the designation of undertakings with significant market power and on the imposition of obligations on the wholesale market for call termination in individual mobile phone networks (Market 7), the PTA has now implemented benchmarking to determine the price for call termination in individual mobile phone networks for the year 2016.

The PTA used the same methodology with this benchmarking as was used in the last benchmarking on this market. As in previous PTA decisions on wholesale price for call termination in individual mobile phone networks, the PTA plans to use the conclusions of the benchmarking to decide call termination rates in this country.

The PTA opened a national consultation on the preliminary draft to the Decision here under discussion on 11 August 2015 and the consultation ran until 1st September. The PTA received comments from 365 miðlar ehf (365).

365 objected to symmetrical mobile termination rates for all telecommunication companies, including 365. 365 base their objection on the grounds that costly distribution obligations were included in their 800 MHz spectrum allocation in 2013, i.e. that the 365 mobile network should reach 99.5% of all households and businesses in Iceland. Such obligations were not included in other spectrum allocations to other telecommunication companies. The Recommendation of the EU Commission of 7.5.2009 on the Regulatory Treatment of Fixed and Mobile Termination Rates in the EU states explicitly that uneven spectrum assignment might be considered an exogenous factor which could result in per-unit-cost difference between mobile operators that could justify deviation from a single efficient cost level. If the tariff that the PTA determines were to reflect the real cost of the mobile operators operating their mobile networks, the PTA should in particular count for the above mentioned distribution obligations of 365. Until that is the case, it is clear that the determined tariffs are erroneous and will not contribute to level playing field amongst electronic communication undertakings in Iceland.

PTA dismisses 365 objections on the grounds that they do not concern the subject matter of this draft decision. As indicated here below this decision is based on PTA decision no. 20/2015, dated 31 July 2015. In the said Decision 365 was designated as having significant market power on the market for call termination in the 365 MVNO network. As a result of that designation the price control obligation, which states that the benchmark approach should be applied to determine the maximum mobile termination prices, was imposed on 365 regarding the company´s MVNO network. To the PTA knowledge, 365 hasn´t started offering service on their own mobile phone network and the company has requested for an alteration of the conditions for the spectrum assigned to them, as seen in PTA's consultation dated 27 May 2015. In the auction 365 filed an offer for the 800 MHz spectrum with the conditions that were included in that spectrum. If 365's status on this market will change in the future, the PTA will conduct a new market analysis on that market. Until then the said 365 remarks are premature and doesn´t affect the Decision in question here.

The following sections cover the legal grounds, methodology and calculations that led to the PTA conclusion. The text of the Draft Decision describes the planned PTA position which can be subject to amendments until the final Decision is made, among other things as a result of comments from stakeholders. The wording of the draft should be read with this in mind.

2 Grounds for the Decision

The PTA bases its Decision on the Electronic Communications Act, on prior Decisions made by the Administration and on the Recommendations of the EU Commission and of ESA with respect to regulatory treatment of fixed and mobile termination rates from 13 April 2011[1].

According to Paragraph 4 of Article 32 of the Electronic Communications Act the PTA can, when calculating costs, use the operation of analogous service that is considered efficiently operated. It can also take into account tariffs in analogous competition markets and it may use cost analysis methodologies that are independent of methodologies employed by the electronic communications company.

In Item 12 of the Recommendations of the EU and of ESA on regulatory treatment of fixed and mobile termination rates it is authorised for regulators such as the PTA to apply benchmarking to decide termination rates where specific conditions are fulfilled.

In PTA Decision no. 20/2015 it is prescribed that the PTA shall annually make a Decision on maximum termination rates for Icelandic electronic communications companies subsequent to benchmarking with EEA States pursuant to a more specifically defined methodology, no later than 1 November each year which shall apply from and including 1 January of the following year.

The grounds underlying this Decision are described in more detail in the following subsections.

2.1 Commission Recommendation on the Regulatory Treatment of Fixed and Mobile Termination

The EU Commission issued a Recommendation with respect to the regulatory treatment of fixed and mobile call termination rates in May 2009[2]. The Commission considered that obligations with respect to termination rates were not sufficiently homogeneous in member states of the Union and decided to issue a regulation to support harmonisation. ESA issued an analogous Recommendation on 13 April 2011.

The main rule according to the Recommendation is that the regulatory authorities should prescribe termination rates that take into account the cost of call termination in mobile phone networks in efficiently designed electronic communication networks, in accordance with a cost

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

[2] Commission Recommendation of 7.5.2009 on the Regulatory Treatment of Fixed and Mobile Termination Rates in the EU.

model based on the Long-Run Average Incremental Cost (LRIC) methodology[3]. Projections are made of future developments on the basis of current costs where the assumption is the use of the most efficient technological solutions, such as next generation networks (NGN). This is a pure bottom-up[4] LRIC cost model, known as pure BU-LRIC.

The incremental service in question in the pure BU-LRIC model is call termination at wholesale level. The additional cost in question, or "avoidable costs" for wholesale service for call termination is the difference between total costs of network operators that provide full wholesale services and the total costs of the same network operators, less call termination wholesale services to third parties. In other words one only calculates the call termination costs that are avoided if the service in question is discontinued.

According to the above specified ESA Recommendation, electronic communications regulatory bodies are granted a general period of notice for adaptation until 31 December 2012 to prepare and introduce the pure LRIC cost model.

Less well-resourced regulators were, pursuant to Article 12 of the Recommendation, granted longer notice, that is to say until 1 July 2014, and even longer if it would breach the principle of proportionality to force such authorities to adopt the pure BU-LRIC cost model, unless BEREC assisted them professionally and/or financially to make such a model.

The PTA is considered to be one of the less well-resourced regulators. It is authorised to use for example benchmarking from and including 1 January 2013 instead of the above-mentioned cost analysis methodology if it can be shown that this will return a result that harmonises with the objectives of the Recommendation. The results returned by methods other than pure BU-LRIC should not be higher than the average rates in the EEA states that apply the pure BU-LRIC methodology when calculating call termination tariffs in mobile phone networks.

According to this it is clear that both the Commission and the ESA recommend that only termination rates based on the pure BU-LRIC model be used in the benchmarking.

In compliance with the above the PTA intends only to include comparison countries where the termination rates had been decided with the pure BU-LRIC methodology.

[3] Long-Run Average Incremental Cost is the cost that is added or is saved when a specific service or operation is added or discontinued, on the assumption that all costs are variable.

[4] One speaks of the "bottom-up" model in the case of calculations made on the basis of an engineering model of electronic communications networks in the relevant electronic communications market. The model is based on a hypothetical network system which is efficiently designed and which uses the most efficient technical solutions on offer at any given time.

2.2 PTA Decision no. 20/2015

The PTA has recently completed market analysis of wholesale markets for call termination in individual mobile phone networks (Market 7). The conclusion of this market analysis is published in PTA Decision no. 20/2015, dated 31 July 2015 on the designation of undertakings with significant market power and on the imposition of obligations on the wholesale market for call termination in individual mobile phone networks.

Specific undertakings were designated in the Decision as having significant market power on the relevant market and appropriate obligations were imposed on these companies. Before the Decision was made, the draft of the Decision was formally notified to ESA. The ESA made no observations on the analysis, or on the obligations that the PTA intended to impose on the relevant market.

Siminn hf. (Síminn), Fjarskipti ehf. (Vodafone), Nova ehf. (Nova), IMC Ísland ehf. (IMC/Alterna) and 365 miðlar ehf. (365) were designated as having significant market power on the following markets:

- Call termination in the Siminn GSM/UMTS/LTE mobile phone network.
- Call termination in the Vodafone GSM/UMTS/LTE mobile phone network.
- Call termination in the Nova UMTS/LTE mobile phone network.
- Call termination in the IMC/Alterna GSM mobile phone network.
- Call termination in the 365 virtual mobile phone network.

Obligations on access, non-discrimination, and price control were imposed on all the companies. The obligation for price control is pursuant to Article 32 of the Electronic Communications Act.

In the above specified Decision it was stated that in the PTA Decision no. 3/2012[5] the methodology had been discontinued of deciding termination rates for Icelandic mobile phone companies on the basis of Siminn cost analysed rates (which were based on historical costs) and instead benchmarking was prescribed pursuant to Article 12 of the ESA Recommendation on regulatory treatment of fixed and mobile network termination rates from 13 April 2011. According to the Decision PTA shall conduct the benchmarking annually and accordingly PTA has performed the benchmark three times as outlined in PTA's Decisions nos. 32/2012, 25/2013 and 24/2014.

Pursuant to the PTA Decision no. 20/2015, termination rates in this country shall be decided annually with benchmarking. In the opinion of the PTA, a predictable procedure for deciding termination rates has been created with this methodology, which gives electronic

[5] Decision no. 3/2012 on the designation of companies with significant market power and on the imposition of obligations on the wholesale market for call termination in individual mobile phone networks (Market 7).

communications companies a more stable and predictable operating environment. PTA benchmarking is based on price information which are available for example at CIRCABC[6], ESA[7] and Cullen International. The market participants can follow the development of termination prices in the states which fulfil PTA's benchmarking criteria and predict the results of the benchmark. In some instances regulatory authorities decide the termination prices for more than one year at a time on the basis of forecast on price developments and/or demand on the relevant market in order to enhance predictability to market participants. PTA believes that due to unstable price levels and currency exchange rate in Iceland over the past years, such an approach is not reasonable for the time being. Annual price decisions are more likely to return gradual development in termination rates where price changes come in smaller steps instead of larger stepwise changes in prices which could occur if the price decisions are at a longer intervals. Benchmarking has also proven to be an economic and efficient way to achieve the objectives for termination rates that were presented in the above specified ESA Recommendation.

The PTA shall conclude its annual benchmarking with a Decision, subsequent to national consultation and consultation with ESA, no later than 1 November each year. The first benchmarking shall therefore be completed not later than 1 November 2015 for prices that will apply from and including 1 July 2016.

The PTA shall apply the following main criteria as a basis for calculations of termination rates when benchmarking is applied:

- Reference shall be made to those EEA states where the termination rates of companies with market dominance on the markets in question are subject to price control by the electronic communications regulatory body of the state in question, on the basis of cost analysis where the results are based on a pure BU-LRIC model.

- Comparison of prices are based on conclusions on termination rates according to calculations based on the pure BU-LRIC model which are available in April of the year when the benchmarking was made in each instance. When benchmarking, a formal Decision shall have been made by the regulatory authority in question.

- The resulting price shall not higher than the arithmetic mean in those countries that fulfil the above conditions.

The above specified methodology is in accordance with the procedures applied by the PTA in recent years when deciding termination rates with benchmarking on this market.

6 https://circabc.europa.eu/

7 http://www.eftasurv.int/internal-market-affairs/notifications/ecom-notifications/ecom-documents/

The PTA shall conduct benchmarking in 2015 which shall be completed with a Decision no later than the coming 1 November which shall apply for maximum termination rates for the year 2016. This rate is a maximum wholesale rate per minute ex VAT and individual mobile phone companies can therefore offer lower termination rates should they so choose, but they must of course respect the non-discrimination obligation and may not discriminate between companies using subjective criteria.

2.3 Prior PTA Decisions on call termination rates on Market 7 on the basis of benchmarking

In the PTA Decision no. from 13 January 2012 the practice was discontinued of deciding termination rates for Icelandic mobile phone companies with reference to the Siminn cost analysed rates (which were based on historical costs) and benchmarking was prescribed instead in accordance with Article 12 of the ESA Recommendation of 13 April 2011 on the Regulatory Treatment of Fixed and Mobile Termination Rates from 13 April 2011. This change in methodology for deciding termination rates was neither appealed to the Appellate Committee nor to the courts.

Subsequently the PTA conducted benchmarking in 2012, 2013 and 2014 to decide rates for call termination on Market 7. The conclusion of the benchmarking was published in PTA Decisions, most recently in Decision no. 24/2014 dated 31 October 2014 on wholesale tariff for call termination in individual mobile phone networks (Market 7).

In the implementation of the benchmarking the PTA took into account the above specified ESA Recommendation with respect to regulatory treatment of fixed and mobile network termination rates. The PTA selected the comparison countries in accordance with Article 12 of the ESA Recommendation in question. In June 2012, Belgium, United Kingdom, Denmark, France, Italy, Portugal and Spain had made Decisions on termination rates in mobile phone networks that were based on the pure BU-LRIC model in accordance with the Recommendation. In 2013, Bulgaria, Greece, Croatia, Poland, Slovakia, Sweden and the Czech Republic had joined this group and a year later they were joined by Austria, Malta, Rumania and Slovenia.

In PTA Decision no. 24/2014 the PTA concluded that the wholesale rate for call termination in individual mobile phone networks in Iceland should be ISK 1.52/minute for the period 1 January 2015 until 31 December 2015.

Before the Decision was made, the draft of the Decision was formally notified to ESA. ESA made no comments on the PTA planned Decision.

In accordance with the PTA Decision no. 24/2014 the current call termination tariff on the market for call termination in individual mobile phone networks is ISK 1.52/minute and this applies until the end of the current year. The Decision here under discussion covers rates that shall apply in the year 2016.

3 Calculation of termination rates

In accordance with the PTA Decision no. 20/2015 dated 31 July 2015 on the designation of undertakings with significant market power and on the imposition of obligations on the wholesale market for call termination in individual mobile phone networks, the PTA has now gathered termination rates on wholesale markets for call termination in individual mobile phone networks of the EEA States to be used in benchmarking[8].

The PTA intends to follow the same methodology with this benchmarking as was used in the last benchmarking. ESA has made no objections to the methodology and nor was the PTA Decision no. 20/2014 dated 31 October 2014 on a wholesale tariff for call termination in individual mobile phone networks referred to the Appellate Committee for Electronic Communications and Postal Affairs or to the courts.

When selecting countries for comparison, the PTA uses electronic communications markets in the EEA where there are now 31 States including Iceland.

In accordance with the PTA Decision no. 20/2015, the following main criteria were used when calculating termination rates:

- Reference was made to those EEA States where the termination rates of companies with significant market power on the markets in question were subject to price control by the electronic communications regulatory body of the State in question, on the basis of cost analysis where the pure BU-LRIC methodology was applied.
- Comparison of prices was based on the conclusion on call termination rates according to calculations based on pure BU-LRIC model available in April 2015. A criteria when benchmarking was that a formal Decision shall have been made by the regulatory authority in question at that point in time.
- For the Decision on termination rates in this country the arithmetic mean of termination rates that fulfilled the above specified conditions was calculated.

When calculating termination rates the mid-rate in ISK of the currency in question for the second quarter of 2015 is used[9]. In this respect the PTA has among other things, taken into account the methods used by BEREC in its regular benchmarking of termination rates[10].

The PTA benchmarking uses information available in April 2015. At the time when the PTA benchmarking was implemented, the relevant regulatory authorities in 21 EEA States had made Decisions on call termination rates in mobile phone networks that were based on the pure BU-

[8] Source: CIRABC, Cullen International, ESA and the relevant electronic communications regulatory bodies.

[9] Central Bank of Iceland mid-rates, see Appendix B.

[10] See BEREC BoR (11) 35 MTR Benchmark snapshot (as of July 2011).

LRIC model. The PTA thus intends to use the termination rates that these authorities have decided, as a basis for the Decision on termination rates in this country according to the statement made by the PTA in the above-mentioned PTA Decision no. 20/2015.

In Table 3.1 these 21 states are specified along with corresponding termination rates in ISK, according to the pure BU-LRIC model. In Appendix A one can also find the termination rates in the currency of the country in question.

Table 3.1 Overview of countries used in the benchmarking

Comparison countries		***Cost-Model***	***Termination ISK/minute***
AT	Austria	Pure BU-LRIC	1.19
BE	Belgium	Pure BU-LRIC	1.74
UK	United Kingdom	Pure BU-LRIC	1.39
BG	Bulgaria	Pure BU-LRIC	1.43
DK	Denmark	Pure BU-LRIC	1.19
FR	France	Pure BU-LRIC	1.15
GR	Greece	Pure BU-LRIC	1.63
IT	Italy	Pure BU-LRIC	1.45
HR	Croatia	Pure BU-LRIC	1.23
LU	Luxembourg	Pure BU-LRIC	1.43
MT	Malta	Pure BU-LRIC	0.60
NO	Norway	Pure BU-LRIC	1.43
PT	Portugal	Pure BU-LRIC	1.88
PL	Poland	Pure BU-LRIC	1.55
RO	Rumania	Pure BU-LRIC	1.42
SK	Slovakia	Pure BU-LRIC	1.81
SI	Slovenia	Pure BU-LRIC	1.68
ES	Spain	Pure BU-LRIC	1.61
SE	Sweden	Pure BU-LRIC	1.29
CZ	Czech Republic	Pure BU-LRIC	1.46
HU	Hungary	Pure BU-LRIC	0.82
		Average	1.40

In deciding the rates for call termination in mobile phone networks in Iceland the PTA used the arithmetic mean of the above specified termination rates. The average is ISK 1.40/minute.

The comparison countries that have been added since the prior comparison are Luxembourg, Norway and Hungary.

In addition to the 21 States that have made Decisions on call termination rates in mobile phone networks based on pure BU-LRIC models, there are three states that have decided termination rates on the basis of benchmarking with those termination rates that are based on the pure BU-

LRIC model. There are thus 24 states including Iceland that have decided to follow the Recommendations from the European Union and ESA.

4 The PTA conclusion

In accordance with the conclusions of the above specified benchmarking it is the conclusion of the PTA that the wholesale rates for call termination in individual mobile phone networks in Iceland shall be **ISK 1.40/minute** for the period 1 January 2016 to 31 December 2016. These are maximum wholesale rates per minute ex VAT. In accordance with the PTA Decision no. 20/2015 the rates should be the same for all companies. The current termination rate, ISK 1.52/minute, shall remain unchanged for the rest of the year 2015.

Table 5.1 Termination rates in electronic communications companies' mobile phone networks as prescribed in the PTA Decision no. 20/2015

Company	*Unit*	*Rate to 31 December 2015*	*Rate 1 January - 31 Dec. 2016*
Siminn	ISK/minute	1.52	1.40
Vodafone	ISK/minute	1.52	1.40
Nova	ISK/minute	1.52	1.40
IMC/Alterna	ISK/minute	1.52	1.40
365	ISK/minute	1.52	1.40

Source: Post and Telecom Administration

The above specified maximum termination rates apply to calls that originate in networks of electronic communications companies that are operated within the EEA. The maximum rates imposed by the PTA do not apply not apply to telephone calls that originate in networks outside the EEA.

The PTA will review all the above specified termination rates in accordance with annual results of the PTA benchmarking, which shall be completed with a Decision by 1 November each year, while obligations on the relevant market prescribe such a methodology. This will be done without the PTA having made a new market analysis of the relevant market, as this is simply a case of technical implementation of a specific obligation. Such a change does however require domestic consultation and consultation with ESA before a final Decision on changes is made, in the same manner as has been done to date.

The Decision

In accordance with the benchmarking results made by the PTA the rate for call termination in individual mobile phone networks in Iceland, as prescribed in the PTA Decision no. 20/2015, shall be ISK 1.40/minute for the period 1 January 2016 to 31 December 2016. This is a maximum wholesale rate per minute ex VAT. The termination rate currently in force, ISK 1.52/minute, shall remain unchanged for the rest of the year 2015.

This Decision comes into force from the day that it is published and will be in force until the Post and Telecom Administration decides otherwise.

This Decision can be appealed to the Appellate Committee for Electronic Communications and Postal Affairs, see Article 13 of Act no. 69/2003 on the Post and Telecom Administration. The appeal shall have reached the Appellate Committee four weeks from the time that the party in question became aware of the Decision of the Post and Telecom Administration. Costs for an appeal are according to Paragraph 5 of Article 13 of the same Act, and in addition to this there is a special appeal charge to the amount of ISK 150,000, pursuant to Article 6 of Regulation no. 36/2009 on the Appellate Committee for Electronic Communications and Postal Affairs.

Reykjavík, xx October 2015

____

Hrafnkell V. Gíslason

____

Óskar Þórðarson

Appendix I Foreign-exchange table
Appendix II: Overview of termination rates: