



PÓST- OG FJARSKIPTASTOFNUN

Draft Decision no. xx/2019

**Wholesale rate for call termination in individual
mobile networks**

Case no. 2019070072

20 September 2019



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1 Introduction

1) This Draft Decision is based on the Post and Telecom Administration (PTA) Decision no. 20/2015, dated 31 July 2015, 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 networks. Pursuant to the Recommendation of the EFTA Surveillance Authority (ESA)¹ from 2016 on the definition of wholesale markets for electronic communications services, call termination in individual mobile networks belongs to Market 2.

2) Pursuant to PTA Decision no. 20/2015, the rate for call termination in individual mobile networks shall be decided annually with benchmarking. The PTA has now carried out the benchmarking for the decision on these rates for the year 2020. The PTA used the same methodology with this benchmarking as was used in the last benchmarking on this market. The PTA intends to use the conclusion of the benchmarking to decide the wholesale rate in Iceland for call termination in individual mobile networks from 1 January to 31 December 2020.

3) The PTA opened a national consultation on the Preliminary Draft of the PTA Decision on 9 August 2019 and this consultation ended on last 30 August. The PTA received no comments from stakeholders.

4) 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 amendment 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.

¹EFTA Surveillance Authority Recommendation of 11 May 2016 on relevant product and service markets within the electronic communications sector susceptible to *ex ante* regulation in accordance with the Act referred to at point 5cl of Annex XI to the EEA Agreement (*Directive 2002/21/EC of the European Parliament and of the Council on a common regulatory framework for electronic communication networks and services*).

2 Grounds for the Decision

- 5) 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 on the regulatory treatment of fixed and mobile termination rates from 13 April 2011².
- 6) According to Paragraph 4 of Article 32 of the Electronic Communications Act the PTA can, when calculating costs, use as a reference the operation of analogous service that is considered efficiently run. It can also take into account tariffs in analogous competition markets and it may use cost analysis methodologies that are not related to methodologies employed by an electronic communications company.
- 7) In Item 12 of the Recommendations of the EU and of ESA on regulatory treatment of fixed and mobile termination rates it was authorised for regulators such as the PTA to apply benchmarking to decide termination rates, where specific conditions are fulfilled.
- 8) In the PTA Decision no. 20/2015, it is prescribed that the PTA shall annually determine the 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.
- 9) The grounds underlying this decision are described in more detail in the following sub-sections.

2.1 Recommendations of the EU Commission and of ESA with respect to termination rates in fixed and mobile networks

- 10) The EU Commission issued a Recommendation with respect to the regulatory treatment of fixed and mobile termination rates in May 2009³. 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 recommendation to support harmonisation. ESA issued an analogous recommendation on 13 April 2011.
- 11) The main rule according to the Recommendations is that the National Regulatory Authorities should prescribe termination rates that take into account the cost of mobile and fixed call termination in efficiently designed electronic communication networks, in accordance with a cost model based on the Long-Run Average Incremental Cost (LRIC) methodology⁴. Projections are made of future developments based on current costs where the assumption is

²EFTA Surveillance Authority Recommendation of 13 April 2011 on the Regulatory Treatment of Fixed and Mobile Termination Rates in the EFTA States.

³Commission Recommendation of 7.5.2009 on the Regulatory Treatment of Fixed and Mobile Termination Rates in the EU.

⁴Long-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.

the use of the most efficient technological solutions, such as next generation networks (NGN). This is a pure bottom-up⁵ LRIC cost model, known as the pure BU-LRIC.

12) The incremental service in question in the pure BU-LRIC model is call termination at wholesale level. The incremental cost or avoidable costs in question, for wholesale call termination service 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.

13) According to the above specified ESA Recommendation, National Regulatory Authorities were granted a general period of notice until 31 December 2012 to prepare and introduce the pure BU-LRIC cost model.

14) National Regulatory Authorities with limited resources were pursuant to Article 12 of the Recommendation granted longer notice, that is to say until 1 July 2014. In this Article, it is specified that if it would be objectively disproportionate for those Regulatory Authorities with limited resources to apply the recommended cost methodology after this date, then such Authorities may continue to apply an alternative methodology up to the date for review of the Recommendation, unless BEREC⁶ provides sufficient practical support and guidance to overcome this limitation of resources and, in particular, the cost of implementing the recommended methodology.

15) The PTA is considered to be one of the less well-resourced Regulatory Authorities. Such Authorities are authorised to use, e.g. benchmarking, 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.

16) In compliance with the above the PTA has over the last years decided termination rates with benchmarking where the benchmark only includes the comparison states where the termination rate has been decided with the pure BU-LRIC methodology.

17) After a review of the Commission's Recommendation it was decided to set maximum Union-wide voice call termination rates. The European Union has issued a Directive no. 2018/1972 (European Electronic Communications Code), dated 11 December 2018. The directive is a comprehensive review of the regulatory framework for the electronic communications sector and stipulates among other things that maximum rates for the termination of voice calls in the European Union will be set with a delegated act. According to Article 75 of the Directive the Commission shall adopt a delegated act by 31 December 2020, deciding the Union-wide termination rates. The Directive has however not been adopted into

⁵One 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.

⁶Body of European Regulators for Electronic Communications.

the EEA agreement and has therefore not been implemented in Iceland although work to that effect has commenced.

18) Until the provisions of this new Directive and the delegated act will enter into force in Iceland the PTA will continue to decide the termination rates in Iceland on the basis of a benchmark with EFTA states where the termination rate has been decided with the pure BU-LRIC methodology.

2.2 PTA Decision no. 20/2015

19) With respect to the implementation of benchmarking under discussion here, the PTA refers to the Administration's Decision no. 20/2015 dated 31 July 2015 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 networks. Decision no. 20/2015 is based on market analysis made by the Administration. The wholesale market for call termination in individual mobile networks is no. 2, pursuant to the ESA Recommendation⁷ on the definition of wholesale markets for electronic communications services and was previously no. 7 pursuant to the older ESA definition from 2008.

20) In the Decision, Síminn hf. (Síminn), Fjaraskipti hf., now Sýn hf. (Vodafone), Nova ehf. (Nova), IMC Ísland ehf. (IMC) and 365 miðlar ehf.⁸ (365) were designated as having significant market power on the following markets:

- Call termination in the Síminn GSM/UMTS/LTE mobile network.
- Call termination in the Vodafone GSM/UMTS/LTE mobile network.
- Call termination in the Nova UMTS/LTE mobile network.
- Call termination in the IMC⁹ GSM mobile network.
- Call termination in the 365¹⁰ virtual mobile network.

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

22) In the above specified Decision, it was stated that in the PTA Decision no. 3/2012¹¹ the methodology had been discontinued of deciding termination rates for Icelandic mobile operators on the basis of Síminn 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 termination rates from 13 April 2011.

⁷EFTA Surveillance Authority Recommendation of 11 May 2016 on relevant product and service markets within the electronic communications sector susceptible to *ex ante* regulation in accordance with the Act referred to at point 5cl of Annex XI to the EEA Agreement (*Directive 2002/21/EC of the European Parliament and of the Council on a common regulatory framework for electronic communication networks and services*).

⁸Fjaraskipti hf. bought the properties and operation of 365 miðlar hf. apart from properties relating to Fréttablaðið. The name of Fjaraskipti hf. was then changed to Sýn hf.

⁹Alterna Tel ehf. discontinued operations in 2015 and the business was taken over by Hringiðan ehf.

¹⁰Vodafone has now taken over 365's mobile operation following the purchase of 365 miðlar hf.

¹¹Decision 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 networks (Market 7).

23) Pursuant to the PTA Decision no. 20/2015, termination rates in this country shall be decided by benchmarking. It was the opinion of the PTA that the Authority, given its current status, would not be in a position to apply the BU-LRIC cost analysis methodology on the market in question in the coming years because of a lack of budget, staff and expert knowledge. It is furthermore clear that given unchanged electronic communications legislation, the PTA does not have the option to make use of BEREC assistance in this connection. In light of this, the PTA considered it best to decide the termination rates with benchmarking and use termination rates in comparison states using a pure BU-LRIC model according to the aforementioned ESA's Recommendation.

24) In the opinion of the PTA, a predictable procedure for deciding termination rates has been created with this methodology, which gives electronic communications companies a more stable and predictable operating environment. Benchmarking has also proven to be an economic and efficient way to achieve the objectives for termination rates set out in the above specified ESA Recommendation.

25) 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.

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

- Reference should be made to those EEA states where the termination rates of operators with significant market power on the markets in question are subject to price control by the National Regulatory Authority of the state in question, on the basis of cost analysis where the results are based on a pure BU-LRIC model.
- Comparison of rates should be based on decisions on termination rates according to calculations based on the pure BU-LRIC model which are available in April of the year when a benchmarking is made in each instance. When benchmarking a formal Decision shall have been made by the regulatory authority in question.
- The resulting rate shall not be higher than the arithmetic mean of those states that fulfil the above conditions.

27) 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.

28) The PTA shall therefore conduct benchmarking in 2019 which shall be completed with a decision, no later than the coming 1 November, which shall apply as maximum termination rate for the year 2020. This rate is a maximum wholesale rate per minute ex VAT and individual mobile operators can therefore offer lower termination rates should they so choose, provide that the non-discrimination obligation is met.

2.3 Prior PTA Decisions on call termination rates on Market 2 (Market 7/2008) on the basis of benchmarking

29) In the PTA Decision no. 3/2012 from 13 January 2012 the practice was discontinued of deciding termination rates for Icelandic mobile operators 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 mobile and fixed termination rates from 13 April 2011. This change in methodology for deciding termination rates was neither appealed to the Appellate Committee Electronic Communications and Postal Affairs nor to the courts.

30) Subsequently the PTA conducted benchmarking during the period 2012 to 2018 to decide call termination rates in mobile networks in Iceland. The conclusions of these benchmarking were published in PTA Decisions, most recently in Decision no. 19/2018 dated 25 October 2018, on wholesale tariff for call termination in individual mobile networks.

31) In the implementation of the benchmarking the PTA took into account the above specified ESA Recommendation with respect to regulatory treatment of mobile and fixed call termination rates. The PTA selected comparison countries in accordance with Article 12 of the ESA Recommendation in question.

32) In PTA Decision no. 19/2018, dated 25 October 2018, the PTA concluded that the wholesale tariff for call termination in individual mobile networks in Iceland should be ISK 0.97/minute for the period 1 January 2019 until 31 December 2019.

33) The Decision here under discussion covers rates that shall apply in the year 2020.

3 Calculation of termination rates

34) In accordance with the PTA Decision no. 20/2015, dated 31 July 2015, 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 networks, the PTA has now gathered termination rates in wholesale markets for call termination in individual mobile networks of the EEA states to be used in benchmarking. In its gathering of data, the PTA has used the European Commission CIRCABC Information Resource Centre, the ESA ECOM database, reports from Cullen International and BEREC¹² benchmarking as well as information published on the websites of the relevant National Regulatory Authorities.

35) The PTA uses the same methodology with this benchmarking as in the last benchmarking. The PTA Decision no. 19/2018, dated 25 October 2018, on a wholesale tariff for call termination in individual mobile networks was not referred to the Appellate Committee for Electronic Communications and Postal Affairs or to the courts.

36) When selecting states for comparison the PTA uses electronic communications markets in the EEA where there are now 31 states including Iceland.

37) 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 operators with significant market power on the markets in question are subject to price control by the National Regulatory Authority of the state in question, on the basis of cost analysis where the pure BU-LRIC methodology is applied.
- Comparison of rates was based on the conclusion on call termination rates according to calculations based on pure BU-LRIC model available in April 2019. In the benchmarking, only rates according to a formal decision made by the Regulatory Authority in question were included.
- For the decision on termination rates in this country the arithmetic mean of termination rates that fulfilled the above specified conditions was calculated.

38) The conclusion is the minute rate for call termination without call setup charge or breakdown into day, night or weekend rates.

39) When calculating termination rates, the average exchange rate in ISK of the currency in question for the second quarter of 2019 was used¹³. In this respect, the PTA has among other things, taken into account the methods used by BEREC in its regular benchmarking of termination rates¹⁴.

¹²“Termination rates at European level” January 2019, BoR (19) 91.

¹³ Central Bank of Iceland mid-rates, see Appendix I.

¹⁴ See BEREC BoR (11) 35 MTR Benchmark snapshot (as of July 2011).

- 40) The PTA benchmarking uses information that were available in the end of April 2019.
- 41) In the light of the fact that rates decided will apply in the year 2020, the PTA examined whether rates were available for call termination that would be in force during that year. This is in accordance with the benchmarking method used by PTA in previous decisions. In the opinion of the PTA, only the final rate should be used and the benchmarking should not include those rates that remain to be revised on the basis of inflation or of other factors.
- 42) The PTA therefore uses conclusions on rates for call termination which are to apply in the year 2020 when they are available, but otherwise rates that come into force in the year 2019 or that were in force in April 2019 are used.
- 43) At the time when the PTA benchmarking was implemented, the relevant regulatory authorities in 23 EEA states had made decisions on call termination rates in mobile networks that were based on a pure BU-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 as prescribed in the above-mentioned PTA Decision no. 20/2015.
- 44) In Table 3.1 these 23 states are specified along with corresponding termination rates in ISK, according to the pure BU-LRIC model.

Table 3.1 Overview of countries used in the benchmarking

Country		MTR 2019	MTR 2020	Benchmark prices
		ISK/min	ISK/min.	ISK/min.
AT	Austria	1.11		1.11
BE	Belgium	1.37		1.37
UK	United Kingdom	0.76		0.76
BG	Bulgaria	0.99	0.99	0.99
DK	Denmark	0.71		0.71
FR	France	1.02		1.02
GR	Greece	1.30		1.30
NL	Netherlands	0.80		0.80
IE	Ireland	1.09		1.09
IT	Italy	1.24	1.05	1.05
HR	Croatia	0.87		0.87
LU	Luxembourg	1.23		1.23
MT	Malta	0.56		0.56
NO	Norway	0.61	0.45	0.45
PT	Portugal	0.55		0.55
PL	Poland	1.38		1.38
SK	Slovakia	1.69		1.69
SI	Slovenia	1.57		1.57
ES	Spain	0.92	0.88	0.88
SE	Sweden	0.76		0.76
CZ	Czech Republic	1.33		1.33
HU	Hungary	0.73		0.73
DE	Germany	1.31		1.31
Average		1.04		1.02



45) The table here above shows the comparison rates used by the PTA in the last column, where account has been taken of rates that will apply in 2020 where they are available. In deciding the rates for call termination in mobile networks in Iceland the PTA used the arithmetic mean of the above specified termination rates. The average is ISK 1.02/minute which is equivalent to €cent 0.74.

4 The PTA conclusion

46) According to PTA Decision no. 20/2015, rates for call termination in individual mobile networks are decided on the basis of conclusions of the benchmarking conducted by the Administration as described here above.

47) The benchmarking provides an average rate per minute in those states covered by the benchmarking. The PTA uses the conclusions of the benchmarking to decide the minute rate for call termination in mobile networks without call setup charge.

48) In accordance with the conclusions of the above specified benchmarking it is the conclusion of the PTA that the wholesale rate for call termination in individual mobile networks in Iceland shall be **ISK 1.02/minute** for the period 1 January 2020 to 31 December 2020. This is a maximum wholesale rate per minute ex VAT. In accordance with the PTA Decision no. 20/2015 the rate should be the same for all operators. The current termination rate, ISK 0.96/minute, shall remain unchanged for the rest of the year 2019.

49) In the following table, one can see the operator's new mobile termination rates in comparison with rates now in force:

Table 4.1 Termination rates in mobile operators' networks

<i>Company</i>	<i>Unit</i>	<i>Rate until 31 Dec 2019</i>	<i>Rate 1 Jan 2020 - 31 Dec 2020</i>
Siminn	ISK/minute	0.96	1.02
Vodafone/365	ISK/minute	0.96	1.02
Nova	ISK/minute	0.96	1.02
IMC	ISK/minute	0.96	1.02

Source: Post and Telecom Administration

50) This represents an increase of 6% in termination rates between years. It should be noted in this context that the average of the rates in the comparison states has decreased but because of changes in the exchange rate there is an increase in the rates expressed in Icelandic Krona's.

51) In accordance with PTA Decision no. 20/2015 the Authority shall review termination rates annually in accordance with results of the PTA benchmarking, which shall be completed with a decision by 1 November each year. However, the European Union issued Directive no. 2018/1972 (European Electronic Communications Code) on 11 December 2018. The Directive stipulates, among other things, that maximum rates for the termination of voice calls in the European Union will be set with a delegated act. According to Article 75 of the Directive the Commission shall adopt a delegated act by 31 December 2020, deciding the Union-wide termination rates. The Directive has however not been adopted into the EEA agreement and has therefore not been implemented in Iceland although work to that effect has been commenced. It is therefore likely that termination rates for the year 2021 will be determined by the Commission's delegated act instead of using the PTA benchmarking.

52) However, it should be mentioned that until otherwise decided by law or regulation in this country, the PTA will follow the PTA decision no. 20/2015 when deciding termination rates.

The Draft Decision

- 1) In accordance with the benchmarking results it is the PTA conclusion that the tariff for call termination in individual mobile networks in Iceland, as they are specified in PTA Decision no. 20/2015 shall be ISK 1.02/minute for the period 1 January 2020 to 31 December 2020. The current call termination rate of ISK 0.96 per minute will remain in force unchanged to and including 31 December 2019.
- 2) These are maximum wholesale rates per minute ex VAT.
- 3) This Decision comes into force from the day that it is published and will be in force until a decision is made to the contrary by the Post and Telecom Administration.
- 4) 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. Pursuant to Paragraph 4 of Article 13 of the same Act, a party can also refer a decision of the Post and Telecom Authority directly to the courts without the case having been first referred to the Appellate Committee. Such a case shall be brought within 3 months from the time that the party in question received knowledge of the Administration's decision. Referral of the case does not postpone the legal impact of the Decision of the Administration. Referral of the case direct to the courts, prevents the Appellate Committee from being authorised to process an appeal.

Reykjavík, xx October 2019

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Appendix I: Exchange rate table.