EFTA SURVEILLANCE AUTHORITY

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Póst- og Fjarskiptastofnun
Suðurlandsbraut 4
108 Reykjavik
Iceland

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

Dear Mr Gíslason,

Subject: **Market for wholesale call termination on individual public telephone networks provided at a fixed location in Iceland – Remedies – Tariff determination via benchmarking**

Market for wholesale voice call termination on individual mobile networks in Iceland – Remedies – Tariff determination via benchmarking

Article 7(3) of Directive 2002/21/EC (Framework Directive)[1]: No comments

I. PROCEDURE

On 20 September 2019, 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"). It concerns the market for wholesale call termination on individual public telephone networks provided at a fixed location and the market for wholesale voice call termination on individual mobile networks in Iceland[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 5 cl of Annex XI to the EEA Agreement and as adapted to the Agreement by Protocol 1 ("the Framework Directive").

[2] Corresponding to markets 1 and 2 of the EFTA 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 communications networks and services*); adopted by Decision No 093/16/COL, OJ L 84, 30.3.2017, p. 7, ("2016 Recommendation").

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The notification became effective on the same day.

National consultation was carried out, pursuant to Article 6 of the Framework Directive, during the period 9 August to 30 August 2019.

On 8 October 2019, the Authority sent a request for information to the PTA (Doc No. 1089864), to which a reply was received on 11 October 2019 (Doc No. 1092051).

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 21 October 2019.

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

Wholesale call termination on individual public telephone networks provided at a fixed location

The PTA's previous review of the market for wholesale call termination on individual public telephone networks provided at a fixed location in Iceland ("market 1") was notified to and assessed by the Authority under Case No. 79867 ("the third review of the market")[3]. Following that review, the PTA adopted its Decision No. 22/2016, in which Síminn hf. ("Síminn"), Fiarskipti ehf., now Sýn hf. ("Vodafone"), Nova ehf. ("Nova"), Símafélagið ehf. ("Símafélagið")[4], Hringdu ehf. ("Hringdu") and Tismi BV ("Tismi") were designated with significant market power ("SMP") on market 1. Specific obligations were imposed on all SMP operators. In addition to obligations of access, non-discrimination, transparency and accounting separation, the PTA continued the obligation to apply a symmetrical termination rate[5], calculated by reference to the following criteria:

- The fixed termination rates ("FTRs") shall be decided on an annual basis coming into force from 1 January of each year;
- the PTA shall publish the FTRs no later than 1 November of the year preceding their applicability[6];
- only the FTRs imposed by EEA NRAs on the basis of a pure Bottom Up Long-Run Incremental Cost ("pure BU-LRIC") methodology, which are available on 30 April of the year when the benchmarking exercise is carried out in each instance, and for which a formal decision has been taken by the relevant NRA, are to be taken into consideration;

[3] See the Authority's "Comments Letter" on 21 December 2016 (Document No. 831197).

[4] Nova has acquired Símafélagið and merged its operation into Nova.

[5] Symmetrical termination rates consistent with the Authority's Recommendation on Termination Rates (see EFTA Surveillance Authority Recommendation of 13 April 2011 on the Regulatory Treatment of Fixed and Mobile Termination Rates in the EFTA States; hereafter "Recommendation on Termination Rates") were already established in the PTA's Decision No. 36/2012. The PTA noted that, as a small NRA with limited resources, the continued use of benchmarking was consistent with the Authority's Recommendation on Termination Rates.

[6] The draft measures will be subject to a national consultation as well as to a consultation with the Authority.

- the reference shall be for single transit prices ("layer 2")[7];
- the reference shall be the price per minute of a three-minute call;
- the average exchange rate in the relevant quarter shall be used; and
- the resulting FTR shall not be higher than the average in those countries that fulfil the above conditions.

Wholesale voice call termination on individual mobile networks

On 23 June 2015, the PTA notified its fourth-round review of the market for wholesale voice call termination on individual mobile networks in Iceland ("market 2"), which the Authority assessed under Case No. 77567[8]. Subsequently, the PTA adopted the notified measures under Decision No. 20/2015 designating the mobile network operators ("MNOs") Síminn hf. ("Síminn"), Fjarskipti ehf, now Sýn hf. ("Vodafone"), Nova ehf. ("Nova"), IMC Ísland ehf. ("IMC/Alterna") and the mobile virtual network operator ("MVNO") 365 miðlar ehf. ("365")[9], as having SMP on their respective market. It imposed *inter alia* price control obligations based on the benchmarking method[10] applying the following criteria:

- The mobile termination rates ("MTRs") shall be decided on an annual basis coming into force from 1 January of each year;
- the PTA shall publish the rates no later than 1 November of the year preceding its 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.

II.2 Current notification

Wholesale call termination on individual public telephone networks provided at a fixed location

The notified draft decision contains the PTA's FTRs for the year 2020, calculated using an annual benchmarking comparison for FTRs in line with the criteria set out in its 2016 market analysis (referenced in section II.1 above). The PTA has included FTRs set by the 20 EEA NRAs[11], which, by 30 April 2019, had adopted decisions based on a pure BU-LRIC methodology (rates that are to apply in the year 2020, when they are available, otherwise

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[7] This criterion does not exclude decisions from NRAs, which apply a single price to more than one layer provided that the price control obligation applies to single transit calls (layer 2).

[8] See the Authority's "No Comments Letter" of 23 July 2015 (Document No. 763795).

[9] Vodafone has now taken over 365's mobile operations following the purchase of 365 miðlar ehf.

[10] 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.

[11] The following countries have been taken into account by the PTA: Austria, Belgium, Bulgaria, Denmark, Greece, the Netherlands, Croatia, Cyprus, Lithuania, Luxembourg, Malta, Norway, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden, the Czech Republic and Hungary. The price control does not include countries that made decisions not based on single transit/layer 2.

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rates that were in force on 30 April 2019). The resulting average amounts to ISK 0.12/minute (approximately €cent 0.088) and constitutes a maximum price cap (ex VAT), which will apply equally to all SMP operators[12].

Wholesale voice call termination on individual mobile networks

The notified draft decision contains the PTA's MTRs for the year 2020, calculated using an annual benchmarking comparison for MTRs in line with the criteria set out in its 2015 market analysis (referenced in section II.1 above). The PTA has included MTRs set by the 23 EEA NRAs[13], which, by April 2019, had adopted decisions on MTRs based on the pure BU-LRIC methodology (rates that are to apply in the year 2020, when they are available, otherwise rates that were in force on 30 April 2019). The resulting average amounts to ISK 1.02/minute (approximately €cent 0.74) and constitutes a maximum price cap (ex VAT), which will apply equally to all SMP operators[14].

Setting FTRs and MTRs beyond 2020

In its reply to the Authority's request for information, the PTA confirmed that it understands that regulation of voice call termination rates using benchmarking in line with the 2011 Recommendation on Termination Rates may still be necessary beyond 31 December 2020. In its reply, the PTA has confirmed the Authority's understanding that the PTA will continue to decide the termination rates in Iceland on the basis of a benchmark with EEA States where the termination rate has been decided with the pure BU-LRIC methodology, until otherwise is decided by law or regulation in Iceland. The PTA will proceed with the benchmarking in 2020 as before[15].

III. NO COMMENTS

The Authority has examined the notified draft measure and has no comments.

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 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.

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[12] The current maximum FTR is also ISK 0.12/minute.

[13] The following countries have been taken into account by the PTA: Austria, Belgium, United Kingdom, Bulgaria, Denmark, France, Greece, the Netherlands, Ireland, Italy, Croatia, Luxembourg, Malta, Norway, Portugal, Poland, Slovakia, Slovenia, Spain, Sweden, the Czech Republic, Hungary and Germany.

[14] The current maximum MTR is ISK 0.97/minute. The increase in the MTR for the year 2020 is due to exchange rate fluctuations.

[15] Furthermore, the PTA informed the Authority that it will remove any speculation on when other acts or regulation will override the PTA's benchmarking decisions.

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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,

Gunnar Thor Petursson
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.