EFTA SURVEILLANCE AUTHORITY

Brussels, 15 November 2019
Case No: 84271
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Póst- og Fjarskiptastofnun
Sudurlandsbraut 4
108 Reykjavik
Iceland

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

Dear Mr Gíslason,

Subject: Review of Míla's wholesale tariffs in the market for trunk segments of leased lines in Iceland- Remedies

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

I. PROCEDURE

On 16 October 2019, the EFTA Surveillance Authority ("the Authority") received a short notification form 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 imposition of remedies on the market for wholesale trunk segments of leased lines in Iceland.[2]

The notification became effective on the same day.

National consultation was carried out, pursuant to Article 6 of the Framework Directive, during the period 26 September 2019 to 10 October 2019.

[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 market 14 of the EFTA Surveillance Authority Recommendation of 14 July 2004 on relevant product and service markets within the electronic communications sector susceptible to *ex ante* regulation in accordance with Directive 2002/21/EC of the European Parliament and of the Council on a common regulatory framework for electronic communication networks and services, as incorporated into the Agreement on the Economic European Area (No 194/04/COL) ("the 2004 Recommendation").

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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 18 November 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

In its Decision No. 21/2015[3] the PTA designated Míla ehf. ("Míla") with significant market power ("SMP") on the wholesale market for trunk segments of leased lines. Furthermore, the PTA imposed obligations on Míla regarding access, non-discrimination, transparency (publication of a reference offer), price control and cost accounting, and accounting separation. In particular, the PTA required Míla to prepare a cost model for the calculation of the wholesale prices for trunk segments of leased lines based on fully-allocated historical costs ("FAC HCA").[4]

In parallel, the PTA notified cost analyses and resulting wholesale tariffs for trunk segments of leased lines, Ethernet services, Metropolitan Data Highway ("MDH") and temporary connections.[5] In November 2015, the PTA also notified a recalculation of the wholesale tariffs for MDH connections.[6] Míla was further required to review these tariffs no later than by the end of 2016 and on an annual basis thereafter, subject to authorisation by the PTA (following national consultation and consultation with the Authority).

In April 2018,[7] the PTA notified a draft decision which concerned a review of wholesale tariffs for leased lines, MDH, Ethernet service (MPLS-TP) and Sync-Ethernet – a new service offered by Míla.

In its assessment of the above draft measures, the Authority commented *inter alia* on the need to ensure a prompt and timely implementation of the proposed obligations.

II.2 Current notification

In the currently notified Draft Decision, the PTA introduces an additional location for the 100Gb/s MDH product.

The draft measure stems from the price obligation on Míla on the market for wholesale trunk segments of leased lines. Míla has requested an additional location for offering 100 Gb/s MDH which will lead to changes of its tariff. The new location is outside the current area where this product is on offer, namely the Reykjavík area (within 50 km range from Reykjavík). This called for a re-calculation of the prices for the 100 Gb/s MDH product. The result is a new price for MDH within a 50 km range from Reykjavík and a price for the new location (over 100 km from Reykjavík), at a data centre in Blönduós. The methods used

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[3] Notified to the Authority on 1 July 2015, Case 77596.

[4] In its reply to the Authority's RFI, the PTA explained that it intended to review the costing methodology in the next market analysis, if the result of that analysis still showed a position of SMP on the market. The frequency and the method of the tariff reviews would also be reconsidered at that time.

[5] Notified to the Authority on 1 July 2015, Case 77597.

[6] Notified to the Authority on 23 November 2015, Case 78301.

[7] Notified to the Authority on 17 April 2018, Case 82013.

to calculate the prices have been previously accepted by the PTA. As this is a minor change in Mila's tariff, the PTA concludes that the draft measure does not change the nature or the general scope of the remedy. The monthly charges for 100 Gb/s from Reykjavík to Keflavík (less than 50 km) will be 424.404 ISK and the 100 Gb/s from Reykjavík to Blönduós (more than 100 km) will be 848.808 ISK. The length coefficients are the same as in the calculation of prices for Ethernet MPLS-TP service on this market (1 for 0-49, 1, 5 for 50-99 and 2 for 100+)[8].

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.

Pursuant to Point 15 of the Procedural Recommendation,[9] 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[10] 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

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[8] The price increase for 100 Gb/s Data Highway to Keflavik will be 3.8%. The current price for 100 Gb/s Data Highway connections is based on costs from 2016 and the increase is below the rise in the building index and the consumer price index from that time.

[9] 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").

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