POST AND TELECOM
ADMINISTRATION
IN ICELAND

Decision no. xx/2016

Wholesale tariff for call termination in individual mobile phone networks.

xx October 2016

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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 companies 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 conducted benchmarking to decide rates for call termination in individual mobile phone networks for the year 2017.

The PTA used the same methodology for this benchmarking as was used in the last benchmarking for this market, taking into account the comments received from the EFTA Surveillance Authority (ESA) on that benchmarking. As in previous PTA Decisions on wholesale rates for call termination in individual mobile phone networks, the PTA plans to use the conclusions of the benchmarking to decide MTR in this country.

The PTA opened a national consultation on the preliminary draft to the Decision here under discussion on 11 August 2016 and the consultation ran until 1st September. PTA did not receive any comments from the operators during the consultation.

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.

2 Grounds for the Decision

The PTA bases its Decision on the Act on Electronic Communications, 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 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.

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 the 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 sub-sections.

2.1 Recommendations of the EU Commission and of ESA with respect to fixed and mobile network termination rates.

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[5] 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 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 have been decided with the pure BU-LRIC methodology.

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[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.

[5] Body of European Regulators for Electronic Communications.

2.2 PTA Decision no. 20/2015

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 phone networks. The Decision is based on market analysis made by the Administration. The wholesale market for call termination in individual mobile phone networks is no. 2, pursuant to a new ESA Recommendation[6] on the definition of wholesale markets for electronic communications services and was previously no. 7 pursuant to the older ESA definition from 2008.

Specific companies 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. (Siminn), 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.

More specifically, these are obligations on access, non-discrimination, and price control. 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[7] 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.

Pursuant to the PTA Decision no. 20/2015, termination rates in this country shall be decided by benchmarking. 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

[6] 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 communication networks and services).*

[7] 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).

more stable and predictable operating environment. Benchmarking has also proven to be an economic and efficient way to achieve the objectives for termination rates that were tabled in the above specified ESA Recommendation.

The PTA shall conclude its annual benchmarking with a decision, subsequent to domestic consultation and consultation with ESA, no later than 1 November each year. Benchmarking shall therefore be completed no later than 1 November 2016 for rates that will apply from and including 1 January 2017.

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 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 rates should be 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.

- It is assumed that the resulting rate is not higher than the arithmetic average 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.

The PTA shall conduct benchmarking in 2016 which shall be completed with a decision, no later than the coming 1 November, which shall apply as maximum termination rates for the year 2017. 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 are unauthorised to discriminate between companies using subjective criteria.

2.3 Prior PTA Decisions on call termination rates on Market 2 (Market 7/2008) 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, 2014 and 2015 to decide the tariff for call termination in mobile phone networks. The conclusion of the benchmarking was published in PTA Decisions, most recently in Decision no. 28/2015 dated 30 October 2015, on wholesale tariff for call termination in individual mobile phone networks (Market 7/2008).

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 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 in 2014 they were joined by Austria, Malta, Romania and Slovenia and a year later by Luxembourg, Norway and Hungary.

In PTA Decision no. 28/2015 the PTA concluded that the wholesale tariff for call termination in individual mobile phone networks in Iceland should be ISK 1.40/minute for the period 1 January 2016 until 31 December 2016.

Before the Decision was made, the draft of the Decision was formally notified to ESA. ESA welcomed the PTA approach to benchmarking only using those countries where termination rates were determined on the basis of a pure BU-LRIC model. At the same time ESA observed that, when benchmarking, calculations should, where possible, be forward-looking and termination rates should be used that are applicable in the same reference period as the termination rates proposed in the Draft Decision. Otherwise a delay would occur before the termination rates resulting from the application of pure BU-LRIC models are taken into account by the PTA in its benchmarking calculation. ESA invited the PTA to review the termination rates used in the benchmarking calculation and where possible, instead of using termination rates applicable in 2015 to use the forward-looking termination rates applicable as of 1 January 2016, provided that a formal decision has been adopted by 1 April 2015. ESA took as an example the Ofcom market analysis of this market, dated 17 March 2015 for the years 2015-2018 where termination rates were decided for the years 2016-2017.

In the opinion of the PTA, a predictable procedure for deciding termination rates with benchmarking has been created in recent years, which gives electronic communications companies a stable and predictable operating environment. In the light of the above, the PTA decided not to veer from the conclusion it had put forward in national consultation and that was to come into force on 1 January 2016 while at the same time taking ESA comments into account in the benchmarking here under discussion for rates that are to come into force on 1 January 2017.

In accordance with PTA Decision no. 24/2014, the current call termination rate on the market for call termination in individual mobile phone networks is ISK 1.40/minute and this applies until the end of the current year. The Decision here under discussion covers rates that shall apply in the year 2017.

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. In its gathering of data, the PTA has used the European Commission CIRCABC Information Resource Centre, the ESA ECOM database and reports from Cullen International and BEREC[8] benchmarking as well as information published on the websites of the relevant electronic communications regulatory bodies.

The PTA mainly uses the same methodology with this benchmarking as in the last benchmarking. The PTA Decision no. 28/2015 dated 30 October 2014 on a wholesale tariff for call termination in individual mobile phone networks was not 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 are 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 is applied.
- Comparison of rates is based on the conclusion on call termination rates according to calculations based on pure BU-LRIC model available in April 2016. 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 average exchange rate in ISK of the currency in question for the second quarter of 2016 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].

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[8] "Termination rates at European level" January 2016, BoR (16) 90.

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

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

The PTA benchmarking uses information available in April 2016.

In the light of the fact that rates are being decided that will apply in the year 2017, the PTA examined whether rates were available for call termination that would be in force during that year. This is in accordance with comments from ESA that termination rates should be used that would apply during the period of validity of the rates prescribed. In the opinion of the PTA, one should however only use the final rates and should not include in the benchmarking those rates that remained to be revised on the basis of inflation or of other factors.

The PTA therefore uses conclusions on rates for call termination which are to apply in the year 2017 when they are available, but otherwise rates that come into force in the year 2016 or that were in force in April 2016 are used.

At the time when the PTA benchmarking was implemented, the relevant regulatory authorities in 22 EEA states had made decisions on call termination rates in mobile phone networks that were based on the 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 according to the statement made by the PTA in the above-mentioned PTA Decision no. 20/2015.

In Table 3.1 these 22 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

Comparison countries		*MTR 2016 ISK/minute*	*MTR 2017 ISK/minute*	*Comparison rates ISK/minute*
AT	Austria	1.12		1.12
BE	Belgium	1.65		1.65
UK	United Kingdom	0.89		0.89
BG	Bulgaria	1.36		1.36
DK	Denmark	1.01		1.01
FR	France	1.06	1.03	1.03
GR	Greece	1.51		1.51
IE	Ireland	1.17	1.14	1.14
IT	Italy	1.37		1.37
HR	Croatia	1.17		1.17
LU	Luxembourg	1.35		1.35
MT	Malta	0.56		0.56
NO	Norway	1.12	0.97	0.97
PT	Portugal	1.10		1.10
PL	Poland	1.37		1.37
RO	Rumania	1.34		1.34
SK	Slovakia	1.71		1.71
SI	Slovenia	1.59		1.59
ES	Spain	1.52		1.52
SE	Sweden	1.14		1.14
CZ	Czech Republic	1.39		1.39
HU	Hungary	0.76		0.76
Average		1.24		1.23

The table here above shows comparison rates used by the PTA in the last column, where account has been taken of rates that will apply in 2017 where they are available. 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 1.23/minute, which corresponds to **0.88 €cents**.

Only one country has been added to the comparison group since the last benchmarking, that is to say, Ireland.

In addition to the 22 states that have made decisions on call termination rates in mobile phone networks based on pure BU-LRIC models, there are 4 states that have decided termination tariffs on the basis of benchmarking with those termination rates that are based on the pure BU-LRIC model. There are thus 26 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 rate for call termination in individual mobile phone networks in Iceland shall be **ISK 1.23/minute** for the period 01 January 2017 to 31 December 2017. This is a maximum wholesale rate per minute ex VAT. In accordance with the PTA Decision no. 20/2015 the rate shall be the same for all companies. The current termination rate, ISK 1.40/minute, shall remain unchanged for the rest of the year 2016.

Table 5.1 Termination rates in electronic communications companies' mobile phone networks

Company	*Unit*	*Rate to 31 December 2016*	*Rate 1 January - 31 Dec. 2017*
Siminn	ISK/minute	1.40	1.23
Vodafone	ISK/minute	1.40	1.23
Nova	ISK/minute	1.40	1.23
IMC/Alterna	ISK/minute	1.40	1.23
365	ISK/minute	1.40	1.23

Source: Post and Telecom Administration

This represents a reduction of 12% in termination rates between years. The reason for the reduction is a combination of a reduction in termination rates in the comparison countries and of changes in exchange rates.

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 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 national 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 1.23/minute for the period 1 January 2017 to 31 December 2017. This is a maximum wholesale rate per minute ex VAT. The termination rate currently in force, ISK 1.40/minute, shall remain unchanged for the rest of the year 2016.

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 2016

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Hrafnkell V. Gíslason

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Appendix I Foreign-exchange table