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Póst- og Fjarskiptastofnun
Sudurlandsbraut 4
108 Reykjavik,
Iceland

EFTA SURVEILLANCE AUTHORITY

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

Dear Mr. Gíslason,

Subject: Access to the public telephone network at a fixed location for residential and non-residential customers in Iceland – Remedies – Cost analysis for wholesale prices

Comments pursuant to Article 7(3) of Directive 2002/21/EC (Framework Directive)[1]

I. PROCEDURE

On 24 April 2015, 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"), concerning a cost analysis for wholesale access to the public telephone network at a fixed location for residential and non-residential customers in Iceland[2].

The notification became effective on the same day.

[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 5cl of Annex XI to the EEA Agreement and as adapted to the Agreement by Protocol 1 (the "Framework Directive").
[2] Corresponding to market 1 of the EFTA Surveillance Authority Recommendation of 5 November 2008 (Decision No 688/08/COL) on relevant product and service markets within the electronic communications sector susceptible to ex ante regulation in accordance with the Framework Directive, OJ C 156, 9.7.2009, p.18 ("the 2008 Recommendation").

A national consultation was carried out, pursuant to Article 6 of the Framework Directive, during the period from 22 December 2014 to 13 February 2015.

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 26 May 2015.

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

The current draft decision is based on the PTA´s Decision no. 8/2013 (dated 18 June 2013). According to this decision, *Síminn hf.* ("Siminn") was designated as an undertaking with significant market power on the retail market for access to the public telephone network at a fixed location for residential and non-residential customers. Furthermore, the PTA imposed the following set of obligations on Siminn on market 1:

- Wholesale access to interconnection with the public telephone network at a fixed location
- Carrier selection and pre-selection
- Non-discrimination
- Transparency
- Accounting separation
- Price control and cost accounting

According to Decision no. 8/2013, Siminn is to submit a tariff for wholesale access to its fixed-line telephone network, which includes carrier pre-selection ("CPS") and single billing carrier pre-selection ("SB-CPS"), to the PTA for endorsement. Pursuant to Paragraph 4 of Article 32 of the Act on Electronic Communications, the tariffs for the wholesale access in question shall be cost related, where costs are allocated to the services in question according to fully-allocated costs ("FAC"). The PTA may take analogous services into account that are considered to be operated efficiently and may adjust prices should this be deemed necessary on the basis of such benchmarking. The PTA may also apply benchmarking on the basis of the cost analysis of tariffs in the EEA.

Siminn was to submit its cost analysis for approval to the PTA no later than six months after the date of publication of Decision no. 8/2013.

In its comments letter on the PTA's draft decision on market analysis and proposed remedies for market 1[3] the Authority noted *inter alia* the multi-tiered approached chosen by the PTA to set the relevant wholesale tariffs and urged the NRA to provide a further elaboration of the individual steps and their underlying principles when notifying the resulting tariffs. Furthermore, the Authority underlined the need for a timely enforcement of price-control remedies to ensure the effectiveness of such remedies.

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[3] See the Authority´s comments letter of 14 June 2013, Case No 73636, Document No 674115.

II.2. Current notification

Under the present draft measure, which is undertaken pursuant to Siminn's obligations on transparency and price control on market 1 as set out above, the PTA proposes to endorse, with certain alterations, Siminn´s revised cost analysis for wholesale prices for access to the public telephone network at a fixed location for residential and non-residential customers.

The PTA bases its examination of the cost analysis submitted by Siminn on the methodology used for the PTA´s Decisions nos. 15/2011 and 21/2011 on the current Siminn wholesale tariffs for access to the public telephone network at a fixed location for residential and non-residential customers, as well as on Decision no. 19/2011 concerning the reference offer for market 1 and cost analysis for SB-CPS.

The PTA has carried out its assessment of Siminn´s cost analysis taking into account the following aspects:

II.2.1 Weighted average cost of capital ("WACC")

The PTA concludes that the accurate WACC for an electronic communications company in Iceland is 7.6% for the year 2013 in rate of return calculations for capital tied in assets used in connection with the company's provision of services. This is slightly below Siminn´s proposed calculation of 7.82%.

II.2.2 Investment

In its revised cost analysis, Siminn assessed the value of investments in the company's public telephone network on the basis of the replacement value using current prices and circumstances instead of using historical costs from the company´s accounts.

The replacement cost of an analogous system was evaluated on the basis of the current structure and number of locations, that is to say telephone exchanges and remote subscriber switches. When calculating annual capital cost of investments, Siminn allowed for a ten-year useful life. This corresponds to the approach adopted in the 2011 cost analysis.

The PTA endorses Siminn´s conclusion as to the replacement value of investments but reduces the company´s estimate for its annual capital cost in 2013 because of a lower rate of return requirement. The PTA acknowledges for 2013 a significant real reduction of the annual capital cost in comparison to 2011.

II.2.3 Operational expenditure ("Opex")

Siminn´s current analysis for Opex is based on the same criteria as in the previous analysis from 2011. The main cost items are rent of premises from the supplier company Mila ehf. ("Mila") with electricity costs, lease of access to Mila distribution frames and maintenance work. Opex is thus mainly comprised of fixed costs.

The PTA agrees with Siminn´s assessment for Opex for 2013, which implies a certain increase in Opex in comparison to the 2011 cost analysis, which in turn was mostly based on costs for 2008. At the same time, the PTA recalls that the consumer price index increased by approximately 34% in the period from 2008 to 2013. According to the PTA, the increase in

Opex from the 2011 cost analysis can be explained, firstly, by an increase in the amount of services purchased from Mila and, secondly, by a review of the distribution of costs from larger telephone exchanges between market 1, on the one hand, and the markets for call origination and call termination on the public telephone network provided at a fixed location (markets 2 and 3 of the 2008 Recommendation), on the other hand. This implies a certain increase in costs from the previous analysis.

II.2.4 Number of ports

Siminn's calculations use the number of ports that are in use. The PTA considers it appropriate in this context to use the number of access lines in use in the middle of 2013, as the number of ports in use has been decreasing in recent years in line with the diminishing use of Siminn's public telephone network.

II.2.5 The PTA´s conclusions on Siminn´s tariffs

The PTA notes that Siminn´s tariffs are mainly based on cost-analysed port prices, billed technician hours and on the resale of Mila's local loops and it agrees that Siminn´s tariffs should include a 20% handling charge to be added to the Mila local loop lease[4].

The PTA acknowledges that the resale services involve handling, which generates costs. The PTA considers that the 20% handling charge is reasonable in light of the difference in underlying costs between wholesale and retail prices, among other things due to service level, interconnection, sales, salaries and premises rental costs. It furthermore corresponds to the previous implementation of the PTA´s Decision no. 21/2011 which is currently in force and Decision no. 35/2011 for the cost analysis of leased lines.

Further to the above considerations, the PTA approves Siminn's revised cost analysis to be used as the basis for a decision on wholesale prices for access to the company's public telephone network. This implies an increase in the price for access to the public telephone network in the range of 1.6% to 4%.

According to this draft decision, Siminn´s new tariffs are to enter into force on the date of publication of the final decision. Further, Siminn´s new tariffs are to be incorporated into the company's reference offer for interconnection of public telephone networks as from the same date.

As for the subsequent review of Siminn´s tariffs, the PTA intends to require Siminn in its next cost analysis to carry out a cost assessment of the specific items covered by the handling charge (time measurements, etc.) and that this assessment be used as a basis for calculating the tariffs instead of the currently proposed fixed percentage mark-up on Mila's local loop lease. The PTA intends to extend that review to cover all work procedures. In particular, the PTA indicates that Siminn is introducing automatic processes and intends to require that the benefits of that automation be included in the next review of Siminn's tariffs.

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[4] The PTA considers that such a percentage could represent 10-14% of the total price for the service in question, where the local loop is included.

EFTA SURVEILLANCE AUTHORITY

III. COMMENTS

The Authority has examined the notified draft measure and has the following comment:

Timely and effective enforcement of remedies

Taking into account the time that has passed since 2013 when the PTA notified its draft decision on market analysis and proposed remedies for market 1, the Authority would like to remind the PTA, in line with its previous comments to that draft decision, of the need to enforce remedies in a timely and effective manner following the conclusion of the underlying market analysis.

Further, the Authority notes the PTA's intention to require Siminn in its next cost analysis to carry out a cost assessment of the specific items covered by the handling charge instead of estimating a fixed percentage mark-up. With a view to promoting efficiency and for the sake of transparency and predictability for other market players, the Authority urges the PTA to progress that cost assessment in a timely manner with a view to determining all of the relevant efficient costs for providing access in this market.

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[5], 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[6] 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.

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[5] 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").

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

Yours sincerely,

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Director
Internal Market Affairs Directorate

Emily O´Reilly
Deputy Director for Competition
Competition and State Aid Directorate