EFTA SURVEILLANCE AUTHORITY

Brussels, 29 May 2017
Case No: 80609
Document No: 856654

Póst- og Fjarskiptastofnun
Sudurlandsbraut 4
108 Reykjavik,
Iceland

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

Dear Mr Gíslason,

Subject: **Review of the Míla wholesale tariff for terminating segments of leased lines – Remedies**

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

I. PROCEDURE

On 27 April 2017, 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 the market for wholesale terminating segments of leased lines in Iceland.[2]

The notification became effective on the same day.

A national consultation was carried out, pursuant to Article 6 of the Framework Directive, during the period from 31 March to 19 April 2017.[3]

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[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 6 in the previous 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").

[3] A previous version of the draft national measure was submitted for public consultation between 26 April and 16 May 2016.

On 9 May 2017, a request for information was sent to the PTA (Document No 854705), and a reply was received on 12 May 2017 (Document No 856123).

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 29 May 2017.

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 8/2014[4], the PTA designated Míla ehf. ("Míla") with significant market power ("SMP") on the market for wholesale terminating segments of leased lines. Furthermore, the PTA imposed obligations on Míla regarding access, non-discrimination, transparency (publication of reference offer), price control and cost accounting and separation of accounts.

The price control obligation was cost-oriented, based on the fully-allocated historical costing ("HC FAC") methodology.[5] In this respect, the local loop cost was to be based on Míla's wholesale tariff for local loop unbundling ("LLU") and the price of specific equipment for terminating segments of leased lines was to be based on the replacement cost of a modern equivalent asset and a reasonable re-use of equipment. Míla was required to prepare a cost analysis and submit that to the PTA for endorsement no later than 6 months from the publication of the PTA's Decision. In addition, annual reviews of the tariff were foreseen.

The PTA planned to compare the conclusion of Míla's cost analysis against tariffs for analogous products within the EEA, in particular against tariffs based on the Bottom Up Long-Run Incremental Cost Plus ("BU LRIC+") methodology and to only endorse a conclusion which it considered acceptable in the light of these other tariffs. The PTA considered that such an approach would produce tariffs in compliance with the objectives of the EU Commission with respect to supporting competition and to improving the investment environment on the electronic communications market in accordance with the Commission's 2013 Recommendation on non-discrimination and costing[6].

The Authority commented i.a. on the delay of seven years accumulated by the PTA in its review of market 6[7] and, furthermore, noted that the implementation of the price control obligation foreseen in the previous market review had taken almost five years.

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[4] Notified to the Authority on 3 April 2014 and assessed by the Authority on 5 May 2014, Case No 75278, Document No 706019.

[5] The PTA did not consider it appropriate to adopt a Bottom Up Long-Run Incremental Cost ("BU-LRIC") model at that time due to the high implementation costs of such a cost model.

[6] Commission's Recommendation 2013/466/EU on consistent non-discrimination obligations and costing methodologies to promote competition and enhance the broadband investment environment (OJ L 251, 21.09.2013, p. 13), incorporated into the EEA Agreement by Decision 59/2015 of the EEA Joint Committee of 20 March 2015 at point 26n of Annex XI as adapted to that agreement by Protocol 1.

[7] The PTA's previous review dated back to 2007.

II.2. Current notification

The notified draft measure implements the price control obligation imposed on Míla by the PTA's Decision No 8/2014.

In parallel with the present notification, the PTA has submitted draft measures concerning the price control obligations imposed on Míla pursuant to the PTA's Decision No 21/2014 with regard to LLU and wholesale bitstream access respectively.[8]

The tariffs proposed in the notified draft measure are based on a cost model initially submitted by Míla on 30 April 2015, which was later updated to include costing data from 2016.

In terms of cost calculation, the PTA broadly accepts Míla's analysis of the following elements:

- the pre-tax weighted average cost of capital of 7% for 2016;
- operational costs (opex) for the year of 2016; and
- equipment costs.

In relation to the number of lines, the PTA accepts Míla's calculation of line equivalents[9]. The number of line equivalents are split between Ethernet over copper and digital leased lines (SHDSL[10]) respectively.

On the basis of the above, the PTA proposes to set the tariffs as follows (all tariffs exclude VAT):

Digital leased line within the same area

Speed	Monthly charge
64 kb/s	7,859 ISK
128 kb/s	8,140 ISK
256 kb/s	8,421 ISK
512 kb/s	8,983 ISK
2 Mb/s	9,124 ISK
Setup charge	87,907 ISK

[8] Assessed by the Authority under Case No 80606 (Míla's wholesale tariff for copper local loops) and Case No 80608 (Míla's wholesale tariff for bitstream access).

[9] The line equivalent is considered to be one in the case of a leased line which lies from a termination point to a technical space (single segment) and to be two in the case of a connection to two points of termination (two segments).

[10] Symmetrical High-Speed Digital Subscriber Line.

Leased lines between areas

Speed	Monthly charge
64 kb/s	8,288 ISK
128 kb/s	8,569 ISK
256 kb/s	8,850 ISK
512 kb/s	9,413 ISK
2 Mb/s	9,553 ISK
Setup charge	152,225 ISK

Leased lines – single segment

Speed	Monthly charge
64 kb/s	4,144 ISK
128 kb/s	4,284 ISK
256 kb/s	4,425 ISK
512 kb/s	4,706 ISK
2 Mb/s	4,777 ISK
Setup charge	76,112 ISK

Ethernet over copper

Speed	Monthly charge
5 Mb/s	11,298 ISK
10 Mb/s	12,704 ISK
15 Mb/s	14,110 ISK
20 Mb/s	15,516 ISK
25 Mb/s	18,328 ISK
30 Mb/s	19,031 ISK
35 Mb/s	19,734 ISK
40 – 100 Mb/s	20,437 ISK
Setup charge	95,587 ISK

In addition, the PTA notes that Míla will continue its tariffs for the following services:

Service	Charge
Digital leased line within the same area – transfer	36,532 ISK
Digital leased line between areas – Transfer	73,064 ISK
Digital leased line with the same area – change in speed	16,899 ISK

Digital leased line between areas – change in speed	28,164 ISK
Withdrawal, work started on line setup	8,884 ISK
Withdrawal, work started on equipment setup	36,614 ISK
EOC – Transfer	57,369 ISK
EOC – change in speed	16,889 ISK

The PTA notes that the proposed tariffs represent a tariff increase of 14% compared to the tariffs which are currently in force. This increase exceeds the price index increase since the latter tariffs came into force, i.e. since 1 August 2013. However, if the increase in the proposed tariffs is compared against the increase in the price index since 2011 instead, i.e. the year when the PTA carried out a total review of the tariffs for terminating segments of leased lines, the increase in the proposed tariffs is in line with the increase in the price index.

In terms of EEA benchmarking, the PTA compares the proposed tariffs against those in force in Denmark and concluded that this benchmarking does not give rise to any objections.[11]

The PTA proposes that the monthly charge for access to local loops shall enter into force at the same time as the new Míla tariffs for access to copper local loops.[12]

As regards the annual review of the tariff foreseen in the PTA's Decision No 8/2014, Míla is required to submit an updated cost analysis before April 2018. The PTA expects to publish its decision on a revised tariff before the end of 2018.

III. COMMENTS

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

Timely enforcement and effectiveness of remedies

The Authority notes that the implementation of the price control obligation imposed on Míla in the PTA's Decision No 8/2014 has been significantly delayed.

It is recalled that, in the interests of pursuing a consistent policy across all EEA States and ensuring effective and targeted regulation, it is important that regulators enforce remedies in a timely and effective manner following the conclusion of the underlying market analysis.

Furthermore, the Authority wishes to recall its comments issued under Cases 75750,

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[11] In reply to the Authority's request for information, the PTA explains that it has proven difficult and time consuming to find comparable products (in terms of speed, transmission standard, tariff structure etc). Therefore, the PTA has limited the benchmarking exercise to the tariffs in force in Denmark. The PTA has not taken into consideration the fact that the Danish tariffs will be lifted from 6 September 2017.

[12] Notified to and assessed by the Authority in parallel with the present notification, see note 4.

77546, 79335 and 80034, respectively. As noted in those cases, considerable delays in the enforcement of remedies imposed on the SMP operator risk harming competition and reducing legal certainty for market participants. The Authority has also previously expressed concerns that a fragmented implementation of individual remedies in Iceland risks generating further uncertainty to the potential detriment of investment and innovation.[13]

Moreover, the Authority regrets that the PTA has only compared the proposed tariffs against tariffs in force in one other EEA State. Whilst recognising the difficulties incurred in identifying tariffs for comparable products, it is recalled that the purpose of the tariff comparison foreseen in the PTA's Decision No 8/2014 was to ensure that the tariffs imposed on Míla would comply with the objectives foreseen in the Commission's 2013 Recommendation on non-discrimination and costing, e.g. with respect to supporting competition and to improving the investment environment on electronic communications markets. Against this background, the Authority invites the PTA, in its final measure, to substantiate how the proposed tariffs are aligned with the objectives provided by the Commission´s 2013 Recommendation on non-discrimination and costing as foreseen in the PTA's Decision No 8/2014.

Finally, in view of past experience in Iceland where cost analyses have incurred considerable delays, the Authority encourages the PTA to ensure that the foreseen annual review of the tariffs is completed without undue delay. In this context, the Authority reminds the PTA of its powers and obligations under the regulatory framework in the enforcement of remedies in case of a reluctant implementation on the part of the operator designated with SMP.

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[14], 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[15] following receipt of this letter if you consider, in accordance

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[13] See, for example, Case No 77546 and Case No 75574.

[14] 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").

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

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 Pétursson	Gjermund Mathisen
Director	Director
Internal Market Affairs Directorate	Competition and State Aid Directorate