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EFTA SURVEILLANCE AUTHORITY

Póst- og Fjarskiptastofnun
Sudurlandsbraut 4
108 Reykjavik
Iceland

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

Dear Mr. Gíslason,

Subject: Wholesale market for voice call termination on individual mobile networks in Iceland

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

I. PROCEDURE

On 8 September 2016, 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 wholesale market for voice call termination on individual mobile networks.[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 7 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"). By Decision No 093/16/COL of 11 May 2016, the Authority adopted a revised Recommendation on relevant product and service markets within the electronic communications sector susceptible to ex ante regulation in accordance with the Framework Directive (publication pending) ("the 2016 Recommendation"), however, pursuant to its Article 5, the 2016 Recommendation is without prejudice to *i.a.* regulatory obligations adopted by the national regulatory authorities prior to its adoption. As the notified draft measure is foreseen in the PTA´s Decision no. 20/2015, the 2016 Recommendation has no impact on the notified draft measure.

A national consultation was carried out, pursuant to Article 6 of the Framework Directive, during the period from 11 August to 1 September 2016.

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 10 October 2016.

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. Previous notifications

On 23 June 2015, the PTA notified its fourth-round review of the wholesale market for voice call termination on individual mobile networks in Iceland, which the Authority assessed under Case No 77567.[3] Subsequently, the PTA adopted the notified measures under Decision no. 20/2015 designating the mobile network operators ("MNOs") *Siminn hf*, *Fjarskipti efh*, *Nova efh*, *IMC Ísland efh/Alterna* and the mobile virtual network operator ("MVNO") *365 miðlar ehf* as having significant market power ("SMP") on their respective markets[4] and imposed *i.a.* price control obligations based on the benchmarking method[5] applying the following criteria:

- The mobile termination rate ("MTR" or "termination rate") shall be decided on an annual basis and completed by 1 November in the year preceding its applicability;
- Only the MTRs decided by EEA NRAs on the basis of a pure Bottom-Up Long-Run Incremental Cost ("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.

Subsequently, on 29 September 2015, the PTA notified its annual benchmarking comparison which the Authority assessed under Case No 77998.[6] The comparison had been carried out on the basis of 21 EEA NRAs which, by April 2015, had adopted decisions on MTRs based on the pure BU-LRIC model. The resulting average amounted to ISK 1.40/minute and constituted a maximum price cap (excluding VAT) which was to apply equally to all operators having SMP from 1 January 2016 to 31 December 2016.

The Authority commented *i.a.* that benchmarking calculations should, where possible, be based on forward-looking MTRs applicable in the same reference period as the MTR proposed in the notified draft measure. Otherwise, a delay will occur before the MTRs resulting from the application of pure BU-LRIC models are taken into account by the PTA

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[3] See the Authority's no comments letter of 23 July 2015 (Document No. 763795).

[4] See section II.2 of the Authority´s no comments letter of 23 July 2015 for a detailed description of the PTA´s market definition.

[5] 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.

[6] See the Authority's comments letter of 23 October 2015 (Document No. 776266).

in its benchmarking calculation. Accordingly, the Authority invited the PTA to review the MTRs used in the benchmarking calculation and, where possible, instead of using MTRs applicable in 2015, to use the forward-looking MTRs applicable as of 1 January 2016, provided that the PTA's criterion of a formal decision adopted by 1 April 2015 was fulfilled.

II.2. Regulatory remedies

In the current draft measure, the PTA has carried out the annual benchmarking comparison on the basis of 22 EEA NRAs which, by April 2016, had adopted decisions on MTRs based on the pure BU-LRIC model.[7] The resulting average amounts to ISK 1.23/minute and constitutes a maximum price cap (excluding VAT), which will apply equally to all SMP operators. The PTA intends the MTR to be applicable from 1 January 2017 until 31 December 2017.

The PTA has taken account of MTRs applicable in 2017, where a formal decision on the final MTR was adopted by 1 April 2016.

According to the PTA, the annual decision-making process as regards MTRs results in a stable and predictable operating environment for the market participants. Moreover, benchmarking is considered an economic and efficient way to achieve the objectives for termination rates laid down in the Authority's Recommendation of 13 April 2011 on the Regulatory Treatment of Fixed and Mobile Termination Rates in the EFTA States.[8]

The 22 NRAs, which according to the PTA have adopted MTR decisions based on a pure BU-LRIC model and which are taken into account by the PTA for its benchmarking exercise, are as follows:

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[7] One comparator country, *i.e.* Ireland, has been added since the PTA´s previous benchmark calculation.

[8] Decision No 124/11/COL of 13 April 2011, OJ C 340 8.11.2012, p. 5, corresponding to the European Commission's Recommendation 2009/396/EC of 7 May 2009 on the Regulatory Treatment of Fixed and Mobile Termination Rates in the EU (OJ L 124, 20.5.2009, p. 67), as adapted to the EEA Agreement.

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Comparator NRAs	MTR in ISK/minute[9]
Austria	1.12
Belgium	1.65
United Kingdom	0.89
Bulgaria	1.36
Denmark	1.01
France	1.03[10]
Greece	1.51
Ireland	1.14[11]
Italy	1.37
Croatia	1.17
Luxembourg	1.35
Malta	0.56
Norway	0.97[12]
Portugal	1.10
Poland	1.37
Romania	1.34
Slovakia	1.71
Slovenia	1.59
Spain	1.52
Sweden	1.14
Czech Republic	1.39
Hungary	0.76

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 NRAs 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.

[9] The PTA has indicated that the comparator MTRs are based on information available on the European Commission's CIRCABC Information Resource Centre, the ESA eCOM notification registry and Cullen International and BEREC benchmarking reports, as well as information published on the websites of the relevant NRAs. For the calculation of the MTR in ISK, the PTA used the Central Bank of Iceland's mid-rates for the second quarter of 2016.

[10] The MTR will apply in 2017.

[11] *Idem*.

[12] *Idem*.

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Pursuant to Point 15 of the Procedural Recommendation[13], 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[14] 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,

Ólafur Jóhannes Einarsson
Director
Internal Market Affairs Directorate

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

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[13] 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 of 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 I thereto.

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