EFTA SURVEILLANCE AUTHORITY

Brussels, 2 June 2014
Case No: 75384
Event No: 708210

Póst-Og Fjarskiptastofnun (PTA)
Sudurlandsbraut 4
108 Reykjavík, Iceland

For the attention of:
Hrafnkell V. Gíslason
Managing Director

Dear Mr Gíslason,

Subject: **Case No 75384 - Remedies: Cost Analysis of Tariffs for Lease of Facilities (hosting) - markets 4, 5, 6 and former market 14 in Iceland**

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

I. Procedure

On 29 April 2014, the EFTA Surveillance Authority ("the Authority") registered a draft national measure, pursuant to Article 7 of the Framework Directive, from the Icelandic national regulatory authority, *Póst-Og Fjarskiptastofnun* ("the PTA"). The draft measure concerns the costing analysis (calculation of new prices) for hosting of equipment in buildings and on masts in the wholesale markets for network infrastructure access (including shared or fully unbundled access) at a fixed location, broadband access, terminating segments of leased lines,[2] as well as for trunk segments of leased lines[3] in Iceland.

The notification became effective on the same day. National consultation was carried out, pursuant to Article 6 of the Framework Directive, between 28 January 2014 and 21 February 2014.

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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 I ("the Framework Directive").

[2] Corresponding to markets 4, 5 and 6 respectively of the EFTA Surveillance Authority Recommendation (Decision No. 688/08/COL) of 5 November 2008 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.

[3] Corresponding to former market 14 of the EFTA Surveillance Authority Recommendation (Decision No. 194/04/COL) of 14 July 2004 on relevant product and service markets within the electronic communications sector susceptible to *ex ante* regulation in accordance with the Framework Directive, OJ L 113, 27.4.2006, p. 18.

On 13 May 2014, a request for information[4] was sent to the PTA and a response was received on 16 May 2014.

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 2 June 2014.

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

The last full reviews of the corresponding markets were notified to the Authority in 2007[5] and 2008.[6] In these reviews, a range of obligations were imposed on Míla ehf. ("Míla") including, *inter alia*, obligations to provide access to facilities, as well as price control (cost orientation), cost accounting and accounting separation. Based on these obligations, the PTA issued a decision in 2010 setting out further details of the costing methodology and the resulting tariffs to be applied by Míla for the lease of facilities (hosting) in buildings and on masts in the relevant markets.

II.2. Current notification

In the draft measure as currently notified, the PTA proposes to set new prices for the lease of facilities in buildings and on masts in markets 4, 5, 6 and former market 14 based on a HC FAC methodology (i.e. historic cost accounting based on fully-allocated costs) with 2012 costing information[7] and where replacement cost is used to evaluate assets. The PTA clarifies that the asset base from 2010 is indexed to 2012 using the building index, which, according to the PTA's response to the Authority's request for information, should represent the development of building costs in Iceland during this period and that a re-valuation of the asset base would not be considered a proportionate measure at this time.

The PTA also includes all hosting locations in the cost analysis which are used for Míla's internal and external sales, as it notes that Míla's price for leasing facilities would apply regardless of whether this was for internal or external sales. In this respect, Míla has identified 15 spaces in the costing analysis which are not currently accessible for leasing by all parties. In its reply to the Authority's request for information, the PTA clarifies, however, that excluding these 15 locations would not have a significant impact on the

[4] In accordance with Article 5(2) of the Framework Directive.

[5] In 2007, the PTA notified markets 4, 6 and former market 14 (see the Authority's comments' letters under Case Nos 63207 and 59834 respectively).

[6] In 2008, the PTA notified market 5 (see the Authority's comments' letter under Case No 64016).

[7] In its reply to the Authority's request for information, the PTA explains that it was not possible to update the costing analysis to take account of 2013 costing information. According to the PTA, this was due to the fact that the draft decision on the costing analysis was published for national consultation in January 2014 and the 2013 costing information was most likely not available at that time. In the PTA's opinion, a review of the new data would now lead to further delays in its decision-making process. The PTA underlines further that it expects that Míla will soon update its costing analysis using the 2013 costing information. As further noted below, it is also proposed that the costing analysis will be reviewed annually following the adoption of the present draft measure.

average unit costs and resulting tariffs calculated by the PTA for the lease of facilities for equipment in buildings and masts.[8]

According to the PTA, taking the revised tariffs into account, it is assumed that Míla's total lease revenue will increase by about 8.2% on an annual basis given revenue based on the existing tariff. By comparison, the PTA notes that the building price index increased by 17% and the consumer price index increased by 15% during the period 2009-2012.

It is proposed that the monthly lease prices and discounts for facilities in buildings and on masts (as shown in the below tables and in Appendix I of the notified draft measure) would be applicable from the end of the month following the publication of the final adopted measure.[9] The monthly rental fee is differentiated in accordance with the varying locations of the facilities being leased, e.g. urban, rural or uninhabited, as well as in relation to the size of cabinets that are on offer. In addition to geographic location, the monthly price for hosting on masts is shown on the basis of the size of the leasing units and the position on the mast.

Table 1 - Lease of facilities in buildings (prices are in ISK ex.VAT)

Service	Halls[10]	Urban area	Rural area	Uninhabited
1 Cabinet space 60x60x220 cm	17,000	21,400	22,800	39,700
1/2 Cabinet space 60x60x110 cm	8,500	10,700	11,400	19,850
1 Cabinet space 80x80x220 cm	27,200	34,200	36,500	63,500
1/2 Cabinet space 80x80x110 cm	13,600	17,100	18,250	31,750
Space for optical connectors 60x60x220 cm	8,500	10,700		

Table 2 - Lease of facilities on masts (prices are in ISK ex.VAT)

Category	Urban and rural	Uninhabited
Category 1	4,900	6,500
Category 2	9,800	13,100
Category 3	14,700	19,600
Category 4	19,500	26,100

[8] The PTA points out that no position is taken in the present costing analysis on the principle of non-discrimination in any such locations. According to the PTA, any such assessment must be dealt with separately in another case than in the present draft measure.

[9] For this purpose, the PTA, in applying its proposed costing methodology, draws on information provided by Míla as well as on data resulting from the accounting separation obligations imposed on Míla under markets 4, 6 and former market 14. The PTA informs the Authority in its reply to the request for information that this obligation also includes an annual audit, whereby the PTA receives annual financial statements from Míla which have been audited by an independent auditor, along with an itemized profit and loss account for the company's service components. In addition, Míla delivers a report annually from an independent auditor to the PTA to show how costs have been divided and how the accounting separation has been implemented by the company.

[10] "Halls" were previously categorized by Míla as mixed hosting operations or "mixed market".

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Table 3 - Division into categories by size and position on masts[11]

Location/surface area	0-0.24m^2	0.25-0.74 m^2	0.75-2.6 m^2	over 2.6 m^2
20 m and higher	2	3	4	4
10-19.9 m	1	2	3	4
0-9.9 m	1	1	2	3
On building	1	1	2	3

Table 4 - Discounts for lease in buildings and masts

Agreement length one year, discount 5%	Exit charge 1 month lease rental
Agreement length two years, discount 10%	Exit charge 2 months lease rental
Agreement length three years, discount 15%	Exit charge 3 months lease rental

According to the PTA, the costing analysis will be reviewed regularly (on an annual basis) in order to balance cost recovery with promoting a clear, transparent and predictable framework to strengthen competition, new investment and innovation. Therefore, the next review is to take place in 12 months.

III. Comments

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

Forthcoming market reviews

According to Article 16(2) of the Framework Directive, NRAs shall decide whether to impose, maintain, amend or withdraw obligations on undertakings on the basis of a market analysis. Furthermore, pursuant to Article 8(4) of the Access Directive,[12] obligations should be based on the nature of the problem identified and should be proportionate and justified in the light of the objectives laid down in Article 8 of the Framework Directive.

In this respect, the Authority notes that the PTA has recently completed its updated review of market 6 and that other market reviews (in particular for markets 4 and 5) are substantially advanced. However, taking account of the requirements of the EEA regulatory framework as set out above and pending the completion of the PTA's updated reviews of markets 4, 5 and former market 14, the Authority invites the PTA, when adopting the final notified measure, to explain how the competition problems identified in the course of the relevant market reviews in 2007 and 2008 still necessitate the proposed price control.

IV. Final remarks

On a procedural note, the Authority recalls that any future amendments to, or more detailed implementation of, the draft remedy consulted on in the current notification will

[11] Tables 2 and 3 both concern the applicable tariffs for the lease of facilities on masts. Table 3 shows that the higher the leased unit is on the mast and the larger the surface area of the unit, the higher the rental price will be in accordance with categories 1-4 as shown in Table 2 above.

[12] Directive 2002/19/EC of the European Parliament and of the Council of 7 March 2002 on access to, and interconnection of, electronic communications networks and associated facilities, OJ L 108, 24.4.2002, p. 7, as referred to at point 5cj of Annex XI to the EEA Agreement and as adapted to the Agreement by Protocol 1 ("the Access Directive").

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require re-notification in accordance with Article 7(3) of the Framework Directive.

Pursuant to Article 7(5) of the Framework Directive, the PTA may adopt the resulting draft measure and, if it does so, shall communicate the final measure 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 national measures.

Pursuant to point 15 of the Procedural Recommendation,[13] the Authority will publish this comments' letter on its eCOM Online Notification Registry. The Authority does not consider the information contained in this letter to be confidential. However, the PTA is invited to inform the Authority within three working days[14] following receipt of this letter if it considers, in accordance with EEA and national rules on confidentiality, that this letter contains confidential information which the PTA would like to have deleted prior to publication. The PTA should provide reasons for any such request.

Yours sincerely,

Ólafur Jóhannes Einarsson
Director
Internal Market Affairs Directorate

Per Andreas Bjørgan
Director
Competition and State Aid Directorate

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[13] EFTA Surveillance Authority Procedural Recommendation of 2 December 2009 on notifications. time limits and consultations provided for in Article 7 of the Framework Directive, OJ C 302, 13.10.2011 p. 12-21 ("the Procedural Recommendation").

[14] The request should be submitted through the eCOM Registry or by e-mail to Ecom@eftasurv.int, marked for the attention of the eCOM Task Force.