PÓST- OG FJARSKIPTASTOFNUN

Decision no. xx/2015

On 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.

(Market 7)

The Post and Telecom Administration (PTA) has, with reference to Article 17 of the Electronic Communications Act number 81/2003, as amended, analysed the wholesale market for call termination in individual mobile phone networks. This is more specifically Market 7 in the EFTA Surveillance Authority (ESA) Recommendation from 2008 on the relevant market.

With a letter dated 1 April, 2015 a draft analysis of the market in question was sent to the Competition Authority and to electronic communications undertakings and they were invited to make comments on the draft market analysis and on its draft conclusions. The consultation ended last 18 May. The following parties submitted comments on the Preliminary Draft. The Competition Authority and Síminn hf. The analysis of the relevant market has now been updated in accordance with those observations that were taken into account. The updated analysis of Market 7 can be found in Appendix A to this letter, and the comments that were received have been answered in Appendix B.

1. Designation of undertakings with significant market power

Siminn hf (Síminn), Fjarskipti ehf (Vodafone), Nova ehf (Nova), IMC Ísland ehf (IMC) and IP-fjarskipti ehf. (Tal) were designated as having significant market power on the relevant market in PTA Decision no. 3/2012.

The conclusion of the market analysis in this instance is that circumstances on the market are similar to those that pertained in the last analysis. The multimedia company, 365 miðlar ehf (365) has now however entered the electronic communications market and Tal merged with that company in 2014 which means that 365 has now become inter alia a mobile phone company.

With a view to the market definition and analysis of competition on Market 7 and pursuant to Paragraph 2 Article 17, see Article 18 of the Electronic Communications Act, the PTA intends to designate Síminn, Vodafone, Nova, IMC/Alterna and 365 as having significant market power on the relevant market.

The relevant service market covers call termination in individual mobile phone networks. The mobile phone networks that fall into this category are GSM (2G), UMTS (3G), LTE (4G) and virtual mobile phone networks (MVNO) based on the above specified networks. For this reason the PTA intends to specify the following service 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.

2. Imposition of obligations

In accordance with Article 27 of the Electronic Communications Act, the PTA plans to impose the following obligations on the above specified undertakings because they have been designated as having significant market power on the wholesale market for call termination in individual mobile phone networks. The PTA believes that these obligations are both in accordance with the objectives presented in the EU Framework and Access Directives and with the provisions of legislation on electronic communications and that they are appropriate for the period that is expected to pass until the market will be analysed again. The PTA considers that the obligations are conducive to preventing the companies from being able to discriminate and to maintain excessively high termination rates. In other respects, the PTA refers to the market analysis of Market 7, see Appendix A.

2.1 Obligations on Siminn, Vodafone, Nova, IMC and 365 mobile phone networks

The PTA plans to impose the following obligations on Siminn, Vodafone, Nova, IMC and 365 with respect to the companies' above specified mobile phone networks as is further detailed in the following sections. More specifically, these are obligations on access, non-discrimination and price control. In the PTA Decision no. 3/2012, the PTA also imposed an obligation for accounting separation on Siminn and Vodafone but the PTA intends to withdraw this obligation as it is unnecessary because it is planned to decide a maximum termination rate with benchmarking and not on the basis of cost analysed prices of the companies.

2.1.1 Obligation on providing access to mobile phone network for termination of telephone calls

With the authority of Article 24 and of Item g of Article 28 of the Electronic Communications Act, the PTA intends to impose the obligation on Siminn, Vodafone, Nova, IMC and 365 to make agreements on interconnection with electronic communications undertakings that offer general electronic communications services or electronic communications networks and to offer call termination in GSM, UMTS, LTE and/or in their virtual mobile phone networks. All necessary information that would otherwise have appeared in a reference offer should thus be above board in contract negotiations between such parties. Interconnection agreements shall be completed without delay and no later than within two months from the time they were requested.

Those electronic communications undertakings that operate both mobile phone and fixed line phone networks shall give counterparties the option of connecting directly to the mobile phone networks and it shall not be made a condition that mobile phone traffic goes through the companies' fixed line networks.

2.1.2 Obligation for non-discrimination

With the authorisation of Article 30 of the Electronic Communications Act, the PTA intends to impose obligations on Siminn, Vodafone, Nova, IMC/Alterna and 365 for non-discrimination with respect to call termination in GSM, UMTS, LTE and/or virtual mobile phone networks of the companies from other mobile phone networks and fixed line networks. The companies shall provide all purchasers of termination of telephone calls in wholesale services with analogous conditions, prices and resources. Access to the network shall be provided within a comparable period of time. The companies shall conduct their operations in such a manner that treatment of information that is revealed when making and applying interconnection agreements is pursuant to Article 26 of the Electronic Communications Act. It is unauthorised to provide other parties with information on transactions with other companies with respect to call termination, including other departments of the company, related companies or partners.

2.1.3 Obligation for price control

With the authorisation of Article 32 of the Electronic Communications Act, the PTA intends to impose obligations on Siminn, Vodafone, Nova, IMC/Alterna and 365 for price control with respect to call termination in wholesale in the companies' GSM, UMTS, LTE and/or virtual mobile phone networks from other mobile phone networks and fixed line networks.

In the PTA Decision no. 3/2012, the practice was discontinued of deciding termination rates for Icelandic mobile phone companies with reference to the Siminn cost analysed prices, and benchmarking was prescribed instead in accordance with the EFTA Surveillance Authority (ESA) Recommendation of 13 April 2011 on the Regulatory Treatment of Fixed and Mobile

Termination Rates from 13 April 2011. In the Decision in question it was prescribed that the PTA should implement annual benchmarking with a decision no later than 1 November each year for the period of validity of the analysis, which would decide the price for the following year. The PTA subsequently implemented benchmarking with the Decisions 32/2012, 25/2013 and 24/2014. With the PTA Decision no. 25/2013, maximum termination rates for all Icelandic mobile phone companies were decided at ISK 1.64/minute for the year 2014 and ISK 1.52/minute for the year 2015 with PTA Decision no. 24/2014. Prior to the above specified PTA Decision no. 25/2013, the maximum rates were ISK 4/minute.

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 bottom-up (BU) LRIC cost model. Mobile phone companies had the same notice to adapt their business plans to such a cost analysis methodology. Less well resourced regulators were granted longer notice, i.e. until 1 July 2014, and longer if it would breach the principle of proportionality to force the relevant authorities to adopt such a cost analysis methodology. It is authorised to apply benchmarking when making a decision on maximum termination rates instead of the LRIC cost analysis methodology and the price shall not be higher than the average price in EEA states that apply the pure BU-LRIC methodology for calculation of termination rates for mobile.

Experience in the EEA had shown that the cost in making a BU-LRIC model was in the order of ISK tens of millions for each model and for each update. Were the PTA to intend to use this methodology for deciding termination rates, it would need to develop a model for the Icelandic mobile phone market with attendant costs for the PTA and for parties to the market. The PTA considers that because of the small size of the market and the considerable cost and inconvenience that would be created both for parties to the market and for the PTA if work was to be launched on making a BU-LRIC model, it would not be proper at this point in time to prescribe the making of such a model, as the cost would in all likelihood be eventually paid by consumers in the form of higher rates. The PTA therefore plans to continue to use the exemption in question in Article 12 of the above specified ESA Recommendation, see also the authority in Paragraph 4 of Article 32 of the Electronic Communications Act, and to prescribe a cost analysis methodology on the relevant market based on benchmarking.

The PTA therefore plans to prescribe that termination rates in this country shall continue to be decided on the basis of benchmarking. In the opinion of the PTA, a predictable procedure for deciding termination rates has been created with this methodology, which gives electronic communications undertakings a 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.

This means that the PTA plans to continue to make benchmarking on an annual basis, which will be the basis for maximum termination rates. The PTA shall conclude its annual benchmarking with a decision, subsequent to national consultation and consultation with

ESA, no later than 1 November each year. The first benchmarking shall therefore be completed not later than 1 November 2015 for prices that will apply from and including 1 January 2016.

The PTA plans to 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 undertakings 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 results are based on a pure BU-LRIC model.

- Comparison of prices 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 expected that the resulting price 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 will therefore conduct benchmarking again in the year 2015 which shall be completed with a Decision, no later than the coming 1 November, which shall apply as maximum termination rates for the year 2016 and so annually for the period of validity of this Decision. 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 may not discriminate between companies using subjective criteria.

The PTA will during the period of validity of this market analysis (presumably 3 years), i.e. in the years 2016, 2017 and 2018, update maximum termination rates in accordance with annual results of the PTA benchmarking, which shall be completed with a decision by 1 November each year. 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 is made.

As electronic communications undertakings outside the EEA are generally not subject to price control obligations, Icelandic mobile phone companies may need to pay them considerably higher termination rates than they can expect to pay counterparties within the EEA. Such a difference can prove disadvantageous for Icelandic mobile phone companies and Icelandic mobile phone users may possibly need to pay for calls to Iceland. For this reason maximum termination rates according to benchmarking that the PTA plans to prescribe shall only apply to telephone calls that originate in networks of mobile phone companies that are operated within the EEA. The obligation for maximum rates that the PTA plans to impose does therefore not apply to telephone calls that originate in networks outside the EEA.

3 The coming into force of the Decision and channels for appeal

This Decision comes into force from the day that it is published and will be in force until a decision is made to the contrary by the Post and Telecom Administration.

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 a special appeal fee shall be charged to the amount of ISK 150,000 pursuant to Article 6 of Regulation no. 39/2009 on the Appellate Committee for Electronic Communications and Postal Affairs.

Reykjavik, 23 June 2015

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Attached:
Appendix A - Analysis of Market 7
Appendix B - Comments by stakeholders