EFTA SURVEILLANCE AUTHORITY

Brussels, 15 July 2015
Case No: 77547
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Póst- og Fjarskiptastofnun
Sudurlandsbraut 4
108 Reykjavik,
Iceland

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

Dear Mr. Gíslason,

Subject: Market for call origination on the public telephone network provided at a fixed location and Market for call termination on individual public telephone networks provided at a fixed location - Remedies – Tariff determination via benchmarking

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

I. PROCEDURE

On 15 June 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 the determination by means of a benchmark of tariffs for wholesale call origination and call termination on public telephone networks provided at a fixed location.[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 markets 2 and 3 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 31 March 2015 to 15 May 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 15 July 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 PTA's second market review of the wholesale market for call origination on the public telephone network provided at a fixed location in Iceland (market 2) and the wholesale market for call termination on individual public telephone networks provided at a fixed location in Iceland (market 3) was notified to and assessed by the Authority under Case No 72796.[3]

Following that review, the PTA adopted its Decision no. 36/2012, in which *Síminn hf.* ("Siminn") was designated as a provider with significant market power ("SMP") on both markets 2 and 3 respectively and Siminn, Vodafone, Nova ehf. ("Nova"), *Símafélagið ehf.* ("Simafilagið") and *Hringdu ehf.* ("Hringdu") were designated with SMP on market 3.

Specific obligations were imposed on all operators. On the market for wholesale call origination, Siminn was obliged to provide access, including resale access in case of demand. Further, the PTA imposed on Siminn obligations of non-discrimination (both with respect to pricing as well as to interconnection and resale access), transparency and the publication of a reference offer, accounting separation and price control on the basis of a benchmark against termination rates in EEA States using the bottom-up long-run incremental cost model approach ("BU-LRIC"). On the market for wholesale call termination, the PTA obliged the SMP operators, in addition to obligations of access, non-discrimination, transparency and accounting separation, to apply a symmetrical termination rate, calculated by the PTA on the basis of a benchmark against termination rates in EEA States using the pure long-run incremental cost model ("pure LRIC").

As recommended in the Authority's Recommendation on termination rates,[4] the PTA established symmetrical termination rates in its Decision no. 36/2012 for Siminn, Simafelagið, Nova and Hringdu. It further established a requirement for a minimum of 5 EEA States to constitute the basis of the benchmark for the price control obligation. The PTA would carry out the benchmarking exercise on an annual basis during the period of validity of the Decision, but the first instance for determining the tariffs was set for 1 July 2013 and subsequently annually from 1 January 2014.

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[3] See the Authority's "no comments" letter on 6 December 2012.

[4] See EFTA Surveillance Authority Recommendation of 13 April 2011 on the Regulatory Treatment of Fixed and Mobile Termination Rates in the EFTA States.

In Decision no. 32/2012 the PTA also decided to implement rates for wholesale call termination on individual mobile networks[5] on the basis of benchmarking. Decision no. 32/2012 was appealed to the Appellate Committee for Electronic Communications and Postal Affairs (the "Appellate Committee") on 29 November 2012. In its Ruling no. 6/2012, the Appellate Committee made objections to the date of entry into force of the new call termination prices and annulled the part of Decision no. 32/2012 that established its entry into force on 1 July 2013. The Appellate Committee assumed that a decision on a new date of commencement of the call termination tariff would be taken subsequent to the ruling.

In light of the ruling by the Appellate Committee on market 7, the PTA considered it appropriate to also postpone its benchmarking exercise for market 3 until a majority of EEA States had adopted termination prices in fixed-line telephone networks in accordance with the Authority's Recommendation on the regulatory treatment of termination rates.

According to the PTA, EEA NRAs have been delayed in implementing the Recommendation on the regulatory treatment of termination rates[6] to fixed-line networks. For this reason, the PTA alleges that there has been a delay in establishing termination rates in fixed line telephone networks on the basis of benchmarking. However, by January 2015, the PTA considered that all criteria were fulfilled to establish the tariffs for wholesale call origination and call termination on public telephone networks provided at a fixed location.

II.2. Current notification

In accordance with the PTA´s Decision no. 36/2012, and as recommended by the Authority's Recommendation on the regulatory treatment of termination rates, the PTA has now carried out a benchmarking exercise and intends to establish the tariffs for the wholesale markets for call origination and call termination on fixed line public telephone networks.

The PTA applies the following main criteria as a basis for calculating wholesale call origination and call termination rates when carrying out the benchmarking exercise:

- Only those EEA States where the origination or termination rates of companies designated with SMP on the markets in question are subject to price control by the NRA will be taken into consideration;
- For call origination fees, the comparison is based on prices resulting from calculations based on BU-LRIC, LRIC+[7], LRAIC[8] or LRAIC+[9] models available on 1 January 2015;
- For call termination fees, the comparison is based on prices resulting from calculations based on a pure BU-LRIC model available on 1 January 2015;
- The price for single transit calls is used where appropriate;
- The price per minute of a three-minute call is used;
- The comparison is made using the average exchange rate in the last quarter of 2014;[10]
- A formal decision has been made by the relevant NRA; and

[5] Corresponding to market 7 of the 2008 Recommendation.
[6] See also the European Commission's corresponding Recommendation of 7 May 2009 on the Regulatory Treatment of Fixed and Mobile Termination Rates in the EU.
[7] Marked up long run incremental cost.
[8] Long run average incremental cost.
[9] Marked up long run average incremental cost.
[10] Central Bank of Iceland mid-rates.

- The resulting price shall not be higher than the simple average in those EEA States that fulfil the conditions mentioned above during the period of reference.

The benchmarking has provided the PTA with an average price per minute for those EEA States covered. The PTA intends to use the conclusion of the benchmarking to decide the per minute price of telephone calls on markets 2 and 3 without a connection charge. At the same time, the existing connection charge will be withdrawn.

II.2.1. Price for the wholesale market for call origination on the public telephone network provided at a fixed location (market 2)

The PTA has selected the 9 EEA States that have established prices for call origination based on a BU-LRIC, LRIC+, LRAIC or LRAIC+ model: Denmark, Italy,[11] Croatia, Malta, Norway, Slovakia, Sweden, Czech Republic and Germany.

The prices for call origination that the PTA takes into account are those that became effective in these EEA States by 1 January 2015. The average tariff charged for origination in these EEA States is ISK 0.56 per minute.[12]

According to the PTA, in most EEA States there is no longer a special connection charge for call origination and for this reason the PTA has taken into account only the per minute charge for call origination. The PTA also remarks that in the majority of those EEA States there are no longer varying charges for day, night and weekend rates.[13]

In accordance with the conclusion of the benchmarking exercise mentioned above, the PTA intends to set the maximum wholesale rates for call origination in the Siminn fixed line telephone network at ISK 0.56/minute for the period starting on 1 January 2016 until 31 December 2016. These are wholesale rates per minute excluding VAT. The existing connection charge will be withdrawn at the time of entry into force of the new tariff.

The current maximum prices will continue to be in force unchanged until the entry into force of the new tariffs on 1 January 2016. The PTA indicates that the new tariff will imply a 33% reduction of the price for three-minute telephone calls when compared to the current average origination price for a three-minute telephone call of ISK 0.84/minute.

II.2.2. Price for the wholesale markets for call termination on individual public telephone networks provided at a fixed location (market 3)

The PTA has selected the 17 EEA States that have established prices for call termination based on a pure LRIC model: Austria, United Kingdom, Bulgaria, Denmark, France, Greece, Ireland, Italy, Croatia, Malta, Romania, Slovakia, Slovenia, Spain, Sweden, Czech Republic and Hungary. In France and the United Kingdom, termination charges are not calculated for single transit and therefore the PTA has not included those States in the benchmarking.

The prices for call origination that the PTA takes into account are those that became effective in these EEA States by 1 January 2015. The average tariff charged for termination in these EEA States is ISK 0.16 per minute.[14]

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[11] The PTA has included Italy, which uses a Total Service Long Run Incremental Cost (TSLRIC) as it considers it analogous to the LRAIC model.

[12] The equivalent of 0.36 EUR cent per minute.

[13] Where the average price per minute with respect to traffic is established the PTA has used it in the comparison but otherwise the arithmetic mean of those rates that are available is used.

[14] The equivalent of 0.10 EUR cent per minute.

The same consideration with regard to the absence of a special connection charge for call origination applies to call termination, and therefore it is also only the per minute charge that the PTA has taken into account for call termination. It seems to be also the case that in most EEA States there are no longer varying charges for day, night and weekend rates.[15]

In accordance with the conclusion of the benchmarking exercise mentioned above, the PTA intends to set the maximum wholesale rates for call termination in the fixed line telephone networks at ISK 0.16/minute for the period starting on 1 January 2016 until 31 December 2016. These are wholesale rates per minute excluding VAT. The existing connection charge will be withdrawn at the time of entry into force of the new tariff.

Pursuant to the PTA´s Decision no. 36/2012, the new prices shall apply as maximum prices charged by Siminn, Vodafone, Nova, Símafélagið and Hringdu for call termination in fixed line public telephone networks in Iceland.

The current maximum prices will continue to be in force unchanged until the entry into force of the new tariffs on 1 January 2016. The PTA indicates that the new tariff will imply a 81% reduction of the price for three-minute telephone calls when compared to the current average origination price for a three-minute telephone call of ISK 0.63/minute.

III. COMMENTS

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

Timely enforcement and effectiveness of remedies

The Authority observes the late implementation of the price control remedies in the present draft measure, despite having been imposed by the PTA on the SMP operators in the last market review carried out in 2012. As in previous comments letters,[16] the Authority reiterates the importance of NRAs enforcing remedies in a timely and effective manner following the conclusion of the underlying market analysis, for the sake of pursuing a consistent policy across all EEA States and ensuring effective and targeted regulation.

Furthermore, in the case of market 3, the Authority's Recommendation on the regulatory treatment of termination rates specified an implementation date of 31 December 2012, i.e. three years before the envisaged implementation date for the present draft measure. In this regard, the Authority recalls, in particular, its comment in Case 74442 and the need for a consistent EEA approach to termination rates to eliminate barriers in the internal market. Against this background, and whilst acknowledging the PTA's references to certain exogenous factors contributing to the delayed implementation of the remedies for market 3, the Authority considers that the proposed implementation date of 1 January 2016 further delays the implementation of cost efficient rates for the benefit of consumers. The Authority therefore urges the PTA to implement the currently proposed remedies without any further delay.

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[15] Where the average price per minute with respect to traffic is established, the PTA has used it in the comparison but otherwise the arithmetic mean of those rates that are available is used.

[16] See, for example, the Authority's "comments" letter of 21 May 2015 in Case 77283.

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.

Pursuant to Point 15 of the Procedural Recommendation[17], 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[18] 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,

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Director
Internal Market Affairs Directorate

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

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[17] 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").

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