EFTA SURVEILLANCE AUTHORITY

Brussels, 23 July 2015
Case No: 77567
Document No: 763795

Póst- og Fjarskiptastofnun
Sudurlandsbraut 4
108 Reykjavik,
Iceland

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

Dear Mr. Gíslason,

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

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

I. PROCEDURE

On 23 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 wholesale market for voice call termination on individual mobile networks.[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 1 April 2015 to 18 May 2015.

[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").

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 expired on 23 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 third-round review of the wholesale market for voice call termination on individual mobile networks in Iceland was notified to and assessed by the Authority under Case No 70923.[3] As regards the relevant product market, the network of each individual operator was considered a distinct product market, regardless of the technology used. In Decision no. 3/2012 the PTA designated all active mobile network operators ("MNOs") providing mobile termination as having significant market power ("SMP") on their respective markets. Accordingly, *Síminn hf.* ("Siminn"), *Fjarskipti ehf.* ("Vodafone"), *Nova ehf.* ("Nova") and *IMC Ísland ehf./Alterna* ("IMC/Alterna") were designated with SMP. The PTA also designated the mobile virtual network operator ("MVNO") *IP-fjarskipti ehf.* ("Tal") with SMP. The PTA imposed access, non-discrimination and price control obligations on all of the above operators. In addition, the PTA imposed an accounting separation obligation on Siminn and Vodafone.

In the PTA's Decision no. 3/2012, the practice of deciding mobile termination rates with reference to Siminn's cost-analysed prices was discontinued and, further to the Authority's Recommendation of 13 April 2011 on the Regulatory Treatment of Fixed and Mobile Termination Rates in the EFTA States, benchmarking[4] was prescribed instead. The PTA committed to carrying out an annual benchmarking exercise leading to a decision establishing a termination rate no later than 1 November each year for the period of validity of the analysis. The PTA subsequently implemented benchmarking in Decisions 32/2012[5], 25/2013[6] and 24/2014[7]. In the PTA's Decision no. 25/2013 the maximum termination rate for all SMP operators was set at ISK 1.64 per minute for the year 2014, while in the PTA's Decision no. 24/2014 the maximum termination rate was set at ISK 1.52 per minute for the year 2015.

II.2. Market definition

The PTA indicates that since the previous analysis[8] the company *365 miðlar ehf* ("365") has purchased Tal and the merging of these companies has been endorsed by the Icelandic Competition Authority subject to certain conditions. The merged companies are identified as 365 (Tal) in the currently notified draft measure.

---

[3] See the Authority's "no comments" letter dated 6 January 2012.

[4] The benchmarking methodology was to be based on those countries within the EEA which had been analysed using the bottom-up long-run incremental costs – BU-LRIC – methodology.

[5] See the Authority's "comments" letter of 26 October 2012 under Case 72572.

[6] See the Authority's "comments" letter of 28 October 2013 under Case 74442.

[7] See the Authority's "no comments" letter of 22 October 2014 under Case 76066.

[8] See section II.1 above.

As regards the product market definition, the network of each individual operator continues to be defined as a distinct product market, regardless of the technology used; i.e. it includes: GSM (2G), UMTS (3G), LTE (4G) and virtual mobile phone networks. For this reason, the PTA intends to specify the following service markets:

- Call termination on the Siminn GSM/UMTS/LTE mobile phone network;
- Call termination on the Vodafone GSM/UMTS/LTE mobile phone network;
- Call termination on the Nova UMTS/LTE mobile phone network;
- Call termination on the IMC/Alterna GSM mobile phone network; and
- Call termination on the 365 (Tal) virtual mobile phone network.

The PTA considers the relevant geographic market to correspond to the geographic coverage of each operator's network and to be national in scope, that is, limited to Iceland.

II.3. Finding of significant market power

The PTA concludes that circumstances on the relevant markets are similar to those in the previous analysis. No new technical innovations have been introduced that make it possible to compete on the call termination market within an individual network. Thus, the PTA proposes to designate all active MNOs providing mobile termination as having SMP on their respective markets. These are: Siminn, Vodafone, Nova and IMC/Alterna. In addition, the MVNO, 365 (Tal), is also designated with SMP. The main criteria considered by the PTA when reaching its conclusion on the SMP designation are: market shares (each operator has a 100% market share on its own network), significant entry barriers, lack of countervailing buyer power and price development.

II.4. Regulatory remedies

The PTA proposes to impose the following remedies on all operators designated with SMP on their relevant markets:

(i) access obligation;
(ii) non-discrimination obligation; and
(iii) price control (benchmarking) obligation.

The PTA intends to maintain the benchmarking exercise during the period of validity of the current market analysis.[9]

The PTA will thus update the maximum termination rate using the benchmarking methodology on an annual basis in the years 2016, 2017 and 2018 respectively. This updating process shall be completed by way of a decision by 1 November of each year, the result of which will then be applied by the start of the following year. The PTA states its intention to consult on such rates in advance of its final decisions, both at national level and at EEA level under the Article 7 mechanism of the Framework Directive.

The PTA intends to apply the following main criteria as a basis for calculating call termination rates when carrying out the benchmarking exercise:

---

[9] The PTA assumes that the period of validity of this market analysis is three years. 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 and the PTA notes further that it does not have the option of using assistance from BEREC under the current framework.

- Only those EEA states will be taken into consideration where the termination rates of operators designated with SMP on the markets in question are subject to price control by the NRA;
- The comparison will be based on prices resulting from calculations based on a pure BU-LRIC model available in April of the year when the benchmarking exercise was carried out in each instance;
- A formal decision has been made by the relevant NRA; and
- The resulting price will not be higher than the average in those EEA States that fulfil the conditions mentioned above during the period of reference.

As electronic communications operators outside of the EEA are generally not subject to price control obligations, the PTA is concerned that Icelandic mobile phone operators may need to pay such undertakings considerably higher termination rates than the Icelandic mobile phone operators can expect to pay counterparties within the EEA. The PTA considers that such a difference can prove disadvantageous for Icelandic mobile phone operators as well as for Icelandic mobile phone users paying for calls to such non-EEA countries compared to users in such non-EEA countries paying for calls to Iceland. For this reason, the maximum termination rates according to the benchmarking that the PTA plans to prescribe will only apply to telephone calls that originate in networks 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 of the EEA.

Finally, the PTA intends to withdraw the accounting separation obligation it had imposed in its Decision no. 3/2012 on Siminn and Vodafone. Indeed, the PTA considers it unnecessary to maintain that obligation because of the use of a benchmarking exercise to establish maximum termination rates, which are no longer based on the cost-analysed prices of the operators.

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.

EFTA SURVEILLANCE AUTHORITY

Pursuant to Point 15 of the Procedural Recommendation[10], 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[11] 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,

Gabrielle Somers
Acting Director
Internal Market Affairs Directorate

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

---

[10] 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").

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