Brussels, 28 October 2013
Case No: 74442
Event No: 687479

**Póst-Og Fjarskiptastofnun** (PTA)
Attention: Hrafnkell V. Gíslason
Managing Director
Sudurlandsbraut 4
108 Reykjavik, Iceland

Dear Sir,

**Subject: Remedies relating to the wholesale market for voice call termination on individual mobile phone networks (market 7) in Iceland**

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

## I. Procedure

On 26 September 2013, 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* (PTA). The draft measure concerns the wholesale market for voice call termination on individual mobile networks[2] in Iceland.

The notification became effective on the same day. National consultation pursuant to Article 6 of the Framework Directive was carried out in the period from 22 August 2013 to 9 September 2013.

The period for consultation with the Authority under Article 7 of the Framework Directive expires on 28 October 2013.

Pursuant to Article 7(3) of the Framework Directive, national regulatory authorities ("NRAs") and the Authority may make comments on notified draft measures to the NRA concerned.

## II. Description of the draft measure

### II.1. Previous notifications

The first benchmarking exercise carried out by the PTA was notified and assessed by the Authority under Case No 72572 on 26 October 2012. This decision was based on the PTA's third round review of the Icelandic wholesale market for voice call termination on

[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 in EFTA Surveillance Authority Recommendation 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.

individual mobile networks[3] which provided for a benchmark in line with the Authority's Termination Rates Recommendation[4] so as not to exceed the average of the mobile termination rates ("MTRs") set by NRAs implementing the recommended cost methodology (that is, the bottom-up long-run incremental cost model, BU-LRIC). The resulting termination fee level amounted to ISK 1.66/minute and was intended to apply to all SMP operators as of 1 July 2013 and until 31 December 2013. In addition, it was envisaged that the annual update of the benchmark would be completed no later than 1 November each year, with the resulting rate entering into force on 1 January of the following year.

The Authority considered that, given that the proposed measure set a level of MTRs which tended towards pure BU-LRIC rates, a very limited delay in the implementation of the cost-oriented rates in Iceland was acceptable, taking account of the need to minimise possible disruptive effects on the sector flowing from a significant decrease in MTRs. Therefore, the Authority took the view that MTRs at a level of ISK 1.66/minute, applicable as of 1 July 2013 *at the latest*, based on a benchmark calculated against countries employing the BU-LRIC costing methodology sufficiently addressed the pressing need to ensure that consumers derive maximum benefits in terms of efficient cost-based MTRs as soon as possible after the recommended deadline of 31 December 2012 by eliminating competitive distortions associated with above-cost MTRs.

The PTA's decision (Decision No. 3/2012) was appealed to the Appellate Committee for Electronic Communications and Postal Affairs (the "Committee"). On 30 June 2013 the Committee repealed the part of the decision which determined the date of entry into force of the reduction of MTRs in Iceland from 4 ISK/min to 1.66 ISK/min on grounds of proportionality.[5]

While the Committee did not question the aim of bringing MTRs in Iceland into conformity with the Termination Rates Recommendation as soon as possible, it observed that the PTA's benchmarking exercise was based on only seven NRAs that had applied a pure BU-LRIC costing approach with rates due to enter into force by 1 July 2013. In view of the number of EEA States that had stipulated later dates of entry into force for rates based on a pure BU-LRIC costing approach or benchmark, or had not taken any decision on whether to apply that costing methodology, the Committee found that the 1 July 2013 date stipulated by the PTA for entry into force of the lower MTRs was disproportionate.

As a result, the ISK 1.66/minute rate did not enter into force on 1 July 2013 as foreseen, and the old rate of ISK 4.00/minute, based on Siminn's cost analysis (using historical costs) was maintained and currently remains applicable until 31 December 2013.

### II.2. Regulatory remedies

In the current draft measure, the PTA has carried out the benchmarking comparison on the basis of the 14 NRAs which, by 1 July 2013, had adopted a final decision stipulating a cost-efficient target MTR based on the BU-LRIC cost model. The resulting arithmetical average amounts to ISK 1.64/minute (€1.04) and constitutes a maximum price cap (excluding VAT), which will apply equally to all SMP operators. The PTA intends the

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[3] Notified to and assessed by the Authority under Case No 70923 on 6 January 2012.
[4] EFTA Surveillance Authority Recommendation of 13 April 2011 on the Regulatory Treatment of Fixed and Mobile Termination Rates in the EFTA States (the "Termination Rates Recommendation"), EEA Supplement to the Official Journal No. 62, 8.11.2012 , p.1.
[5] Appellate Committee ruling No. 6/2012.

rate to be applicable from 1 January 2014 until 31 December 2014. The former rate of ISK 4.00/minute will be maintained until 31 December 2013.

The PTA intends to review the currently proposed level of MTRs on an annual basis (by 1 November), without carrying out a new analysis of the relevant markets.[6]

The 14 NRAs which adopted decisions with cost-efficient target MTRs and which are taken into account by the PTA for its benchmarking comparison are as follows:

| Comparison NRAs | MTR in ISK/ minute[7] |
|---|---|
| Belgium | 1.70 |
| United Kingdom | 1.57 |
| Bulgaria | 1.61 |
| Denmark | 1.69 |
| France | 1.26 |
| Greece | 1.73 |
| Italy | 1.54 |
| Croatia | 1.31 |
| Portugal | 2.00 |
| Poland | 1.61 |
| Slovakia | 1.93 |
| Spain | 1.72 |
| Sweden | 1.66 |
| Czech Republic | 1.65 |

## III. Comments

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

**Need for a consistent EEA approach for termination rates to eliminate barriers to the internal market**

The Authority commends the PTA's efforts to comply with the recommended benchmarking approach – which foresees that NRAs must take into account the

[6] The PTA has informed the Authority that it intends to commence a new fully-fledged review of market 7 at the end of 2014, with a final decision envisaged in 2015.

[7] For the calculation of the MTR in ISK, the PTA uses the average exchange rate of the relevant currency for the second quarter of 2013 as published by the Central Bank of Iceland.

best evidence available at the time of the decision (i.e. the cost-efficient target rates in the EEA States that have implemented the recommended pure BU-LRIC model for the relevant regulatory period[8]). The Authority regrets that the benchmarked MTR calculated by the PTA in its Decision 3/2012 (at the level of ISK 1.66/minute) based on countries employing the pure BU-LRIC model at that time did not enter into force on 1 July 2013, as previously notified to the Authority.

In the Authority's view, and as expressed previously, this delays the pressing need to ensure that consumers derive maximum benefits in terms of efficient cost-based MTRs as soon as possible.

The Authority further notes that if the MTRs set in one EEA State by one NRA are above the efficient level, the terminating operators in that EEA State will be able, on the basis of the "calling party pays" principle, to benefit from that rate at the expense of operators, and ultimately consumers, in other EEA States. Moreover, MTRs set at an efficient level contribute to a level playing field by reducing the scope for competitive distortions between different operators (i.e. between fixed and mobile operators as well as between operators of differing size) both at national and EEA level. Where termination rates are set above efficient costs, this can create substantial transfers and competitive distortions between fixed and mobile markets and consumers, as well as between operators with asymmetric market shares and traffic flows.

It is for these reasons that the Authority adopted the Termination Rates Recommendation with an implementation date of 31 December 2012 (i.e. one year earlier than the proposed implementation date in Iceland), with a view to ensuring a timely, effective and harmonised application of the regulatory framework. In furthering the achievement of the objectives set out in Article 8 of the Framework Directive, the Authority is mindful of ensuring that EEA end users can realise the full benefits of cost-efficient MTRs as soon as possible.

## 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 regulatory authorities and the Authority and may adopt the resulting draft measure and, where 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[9], the Authority will publish this document on its eCOM Online Notification Registry. The Authority does not consider the

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[8] This approach is confirmed in Commission decisions under the Article 7 procedure, see: IE/2012/1371, EE/2012/1373, EL/2012/1343, LV/2012/1356 and SK/2010/1151.

[9] 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

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information contained herein to be confidential. You are invited to inform the Authority within three working days[10] 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

Per Andreas Bjørgan
Director
Competition and State Aid Directorate

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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").

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