

Brussels, 25 October 2017
Case No: 81176
Document No: 875984

Póst- og Fjarskiptastofnun
Suðurlandsbraut 4
108 Reykjavík
Iceland

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

Dear Mr. Gíslason,

Subject: Wholesale market for voice call termination on individual mobile networks in Iceland - Remedies – Tariff determination via benchmarking Article 7(3) of Directive 2002/21/EC (Framework Directive)¹: No comments

I. PROCEDURE

On 26 September 2017, 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.

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”). By Decision No 093/16/COL of 11 May 2016, the Authority adopted a revised Recommendation on relevant product and service markets within the electronic communications sector susceptible to ex ante regulation in accordance with the Framework Directive (OJ L 84, 30.3.2017, p.7), (“the 2016 Recommendation”), however, pursuant to its Article 5, the 2016 Recommendation is without prejudice to *i.a.* regulatory obligations adopted by the national regulatory authorities prior to its adoption. As the notified draft measure is foreseen in the PTA’s Decision no. 20/2015, the 2016 Recommendation has no impact on the notified draft measure.

A national consultation was carried out, pursuant to Article 6 of the Framework Directive, during the period from 10 August to 31 August 2017.

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 26 October 2017.

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

On 23 June 2015, the PTA notified its fourth-round review of the wholesale market for voice call termination on individual mobile networks in Iceland, which the Authority assessed under Case No 77567.³ Subsequently, the PTA adopted the notified measures under Decision no. 20/2015 designating the mobile network operators (“MNOs”) *Siminn hf*, *Fjarskipti ehf*, *Nova ehf*, *IMC Ísland ehf/Alterná* and the mobile virtual network operator (“MVNO”) *365 miðlar ehf* as having significant market power (“SMP”) on their respective markets⁴. It imposed *i.a.* price control obligations based on the benchmarking method⁵ applying the following criteria:

- The mobile termination rate (“MTR” or “termination rate”) shall be decided on an annual basis and completed by 1 November in the year preceding its applicability;
- Only the MTRs decided by EEA NRAs on the basis of a pure Bottom-Up Long-Run Incremental Cost (“BU-LRIC”) model will be taken into account;
- The comparison will be based on prices resulting from conclusions on MTRs which are available in April of the year when the benchmarking exercise is made;
- Only MTRs subject to a formal decision by a NRA will be taken into account; and
- The resulting MTR shall not be higher than the average in those EEA States that fulfil the criteria mentioned above.

Subsequently, on 29 September 2015, the PTA notified its annual benchmarking comparison which the Authority assessed under Case No 77998.⁶ The resulting average amounted to ISK 1.40/minute and constituted a maximum price cap (excluding VAT) which was to apply equally to all operators having SMP from 1 January 2016 to 31 December 2016.

On 8 September 2016, the PTA notified its annual benchmarking comparison which the Authority assessed under Case No 79550.⁷ The PTA took into account MTRs fixed by 22

³ See the Authority’s “No Comments Letter” of 23 July 2015 (Document No. 763795).

⁴ See section II.2 of the Authority’s “No Comments Letter” of 23 July 2015 for a detailed description of the PTA’s market definition.

⁵ 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. The PTA notes further that it does not have the option of using assistance from BEREC under the current framework.

⁶ See the Authority’s “Comments Letter” of 23 October 2015 (Document No. 776266) in which the Authority *i.a.* commented that benchmarking calculations should, where possible, be based on forward-looking MTRs applicable in the same reference period as the MTR proposed in the draft measure.

⁷ See the Authority’s “No Comments Letter” of 29 September 2016 (Document No. 819002).

EEA NRAs which, by April 2016, had adopted decisions on MTRs based on the pure BU-LRIC model.⁸ The PTA took into account MTRs applicable in 2017, where a formal decision on the final MTR had been adopted by 1 April 2016. The resulting average amounted to ISK 1.23/minute and constituted a maximum price cap (excluding VAT), which was to apply equally to all SMP operators from 1 January 2017 until 31 December 2017.

II.2. Regulatory remedies

In the current draft measure, the PTA has carried out the annual benchmarking comparison on the basis of 23 EEA NRAs which, by April 2017, had adopted decisions on MTRs based on the pure BU-LRIC model.⁹ The resulting average amounts to ISK 0.97/minute and constitutes a maximum price cap (excluding VAT), which will apply equally to all SMP operators. The PTA intends the MTR to be applicable from 1 January 2018 until 31 December 2018.

The 23 EEA NRAs, which according to the PTA have adopted MTR decisions based on a pure BU-LRIC model and which are taken into account by the PTA for its benchmarking exercise, are as follows:

Comparator NRAs	MTR in ISK/minute ¹⁰
Austria	0.93
Belgium	1.36
United Kingdom	0.66
Bulgaria	0.82
Denmark	0.73
France	0.85
Greece	1.23
Ireland	0.91 ¹¹
Italy	1.13
Croatia	0.73
Luxembourg	1.02
Malta	0.47
Norway	0.80
Portugal	0.86
Poland	1.17
Romania	1.10
Slovakia	1.41
Slovenia	1.31
Spain	1.25
Sweden	0.73 ¹²
Czech Republic	1.07
Hungary	0.64
Germany	1.10 ¹³

⁸ One comparator country, *i.e.* Ireland, had been added since the PTA's previous benchmark calculation.

⁹ One comparator country, *i.e.* Germany, has been added since the PTA's previous benchmark calculation.

¹⁰ The PTA has indicated that the comparator MTRs are based on information available on the European Commission's CIRCABC Information Resource Centre, the ESA eCOM notification registry and Cullen International and BEREK benchmarking reports, as well as information published on the websites of the relevant NRAs. For the calculation of the MTR in ISK, the PTA used the Central Bank of Iceland's mid-rates for the second quarter of 2017.

¹¹ The MTR will apply in 2018.

¹² *Idem.*

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.

Pursuant to Point 15 of the Procedural Recommendation¹⁴, 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 days¹⁵ 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,



Gunnar Thor Pétursson
Director
Internal Market Affairs Directorate



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

¹³ *Idem.*

¹⁴ 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 of 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 I thereto.

¹⁵ The request should be submitted through the eCOM Registry, marked for the attention of the eCOM Task Force.