

Brussels, 3 December 2008  
Case No: 65637  
Event No: 498031

Póst- og Fjarskiptastofnun  
Sudurlandsbraut 4  
108 Reykjavik  
Iceland

For the attention of:  
Mr Hrafnkell Gíslason, Director

Dear Mr Gíslason,

**Subject: Comments pursuant to Article 7(3) of Directive 2002/21/EC<sup>1</sup> concerning the Icelandic retail markets for:**

- **Access to the public telephone network at a fixed location for residential customers**
- **Access to the public telephone network at a fixed location for non-residential customers**
- **Publicly available local and/or national telephone services provided at a fixed location for residential customers**
- **Publicly available international telephone services provided at a fixed location for residential customers**
- **Publicly available local and/or national telephone services provided at a fixed location for non-residential customers**
- **Publicly available international telephone services provided at a fixed location for non-residential customers**

## **I PROCEDURE**

On 3 November 2008, the EFTA Surveillance Authority (“the Authority”) registered a notification pursuant to Article 7(3) of the Framework Directive from the Icelandic national regulatory authority, *Póst- og Fjarskiptastofnun* (“PTA”), relating to the Icelandic retail markets for:

- (1) Access to the public telephone network at a fixed location for residential customers;
- (2) Access to the public telephone network at a fixed location for non-residential customers;
- (3) Publicly available local and/or national telephone services provided at a fixed location for residential customers;

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<sup>1</sup> Directive 2002/21/EC of the European Parliament and of the Council on a common regulatory framework for electronic communication networks and services (Framework Directive), as referred to at point 5cl of Annex XI to the EEA Agreement and as adapted to the Agreement by Protocol 1 thereto and by the sectoral adaptations contained in Annex XI to that Agreement.

- (4) Publicly available international telephone services provided at a fixed location for residential customers;
- (5) Publicly available local and/or national telephone services provided at a fixed location for non-residential customers;
- (6) Publicly available international telephone services provided at a fixed location for non-residential customers.

The present notification was based on the list of markets contained in the Annex to the Authority's original Recommendation on relevant product and service markets within the electronic communications sector susceptible to *ex ante* regulation adopted in 2004 ("the 2004 Recommendation").<sup>2</sup> On 5 November 2008, the Authority adopted a new Recommendation on relevant markets with a reduced list of markets susceptible to *ex ante* regulation.<sup>3</sup> The present notification was submitted prior to the adoption of the Authority's new Recommendation, following market analyses of the six retail markets and consultation at the national level. Thus, the Authority has based its assessment on its 2004 Recommendation.

The notification consisted of the following documents:

- A summary notification form, event no. 496989;
- A draft decision designating undertakings with significant market power and imposing obligation in the retail markets for publicly available telephone services provided at a fixed location, event no. 496990;
- Market analysis (Annex A), event no. 496996;
- Summary of the result of the consultation on PTA's preliminary draft analysis of the retail markets for general telephone services on fixed-line networks (markets 1 – 6), (Annex B), event no. 496991.

Additional information was provided, at the Authority's request, by letter submitted on 2 December 2008.

PTA carried out the national consultation, pursuant to Article 6 of the Framework Directive, between 7 March 2008 and 25 April 2008. Three parties submitted contributions in the consultation. The Icelandic Competition Authority did not object to PTA's conclusions.

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

The EEA consultation period under Article 7 of the Framework Directive expires on 3 December 2008.

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<sup>2</sup> EFTA Surveillance Authority Recommendation of 14 July 2004 on relevant product and service markets within the electronic communications sector susceptible to *ex ante* regulation in accordance with Directive 2002/21/EC of the European Parliament and of the Council on a common regulatory framework for electronic communication networks and services, as incorporated into the Agreement on the European Economic Area. The Recommendation was adopted by Decision No 194/04/COL.

<sup>3</sup> 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 Act referred to at point 5c) of Annex XI to the EEA Agreement (Directive 2002/21/EC of the European Parliament and of the Council on a common regulatory framework for electronic communication networks and services), as adapted by Protocol I thereto and by the sectoral adaptations contained in Annex XI to that Agreement. The Recommendation was adopted by Decision No 688/08/COL.

## II DESCRIPTION OF THE DRAFT MEASURE

### II.1 Product market definition

PTA defined the relevant product markets as follows:

#### Market 1:

##### **Access to the public telephone network at a fixed location for residential customers**

This market includes any type of connection to the electronic communications network with fixed-line access to public telephone services for residential users, irrespective of the infrastructure or technology on which that access is based. This means that this relevant market is not limited to analogue (PSTN) or digital (ISDN) access to the copper local loop network; rather, it also includes residential access to the public telephone network via other access networks through a fixed network termination point (including access to broadband networks with the assistance of various technological solutions).

#### Market 2:

##### **Access to the public telephone network at a fixed location for non-residential customers**

This market includes any type of connection to the electronic communications network with fixed-line access to public telephone services for non-residential users, irrespective of the infrastructure or technology on which that access is based. This means that this relevant market is not limited to analogue (PSTN) or digital (ISDN) access to the copper local loop network; rather, it also includes non-residential access to the public telephone network through a fixed network termination point (including access to broadband networks with the assistance of various technological solutions).

#### Market 3:

##### **Publicly available local and/or national telephone services provided at a fixed location for residential customers**

This market includes all residential telephone use originating in a fixed-line network in Iceland and terminating in a fixed or mobile network in Iceland. In this context, telephone communications with Icelandic mobile phone operators' subscribers who are located abroad are defined as termination within an Icelandic mobile phone network and are therefore a part of this market. However, telephone communications with foreign mobile network operators' customers located in Iceland do not belong to this market.

#### Market 4:

##### **Publicly available international telephone services provided at a fixed location for residential customers**

This market includes all residential telephone use originating in a fixed-line network in Iceland and terminating in another country. Telephone communications via international telephone cards are considered to belong to this market. Telephone communications with Icelandic operators' mobile phone subscribers located abroad are defined as terminating in an Icelandic mobile network and therefore do not belong to this market. Telephone communications with foreign mobile network operators' customers located in Iceland do belong to this market. Telephone communications from domestic fixed networks to foreign mobile phone numbers are considered to terminate in a foreign mobile network, even where the foreign mobile phone user is located in Iceland.

**Market 5:****Publicly available local and/or national telephone services provided at a fixed location for non-residential customers**

This market includes all non-residential telephone use originating in a fixed-line network in Iceland and terminating in a fixed or mobile network in Iceland. In this context, telephone communications with Icelandic mobile phone operators' subscribers who are located abroad are defined as termination within an Icelandic mobile phone network and are therefore a part of this market. However, telephone communications with foreign mobile network operators' customers located in Iceland do not belong to this market.

**Market 6:****Publicly available international telephone services provided at a fixed location for non-residential customers**

This market includes all non-residential telephone use origination in a fixed-line network in Iceland and termination in another country. Telephone communications via international telephone cards are considered to belong to this market. Telephone communications with Icelandic operators' mobile phone subscribers located abroad are defined as terminating in an Icelandic mobile network and therefore do not belong to this market. Telephone communications with foreign mobile network operators' customers located in Iceland do belong to this market. Telephone communications from domestic fixed networks to foreign mobile phone numbers are considered to terminate in a foreign mobile network, even where the foreign mobile phone user is located in Iceland.

On the basis of the market analysis, the Authority considers that PTA has not deviated from the market definitions of markets 1 to 6 as laid down in the Annex to the Authority's 2004 Recommendation on relevant markets.

**II.2 Geographic market definition**

PTA defined the relevant geographic markets for all six markets as comprising the entire country. In reaching this conclusion, PTA also considered possible delineation of geographic markets on a local or regional basis.

**II.3 Assessment of significant market power ("SMP")**

The criteria used by PTA to assess whether public telephone network operators have SMP in the relevant markets, as described above, are the following: revenues and market share; profitability; entry barriers (including control over infrastructure not easily duplicated; sunk costs; economies of scale and scope; access to capital; access to sales and distribution systems; and barriers to growth); potential competition and innovation; behaviour of market participants (including product bundling/diversification; the impact of significant market power on related markets; and price trends); and demand-side conditions (including dominant market position/ countervailing buying power; customers' switching options, potential switching costs, and the effects of binding contracts; and customers' access to information).

As regards the assessment of the criteria related to **product bundling**, PTA stated in the market analysis that Síminn dominates the supply of fixed-line phone services, broadband, broadband television, and mobile phone services to users. For this reason, PTA considered Síminn to have an advantage over potential competitors in assembling attractive integrated solutions for individuals and offering and pricing these products in an innovative way.

Concerning the assessment of **market shares**, PTA claimed that Síminn's market share on all six markets is still large enough to indicate unequivocally that the company has

significant market power in this market. Even though the company's market share in the six markets has dropped slightly from year to year since the monopoly was lifted, this trend has been very slow.

An examination of market shares in terms of revenues and in terms of traffic is presented below by market.

#### **Market 1:**

##### **Access to the public telephone network at a fixed location for residential customers**

In 2007, Síminn's market share in the relevant markets was [80-85%]<sup>4</sup> in terms of revenues and [80-85%] in terms of the number of subscriptions. According to PTA, Síminn's market share is still large enough to indicate unequivocally that the company has significant market power in this market. The company's market share has dropped slightly from year to year since the monopoly was lifted; however, this trend has been, and still is, very slow.

#### **Market 2:**

##### **Access to the public telephone network at a fixed location for non-residential customers**

In 2007, Síminn had a [75-80%] market share in the relevant market, based on its revenues from PSTN/ISDN access lines. PTA pointed out that Síminn's market share is still large enough to indicate unequivocally that the company has significant market power in this market. The company's market share has dropped slightly from year to year since the monopoly was lifted; however, this trend has been, and still is very slow.

#### **Market 3:**

##### **Publicly available local and/or national telephone services provided at a fixed location for residential customers**

In 2007, Síminn's market share in the relevant market was [75-85%] in terms of revenues and [75-80%] in terms of the number of minutes. Síminn's market share is still high enough to indicate unequivocally that the company has significant market power in this market. According to PTA, the company's market share has dropped slightly from year to year since the monopoly was lifted; however, this trend has been, and still is, very slow.

#### **Market 4:**

##### **Publicly available international telephone services provided at a fixed location for residential customers**

In assessing the state of competition in this market, PTA considered that Síminn dominates the supply of fixed-line phone services, broadband, broadband television, and mobile phone services to users. According to the assessment by PTA, Síminn had lost a large portion of its market share in terms of the volume of international telephone traffic. A service provider that offers less expensive calling using pre-paid telephone cards has gained a market share in traffic that is close to that of Síminn. However, Síminn has the largest market share in terms of revenues. PTA pointed to the fact that Síminn has not needed to lower its prices in order to respond to competition in this market, and assumes that this indicates strongly that the company has SMP.

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<sup>4</sup> Deviation band included for reasons of confidentiality.

**Market 5:****Publicly available local and/or national telephone services provided at a fixed location for non-residential customers**

In assessing the state of competition in this market, PTA found that Síminn's market share in terms of revenues from domestic telephone calls has changed very little in recent years. In 2007 its market share was [65-75%] in terms of revenues and [60-70%] in terms of volume of traffic.

**Market 6:****Publicly available international telephone services provided at a fixed location for non-residential customers**

In assessing the state of competition in this market, PTA considers Síminn to have by far the largest market share in this market, or approximately [70-75%] in revenues and [60-65%] in traffic. Síminn dominates the supply of fixed-line phone services, broadband, broadband television, and mobile phone services to users. For this reason, PTA considers that Síminn has an advantage over potential competitors in assembling attractive integrated solutions for non-residentials and offering and pricing them in an innovative way.

On the basis of the above mentioned criteria, in particular the market shares, PTA determined that Síminn possesses SMP in all the retail markets for public telephone services on fixed-line networks and concludes that Síminn still has the financial strength to prevent effective competition and therefore can operate without concern for competitors, customers, and consumers.

**II.4 Regulatory remedies**

PTA does not intend to impose retail obligations on Síminn in the relevant retail markets, despite the fact that it has designated Síminn as an undertaking with significant market power in these markets. PTA is of the opinion that the wholesale obligations that have been imposed on Síminn in the public voice telephone network<sup>5</sup> will enhance effective competition and protect consumer interests.

PTA intends to impose the following regulatory requirements on Síminn at the wholesale level in the public voice telephone network at fixed location for residential and non-residential customers, designated markets 1 and 2:

- **Carrier selection and pre-selection;** obligation to continue to offer both carrier selection and carrier pre-selection;
- **Obligation to grant access** – obligation to respond to reasonable and appropriate requests by electronic communications undertakings for access to its public telephone network and the related wholesale services;
- **Non-discrimination** – obligation to practice non-discrimination concerning price and other elements, both with respect to external customers and with respect to internal vs. external customers and shall apply to all types of access to the public voice telephone network, and resale of such lines and services;
- **Transparency** – obligation to observe transparency and to publish a reference offer, terms and conditions for supply and use, price lists, and accounting information for its public voice telephone network division, including carrier

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<sup>5</sup> Including both POTS and ISDN network.

selection and pre-selection. Síminn shall also publish a reference offer for the related wholesale of lines and other solution in connection with single billing. The reference shall be itemised and must include prices, as well as terms and conditions for service levels. The offer shall contain a sufficiently detailed description of terms so that the party requesting access can easily determine its position;

- **Accounting separation** – the separation of accounting for wholesale of public voice telephone network operations, on the one hand, and retail of public voice telephone network operations, on the other, from other activities. Síminn's internal transfer prices at the wholesale level shall be transparent so as to prevent unfair cross-subsidisation;
- **Price controls** – for wholesale access to its public voice telephone network (including the related wholesale lines and other solutions in connection with single billing) and pre-selection. Síminn shall prepare a cost model for calculation, no later than six months following the publication of the decision on the relevant markets, using historical costs as a reference for its price lists;
- **Cost accounting** – for access to its public voice telephone network (including the related wholesale line rental and other solutions in connection with single billing) and pre-selection.

### III COMMENTS

The Authority has examined the notification and has the following comments pursuant to Article 7(3) of the Framework Directive:

Bearing in mind the absence of retail obligations in the notified draft measure, despite the fact that Síminn is declared as having SMP in the markets at issue, the Authority urges PTA to monitor market developments closely in order to verify whether the wholesale remedies have the effect expected by PTA on the notified retail markets. In particular, the Authority would like to draw PTA's attention to developments in the market for international calls for residential customers.

In addition, the Authority recalls that PTA has to intervene appropriately and timely if any anti-competitive practices are detected in these markets. On this basis, the Authority encourages PTA to consider whether it would be appropriate to carry out a new market review of the relevant markets at issue before the end of the usual two to three year duration foreseen for the notified draft measure.

### IV FINAL REMARKS

Pursuant to Article 7(5) of the Framework Directive, PTA may adopt the resulting draft measure and, where it does so, shall communicate the final measure to the Authority.

The Authority's position on this particular notification is without prejudice to any position the Authority may take *vis-à-vis* other notified draft national measures.

Pursuant to point 12 of the Authority's Article 7 Recommendation<sup>6</sup>, the Authority will publish this document on its eCOM Online Notification Registry. The Authority does not

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<sup>6</sup> EFTA Surveillance Authority Recommendation of 14 July 2004 on notifications, time limits and consultations provided for in Article 7 of Directive 2001/21/EC of the European Parliament and of the Council on a common regulatory framework for electronic communications networks and services, adopted by decision No 193/04/COL, OJ L113/10 of 27.4.2006.

consider the information contained herein to be confidential. You are invited to inform the Authority within three working days following receipt of this letter whether you consider that, in accordance with EEA and national rules on confidentiality, this document contains confidential information which you request to be deleted prior to such publication. You should give reasons for any such request. The request should be submitted through the eCOM Registry or by facsimile to +32 22 86 18 00, for the attention of the eCOM Task Force.

Yours sincerely,



Tuula Nieminen  
Acting Director  
Internal Market Affairs Directorate



Per Andreas Bjørgan  
Director  
Competition and State Aid Directorate