

Brussels, 14 June 2013  
Case No: 73636  
Event No: 674115



*Póst- og Fjarskiptastofnun*  
Sudurlandsbraut 4  
108 Reykjavik  
Iceland

For the attention of:  
Mr Hrafnkell Gíslason, Director

Dear Mr Gíslason,

**Subject: Market 1 - Retail market for access to the public telephone network at a fixed location for residential and non-residential customers in Iceland**

**Former markets 3-6 – Retail markets for publicly available telephone services provided at a fixed location for residential and non-residential customers in Iceland**

**Comments pursuant to Article 7(3) of Directive 2002/21/EC (Framework Directive)<sup>1</sup>**

## **I. Procedure**

On 14 May 2013, the EFTA Surveillance Authority (“the Authority”) registered draft measures pursuant to Article 7 of the Framework Directive from the Icelandic national regulatory authority, *Póst- og Fjarskiptastofnun* (“the PTA”), concerning a review of the retail market for access to the public telephone network at a fixed location for residential and non-residential customers<sup>2</sup> and the retail markets for publicly available telephone services provided at a fixed location for residential and non-residential customers in Iceland.<sup>3</sup>

---

<sup>1</sup> 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”).

<sup>2</sup> Corresponding to market 1 of EFTA Surveillance Authority Recommendation (Decision No. 688/08/COL) 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 5cl of Annex XI to the EEA Agreement (Framework Directive); OJ C 156, 9.7.2009, p.18 (“the Authority’s 2008 Recommendation”).

<sup>3</sup> Corresponding to markets 3-6 of the EFTA Surveillance Authority Recommendation (Decision No. 194/04/COL) of 14 July 2004 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 5cl of Annex XI to the

The notification became effective on the same day.

The national consultation took place between 30 November 2012 and 18 January 2013 pursuant to Article 6 of the Framework Directive.

The period for consultation with the Authority and the national regulatory authorities in the EEA States under Article 7 of the Framework Directive expires on 14 June 2013.

## II. Description of the draft measures

### II.1. Background

The PTA previously notified the retail markets for access to the public telephone network at a fixed location for residential and non-residential customers (markets 1 and 2 of the Authority's 2004 Recommendation) as well as the retail markets for publicly available telephone services provided at a fixed location for residential and non-residential customers (markets 3-6 of the Authority's 2004 Recommendation) in 2008.<sup>4</sup> The PTA found Siminn to have significant market power on all identified relevant markets. On markets 1 and 2, obligations were imposed on Siminn for carrier selection and pre-selection, wholesale access to connections to the fixed line telephone network, non-discrimination, transparency, accounting separation, price control and cost accounting.

On former markets 3-6, no retail obligations were imposed on Siminn at that time as, in the PTA's view, the wholesale obligations in force on former markets 8-12 as well as the carrier selection and pre-selection obligations were sufficient to ensure effective competition.

### II.2. Market definition

#### a) *Retail market for access to the public telephone network at a fixed location for residential and non-residential customers*

The PTA includes in the market definition any kind of connection with an electronic communications network that provides fixed line access to public telephone services for residential and non-residential customers<sup>5</sup>, regardless of the infrastructure or technology on which the access is based. This means that the market in question is not limited to analogue (PSTN) and digital (ISDN) access to the copper local loop but it also includes access to services provided through a broadband (high-speed) connection such as access to VoIP services provided *via* DSL and fibre networks.

According to the PTA, there are now approximately 19,000 subscribers to VOIP services in Iceland (equivalent to 10.5% of the total number of fixed telephony voice connections) with much of the recent significant growth attributable to VOIP services delivered *via* fibre-optic connections.<sup>6</sup> In the PTA's view, access to VOIP services with a telephone number provided *via* a fibre connection is viewed by the consumer as fully substitutable

---

EEA Agreement ("the Authority's 2004 Recommendation"). These markets are not listed in the Authority's 2008 Recommendation.

<sup>4</sup> See the Authority's comments' letter of 3 December 2008, Case No 65637, Event No 498031.

<sup>5</sup> The proposed market thus includes services for both residential and non-residential customers. The PTA notes that, in general, supply conditions do not justify maintaining the previous distinction between these respective customer segments.

<sup>6</sup> According to the PTA approximately 50,000 users can now connect to fibre-optic local loops in Iceland.

with access to PSTN/ISDN telephone services in terms of the products' characteristics (functionality/ quality), their prices and their intended use.<sup>7</sup>

As regards the nomadic VOIP services that only use numbers from the 49x xxx xxx sequence (and which account for just 1.7% of the total number of telephone connections), the PTA explains that access to these nomadic VOIP services is sufficiently interchangeable with access to PSTN/ISDN services in terms of pricing and functionality/quality of service. However, the PTA acknowledges the low usage of the nomadic VOIP service which it believes can be partly explained by the lack of emphasis by providers on the marketing of the service. It further explains that the main limitation of this service is that number portability is not allowed.<sup>8</sup> However, according to the PTA, this nomadic service could be considered a substitute for some users - such as those who are not concerned about their telephone number or for new users who do not need number portability - as the user is able to make a call to and receive calls from every telephone number and the prices are comparable.

The PTA does not quantify the number of users who use this nomadic VoIP service as an alternative, rather than as a complement, to other fixed voice telephone services but the regulator confirms that the number of users of this service only increased from 1,786 to 3,125 over the period 2009-2012, with the number of nomadic VOIP users in fact declining in the first half of 2012.<sup>9</sup>

Given the low numbers of customers, in the PTA's view it is not of any relevance to the conclusion of the market analysis whether this service is included or not, as it does not have a significant impact on the market shares. Furthermore, the PTA does not intend to impose remedies regarding this service.

Taking account of the nationwide coverage of Siminn's network, as well as the fact that Vodafone now offers access to its fixed public telephone network at a number of locations in the country, the geographical scope of the market is considered to cover the national territory of Iceland.

b) *Retail markets for publicly available telephone services provided at a fixed location for residential and non-residential customers*

With regard to the market definitions of former markets 3-6, the PTA considers that the definitions of the markets which were employed in PTA's previous market analysis in 2008 should still apply for the current analysis.<sup>10</sup>

---

<sup>7</sup> According to the PTA, the service is sold as a substitute for PSTN and pricing, functionality and quality are very similar. Also, the same terminal equipment is used for the telephone service on the fibre optic network and PSTN network and the quality is similar. While standalone voice services are cheaper on the PSTN, since VoIP services cannot be separated from the underlying internet access connection, the PTA notes that at least 93% of households in Iceland are already buying internet services. Thus, in the PTA's view, it makes sense to compare the price of voice telephone and broadband service bundles provided via the various technologies. Moreover, number portability is allowed between the voice service on the copper network and the non-nomadic voice service on the fibre optic network.

<sup>8</sup> The PTA notes, however, that it is considering lifting the ban on number portability for these nomadic services and this could come into effect in the near future.

<sup>9</sup> By contrast, the number of users of VOIP telephony through a fixed network connection point (i.e. non-nomadic users) increased from 4,952 to 19,303 over the same period.

<sup>10</sup> These market definitions were in line with the Authority's 2004 Recommendation.

### **II.3. Assessment of significant market power in the retail market for access to the public telephone network at a fixed location for residential and non-residential customers**

The PTA designates Siminn as possessing significant market power in the retail market for access to the public telephone network at a fixed location for residential and non-residential customers.

In reaching its conclusion, the PTA relied, *inter alia*, on market shares, entry barriers associated with economies of scale and scope, access to capital for new investments, and market maturity and resulting barriers to growth, as well as a lack of countervailing buyer power.

According to the PTA, although Siminn's market shares have declined since 2007<sup>11</sup>, they nevertheless remain very high. Looking at the speed of the decrease over the past years, the PTA expects that the market share of Siminn (by revenue) will continue to be over 50% for the next 2-3 years.

### **II.4. Evaluation of whether the retail markets for publicly available telephone services provided at a fixed location for residential and non-residential customers are still susceptible to *ex ante* regulation (the three-criteria test)**

Pursuant to Article 2 of the Authority's 2008 Recommendation, the following three criteria must be cumulatively met in order for a market to be considered as susceptible to *ex ante* regulation:

- The presence of high and non-transitory structural, regulatory or legal barriers to entry.
- A market structure which does not tend towards effective competition within the relevant time horizon.
- The insufficiency of competition law alone to address the markets failure(s) concerned adequately.

In its draft measures, the PTA assesses whether the retail markets for publicly available telephone services provided at a fixed location for residential and non-residential customers (markets 3-6 of the Authority's 2004 Recommendation) should remain susceptible to sector-specific *ex ante* regulation.

With regard to the first criterion, the PTA concludes - on the basis of factors such as control over infrastructure which is difficult to duplicate, economies of scale and scope, access to capital and barriers to expansion - that potential operators are not forced to build their own complete physical network in order to compete with Siminn in the relevant markets. Siminn's wholesale access obligations to provide access on the copper local loop, and its obligations to provide carrier selection and pre-selection which in the case of the latter have been in place for 12 years now, together with technical innovations (IP telephone exchanges) mean that the operators do not need to invest as much in equipment as previously. The increased number of providers on the relevant markets also shows,

---

<sup>11</sup> Between 2007 and 2011 Siminn's market shares in terms of revenues decreased from around 79%-84% to 72%. The operator's share by a number of subscriptions had changed from 82% 2007 to 67% in the same period.

according to the PTA, that their capacity to install/ avail of the equipment needed to provide public fixed line telephone services has increased.

With regard to the economies of scale and scope, the PTA underlines that the advent of IP technology has reduced fixed costs. Moreover, the providers do not need to develop their infrastructures throughout the whole country as they may install one telephone exchange at the most (cost) convenient position. Siminn's market share, although the operator still has a far greater number of customers than all of the other providers on the relevant markets, has decreased in the past years.<sup>12</sup> Therefore, according to the PTA, this has reduced the economies of scale enjoyed by Siminn. With regard to the access to capital, the PTA underlines *inter alia* the decreasing costs of equipment (due to the development of IP technologies), which make capital a less important factor.

As the first criterion is not met, the PTA does not consider it necessary to examine the second and third criterion.

In conclusion, the three criteria test is not met and therefore the market does not qualify for sector-specific *ex ante* regulation. Nevertheless, the PTA considers that it would closely monitor the markets and is prepared to examine whether a new analysis needs to be made should the circumstances on the markets change significantly.

## II.5. Regulatory remedies

- a) *Retail market for access to the public telephone network provided at a fixed location for residential and non-residential customers*

The PTA proposes to impose the following obligations on Siminn on the retail market for access to the public telephone network provided at a fixed location for residential and non-residential customers: (i) access, (ii) carrier selection and pre-selection, (iii) non-discrimination, (iv) transparency, (v) accounting separation and (vi) price control and cost accounting obligations. The proposed regulatory obligations will apply to Siminn's PSTN/ISDN network and services but not to Siminn's provision of VOIP services.<sup>13</sup>

- b) *Retail markets for publicly available telephone services provided at a fixed location for residential and non-residential customers*

Given that the three-criteria test for the retail markets for publicly available telephone services provided at a fixed location for residential and non-residential customers is not met and the markets do not qualify for sector-specific *ex ante* regulation, the PTA does not intend to impose any obligations on these markets. Siminn's current designation with significant market power on those markets is proposed to be withdrawn immediately subsequent to the publication of the final adopted measure as no commercial relationships exist between Siminn and other operators based on its designation on the relevant former markets 3-6.

---

<sup>12</sup> Siminn's market shares are gradually decreasing (although still rather high according to the PTA). Whereas in 2007 Siminn's market share in terms of revenues on former markets 3-6 was around 64-77%, it has gone down by about 10 (for non-residential customers) and 15 percentage points (for residential customers) on domestic calls. The reduction in share of traffic was similar to that of revenue.

<sup>13</sup> According to the PTA, Siminn's market power is based on its PSTN network which covers the whole country. The operator has not yet introduced a significantly successful VOIP product. If there is a significant shift from PSTN to VOIP over the period of this market review, the PTA may consider performing a new market analysis.

### III. Comments

The Authority has examined the notified draft measures and has the following comments:

#### **Inclusion of nomadic VoIP services in the relevant market**

The Authority is not convinced, on the basis of the information provided by the PTA, that the nomadic VoIP services would satisfy the test for inclusion in the relevant market. For example, in order to justify this inclusion, such nomadic VoIP services must represent a sufficiently effective alternative so as to be capable of offsetting a small but significant non-transitory increase in the price (SSNIP) of non-nomadic voice services offered at a fixed location. While the pricing of these nomadic VoIP services is deemed comparable to other voice telephony services offered at a fixed location, their comparatively lower take-up, together with an absence of number portability and the apparent lack of emphasis on the marketing of such nomadic services, raises questions as to whether they are in fact sufficiently effective substitutes to be included in the relevant product market.

However, the Authority notes that the PTA has itself observed that the inclusion or exclusion of this service in the relevant market would not impact on the overall conclusion reached in this particular market review. This is due primarily to its low usage and to the fact that nomadic VoIP services will not fall under the scope of the imposed remedies.

The Authority recognises, for the purposes of the present draft measure, that the inclusion of the said services will not impact on the particular regulatory outcome. Therefore, the Authority does not contest PTA's finding that the present market definition can be left open in respect of this particular service.

#### **Need to notify price control related obligations under the Article 7 procedure**

The Authority recalls that price control constitutes a regulatory obligation referred to in Article 16 of the Framework Directive and has an effect on trade between the EEA States. Price control-related remedies are therefore required to be notified under Article 7(3) in conjunction with Recital 15 of the Framework Directive.

Also, according to the Authority's Procedural Recommendation<sup>14</sup>, price levels and amendments to the methodologies used to calculate costs or prices are considered to be material changes to the nature or scope of a remedy that have an appreciable impact on the market and should therefore be notified under the EEA consultation procedure.

While acknowledging PTA's intention to notify the wholesale tariffs and underlying cost methodology for the relevant service under the Article 7 procedure, the Authority notes at the same time the multi-tiered approach

---

<sup>14</sup> EFTA Surveillance Authority Procedural Recommendation of 2 December 2009 on notifications, time limits and consultations provided for in Article 7 of the Act referred to at point 5c1 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. 12-21 ("Procedural Recommendation").

chosen by the PTA to set these tariffs. Siminn is initially obliged to submit its cost calculation based on a fully-allocated historical costing approach. Afterwards, the PTA proposes to review and amend the model to avoid cost inefficiencies and finally it proposes to use the simple average of corresponding services in the EEA countries in a benchmarking cross-check.

The Authority urges the PTA to provide a further elaboration of each of these steps and their underlying principles when notifying the resulting wholesale tariffs in order to ensure transparency and predictability for other market players.

Furthermore, in the absence of the detailed price control methodology in the present draft measure, the Authority reserves its right to examine the proposed methodology in further detail when it is actually notified under the Article 7 procedure.

#### **Timely enforcement and effectiveness of remedies**

Moreover, the Authority notes that Siminn is obliged to submit the above-specified cost analysis within 6 months subsequent to the publication of the final adopted measure. In this regard, the Authority observes the late implementation of this remedy in the last market review carried out by the PTA. For example, the wholesale tariff for Siminn was only finalised in 2011/2012, despite the price control remedy having been imposed by the PTA in 2008. Similarly, the single-billing service has only been on offer since the autumn of 2011, despite the relevant access obligation being in place also since 2008.<sup>15</sup>

The Authority recalls, however, in the interests of pursuing a consistent policy across all EEA States and ensuring effective and targeted regulation, the importance of regulators enforcing remedies in a timely and effective manner following the conclusion of the underlying market analysis.

The Authority further urges the PTA to ensure the effectiveness of the currently proposed remedies and that the terms and conditions of important access services, such as single-billing which still has a very low take-up, are sufficiently effective to enable alternative operators to compete efficiently.

In this context, the Authority reminds the PTA of its powers and obligations under the Regulatory Framework in the enforcement of remedies in case of a reluctant implementation on the part of the operator designated with significant market power.

#### **IV. Final remarks**

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

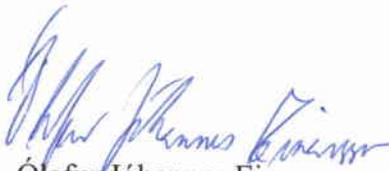
---

<sup>15</sup> According to the PTA, in March 2013 there were 4,200 users connected with pre-selection and, of that number, approx. 463 have a single-billing service. The PTA notes that the low usage of single billing could be partly explained by how long it took to bring the service to the market.

The Authority's position on the current notification is without prejudice to any position the Authority may take in respect of other notified draft national measures.

Pursuant to point 15 of the Procedural Recommendation, the Authority will publish this comments letter on its eCOM Online Notification Registry. The Authority does not consider the information contained in this letter to be confidential. However, the PTA is invited to inform the Authority within three working days<sup>15</sup> following receipt of this letter if it considers, in accordance with EEA and national rules on confidentiality, that this letter contains confidential information which the PTA would like to be deleted prior to publication. The PTA should provide reasons for any such request.

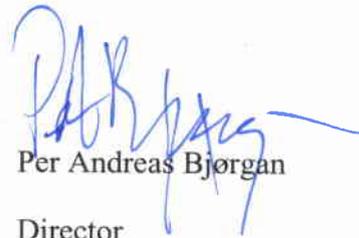
Yours sincerely,



Ólafur Jóhannes Einarsson

Director

Internal Market Affairs Directorate



Per Andreas Bjorgan

Director

Competition and State Aid Directorate

---

<sup>15</sup> The request should be submitted through the eCOM Registry or by facsimile to +32 2 286 1800, marked for the attention of the eCOM Task Force.