



POST- AND TELECOM ADMINISTRATION

Decision no. 8/2013 on the designation of an undertaking with significant market power and on the imposition of ex ante obligations on the retail market for access to public telephone network at a fixed location for residential and non-residential customers

(Market 1)

The Post and Telecom Administration (PTA) has, with reference to Article 17 of the Electronic Communications Act no. 81/2003, as amended, analysed the retail market for access to the public telephone network at a fixed location for residential and non-residential customers (Market 1).

With a letter dated 30 November 2012, a draft analysis of the above markets was sent to the Competition Authority and to electronic communications companies and they were invited to make comments on the market analysis and on its conclusions. The Competition Authority and Siminn hf. sent in comments.

On 14 May 2013, the PTA formally notified to the EFTA Surveillance Authority (ESA) of a draft decision on the above market, in accordance to Article 7 of Directive 2002/21/EC (Framework Directive). On 14 June 2013, the PTA received ESA's opinion on PTA's draft decision and analysis on Market 1. ESA made specific comments on the draft analysis and the draft obligations. The nature of the comments are not such that PTA cannot take a final decision on the matter. ESA's comments letter can be found in Appendix C to this decision.

The analysis of Market 1 has now been updated in accordance with those observations that were taken into account. The updated analysis can be found in Appendix A to this decision, and the comments that were received have been answered in Appendix B.

1. Designation of an undertaking with significant market power

Siminn was designated with significant market power on the relevant market (then Markets 1 and 2) with the PTA Decision no. 30/2008. Having in mind the market analysis and the analysis of competition on the retail market for access to the public telephone network at a fixed location for residential and non-residential customers (now Market 1), and in accordance with Paragraph 2 of Article 17, see Article 18 of the Electronic Communications Act, the PTA has decided to designate Siminn hf. as having significant market power on the relevant market.

2. Imposition of obligations on Siminn on Market 1

With the Decision of the PTA no. 30/2008, obligations were imposed on Siminn hf. on the relevant markets (then Markets 1 and 2), 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. Pursuant to Article 27 of the Electronic Communications Act, the PTA has decided to maintain the following obligations on Siminn hf., subsequent to the undertaking being designated as having significant market power on the retail market for access to the public telephone network provided at a fixed location for residential and non-residential customers (Market 1). The obligations that were imposed in 2008 and that the PTA intends to maintain are mostly unchanged. There is, however, the occasional amendment of implementation, such as with respect to the methodology for cost analysis and to the publication of book-keeping information. In the opinion of the PTA these obligations are both in accordance with the objectives presented in the EU Framework and Access Directives and with the provisions of legislation on electronic communications and that they are appropriate for the period that is expected to pass until the market will be analysed again. The PTA considers that the obligations are conducive to increasing competition on the relevant market. With respect to further discussion on the obligations the PTA refers to the revised analysis on Market 1, see Appendix A.

The following obligations will replace the obligations imposed on Siminn with the PTA Decision no. 30/2008 from 5 December 2008.

2.1 Carrier selection and pre-selection

Siminn has significant market power on the market under discussion here, with respect to the possibilities for connecting to a public telephone networks at a fixed location. For this reason, the obligation still rests on Siminn hf. pursuant to Article 53 of the Electronic Communications Act, to offer both carrier selection and pre-selection. Siminn is obliged to enable its subscribers to gain access to the services of all interconnected companies that provide public fixed line telephony. The structure of this access can either be such that the user selects a prefix prior to each phone call or uses pre-selection, which can be by-passed in certain phone calls by selecting a prefix.

2.2 Obligation for access: Wholesale leasing of fixed line telephone lines

Based on the authority in Article 28 of the Electronic Communications Act, the PTA intends to impose on Siminn the obligation to respond to reasonable and appropriate requests for access to its fixed-line network and related services. Should Siminn reject or not reply within 14 days to a request for access, then it shall provide the applicant with a reasoned written response explaining the rejection or delay.

Siminn shall offer a solution where service providers with pre-selection can provide their customers with single billing for both access and telephone usage. The PTA considers it appropriate for the time being to use the service that is called single billing and that is now part of the Siminn reference offer for interconnection of fixed line telephone networks. The nature of single billing service was defined in more detail in the PTA Decisions numbers 19/2011 and 21/2011. The PTA, however, states that the obligation is not necessarily limited

to that single form of access. If the needs of the market change, the PTA reserves the right to review the nature and presentation of wholesale access to fixed line telephony.

2.3 Obligation for non-discrimination

With authority of Article 30 of the Electronic Communications Act, the PTA intends to impose on Siminn an obligation to practise non-discrimination both with respect to price and to other criteria that have been mentioned here. The non-discrimination obligations apply to all types of access and resale of lines related to the relevant market. The dissemination of information from the Siminn wholesale department should be in a comparable manner whether to third parties or to other departments within the company. The treatment of information gained by Siminn in making agreements for access shall be in accordance with Article 26 of the Electronic Communications Act.

2.4 Obligation for transparency

Based on the authority in Article 29 of the Electronic Communications Act, the PTA intends to maintain obligations on Siminn for transparency and to publish a reference offer, for carrier selection, pre-selection and wholesale access to fixed line telephony lines which contain terms and conditions for supply and use, tariffs and other information necessary for counterparties, see the list of the content of the reference offer here below. The offer shall contain a sufficiently detailed description of terms so that the party requesting access can easily determine its position. The reference offer shall contain the following items, at a minimum.

- Basic items pertinent to the agreement
 - Type of service
 - Fees, invoices, and accounting
 - Prices, discounts, and amount of traffic
 - Quality of service
- Technological implementation
 - Distribution system and communication between systems
 - Telephone calls
 - International calls
 - Other services
 - Testing
- Customer maintenance
- The obligations to observe confidentiality between parties, confidentiality of data, plans and protection of personal information
- Guarantees and payment
- Unforeseen events and special circumstances
- Security and phone-tapping
- Expiry of agreement and termination of agreement
- Treatment of disputes

Should the Siminn reference offer not be considered adequate for the market, the PTA could prescribe amendments to the offer pursuant to Paragraph 2 of Article 29 of the Electronic Communications Act. Siminn hf. may not demand bank guarantees from electronic communication companies for resale of lines without the express permission of the PTA.

It is required that Siminn send to the PTA all agreements that are made on access to the public

telephone network and in addition to notify all changes made to the conditions of the agreements within a given period of notice. A copy of a signed agreement based on the reference offer shall be sent to the PTA in the form in which it is made and no later than a week after it has been signed. Amendments to the agreements shall also be notified in such a manner that the nature of the changes is clear and their location in the document. The requirement concerning the obligation to provide information is based on the authority in Article 5 of the Act on the Post and Telecom Administration, no. 69/2003.

The PTA considers it unnecessary to maintain the obligations for publishing of book-keeping information, but Siminn is obliged to deliver all such information to the PTA to the extent that this is required to verify compliance with the obligations that are in force on this market.

2.5 Obligation for accounting separation

With the authority in Article 31 of the Electronic Communications Act, the PTA has decided to maintain the obligation on Siminn hf. for accounting separation. Such separation should constitute as a minimum that on the one hand wholesale and on the other hand the retail fixed line telephone divisions of Siminn hf. should have their accounts separated from other operations. The Siminn hf. wholesale prices and internal prices within the company shall be transparent, among other things to prevent unjustified subsidies.

In its accounting, Siminn should separate income, expenditure, assets and capital for its fixed line telephone network. Siminn shall provide the PTA on an annual basis with a breakdown of the operational accounts and balance sheet for wholesale and retail along with a statement of the division of indirect costs that were not possible to assign through comparison with other cost items. The above specified statement should have reached the Administration no later than five months after the end of the operational year. Should Siminn's accounting separation not be satisfactory, the PTA reserves the right to submit demands at a later date for further separation.

2.6 Obligation for price control

With the authority of Article 2 of the Act on Electronic Communications the PTA intends to maintain the obligations on Siminn for price control of wholesale access to public telephone networks provided at fixed location for residential and non-residential customers. Siminn shall submit a tariff for wholesale access to its fixed line network to the PTA for endorsement, which includes carrier selection and pre-selection with single billing. Pursuant to Paragraph 4 of Article 32 of the Act on Electronic Communications, the tariff for the wholesale access in question shall be cost related, where costs are allocated to the services in question (FAC). The PTA is authorised to take into account analogous services that are considered to be operated in an efficient manner, where prices are adjusted should it be considered necessary in the opinion of the Administration on the basis of such comparison. Furthermore, the PTA is authorised to make price comparison on the basis of cost analysis of tariffs in the EEA.

When implementing its cost analysis Siminn shall base its methodology on Chapter IV of Regulation no. 564/2011 on book-keeping and cost analysis in the operations of the electronic communications undertakings, such as on evaluation of operating capital, life-cycle and ROI requirements.

When deciding the price for wholesale access to public telephone networks provided at a fixed location for residential and non-residential customers, the PTA plans to authorise Siminn to review its cost analysis on the basis of the cost model on which the analysis was based.

Siminn hf. shall submit the above specified cost analysis in the last instance 6 months subsequent to the publishing of this decision. The new wholesale tariff for access to fixed line public telephone networks will not come into force prior to PTA endorsement which will be subsequent to national consultation and consultation with ESA. The current Siminn hf. wholesale tariff, dated 1 March 2012, which is published under item 4 in Appendix 1a to the Siminn reference offer on interconnection of fixed line telephone networks, shall apply until the revised tariff is available and has been endorsed by the PTA.

2.7 Obligation for cost accounting

With the authority granted by Article 32 of the Electronic Communications Act, the PTA has decided to maintain the obligation on Siminn hf. for cost accounting for access to the fixed line telephone network (i.e. for wholesale of such lines and other solutions in connection with single billing and for carrier pre-selection).

3. The coming into force of the decision and channels for appeal

This decision comes into force from the day that it is published and will be in force until a decision is made to the contrary by the Post and Telecom Administration.

This decision can be appealed to the Appellate Committee for Electronic Communications and Postal Affairs, see Article 13 of Act no. 69/2003 on the Post and Telecom Administration. The appeal shall have reached the Appellate Committee four weeks from the time that the party in question became aware of the decision of the Post and Telecom Administration.

Reykjavík, 18 June 2013

Hrafnkell V. Gíslason

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Attached:

Appendix A - Analysis of Market 1

Appendix B - Comments by stakeholders and the conclusions from national consultation

Appendix C – ESA’s comments letter