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Case No: 59760
Event No: 380432

EFTA SURVEILLANCE
AUTHORITY

Póst og fjarskiptastofnun
Suðurlandsbraut 4 2.h.
108 Reykjavík
Iceland

Att: Mr. Hrafnkell V. Gíslason
Director
Fax.: +354 5101509

Dear Mr. Gíslason,

Subject: Wholesale voice call termination on individual mobile networks in Iceland
Comments pursuant to Article 7(3) of Directive 2002/21/EC

I PROCEDURE

On 2 June 2006, the EFTA Surveillance Authority (hereinafter ‘the Authority’) registered a notification by the Icelandic national regulatory authority, *Póst og fjarskiptastofnun* (hereinafter ‘PTA’), relating to the market for wholesale voice call termination services on individual mobile networks in Iceland, under case number 59760. The notification consists of the following documents:

- Summary Notification Form;
- Draft decision on the designation of undertakings with significant market power and imposition of obligations in the market for call termination on individual mobile phone networks (market 16) (“the notified draft measure”);
- Annex 1: “Analysis of the wholesale market for call termination on individual mobile telephone networks (market 16)”;
- Annex 2: “Price comparison and adaptation period for reduction of voice call termination prices on Og Vodafone and Síminn’s GSM mobile networks”;
- Annex 3: “Results from the PTA’s consultation regarding the draft of an analysis of the market for voice call termination on individual mobile networks (market 16)”.

The national consultation in accordance with Article 6 of Framework Directive 2002/21/EC¹ (hereinafter ‘FWD’) was originally carried out between 8 July 2005 and 15

¹ Directive 2002/21/EC of the European Parliament and of the Council on a common regulatory framework for electronic communication networks and services, 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.

September 2005. On 30 January 2006, PTA sent out for a consultation a document presenting the methodologies that it intended to use for the price comparison (benchmarking) and for the adaptation period for the reduction of Síminn's and Og Vodafone's termination prices in their respective GSM networks.

On 19 June 2006, the Authority sent a request for information to PTA. PTA replied on 22 June 2006. PTA has requested the reply to be treated as confidential.

Pursuant to Article 7(3) FWD, national regulatory authorities (hereinafter 'NRAs') in the European Economic Area (hereinafter 'EEA'), the European Commission and the Authority may make comments on notified draft national measures to the NRA concerned.

The EEA consultation period under Article 7 FWD expires on 3 July 2006.

II DESCRIPTION OF THE DRAFT MEASURE

II.1 Market definition

The market covered by the notification corresponds to market 16, the market for wholesale voice call termination on individual mobile networks, of the Authority's Recommendation on relevant markets². Three mobile network operators ("MNOs") offer voice call termination in their mobile networks in Iceland: Síminn, Og Vodafone, and IMC Island. According to PTA, the markets for wholesale voice call termination services on individual mobile networks are defined as encompassing mobile networks based on GSM 900, GSM 1800 and NMT 450 mobile communications technologies. PTA has defined four distinct relevant service markets as follows:

- Wholesale voice call termination on Síminn's GSM mobile network;
- Wholesale voice call termination on Síminn's NMT mobile network;
- Wholesale voice call termination on Og Vodafone's GSM mobile network;
- Wholesale voice call termination on IMC Island's GSM mobile network.

PTA is of the opinion that the geographical demarcation of the relevant markets is Iceland.

II.2 Finding of significant market power ("SMP")

PTA intends, on the basis of its market analysis, to designate Síminn and Og Vodafone as individually possessing SMP in their own networks. The main criteria considered by PTA are price trends, market shares, entry barriers and potential competition, as well as countervailing buying power.

PTA does not intend to designate IMC Island as possessing SMP in the market for wholesale voice call termination services on its own network. In its reply to the Authority's information request, PTA has stated that it considers that exceptional circumstances apply to IMC Island's market position *vis-à-vis* provision of voice call termination services on its own mobile network. To reach this conclusion, alongside market share, PTA has considered the overall limited operations of IMC Island in Iceland,

² EFTA Surveillance Authority Recommendation (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 Directive 2002/21/EC of the European Parliament and of the Council on a common regulatory framework for electronic communication networks and services (the "Recommendation on relevant markets"), OJ L113/18 of 27.4.2006.

the very small number of customers, low traffic volumes, price levels, lack of economies of scale and scope, as well as countervailing buying power by its wholesale customers.

II.3 Regulatory remedies

PTA intends to impose different sets of remedies on the MNOs running NMT and GSM networks. PTA intends to impose the following regulatory remedies on Síminn and Og Vodafone regarding their GSM mobile networks:

- Access/co-location/information;
- Transparency (publication and reference offer);
- Non-discrimination;
- Accounting controls;
- Price controls.

According to the notified draft measure, the two operators will be required to reduce the voice call termination prices in their GSM mobile networks to ISK 7,49 by 1 June 2008. Furthermore, the companies shall, by 1 June 2008, reduce their connection fees at regular intervals until these fees are entirely discontinued. In its determination of the price control levels to be imposed on the MNOs, PTA has relied upon a benchmarking methodology.

PTA intends to impose the following obligations on Síminn with respect to its NMT mobile network:

- Access;
- Non-discrimination;
- Price controls.

Síminn will be obliged to separate its GSM network from its NMT network.

III COMMENTS

The Authority has examined the notification and the additional information provided by PTA in reply to the Authority's information request, and has the following comments³:

III.1 Assessment of the market power possessed by IMC Island

In Annex 1 to the notified draft measure "Analysis of the wholesale market for call termination on individual mobile telephone networks (market 16)", PTA has stated that it considers IMC Island to be too small to be meaningful in an analysis of the relevant market, due to its limited operations in Iceland, the low volume of voice call termination minutes in IMC Island's network compared to the overall termination traffic in Iceland ([..]% of the total number of mobile minutes originating in Iceland during the first half of 2005), the low revenue of less than [..]% of the total termination revenue in Iceland, as well as the fact that IMC Island's core business is the sale of foreign subscriptions.

According to established case-law, very large market shares – in excess of 50% – are in themselves, save in exceptional circumstances, evidence of the existence of a dominant position⁴. IMC Island has a 100% market share in its own network, and potential

³ Pursuant to Article 7(3) FWD.

⁴ Paragraph 66 of the EFTA Surveillance Authority guidelines of 14 July 2004 on market analysis and the assessment of significant market power under the regulatory framework for electronic communications

competition is unlikely. It follows that, on the basis of its market share alone, IMC Island could be presumed to possess SMP in the market for voice call termination services on its own mobile network, unless PTA has established **exceptional circumstances** in the relevant market which would rebut this presumption.

However, in its reply to the information request, PTA submits that it has also assessed additional criteria such as an extremely small customer base in Iceland, low traffic volumes, price trends, entry barriers and potential competition, lack of economies of scale and scope, and purchasers' countervailing buying power. On the basis of these criteria, PTA has concluded that exceptional circumstances exist with respect to IMC Island's position on the relevant market and that it cannot, to an appreciable extent, act independently of its competitors, customers and, ultimately, consumers. PTA has therefore concluded that IMC Island does not possess SMP on its mobile network in Iceland.

PTA has not examined IMC Island's network costs and profitability. IMC Island's termination prices are slightly higher than Síminn's and Og Vodafone's. PTA has concluded that Síminn's and Og Vodafone's termination prices are above the competitive level. It is not clear if IMC Island's termination price level could be explained by the limited network of IMC Island and, potentially, higher production costs or other objective justification.

Therefore, the Authority invites PTA to closely monitor the price levels and developments regarding mobile termination prices charged by IMC Island. PTA is, furthermore, invited to verify whether the exceptional circumstances justifying non-designation of SMP and non-imposition of remedies continue to exist regarding IMC Island.

III.2 Price controls

In accordance with Article 8(4) of the Access Directive⁵, the obligations imposed on SMP operators shall be based on the nature of the problem identified, proportionate and justified in the light of the objectives laid down in Article 8 of FWD.

PTA intends to impose price controls on Síminn and Og Vodafone on the basis of an international benchmarking methodology, whereby PTA has taken the average of the three lowest termination prices in comparable markets⁶:

“PTA recommends that prices for voice call termination in Síminn's and Og Vodafone's GSM networks be based on the termination prices charged by efficiently operated companies in Sweden, the United Kingdom, and Norway, as there prices were on 1 January 2006”⁷

The Authority wishes to recall that Article 13(2) of the Access Directive requires that cost and pricing methodologies imposed by an NRA must promote efficiency, sustainable

networks and services referred to in Annex XI of the Agreement on the European Economic Area, OJ 27.4.2006, C 101/1.

⁵ Directive 2002/19/EC of the European Parliament and of the Council on access to, and interconnection of, electronic communications networks and associated facilities (Access Directive), as referred to at point 5cj 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.

⁶ The criteria to choose comparable markets and the adaptation period can be found in Annex 2 to the notified draft measure “Price comparison and adaptation period for reduction of voice call termination prices on Og Vodafone and Síminn's GSM mobile networks”.

⁷ Idem, page 15.

competition and maximise consumer benefits. In this regard NRA may also take account of prices available in comparable competitive markets.

The Authority acknowledges that PTA has endeavoured, in selecting the criteria for comparability, to establish the most relevant benchmark for mobile termination in Iceland. The Authority would nevertheless wish to point out that mobile termination prices in one of the benchmarking countries, Norway, are themselves not based on a cost accounting methodology which would guarantee an efficient termination price level. International benchmarking, as a price control methodology, is further weakened by the sharp exchange rate fluctuations of the Icelandic national currency.

The Authority therefore invites PTA to commit itself to introducing a cost and pricing methodology that allows consumers to benefit fully from an efficient production of the service concerned. In accordance with Article 13(3) of the Access Directive, this may be a methodology independent of those used by the MNOs, such as LRIC. Should PTA decide to modify the cost or pricing methodology, the resulting draft measure to this effect must be notified under Article 7(3) of the Framework Directive.

III.3 Final remarks

Pursuant to Article 7(5) FWD, NPT 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 Recommendation⁸, 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 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,

Hallgrímur Ásgeirsson
Director
Internal Market Affairs Directorate

Amund Utne
Director
Competition and State Aid Directorate



Signed version

⁸ EFTA Surveillance Authority Recommendation (No 193/04/COL) 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 (the "Article 7 Recommendation").