

Brussels, 4 December 2008
Case No: 65655
Event No: 500459

The logo of the EFTA Surveillance Authority, featuring the text "EFTA SURVEILLANCE AUTHORITY" in white capital letters on a dark blue rectangular background.

Póst- og Fjarskiptastofnun
Sudurlandsbraut 4
108 Reykjavik
Iceland

For the attention of:
Mr Hrafnkell Gíslason, Director

Dear Mr Gíslason,

Subject: Wholesale broadcasting transmission services to deliver broadcast content to end users

Letter pursuant to Article 7(3) of Directive 2002/21/EC¹: No comments

I PROCEDURE

On 4 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 wholesale broadcasting transmission services to deliver broadcast content to end users.

The 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”).² On 5 November 2008, the Authority adopted a new Recommendation on relevant markets with a reduced list of markets susceptible to *ex ante* regulation.³ The present notification was submitted prior to the adoption of the Authority’s

¹ 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.

² 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, as incorporated into the Agreement on the European Economic Area. The Recommendation was adopted by Decision No 194/04/COL.

³ 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 5cl 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

new Recommendation, following market analysis of the relevant market and consultation at the national level. Thus, the Authority has based its assessment on the 2004 Recommendation.

The notification consisted of the following documents:

- Summary Notification Form, Event No 497101;
- Draft decision on the designation of undertakings with significant market power and the imposition of obligations in the wholesale market for broadcasting transmission services to deliver broadcast content to end users, Event No 497102;
- Annex A: Market analysis, Event No 497105;
- Annex B: Results of the Post and Telecom Administration (PTA) consultation on the preliminary draft analysis of the wholesale market for broadcasting transmission services to deliver broadcasting content to end users, Event No 497103.

PTA carried out the national consultation, pursuant to Article 6 of the Framework Directive, between 25 June 2008 and 3 September 2008. Two 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 4 December 2008.

II DESCRIPTION OF THE DRAFT MEASURE

II.1 Product and geographic market definition

PTA divides the broadcasting transmission market as defined in the 2004 Recommendation into five different markets. The product markets defined are:

1. Broadcasting transmission services for analogue radio via wireless networks;
2. Broadcasting transmission services for analogue television via wireless networks;
3. Broadcasting transmission services for digital radio and television via wireless networks;
4. Broadcasting transmission services for digital radio and television via fixed-line networks;
5. Broadcasting transmission services for digital radio and television via satellite.

The geographical scope of markets 1-4 above is defined as Iceland, whereas the satellite market (number 5 above) is considered to be transnational and therefore beyond the scope of PTA's competence.⁴

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.

⁴ For that reason, PTA does not carry out an analysis of the satellite transmission market.

II.2. Three criteria test

In case of the four broadcasting transmission markets as defined above (markets 1-4), PTA conducted an examination of the three criteria test, *i.e.*:

- i) whether there are high and non-transitory entry barriers of structural, legal or regulatory nature;
- ii) whether the characteristics of the market are such that it will not tend towards effective competition within the relevant time horizon; and
- iii) whether the application of competition law alone would not adequately address the market failure(s) concerned.

Based on the above criteria, PTA concluded that market number 1 above (analogue wireless radio transmission) does not fulfil the first criterion, as the entry barriers are considered not to be significant.⁵ As regards the remaining three markets, number 2-4 above (analogue wireless television transmission, digital wireless radio and television transmission and digital fixed-line radio and television transmission), the third criterion appears not to be met, as, in PTA's view, competition law tools are sufficient to address market failure on an *ex post* basis.

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

The main undertakings operating broadcast distribution in Iceland are RÚV (the Icelandic national broadcasting service), Vodafone (Digital Iceland), Síminn/Skjárinn and Gagnaveita Reykjavíkur (Reykjavík Data Utility ehf.). In addition, there are a few other small undertakings present in the markets in question.

On the basis of the conclusion that the relevant markets do not fulfil the three criteria test, PTA has not designated any undertakings as having SMP.

II.4 Regulatory remedies

Since no undertaking is considered to be designated with SMP, no regulatory remedies are proposed by PTA.

III COMMENTS

The Authority has examined the notification and has no comments pursuant to Article 7(3) of the Framework Directive.

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.

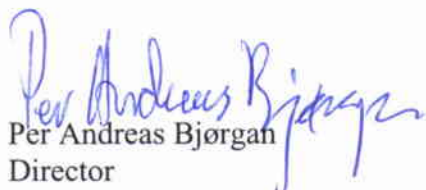
⁵ As the main grounds for this conclusion, PTA refers to the manageable level of costs of establishing a distribution system, no shortage of frequencies and the considerable movement by operators into and out of this market.

Pursuant to point 12 of the Authority's Article 7 Recommendation⁶, 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,



Tuula Nieminen
Acting Director
Internal Market Affairs Directorate



Per Andreas Bjørgan
Director
Competition and State Aid Directorate

⁶ 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.