Brussels, 26 October 2012
Case No: 72572
Event No: 649195

EFTA SURVEILLANCE AUTHORITY

Póst-Og Fjarskiptastofnun (PTA)
Attention: Hrafnkell V. Gíslason
Managing Director
Sudurlandsbraut 4
108 Reykjavik, Iceland

Dear Sir,

Subject: Remedies relating to the wholesale market for voice call termination on individual mobile phone networks (market 7) in Iceland

Comments pursuant to Article 7(3) of Directive 2002/21/EC[1]

I. Procedure

On 26 September 2012, the EFTA Surveillance Authority (the "Authority") received a notification of a draft national measure in the field of electronic communications pursuant to Article 7 of the Framework Directive from the Icelandic national regulatory authority, *Póst-Og Fjarskiptastofnun* (PTA). The draft measure concerns the wholesale market for voice call termination on individual mobile networks[2] in Iceland.

The notification became effective on the same day. National consultation pursuant to Article 6 of the Framework Directive was carried out in the period from 22 August 2012 to 14 September 2012.

The period for consultation with the Authority under Article 7 of the Framework Directive expires on 26 October 2012.

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

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[1] 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").

[2] Corresponding to market 7 in 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 of 7 March 2002 on a common regulatory framework for electronic communications networks and services); adopted by Decision No. 688/08/COL; OJ C 156, 9.7.2009, p.18.

II. Description of the draft measure

II.1. Background

The third round review of the Icelandic wholesale market for voice call termination on individual mobile networks was notified to and assessed by the Authority under Case No 70923 on 6 January 2012. PTA designated all active mobile network operators (MNOs) providing mobile termination as having significant market power (SMP) on their respective markets. These were: Siminn, Vodafone, Nova and IMC/Alterna as well as the mobile virtual network operator, IP-fjarskipti (Tal). PTA imposed access, non-discrimination and price control obligations (including the obligation to monitor tariffs) on all of the above operators. In addition, PTA imposed an accounting separation obligation on Siminn and Vodafone.

With regard to price control, the evolution of the price caps of mobile termination rates (MTRs) imposed on the four MNOs[3] was not changed in that decision. The additional operator, IP-fjarskipti ehf. (Tal), was added to the glide-path and was required to achieve the same maximum symmetric MTR of ISK 4.00/ minute as of 1 January 2013. From 1 January 2013, PTA envisaged setting a new rate based on a benchmark. When choosing the appropriate benchmark, in order to achieve cost-efficient levels over time, PTA stated that it intended to apply the provisions of the Termination Rates Recommendation[4] so as not to exceed the average of the MTRs set by NRAs implementing the recommended cost methodology (that is, the bottom-up long-run incremental cost model, BU-LRIC). In addition, it was envisaged that the annual update of the benchmark would be completed no later than 1 November each year, with the resulting rate entering into force on 1 January of the following year.

II.2. Regulatory remedies

In the current draft measure, PTA conducts the anticipated benchmarking comparison with NRAs which, by July 2012, adopted a final decision stipulating a cost-efficient target MTR based on the BU-LRIC cost model. These are as follows:

[3] Notified to and assessed by the Authority under Case No 67608 in 2010.

[4] EFTA Surveillance Authority Recommendation of 13 April 2011 on the Regulatory Treatment of Fixed and Mobile Termination Rates in the EFTA States (the "Termination Rates Recommendation"), not yet published in the OJ, available on the Authority's website http://www.eftasurv.int/media/internal-market/ESAs-Recommendation-on-termination-rates.pdf.

Comparison NRAs[5]	MTR in ISK/ minute[6]
Belgium	1.76
United Kingdom	1.39
Denmark	1.75
France	1.30
Italy	1.60
Portugal	2.07
Spain	1.78

The resulting arithmetical average amounts to ISK 1.66/ minute and constitutes a maximum price cap excluding VAT, which will be symmetrical for all SMP operators. PTA intends that the rate shall, however, only be applicable as of 1 July 2013 (until 31 December 2013). PTA intends to maintain the formerly calculated rate of ISK 4.00/ minute between 1 January 2013 and 30 June 2013. According to PTA, this is due to the fact that the envisaged decrease from the initially set MTR of ISK 4.00/ minute to ISK 1.66/ minute is very significant and came as a surprise to the operators in Iceland. PTA also notes that it did not foresee a reduction of such a degree in MTRs across the EU. Therefore, in PTA's view, there is a need for a longer period of time than planned in order to allow the operators to adapt their operations, including their wholesale agreements for resale and virtual network access.[7]

PTA intends to review the currently proposed level of MTRs in 2013 and 2014, without carrying out a new analysis of the relevant markets.

III. Comments

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

Need for a consistent EEA approach for termination rates

The Authority welcomes PTA's decision to set regulated MTRs on the basis of a benchmark based on NRAs which implement MTRs calculated on the basis of the BU-LRIC cost model. The Authority notes, however, that the introduction of fully cost-oriented MTRs in Iceland will result in reaching the BU-LRIC target level only as of 1 July 2013. This is not fully in line with the Authority's Termination Rates Recommendation, according to which NRAs should ensure that termination rates are implemented at a cost-efficient level by the end of December 2012.

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[5] The respective MTRs will apply in Belgium, Denmark, France and Portugal as of 1 January 2013; in the UK as of 1 April 2013; in Italy, and Spain as of 1 July 2013.

[6] For the calculation of the MTR in ISK, PTA uses the average exchange rate of the relevant currency for the second quarter of 2012 as published by the Central Bank of Iceland.

[7] PTA also considers the difficult operational environment in Iceland due to the collapse of the banking system, which has weakened the position of electronic communications undertakings. PTA notes that the operators appear not to have made allowances in their plans for 2013 for a reduction in MTRs from ISK 4.00/ minute.

While the Authority takes note of PTA's justification that the introduction of MTRs based on BU-LRIC at an earlier stage would result in a steep decrease which neither the Icelandic mobile industry nor PTA have foreseen, the Authority reminds PTA that the timeframe for implementing the Termination Rates Recommendation aims to ensure not only the sustainability of the sector but also maximum benefits to consumers as soon as possible.

Having said this, the Authority recognizes that regulators are confronted with the need to strike a balance between protecting consumer welfare and avoiding too disruptive an impact on operators. To that end, the Authority acknowledges that NRAs have a certain margin of discretion, which could allow them to delay to a certain extent the introduction of fully cost-oriented rates.[8]

Against this background, and given that the proposed draft measure sets a level of MTRs which tends towards the pure BU-LRIC rates which are to be implemented by 31 December 2012 by all NRAs, a very limited delay in the implementation of the cost-oriented rates in Iceland is considered acceptable by the Authority, taking account of the need to minimise disruptive impacts on the sector in the Icelandic markets flowing from an important decrease in MTRs.

Therefore, the Authority considers that the application of MTRs at a level of ISK 1.66/ minute based on a benchmark against countries employing the BU-LRIC costing methodology as of 1 July 2013 *at the latest* would still sufficiently address the pressing need to ensure that consumers derive maximum benefits in terms of efficient cost-based MTRs as soon as possible after 31 December 2012 by eliminating competitive distortions associated with above-cost MTRs.

Nevertheless, the Authority notes that the proposed glide-path would maintain MTRs in Iceland at the level of ISK 4.00/ minute between 1 January 2013 and 30 June 2013, while leading to a steep decrease as of 1 July 2013. Against this background, in order both to bring the benefits of lower MTRs to consumers more quickly and to avoid excessively steep glide-paths at the end of the transition period, the Authority suggests that PTA consider introducing an additional intermediate step in the proposed glide-path, i.e. between January and June 2013, in order to reduce termination rates in Iceland earlier and more gradually.

Need to monitor termination markets

The Authority acknowledges PTA's decision to carry out a new annual benchmarking exercise in 2013 and 2014 in order to take account, in its calculation, of all NRAs deploying (at the relevant time) cost methodologies which yield cost-efficient MTR levels. The Authority also welcomes PTA's stated intention to consult in respect of such rates, both at national and EEA-level under the Article 7 mechanism of the Framework Directive.

The Authority concurs with PTA that such benchmarking exercises do not necessarily instigate a fully-fledged market analysis, and may be made available to the Authority as a change to existing remedies by means of the standard notification procedure pursuant to Recital 14 of the Authority's Procedural Recommendation.[9] However, in this context, the

[8] This view is also shared by the European Commission, see for example Cases ES/2012/1314 and UK/2010/1068. See also the Authority's "comments" letter to Liechtenstein (Case No 63627).

[9] EFTA Surveillance Authority Recommendation of 2 December 2009 on notifications, time limits and consultations provided for in Article 7 of the Act referred to at point 5cl of Annex XI to the Agreement on

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Authority reminds PTA of its obligation to commence a new market analysis in the case of new entry on the relevant market of operators with their own termination markets.

In this respect, the Authority also recalls that the revised Procedural Recommendation (Point 6 thereof) has significantly lessened the procedural burden on NRAs by giving them the possibility to use a short notification form when proposing to extend existing measures on a relevant market (that has already been analysed) to another market player in a similar situation, without *materially* changing the principles applied in the previous notification.

IV. Final remarks

On a procedural note, the Authority recalls that any future amendments to, or more detailed implementation of, the draft remedies consulted on in the current notification will require re-notification in accordance with Article 7(3) of the Framework Directive.

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

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, you are invited to inform the Authority within three working days[10] following receipt of this letter if you consider, in accordance with EEA and national rules on confidentiality, that this letter contains confidential information which you would like to be deleted prior to publication. You should provide reasons for any such request.

Yours sincerely,

Ólafur Jóhannes Einarsson
Director
Internal Market Affairs Directorate

Tormod S. Johansen
Acting Director
Competition and State Aid Directorate

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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, and available on the Authority's website at http://www.eftasurv.int/media/internal-market/recommendation.pdf (the "Procedural Recommendation").

[10] 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.