

Brussels, 14 July 2010

Case No: 67608

Event No: 546825

EFTA SURVEILLANCE
AUTHORITY

**Attention: Hrafnkell V. Gíslason, Manager Director
Póst-Og Fjarskiptastofnun (PTA)
Sudurlandsbraut 4
108 Reykjavík**

Dear Mr. Gíslason,

Subject: Wholesale market for voice call termination in individual mobile phone networks (Market 7)

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

1 PROCEDURE

On 14 June 2010, the EFTA Surveillance Authority (the "Authority") received and registered a notification from the *Póst-Og Fjarskiptastofnun* (PTA) pursuant to Article 7(3) of Directive 2002/21/EC (the "Framework Directive"), relating to the wholesale market for voice call termination in individual mobile phone networks in Iceland (the "Notification"). The analysis corresponds to Market 7 in the list of markets contained in the Annex to the Authority's Recommendation on relevant product and service markets within the electronic communications sector susceptible to *ex ante* regulation in accordance with the Framework Directive (the "Recommendation on relevant markets").²

The Notification consists of the following documents:

- Summary Notification Form (Event No 560284)
- Market analysis (Event No 560288)
- Summary of responses received in the national consultation (Event No 560291)

¹ Directive 2002/21/EC of the European Parliament and of the Council on a common regulatory framework for electronic communication networks and services, OJ L 108, 24.4.2002, p.33, as referred to at point 5cl of Annex XI to the EEA Agreement and as adapted to the Agreement by Protocol 1.

² 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 Directive 2002/21/EC of the European Parliament and of the Council on a common regulatory framework for electronic communication networks and services, adopted by Decision No 688/08/COL, OJ C 156 of 9.7.2009, p. 18.

The PTA carried out national consultation between 5 October 2009 and 2 November 2009, in which five responses were received.³ It carried out further limited national consultation on 18 February 2010 in respect of two changes made to the first proposed decision following the first consultation. Four responses were received.⁴

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

The EEA consultation period under Article 7 of the Framework Directive expires on 14 July 2010.

2 DESCRIPTION OF THE DRAFT MEASURE

2.1 Product market definition

The relevant product market is that of voice call termination on individual mobile networks.⁵ The mobile phone networks included are 3G (UMTS), GSM 900 and 1800 and NMT 450.

There are currently four companies that operate mobile phone networks in Iceland, and that therefore offer call termination in their own mobile networks: Siminn hf., Og fjarskipti ehf (Vodafone), Nova ehf., and IMC Ísland ehf. In that light, the PTA defines the following markets:

- Voice call termination in Siminn’s GSM/3G mobile network
- Voice call termination in Siminn’s NMT network
- Voice call termination in Vodafone’s GSM/3G mobile network
- Voice call termination in Nova’s 3G network
- Voice call termination in IMC Ísland’s GSM network

2.2 Geographic market definition

The relevant geographic market is the territory of Iceland.

2.3 Assessment of significant market power (“SMP”)

The PTA designates each of the four companies that offer call termination in their mobile phone networks as undertakings with significant market power (SMP) on each respective relevant market. Each of those companies has a 100% market share in call termination in its own mobile network: Siminn in its GSM/3G and NMT mobile networks; Vodafone in

³ From the Competition Authority, Nova, Vodafone, Siminn and IMC...

⁴ From the Competition Authority, Siminn, Nova and IMC. A non-confidential version of a summary of all responses are available on the PTA’s website.

⁵ 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 5c1 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 and services); adopted by Decision NO 688/08/COL, OJ C 156, 9.7.2009, p.18.

its GSM mobile network and 3G service; Nova in its 3G network; and IMC Ísland in its GSM network.

The PTA is of the view that the relevant markets are characterised by absolute entry barriers, and that potential competition is not foreseeable within the next two to three years. It considers that the competitive conditions in the market do not appear to generate any pressure on prices for call termination in mobile networks, that countervailing buying power does not appear to exist, and that nothing indicates that competitors or customers/consumers could make an impact on rates for call termination in mobile networks.

The PTA has not deviated from the market definition laid down in the Annex to the Authority's Recommendation on relevant markets.

2.4 Remedies

The PTA intends to impose the following obligations.

- **Access:** Siminn will be required to come to an agreement on interconnection with electronic communications companies that offer general electronic communications services or electronic communications networks, and offer call termination in its GSM/3G and NMT mobile networks. The agreements will be required to be completed without delay and no later than within one month from the time they are requested.

Vodafone, Nova and IMC will all be subject to the same obligation regarding their mobile networks.

Siminn and Vodafone, which both operate mobile and fixed-line networks, will be required to offer the possibility of connecting directly to their mobile networks without any condition that mobile traffic is routed first through their fixed-line networks.

- **Transparency (publication and reference offer):** all of the mobile operators will be required to inform electronic communications companies that request interconnection of all details necessary to ensure that the conclusion of an interconnection agreement does not take longer than one month from the time interconnection is requested.
- **Non-discrimination:** Siminn will be made subject to a continuing obligation of non-discrimination, for its GSM and NMT mobile phone networks and, in addition, for its UMTS network. Vodafone will be made subject to a continuing obligation of non-discrimination for its GSM network and, in addition, UMTS, in respect of calls from other mobile or fixed line networks. However, on-net calls – calls originating and terminating within the same mobile network – will not be subject to an obligation of non-discrimination.

The same obligation of non-discrimination will also be imposed on Nova and IMC.

The companies will be required to practise non-discrimination when concluding agreements for call termination in their relevant networks. They will be required to provide all wholesale buyers of call termination service on comparable terms, price and quality. Access to the network will have to be provided on similar terms. The

companies will be required to operate in such a manner that the treatment of information that emerges during the conclusion and implementation of interconnection agreements is in accordance with Article 26 of the Electronic Communications Act. Information concerning call termination business with other companies will be prohibited from being provided to other parties, including other divisions of the undertaking, its subsidiaries or partners.

- **Accounting separation:** the obligation of accounting separation on Siminn and Vodafone for their GSM networks will be maintained. Accounting separation will be carried out with respect to income, costs, assets and liabilities for mobile services at the wholesale and retail levels. In addition, Siminn will be required to separate its GSM network from its NMT network. Siminn and Vodafone will be required to submit to the PTA, on an annual basis – by 1 April each year for the preceding year – an itemised profit and loss account and balance sheet for their wholesale and retail mobile network services, together with a statement of the division of indirect costs that cannot be categorised through comparison with other cost items.
- **Price controls:** all operators will be required to reduce prices for voice call termination in GSM and UMTS mobile networks to ISK 4 per minute by 1 January 2013, as specified in the table below. The PTA has taken into account the recommendation from the EU Commission on termination rates⁶ to the extent that it is appropriate for Icelandic circumstances on the mobile termination market.

The figures listed below are maximum wholesale rates per minute excluding VAT. Individual mobile phone companies will be entitled to offer lower call termination rates at earlier dates if they so wish. The PTA intends to review call termination rates annually, and to update the glide path in accordance with the updated cost analysis.⁷

As regards Siminn's NMT system, in the light of the probable termination of that system on 1 September 2010, and of the small size of the NMT market, Siminn will continue to be required not to charge higher rates for call termination in the NMT network than were in force on 31 December 2005: ISK 14.4 day rate; ISK 13 night rate; ISK 0.68 connection rate.

Given that the figures represent an important reduction for all companies on the market, the PTA considers that the reduction should be implemented in stages with full convergence of rates to be achieved within just under three years of publication of its decision. All companies will converge on the same rate at the end of the glide path.

⁶ Commission Recommendation of 7.5.2009 on the Regulatory Treatment of Fixed and Mobile Termination Rates in the EU.

⁷ The cost analysis, provided by Siminn, is based on a top-down model elaborated using the LRAIC method (long-run average incremental cost), where the mean unit cost is used as a basis for calculating variable additional costs and proportionate equal distribution of joint costs (LRAIC+).

Table: reduction of call termination rates in GSM/3G mobile phone networks up to 1 January 2013

Company	Unit	Price from Decision	Price from 1.9.2010	Price from 1.1.2011	Price from 1.1.2012	Price from 1.1.2013
Síminn	ISK/min.	7.49	6.5	5.5	4.5	4.0
Vodafone	ISK/min.	7.49	6.5	5.5	4.5	4.0
Nova	ISK/min.	12.0	10.3	8.3	6.3	4.0
IMC/Alterna ⁸	ISK/min.	12.0 ⁹	10.3	8.3	6.3	4.0

Nova's and IMC's connection rates of ISK 0.6 and ISK 0.7 respectively will be reduced to ISK 0 with the first reduction in termination rates on 1 September 2010.

- **Cost accounting:** Siminn will be required to deliver a cost analysis to the PTA on an annual basis by 1 July of each year. The PTA considers that because of the cost and considerable effort required both from Siminn and the PTA for the implementation of a full LRIC model, for the time being it is not appropriate to require such a model. Therefore, the LRAIC cost model, which is based on historical data for calculations of call termination costs (top-down model¹⁰), which has been used by Siminn will suffice for the present. However, if that methodology does not return acceptable results, and call termination rates in Iceland remain high compared to rates in analogous markets, the PTA reserves the right to require that an LRIC model be implemented.

3 COMMENTS

The Authority has examined the Notification and has no comments.

4 FINAL REMARKS

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

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.

⁸ Alterna Tel ehf. is a sister company of IMC.

⁹ The IMC termination charge is ISK 12 to parties other than Siminn. Pursuant to a roaming agreement between IMC and Siminn in November 2009, IMC's termination charge to Siminn is ISK 7.49 for calls originating in Siminn's fixed line and/or NMT networks, but calls from Siminn's mobile phone network that terminate in IMC's system are priced as though they were on-net calls in Siminn's mobile phone network, i.e. both origin and termination of these calls is priced at ISK 6.53.

¹⁰ The costing tool related to top-down accounting data produces cost references, which correspond to direct references to accounting records and asset registers, and are based on real existing mobile networks and historical/current data.

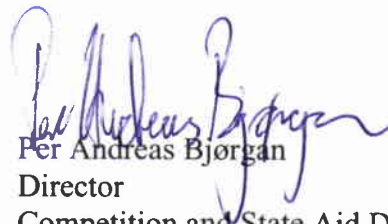
The Authority's position on the Notification is without prejudice to any position the Authority may take in respect of other notified draft national measures.

Pursuant to point 15 of the Authority's Recommendation on Article 7,¹¹ 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 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. The request should be submitted through the eCOM Registry or by facsimile to +32 2 286 1800, marked to 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

¹¹ EFTA Surveillance Authority Recommendation of 2 December 2009 on notifications, time limits and consultations provided for in Article 7 of Directive 2002/21/EC of the European Parliament and of the Council on a common regulatory framework for electronic communications networks and services, adopted by Decision No 493/09/COL of 2 December 2009, not published yet. The Recommendation is available on the Authority's website: <http://www.eftasurv.int/media/internal-market/recommendation.pdf>