

Brussels, 14 April 2008
Case No: 64016
Event No: 472403

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

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

Dear Mr. Gíslason,

**Subject: Wholesale broadband access
Comments pursuant to Article 7(3) of Directive 2002/21/EC¹ (hereinafter
“FWD”)**

I PROCEDURE

On 13 March 2008, the EFTA Surveillance Authority (hereinafter “the Authority”) registered a notification by the Icelandic national regulatory authority, *Póst og fjarskiptastofnun* (hereinafter “PTA”), relating to the wholesale market for broadband access in Iceland, under case number 64016.

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 wholesale broadband access (Market 12) (hereinafter “the notified draft measure”);
- Annex A Market analysis — Wholesale market for broadband access (Market 12);
- Annex B Results of the PTA’s consultation regarding the draft of an analysis of the market for wholesale broadband access (Market 12);

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 14 April 2008.

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 (Framework Directive).

II DESCRIPTION OF THE DRAFT MEASURE

II.1 Market definition

PTA has not deviated from the definition set out for Market 12 in the Authority's Recommendation on relevant markets² and concludes that the relevant market for wholesale broadband access includes only xDSL via copper local loops.

Based on an assessment as to whether alternative technologies may constitute viable substitutes to wholesale broadband access provided over the PSTN network, PTA concludes that there is no wholesale substitute from either a demand or supply-side perspective. In this sense, PTA indicates that these technologies are not particularly widespread and do not provide ubiquitous coverage; only xDSL on the basis of the copper loop offers nationwide services. Therefore, PTA establishes that broadband access based on cable television network, fibre optic network, satellite connections and fixed wireless access do not belong to the relevant market. Shared access to the local loop is not considered a substitute for bitstream access either. However, PTA takes these services into account at the stage of the SMP assessment.

PTA specifies that the relevant market for wholesale broadband access includes self-supply and supply to third parties. The relevant market also includes wholesale bitstream access services which are necessarily related to the provision of xDSL services.

PTA is of the opinion that the geographical demarcation of the relevant service market is Iceland.

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

PTA carried out the analysis of the relevant market relying on the following criteria:

- High market shares;
- Overall size and experience in electronic communications market, compared to competitors;
- Control over facilities not easily duplicated;
- Entry barriers (sunk costs, economies of scale and scope, access to capital, technological advantages, barriers to growth, access to distribution and sales system, vertical integration, product diversification/bundling);
- Competition in the relevant market (countervailing buying power among strong purchasers, potential competition, pressure from substitute products, competition among operators in the market).

Based on this assessment, PTA concludes that the market is not characterised by effective competition and has designated Síminn hf. as undertaking possessing individually SMP on the relevant market.

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 2001/21/EC of the European Parliament and of the Council on a common regulatory framework for electronic communications networks and services, as incorporated into the Agreement on the European Economic Area (hereinafter the "Recommendation on relevant markets").

II.3 Regulatory remedies

PTA intends to impose on Síminn the following regulatory obligations in the market for wholesale broadband access:

- Access to networks and related infrastructure;
- Non-discrimination;
- Transparency;
- Accounting separation;
- Price controls.

III COMMENTS

The Authority has examined the notification and the additional information provided by PTA and has the following comments³:

The Authority understands the reasons why it is not advisable to postpone the adoption of the notified draft decision until the necessary regulatory procedures for review and approval of the consolidation project, as described in the notified decision, are finalised. The Authority welcomes PTA's intention to re-examine the competitive situation of the market following completion of the consolidation. In this regard, the Authority encourages PTA to monitor closely the developments of the market and, if appropriate, to react promptly with a new market analysis.

On a procedural note, the Authority would like to remind PTA that any future amendments to, or more detailed implementation of, the draft remedies consulted on in the present notification, such as in particular further specification of the price control obligation, will require their re-notification in accordance with Article 7(3) of the Framework Directive. Whether such a re-notification of the remedies also necessitates a re-assessment and re-notification of the underlying SMP findings, will depend on the circumstances of the individual case.

IV FINAL REMARKS

Pursuant to Article 7(5) FWD and under the reservation made according to paragraph III of this letter, PTA may adopt the resulting draft measure and, where it does, 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 Recommendation⁴, 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

³ Pursuant to Article 7(3) FWD.

⁴ 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").

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 Authority's eCOM Task Force.

Yours sincerely,



Hallgrímur Ásgeirsson
Director
Internal Market Affairs Directorate



Amund Utne
Director
Competition and State Aid Directorate