ESA | EFTA Surveillance Authority

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Fjarskiptastofa
Sudurlandsbraut 4
108 Reykjavik
Iceland

For the attention of:
Mr Hrafnkell V. Gíslason
Managing Director

Dear Mr Gíslason,

Subject: Market for wholesale call termination on individual public telephone networks provided at a fixed location in Iceland – Remedies – Tariff determination via benchmarking

Market for wholesale voice call termination on individual mobile networks in Iceland – Remedies – Tariff determination via benchmarking

Article 7(3) of Directive 2002/21/EC (Framework Directive)[1]: No comments

I. PROCEDURE

On 29 September 2021, the EFTA Surveillance Authority ("the Authority") received a notification of draft national measures in the field of electronic communications pursuant to Article 7 of the Framework Directive from the Icelandic national regulatory authority, *Fjarskiptastofa* ("ECOI")[2]. The draft national measures concern the market for wholesale

[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 5 cl of Annex XI to the EEA Agreement and as adapted to the Agreement by Protocol 1 ("the Framework Directive"). On 24 September 2021, the EEA Joint Committee adopted Decision ("JCD") No 275/2021 incorporating Directive (EU) 2018/1972 of the European Parliament and of the Council of 11 December 2018 establishing the European Electronic Communications Code (Recast), as corrected by OJ L 334, 27.12.2019, p. 164 and OJ L 419, 11.12.2020, p. 36, into the EEA Agreement. Directive (EU) 2018/1972 will repeal, *inter alia*, the Framework Directive. However, until JCD No 275/2021 enters into force, the Framework Directive remains applicable.

[2] On 1 July 2021, the name of the national regulatory authority in Iceland was changed from Póst- og fjarskiptastofnun (the Post and Telecoms Administration or "PTA") to Fjarskiptastofa (the Electronic Communications Office of Iceland or "ECOI"). For ease of reference, the new name ECOI will be used throughout this letter even when referring to activities pre-dating 1 July 2021.

call termination on individual public telephone networks provided at a fixed location and the market for wholesale voice call termination on individual mobile networks in Iceland[3].

The notification became effective on the same day.

National consultation was carried out, pursuant to Article 6 of the Framework Directive, during the period from 10 to 31 August 2021.

The period for consultation with the Authority and the national regulatory authorities ("NRAs") in the EEA States, pursuant to Article 7 of the Framework Directive, expires on 29 October 2021.

II. DESCRIPTION OF THE DRAFT MEASURES

II.1. Background

Wholesale call termination on individual public telephone networks provided at a fixed location

The ECOI's previous review of the market for wholesale call termination on individual public telephone networks provided at a fixed location in Iceland ("market 1") was notified to and assessed by the Authority under Case No. 79867 ("the third review of the market")[4]. Following that review, the ECOI adopted its Decision No. 22/2016, in which Síminn hf. ("Síminn"), Fiarskipti ehf., now Sýn hf. ("Vodafone"), Nova ehf. ("Nova"), Símafélagið ehf. ("Símafélagið")[5], Hringdu ehf. ("Hringdu") and Tismi BV ("Tismi") were designated with significant market power ("SMP") on market 1. Specific obligations were imposed on all SMP operators. In addition to obligations of access, non-discrimination, transparency and accounting separation, ECOI continued the obligation to apply a symmetrical termination rate[6], calculated by reference to the following criteria:

- The fixed termination rate ("FTR") shall be decided on an annual basis coming into force from 1 January of each year;
- ECOI shall publish the FTR no later than 1 November of the year preceding its applicability[7];
- only the FTRs imposed by EEA NRAs on the basis of a pure Bottom Up Long-Run Incremental Cost ("pure BU-LRIC") methodology, which are available on 30 April of the year when the benchmarking exercise is carried out in each instance, and for which a formal decision has been taken by the relevant NRA, are to be taken into consideration;
- the reference shall be for single transit prices ("layer 2")[8];

[3] Corresponding to markets 1 and 2 of the EFTA Surveillance Authority Recommendation of 11 May 2016 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 communications networks and services*); adopted by Decision No 093/16/COL, OJ L 84, 30.3.2017, p. 7, ("2016 Recommendation").
[4] See the Authority's "Comments Letter" on 21 December 2016 (Document No. 831197).
[5] Nova has acquired Símafélagið and merged its operation into Nova.
[6] Symmetrical termination rates consistent with the Authority's Recommendation on Termination Rates (see EFTA Surveillance Authority Recommendation of 13 April 2011 on the Regulatory Treatment of Fixed and Mobile Termination Rates in the EFTA States; hereafter "Recommendation on Termination Rates") were already established in ECOI's Decision No. 36/2012. ECOI noted that, as a small NRA with limited resources, the continued use of benchmarking was consistent with the Authority's Recommendation on Termination Rates.
[7] The draft measures will be subject to a national consultation as well as to a consultation with the Authority.
[8] This criterion does not exclude decisions from NRAs, which apply a single price to more than one layer provided that the price control obligation applies to single transit calls (layer 2).

- the reference shall be the price per minute of a three-minute call;
- the average exchange rate in the relevant quarter shall be used; and
- the resulting FTR shall not be higher than the average in those countries that fulfil the above conditions.

Wholesale voice call termination on individual mobile networks

On 23 June 2015, ECOI notified its fourth-round review of the market for wholesale voice call termination on individual mobile networks in Iceland ("market 2"), which the Authority assessed under Case No. 77567[9]. Subsequently, ECOI adopted the notified measures under Decision No. 20/2015 designating the mobile network operators ("MNOs") Síminn hf. ("Síminn"), Fjarskipti ehf, now Sýn hf. ("Vodafone"), Nova ehf. ("Nova"), IMC Ísland ehf. ("IMC/Alterna") and the mobile virtual network operator ("MVNO") 365 miðlar ehf. ("365")[10], as having SMP on their respective market. It imposed, *inter alia,* price control obligations based on the benchmarking method[11] applying the following criteria:

- The mobile termination rate ("MTR") shall be decided on an annual basis coming into force from 1 January of each year;
- the ECOI shall publish the MTR no later than 1 November of the year preceding its applicability;
- only the MTR decided by EEA NRAs on the basis of a pure BU-LRIC model will be taken into account;
- the comparison will be based on prices resulting from conclusions on MTRs which are available in April of the year when the benchmarking exercise is made;
- only MTRs subject to a formal decision by a NRA will be taken into account; and
- the resulting MTR shall not be higher than the average in those EEA States that fulfil the criteria mentioned above.

II.2 Current notification

Wholesale call termination on individual public telephone networks provided at a fixed location

The notified draft decision contains the ECOI's FTR for the year 2022, calculated using an annual benchmarking comparison of FTRs in line with the criteria set out in its 2016 market analysis (referenced in section II.1 above)[12]. The ECOI has included FTRs set by the Commission Delegated Regulation[13], in particular Article 5(1), and the pure BU-LRIC rate applicable in Norway[14]. The resulting average amounts to ISK 0.104/minute

9 See the Authority's "No Comments Letter" of 23 July 2015 (Document No. 763795).

10 Vodafone has now taken over 365's mobile operations following the purchase of 365 miðlar ehf.

11 According to ECOI, it is not in a position to develop a pure BU-LRIC cost model for the relevant markets in the coming years due to a lack of resources and specialised knowledge. ECOI notes further that it does not have the option of using assistance from BEREC under the current framework.

12 The benchmarking includes call termination rates based on a pure BU-LRIC model available before the end of April 2021 and applicable in 2022.

13 Commission Delegated Regulation (EU) 2021/654 of 18 December 2020 supplementing Directive (EU) 2018/1972 of the European Parliament and of the Council by setting a single maximum Union-wide mobile voice termination rate and a single maximum Union-wide fixed voice termination rate (Text with EEA relevance) C/2020/8703; OJ L 137, 22.4.2021, p. 1–9 ("Commission Delegated Regulation"). The Commission Delegated Act has not yet been incorporated into the EEA Agreement. Until otherwise stipulated by Icelandic law or regulation, the ECOI will therefore continue to decide the termination rates in individual telephone networks provided at a fixed location according to the ECOI Decision no. 22/2016.

14 The current termination rate in Norway is 0.4 Norwegian øre/minute or ISK 0.059/minute. No decision on termination rates in Norway for 2022 had been made as of 30 April 2021 so the ECOI uses the current rate as its benchmark price. The termination rate in Liechtenstein has not been

(approximately €cent 0.07) and constitutes a maximum price cap (ex VAT), which will apply equally to all SMP operators from the period from 1 January 2022 to 31 December 2022[15].

Wholesale voice call termination on individual mobile networks

The notified draft decision contains the ECOI's MTR for the year 2022, calculated using an annual benchmarking comparison of MTRs in line with the criteria set out in its 2015 market analysis (referenced in section II.1 above)[16]. The ECOI has included MTRs set by the Commission Delegated Regulation, in particular Article 4(2)(b) and 4(4), and the pure BU-LRIC based rate applicable in Norway[17]. The resulting average amounts to ISK 0.74/minute (approximately €cent 0.49) and constitutes a maximum price cap (ex VAT), which will apply equally to all SMP operators[18] for the period from 1 January 2022 to 31 December 2022[19].

III. NO COMMENTS

The Authority has examined the notified draft measures and has no comments.

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, the ECOI shall take the utmost account of comments of other NRAs and the Authority. It may adopt the resulting draft measures and, when it does so, shall communicate it 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 measures.

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included in the calculation, since the rate in Liechtenstein results from a benchmarking exercise and is not based on a pure BU-LRIC model.

[15] The current maximum FTR is ISK 0.12/minute.

[16] The benchmarking includes call termination rates based on a pure BU-LRIC model available before the end of April 2021 and applicable in 2022.

[17] The current termination rate in Norway is NKR 0.032/minute, or ISK 0.47/minute. No decision on termination rates in Norway for 2022 had been made as of 30 April 2021 so the ECOI uses the current rate as its benchmark price. The termination rate in Liechtenstein has not been included in the calculation, since the rate in Liechtenstein results from a benchmarking exercise and is not based on a pure BU-LRIC model.

[18] The current maximum MTR is ISK 1.01/minute.

[19] On 11 December 2018 Directive no. 2018/1972 (European Electronic Communications Code) on 11 December 2018 has been adopted. The Directive stipulates, among other things, that maximum rates for the termination of voice calls in the European Union will be set with a delegated act. On 24 September 2021, the EEA Joint Committee adopted Decision ("JCD") No 275/2021 incorporating Directive (EU) 2018/1972 of the European Parliament and of the Council of 11 December 2018 establishing the European Electronic Communications Code (Recast), as corrected by OJ L 334, 27.12.2019, p. 164 and OJ L 419, 11.12.2020, p. 36, into the EEA Agreement. Directive (EU) 2018/1972 will repeal, inter alia, the Framework Directive. However, until JCD No 275/2021 enters into force, the Framework Directive remains applicable. The Delegated Regulation was subsequently issued on 18 December 2020, setting a maximum call termination rate for the EU. However, the provisions of the Delegated Regulation have not yet been incorporated into the EEA Agreement. Until otherwise stipulated by Icelandic law or regulation, the ECOI will therefore continue to decide the termination rates in individual mobile networks according to the ECOI Decision no. 20/2015.

Pursuant to Point 15 of the Procedural Recommendation[20], 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[21] 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 wish to have deleted prior to publication. You should give reasons for any such request.

Yours sincerely,

Valgerður Guðmundsdóttir Deputy Director Internal Market Affairs Directorate	Emily O'Reilly Deputy Director for Competition Competition and State Aid Directorate

This document has been electronically authenticated by Emily OReilly, Valgerdur Gudmundsdottir.

[20] 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 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").

[21] The request should be submitted through the eCOM Registry, marked for the attention of the eCOM Task Force.