



PÓST- OG FJARSKIPTASTOFNUN

Draft decision

Designation of companies with significant market power and imposition of obligations on the wholesale market for call termination in public telephone networks provided at a fixed location (Market 1).

The Post and Telecom Administration (PTA) has, with reference to Article 17 of the Electronic Communications Act no.81/2003, as amended, analysed the wholesale market for call termination in public telephone networks provided at a fixed location. This is Market 1 in the current EFTA Surveillance Authority (ESA) Recommendation on the relevant market from 11 May 2016.

With a letter dated 10 October 2016 a draft analysis of the above specified market was submitted for consultation, where the Competition Authority and electronic communications companies were invited to make comments on the market analysis and on its planned conclusions. The Competition Authority submitted observations. The Competition Authority stated that it considered the analysis well made and serving it's objectives and is in agreement with the PTA in it's findings. Síminn communicated to the PTA that the company did not have any comments to make on the findings of the analysis.

With a letter dated 22 November 2016, the PTA formally notified to the EFTA Surveillance Authority (ESA) its Draft Decision on the markets in question, along with appendices, in accordance with the provisions of Paragraph 1 of Article 7 of Act no. 69/2003 on the Post and Telecom Administration and with the Recommendation pursuant to Article 7 of the Framework Directive.

The analysis of Market 1 has now been updated in accordance with those observations that were taken into account. The updated analysis can be found in Appendix A to this Decision.

1. Designation of a company with significant market power

With a view to the definition and analysis of competition on the wholesale market for call termination in individual public telephone networks provided at a fixed location (Market 1) and pursuant to Paragraph 2 Article 17, see Article 18 of the Electronic Communications Act no. 81/2003 the PTA has decided to designate Siminn hf. (Siminn) Fjarskipti hf. (Vodafone), Nova ehf. (Nova), Símafélagið ehf. (Símafélagið), Hringdu ehf. (Hringdu) and Tismi BV (Tismi) as having significant market power on the relevant market.

2. Imposition of regulatory obligations

In accordance with Article 27 of the Electronic Communications Act no.81/2003, the PTA has decided to impose obligations on Síminn, Vodafone, Nova, Símafélagið, Hringdu and Tismi as described in the following Sections, as a result of the designation of the companies as having significant market power on the wholesale market for call termination in individual public telephone networks provided at a fixed location (Market 1 in ESA Recommendation from 2016). In the opinion of the PTA these obligations are both in accordance with the objectives presented in the EU Framework and Access Directives and with the provisions of legislation on electronic communications and that they are appropriate for the period that is expected to pass until the market will be analysed again. The PTA considers that the obligations are conducive to increasing competition on the relevant market. With respect to further discussion on the obligations the PTA refers to the revised analysis on Market 3, see Appendix A.

The following obligations replaced the obligations imposed on Siminn and Vodafone with Decision no. 36/2012 from 14 December 2012.

2.1 Obligation to provide access

With the authority in Article 28 of the Electronic Communications Act, the PTA imposes obligations on Siminn, Vodafone, Símafélagið, Nova, Hringdu and Tismi to accede to normal and fair requests for access to network and services for call termination in the fixed line network at wholesale level. If a request for interconnection is rejected or not answered within 14 days then the company should provide the applicant with a written reason supported with arguments for the rejection or delay. The completion of agreements for access shall in all instances, be completed within three months from receipt of the request.

The companies are obliged to record the time taken by the negotiations, progress in the negotiations and the reasons for delays should there be any. This documentation shall be available for counterparties and for the PTA should it be requested.

2.2 Obligation of non-discrimination

With the authority granted by Article 30 of the Electronic Communications Act, the PTA imposes obligations on Siminn, Vodafone, Símafélagið, Nova, Hringdu and Tismi for non-discrimination, both with respect to price and other factors, both towards external operations and between internal operations and external operations. The dissemination of information from the relevant department should be in a comparable manner whether to third parties or to other departments within the company or to related parties. The treatment of information gained by the companies in making agreements for access should be in accordance with Article 26 of the Electronic Communications Act.

2.3 Obligation of transparency

With the authority of Article 29 of the Electronic Communications Act, the PTA imposes the obligations on Símann, Vodafone, Símafélagið, Nova, Hringdu and Tismi to provide the PTA and parties that request interconnection agreements with all necessary information related to interconnection, such as on call termination rates, prices for all related services, all measurement units on which invoicing is based, charging period, possibilities for discounts should there be any, other information that affects charging, information on location and technical characteristics of interconnection points.

Siminn, Vodafone, Símafélagið, Nova, Hringdu and Tismi shall notify other companies in advance of changes to the terms and services, no later than three months before the changes are implemented. It is however authorised to notify changes in price with two months' notice. Changes to interconnection areas and interconnection points shall be notified with six months' notice. The companies should also notify the PTA of all changes to interconnection agreements, tariffs or general terms for interconnection. Changes to tariffs and general conditions would not come into force before the PTA has endorsed them. In information that is provided, the changes that have been made and the nature of these changes must be shown clearly.

All electronic communications companies that make agreements on interconnection, including call termination in fixed line networks, are obliged to send the PTA a copy of such agreements without delay and no later than one week after the signing, pursuant to Paragraph 6 Article 24 of the Electronic Communications Act.

The PTA lifts the obligation on Siminn to publish its reference offer from 31 December 2017. The PTA publishes maximum termination rates in accordance with the obligation for price control. The PTA considers it to be sufficient for all companies to provide the Administration and those parties that request interconnection agreements, with all necessary information related to interconnection.

2.4 Obligation of separation of accountancy

With the authority in Article 31 of the Electronic Communications Act, the PTA imposed the obligation on Siminn and Vodafone, with the PTA Decision no. 36/2012 from 14 December 2012 for separation of accountancy.

The purpose of accountancy separation is among other things to be able to identify information from bookkeeping to show as exactly as possible the results from various parts of operations as though from separate companies. Separation of costs limits possibilities for the company in question to charge for costs that are not related to a specific service. As call termination rates are now decided on the basis of benchmarking and are for this reason not dependent on the costs of individual electronic communications companies in this country, the PTA sees no reason to maintain obligations on separation of accountancy.

The PTA therefore withdraws the obligation for separation of accountancy on Síminn and Vodafone from 31 December 2017. This obligation is not imposed on other companies.

2.5 Obligation of price control

With reference to Article 32 of the Electronic Communications Act, the PTA imposes an obligation for price control on Síminn, Vodafone, Símafélagið, Nova, Hringdu and Tismi. The maximum price for call termination will be decided with benchmarking pursuant to authorisation in Paragraph 4 Article 32 of the Electronic Communications Act. Maximum termination rates shall be the same for all companies, i.e. symmetrical rates.

The PTA believes that the pricing obligation will lower entry barriers to the market in question as new parties need to pay lower termination rates to those electronic communications companies incumbent on the market. The PTA points out that as termination rates drop there is less likelihood that the PTA will authorise new parties to charge higher termination rates than those that the PTA has prescribed.

The PTA will apply the following main criteria as a basis for calculations of termination rates when benchmarking is applied:

- Reference shall be made to those EEA states where the termination rates of companies with market dominance on the markets in question are subject to price control by the electronic communications regulatory body of the state in question, on the basis of cost analysis where the pure BU-LRIC methodology is applied.
- Comparison of prices should be based on conclusions on termination rates according to calculations based on the pure BU-LRIC model which are available on 30 April of the year when the benchmarking is made in each instance.
- The reference shall be for single transit prices (layer 2)¹.
- The reference shall be the price per minute of a three-minute call.²
- The average exchange rate in the relevant quarter shall be used.³
- A formal Decision shall have been made by the relevant regulatory authority.
- The resulting price shall not be higher than the arithmetic mean of those countries that fulfil the above conditions.

The conclusion of the benchmarking shall be the basis for the PTA Decision on termination rates and that rate shall apply as the maximum for Síminn, Vodafone, Nova, Símafélagið, Tismi and Hringdu.

On an annual basis during the period of validity of the Decision, the PTA shall repeat the benchmarking using the above specified criteria and decide maximum termination rates which will come into force from and including 1 January each year in accordance with the conclusions of the benchmarking. The PTA will publish conclusions from the benchmarking no later than 1 November each year with a Decision (for rates that are to apply from and including 1 January of the following year), subsequent to national consultation and to consultation with ESA. Normally, all countries that fulfilled the above specified criteria should be used in the benchmarking.

The first benchmarking in accordance with this Decision shall be completed not later than 1 November 2017 for prices that will apply from and including 1 January 2018. With the PTA Decision no. 17/2016, the PTA decided the maximum termination rate at ISK 0.14/minute which applies for the year 2017.

¹ This does not exclude states where a single price applies to more than one layer, provided that the price control obligation applies to single transit calls (layer 2).

² It is assumed that an average telephone call is 3 minutes; the calculation is made using the following formula: average minute price for call origination = connection charge/3 + price per minute.

³ In this process the PTA shall apply the BEREC implementation in its regular benchmarking.

3. The coming into force of the Decision and channels for appeal

This Decision comes into force from the day that it is published and will be in force until a Decision is made to the contrary by the Post and Telecom Administration.

This Decision can be appealed to the Appellate Committee for Electronic Communications and Postal Affairs, see Article 13 of Act no. 69/2003 on the Post and Telecom Administration. The appeal shall have reached the Appellate Committee four weeks from the time that the party in question became aware of the Decision of the Post and Telecom Administration. Costs resulting from an appeal are decided pursuant to Paragraph 5 of Article 13 of the same Act, and in addition a special appeal fee shall be charged to the amount of ISK 150,000 pursuant to Article 6 of Regulation no. 36/2009 on the Appellate Committee for Electronic Communications and Postal Affairs.

Reykjavik, xx December 2016

Hrafnkell V. Gíslason

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Attached:
Appendix A - Analysis of Market 1