



PÓST- OG FJARSKIPTASTOFNUN

Draft decision

on the lifting of obligations on the retail market for access to the public telephone network provided at a fixed location and on the wholesale market for call origination in the public telephone network provided at a fixed location (Markets 1/2008 – 2/2008)

The Post and Telecom Administration (PTA) has, with reference to Article 17 of the Electronic Communications Act no. 81/2003, as amended, analysed the retail market for access to the public telephone network provided at a fixed location (Market 1/2008)¹ and the wholesale market for call origination in the public telephone network provided at a fixed location (Market 2/2008).²

With a letter dated 7 October 2016 a draft analysis of the above specified markets 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 its objectives and is in agreement with the PTA in its 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 Markets 1 and 2, 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 Markets 1 and 2 has now been updated in accordance with the observations that were taken into account. The updated analysis of the markets can be found in Appendix A to this Decision.

1. Conclusion of Market Analysis

¹ Market no. 1 in the Recommendation of the EFTA Surveillance Authority (ESA) from 5 November 2008.

² Market no. 2 in the Recommendation of the EFTA Surveillance Authority (ESA) from 5 November 2008.

The PTA has defined the relevant market in accordance with Article 16 of the Electronic Communications Act. As the market is no longer in the ESA Recommendations on the relevant markets and as it is not mentioned in the Appendix to the Regulation on Market Analysis in the Field of Electronic Communications no. 741/2009, an assessment was made according to Paragraph 4 of Article 4 of the Regulation as to whether the market still fulfils the criteria to be susceptible to ex-ante obligations on companies on the market. According to Paragraph 3 of Article 4 of the Regulation, the criteria that must be fulfilled are the following:

- a. that there exist high and non-transitory barriers to entry;
- b. that the market is structured in such a manner that one cannot expect active competition in the foreseeable future;
- c. that the application of existing competition law would not on its own suffice to provide remedies where the market has failed.

The conclusion of the PTA analysis was that the markets no longer fulfil criterion a, that there are no longer high and non-transitory barriers to entry and therefore the obligations that had been imposed on companies on this market should be lifted. With regards to further arguments in support of this conclusion reference is made to Appendices A and B to this Decision.

2. Obligations on the relevant markets

With the PTA Decision no. 8/2013 of 18 June 2013, which was published subsequent to market analysis of the retail market for access to the public telephone network provided at a fixed location (Market 1), the following obligations were imposed on Siminn.

- Carrier selection and pre-selection.
- Obligation of access; wholesale leasing of telephone lines provided at a fixed location.
- Obligation of non-discrimination.
- Obligation of transparency.
- Obligation of separation of accountancy.
- Obligation of price control; maximum price decided with cost analysis.
- Obligation of cost accounting.

With the PTA Decision no. 36/2012 dated 14 December 2012, which was published subsequent to market analysis on the wholesale market for call origination in the public telephone network provided at a fixed location (Market 2), the following obligations were imposed on Siminn:

- Obligation to provide access.
- Obligation of non-discrimination.
- Obligation of transparency.
- Obligation of separation of accountancy.
- Obligation of price control; maximum price decided with benchmarking.

As the market no longer fulfils the conditions needed to make it susceptible to the imposition of ex-ante obligations, with reference to Paragraph 3 of Article 4 of the Regulation on Market Analysis in the Field of Electronic Communications and to obligations according to the EEA Agreement, the PTA has decided to lift the above specified obligations on Siminn on Markets 1 and 2.

According to Paragraph 6 of Article 9 of the Regulation on Market Analysis in the Field of Electronic Communications, the PTA is obliged to notify those affected by the Decision, with

reasonable notice, about the lifting of the obligations before the Decision in question is implemented. With this in mind, the PTA has decided that obligations on Markets 1 and 2 will cease to be in force at the end of 2017.

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 for an appeal are according 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

Óskar H. Ragnarsson

Attached:
Appendix A - Analyses of Markets 1 and 2.