



POST- AND TELECOM  
ADMINISTRATION

**Decision no. 36/2012 on designation of undertakings with significant market power and the imposition of obligations on the wholesale markets for call origination and termination on the public telephone network provided at a fixed location**

**(Markets 2 and 3)**

The Post and Telecom Administration (PTA) has, with reference to Article 17 of the Electronic Communications Act number 81/2003, on electronic communications, as amended, analysed the wholesale market for call origination on the public telephone network provided at a fixed location (Market 2) and for call termination on the public telephone network provided at a fixed location (Market 3).

With a letter dated 26 June, 2012 a draft analysis of the above markets was sent to the Competition Authority and to electronic communications companies and they were invited to make comments on the market analysis and on its conclusions. The following parties submitted comments on the preliminary draft: the Competition Authority, FjarSKIPTI ehf. (Vodafone), Nova and Siminn hf.

On 6 November 2012, the PTA formally notified to the EFTA Surveillance Authority (ESA) of a draft decision on the above markets, in accordance to Article 7 of Directive 2002/21/EC (Framework Directive). On 6 December 2012, the PTA received ESA's opinion on PTA's draft decision and analysis on Market 7. In the opinion ESA makes no comments to the notification.

The analysis of Markets 2 and 3 has now been updated in accordance with the comments that were taken into account. The updated analysis can be found in Appendix A to this decision, and the comments that were received have been answered in Appendix B.

## **1 Designation of undertakings with significant market power**

With a view to the definition and analysis of competition on the wholesale market for call origination on the public telephone network provided at a fixed location (Market 2) and pursuant to Paragraph 2 of Article 17, see Article 18 of the Electronic Communications Act, the PTA has decided to designate Siminn hf. as having significant market power on the relevant market.

With a view to the definition and analysis of competition on the wholesale market for call termination on the public telephone network provided at a fixed location (Market 3) and

pursuant to Paragraph 2 of Article 17, see Article 18 of the Electronic Communications Act, the PTA has decided to designate Siminn hf., Fjarskipti ehf. (Vodafone), Nova ehf., Símafélagið ehf. and Hringdu ehf. as having significant market power on the relevant market.

## **2 Imposition of obligations on Siminn on Market 2**

In accordance with Article 27 of the Electronic Communications Act, the PTA has decided to impose the following obligations on Siminn hf. because it has been designated as a undertaking with significant market power on the wholesale market for call origination on the public telephone network provided at a fixed location (Market 2). 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 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 2, see Appendix A to this decision.

The following obligations replaced the obligations imposed on Siminn with decision number 29/2008 from 4 December 2008.

### **2.1 Obligation to provide access**

With the authority in Article 28 of the Electronic Communications Act, the PTA intends to maintain obligations on Siminn to accede to normal and reasonable requests for access to the network for service for call origination in fixed line networks at wholesale level. The PTA considers it appropriate to reiterate that the obligation for access also covers resale access, should there be a demand for such a form of access.

Siminn is obliged to complete agreements on call origination, including agreements on resale access, without unnecessary delay. Siminn is 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. Should Siminn reject or not reply within 14 days to a request for access, then the company should provide the applicant with a written reason supported with arguments for the rejection or delay. Arguments must contain all the information necessary for an assessment of the basis for the rejection. The completion of agreements for access shall in all instances be completed within three months from Siminn's receipt of the request with the required information according to the reference offer.

### **2.2 Obligation for non-discrimination**

With the authority granted by Article 30 of the Electronic Communications Act, the PTA will maintain the obligation on Siminn for non-discrimination, both with respect to price and other factors, both towards external operations and between internal operations and external operations. The obligation for non-discrimination applies to interconnection, and also to resale access to the Siminn fixed line telephone system. 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 related parties. The treatment of information gained by

Siminn in making agreements for origination shall be in accordance with Article 26 of the Electronic Communications Act.

### **2.3 Obligation for transparency**

With the authorisation in Article 29 of the Electronic Communications Act the PTA intends to maintain the obligation on Siminn for transparency and the publication of a reference offer for interconnection of fixed line networks, terms and conditions for delivery and use, along with tariffs for wholesale fixed line telephone services. Siminn is further obliged to notify the PTA of all changes to relevant contracts or to the reference offer. Changes to the reference offer on interconnection do not come into force before they have been endorsed by the PTA. In notifications on planned changes to the reference offer or to the interconnection agreement it shall be clearly stated where in the agreement or in the reference offer changes have been made and there shall be a description of the nature of the changes.

The reference offer for call origination may be part of the same offer for access in the form of call termination and other services in the fixed line system (see the reference offer currently in force on interconnection). Should Siminn make an agreement with an electronic communications company for access to its fixed line network then Siminn shall publish an analogous reference offer for such access, no later than three months after the signing of the agreement. Pursuant to Paragraph 2 of Article 29 of the Electronic Communications Act, the PTA is authorised to prescribe amendments to such a reference offer.

Publication is deemed adequate if Siminn publishes the reference offer on its website. The reference offer, shall be divided into independent sections with appropriate terms and conditions, according to the needs of the market such that the counterparty is not obliged to agree to purchase of service, or other items for which he has no need. The reference offer shall be updated as necessary and it shall contain all information necessary for the service on offer. The published reference offer, shall, as a minimum contain information on the following:

- Interconnection service or other access service on offer
- Call origination price
- The unit price and the service represented by each unit
- All discounts and criteria for discounts
- Methods for calculating offers that are not at fixed prices
- Interconnection points
- Geographical areas where services are rendered
- All significant limitations on delivery
- All technological and physical characteristics, including interfaces used on interconnection points as well as the standards in use
- Quality level
- Customer maintenance
- The obligations to observe confidentiality between parties, confidentiality of data and plans, and protection of personal information
- Guarantees and payment
- Unforeseen events in special circumstances

- Security and phone-tapping
- Term of agreement and termination of agreement
- Treatment of disputes
- Terms and conditions for fair compensation when it is not possible to provide the agreed quality level
- Other general contractual terms and conditions

In other respects than those set forth in this section, the reference offer shall be in accordance with the Rules concerning Reference offers for Interconnection, no. 94/2002 as appropriate. Should the Siminn reference offer not be considered adequate for the market, the PTA can prescribe amendments to the offer pursuant to Paragraph 2 of Article 29 of the Electronic Communications Act. Given the problems that have emerged in previous contractual negotiations with Siminn, the PTA considers it appropriate to stipulate that Siminn may not demand a bank guarantee from electronic communications undertakings without special permission from the PTA.

The PTA imposes the obligation on Siminn to notify other companies in advance about all amendments to the reference offer with at least three months' notice. It is however authorised to notify changes to price no later than two months before the changes come into effect. Changes to interconnection areas and interconnection points shall be notified with six months' notice

All electronic communications undertakings that make agreements on interconnection or other access forms, including call origination 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 considers it to be no longer necessary for Siminn to publish book-keeping information related to this market and intends to withdraw this obligation.

## **2.4 Obligation for accounting separation**

With the authority in Article 31 of the Electronic Communications Act the PTA maintains obligations on Siminn for accounting separation. Such separation should constitute as a minimum that on the one hand wholesale and on the other hand the retail fixed line telephone divisions should have their accounts separated from other operations. The Siminn wholesale prices and internal prices within the company should be transparent, inter alia to prevent unjustified subsidies. Should Siminn's accounting separation not be satisfactory, the PTA reserves the right to submit demands at a later date for further separation.

In its accounting, Siminn should separate income, expenditure, assets and capital for its fixed line phone network. Siminn should provide to the PTA on an annual basis with a breakdown of the operational accounts and balance sheet for wholesale and retail along with a statement of the division of indirect costs that were not possible to assign through comparison with other cost items. The above specified statement should have reached the Administration no later than five months after the end of the operational year.

## 2.5 Obligation for price control

With reference to Article 32 of the Electronic Communications Act, the PTA intends to impose on Siminn an obligation for cost-analysed tariffs. The maximum price for call origination will be decided with benchmarking pursuant to authorisation in Paragraph 4 Article 32 of the Electronic Communications Act.

When selecting analogous competition markets the PTA will use the electronic communications market in the EEA as the reference market. When choosing countries for comparison and for the calculation of call origination in fixed networks when benchmarking is used, the PTA shall apply the following main criteria:

- Reference shall be made to those EEA states where the origination rates of undertakings with significant market power on the markets in question are subject to price control by the NRA of the state in question, on the basis of cost analysis where the BU-LRIC methodology is used.
- Comparison of prices shall be based on conclusions according to calculations based on a BU-LRIC model available at the time when the price comparison is made in each instance.
- Comparison shall be made with the price for single transit.
- The reference shall be the price per minute of a three-minute call.
- Comparison shall be made using the average exchange rate in the relevant quarter.
- The resulting price shall not be higher than the arithmetic average in those countries that fulfil the above conditions during the period of reference.

During the period of validity of the Decision the PTA will regularly repeat benchmarking using the above criteria and will decide Siminn's maximum call origination charge effective as from 1 January each year, in accordance with the conclusions of the benchmarking. The PTA will however in the first instance decide the maximum call origination charge using the above criteria with effect as from 1 July, 2013, and then annually as from 1 January, 2014, or at the same time as the charges for call termination on market 3 will be decided on the basis of benchmarking. Generally all the states fulfilling the above criteria will be used in the benchmarking. In the opinion of the PTA it is, however, necessary to have a minimum of five comparison countries as the basis for a decision on price using benchmarking. The PTA will publish the conclusions of the benchmarking no later than 1 November each year (for prices that will apply as from 1 January next year), subsequent to national consultation and consultation with ESA. The first benchmarking shall, however, be completed no later than 1 May, 2013, or at the same time as the benchmarking for call termination on market 3 will be completed.

Siminn rates for call origination according to the reviewed cost analysis, dated 19 April, 2011, which was endorsed with the PTA decision number 15/2011, are now ISK 0.63 per minute and ISK 0.62 connection charge for each call. This price shall be Siminn's maximum price until the next PTA benchmarking has been completed.

The cost accounting obligation currently imposed on Siminn on the market for call origination in public telephone networks provided at a fixed location is hereby withdrawn.

### **3 Imposition of obligations on Market 3**

Pursuant to Article 27 of the Electronic Communications Act, the PTA has decided to impose obligations on Síminn hf., Fjarskipti ehf. (Vodafone), Nova ehf., Símafélagið ehf. and Hringdu ehf. as described in the following chapters, as a result of the undertakings being designated as having significant market power on the wholesale market for call termination on the public telephone network provided at a fixed location (Market 3). 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 2, see Appendix A.

The following obligations replaced the obligations imposed on Siminn and Vodafone with decision number 29/2008 from 4 December 2008.

#### **3.1 Obligation to provide access**

With the authority in Article 28 of the Electronic Communications Act, the PTA intends to impose obligations on Siminn, Vodafone, Símafélagið, Nova and Hringdu to accede to normal and fair requests for access to the networks and services for call termination in fixed line networks at wholesale level. If a request for interconnection is rejected or not answered within 14 days then the company shall 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.

Interconnection agreement shall be completed no later than three months from receipt of the request. Should an agreement not be reached between the parties then either one can request that the PTA make a decision on whether an agreement should be made on interconnection or access, and on the conditions of such agreements.

Siminn, Vodafone, Símafélagið, Nova and Hringdu will be 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. Should access be denied then the applicant shall be provided with a documented and reasoned rejection of the request. Arguments must contain all the information necessary for an assessment of the basis for the rejection.

#### **3.2 Obligation for non-discrimination**

With the authority granted by Article 30 of the Electronic Communications Act, the PTA imposes obligations on Siminn, Vodafone, Símafélagið, Nova and Hringdu 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 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.

### **3.3 Obligation for transparency**

With the authority in Article 29 of the Electronic Communications Act, the PTA imposes obligations on Siminn for transparency and the publication of a reference offer for call termination on the public telephone network provided at a fixed location at wholesale level, terms and conditions for delivery and use and tariff. Siminn is further obliged to notify the PTA of all changes to relevant contracts or to the reference offer. Changes to the reference offer do not come into force before they have been endorsed by the PTA. In notifications on planned changes to the reference offer or to the interconnection agreement it shall be clearly stated where in the agreement or in the reference offer changes have been made and there shall be a description of the nature of the changes.

The reference offer for call termination may be part of the same offer for access in the form of call origination and other services in the fixed line system (see the reference offer currently in force on interconnection).

Publication is deemed adequate if Siminn publishes the reference offer on its website. The reference offer shall be divided into independent sections with appropriate terms and conditions, according to the needs of the market such that the counterparty is not obliged to agree to purchase of service, or other items for which it has no need. The reference offer shall be updated as necessary and it shall contain all information necessary for the service on offer. The published reference offer, shall, as a minimum contain information on the following:

- Interconnection service on offer
- Call termination price
- The unit price and the service represented by each unit
- All discounts and criteria for discounts
- Methods for calculating offers that are not at fixed prices
- Interconnection points
- Geographical areas where services are rendered
- All significant limitations on delivery
- All technological and physical characteristics, including interfaces used on interconnection points as well as the standards in use
- Quality level
- Customer maintenance
- The obligations to observe confidentiality between parties, confidentiality of data and plans, and protection of personal information
- Guarantees and payment
- Unforeseen events in special circumstances
- Security and phone-tapping

- Term of agreement and termination of agreement
- Treatment of disputes
- Terms and conditions for fair compensation when it is not possible to provide the agreed quality level
- Other general contractual terms and conditions

In other respects the reference offer shall be in accordance with the Rules concerning Reference offers for Interconnection, no. 94/2002 as appropriate.

Should the Siminn reference offer not be considered adequate for the market, the PTA could prescribe amendments to the offer pursuant to Paragraph 2 Article 29 of the Electronic Communications Act. Given the problems that have emerged in previous contractual negotiations with Siminn, the PTA considers it appropriate to stipulate that Siminn may not demand a bank guarantee from electronic communications undertakings without special permission from the PTA.

The PTA imposes the obligation on Siminn to notify other companies in advance about all amendments to the reference offer with at least three months' notice. It is however authorised to notify changes to price no later than two months before the changes come into effect. Changes to interconnection areas and interconnection points shall be notified with six months' notice

The PTA considers it to be no longer necessary for Siminn to publish book-keeping information related to this market and intends to withdraw this obligation.

The PTA imposes the obligations on Vodafone, Símafélagið, Nova and Hringdu, to provide the PTA and parties that request interconnection agreements, with all necessary information related to interconnection, such as on call termination prices, 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.

Vodafone, Símafélagið, Nova and Hringdu 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.

### **3.4 Obligation for accounting separation**

With the authority in Article 31 of the Electronic Communications Act, the PTA imposes the obligation on Siminn and Vodafone on the relevant market for accounting separation. Such separation should constitute as a minimum that on the one hand wholesale and on the other hand retail fixed line telephone division should have their accounts separated from other operations. Wholesale prices and internal prices within the company should be transparent, inter alia to prevent unfair subsidies. Should accounting separation not be satisfactory, the PTA reserves the right to submit demands at a later date for further separation.

In its accounting, Siminn and Vodafone should separate income, expenditure, assets and capital for their fixed line phone networks. Siminn should provide to the PTA on an annual basis with a breakdown of the operational accounts and balance sheet for wholesale and retail along with a statement of the division of indirect costs that were not possible to assign through comparison with other cost items. The above specified statement should have reached the Administration no later than five months after the end of the operational year.

### **3.5 Obligation for price control**

With reference to Article 32 of the Electronic Communications Act, the PTA intends to maintain obligations on Siminn and Vodafone and to impose analogous obligations on Símafélagið, Nova and Hringdu for cost related tariffs. The maximum price for call termination will be decided with benchmarking pursuant to authorisation in Paragraph 4 Article 32 of the Electronic Communications Act.

When selecting analogous competition markets the PTA will use the electronic communications market in the EEA as the reference market. When choosing countries for comparison and for the calculation of call termination in fixed networks when benchmarking is used, the PTA shall apply the following main criteria:

- Reference should be made to those EEA states where the termination rates of undertakings with significant market power on the relevant market are subject to monitoring of tariff by the NRA of the state in question, on the basis of cost analysis where the pure LRIC methodology is applied.
- Comparison of prices should be based on conclusions on termination rates according to calculations based on the pure LRIC model which were available when the benchmarking was made in each instance.
- Comparison shall be made with the price for single transit.
- The reference shall be the price per minute of a three-minute call.
- Comparison shall be made using the average exchange rate in the relevant quarter.
- The resulting price shall not be higher than the arithmetic average of those countries that fulfil the above conditions during the period of reference.

During the period of validity of the Decision the PTA will regularly repeat benchmarking using the above criteria and will decide the maximum call termination charge effective as from 1 January each year, in accordance with the conclusions of the benchmarking, but in the first instance as from 1 July 2013 and then annually as from 1. January, 2014. The PTA will publish the conclusions of the benchmarking no later than 1 November each year (for prices that will apply as from 1 January next year), subsequent to national consultation and consultation with ESA. The first benchmarking shall, however, be completed no later than 1 May, 2013 and then annually as from 1 November, 2013. Generally all the states fulfilling the above criteria will be used in the benchmarking. In the opinion of the PTA it is however necessary to have a minimum of five comparison countries as the basis for a decision on price using benchmarking. Therefore the above timing is with the reservation that at least five countries meet the above conditions. Should there not be five available criterion countries on 1 January 2013, the first benchmarking will be postponed for at least six months, or until the number of criterion countries will be enough.

Siminn rates for call termination, according to the revised cost analysis dated 19 April, 2011, which was endorsed with the PTA decision number 15/2011, are now ISK 0.63 per minute and ISK 0.62 connection charge for each call. This price shall be Siminn's maximum price until the next PTA benchmarking has been completed.

The Vodafone termination charge is now ISK 0.73 per minute with an ISK 0.69 connection charge. According to the PTA decision from 4 December, 2008, Vodafone's rates should decrease in stages until they are symmetrical with Siminn rates. There is only one stage left of this glide path and Vodafone's rates will be symmetrical with Siminn's rates from 4 December, 2012. From and including 4 December, 2012 the Vodafone maximum call termination rate will be ISK 0.63 per minute and connection charge ISK 0.62 until the next PTA benchmarking has been made.

The maximum termination rates for Símafélagið, Nova and Hringdu will be the same as the Siminn and Vodafone termination rates as from 1 March 2013.

***Maximum termination rates until the rates are decided on the basis of benchmarking***

<b>Period</b>	<b>Rates until 3. Des. 2012</b>		<b>Rates 4. Des. 2012 - 28. Feb. 2013</b>		<b>Rates as from 1. Mar. 2013</b>	
<b>Company</b>	<b>Connection ISK/call</b>	<b>Per minute ISK/minute</b>	<b>Connection ISK/call</b>	<b>Per minute ISK/minute</b>	<b>Connection ISK/call</b>	<b>Per minute ISK/minute</b>
<b>Síminn</b>	0,62	0,63	0,62	0,63	0,62	0,63
<b>Vodafone</b>			0,62	0,63	0,62	0,63
<b>Símafélagið</b>					0,62	0,63
<b>Nova</b>					0,62	0,63
<b>Hringdu</b>					0,62	0,63

The cost accounting obligation currently imposed on Siminn on the market for call termination in public telephone networks provided at a fixed location is hereby withdrawn.

## **4 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 number 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 number 39/2009 on the Appellate Committee for Electronic Communications and Postal Affairs.**

Reykjavik, 14 December 2012

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Hrafnkell V. Gíslason

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Óskar H. Ragnarsson

Attached:

Appendix A - Analysis of Markets 2 and 3.

Appendix B - Comments by stakeholders and the conclusions from consultation.

Appendix C – Comments letter from ESA.