

Appendix B



POST- AND TELECOM ADMINISTRATION

Conclusions from PTA consultation on draft decision of the retail market for access to the public telephone network provided at a fixed location for residential and non-residential customers

(Market 1)

18 June 2013

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1 Introduction

This document contains a summary of the responses and comments received in relation to the Post and Telecom Administration (PTA) consultation on the Preliminary Draft to the Administration's analysis of the retail market for access to the fixed line public telephone network provided at a fixed location for residential and non-residential customers (Market 1). The Preliminary Draft was submitted to stakeholders for consultation with a letter dated 30 November 2012 and was published on the PTA website at the same time. The notice for submission of comments was initially until 4 January 2013, but it was extended to 18 January.

The following parties submitted comments on the Preliminary Draft.

- The Competition Authority
- Siminn hf.

Comments are categorised by subject, chapters and paragraphs. At the end of each comment there is a short summary of the position of the PTA.

2 General comments

The Competition Authority restricts its examination to a definition of the relevant service and goods markets and to the geographical markets, and to those issues that one could assume would influence assessment of company market power on individual markets. The Competition Authority makes no comment on the parts of the draft that it examined and considers that part of the Analysis to be well made and to serve its purpose. The Competition Authority finally states that it is naturally not bound by the methodology or by the conclusions presented in the PTA draft when processing cases in the future that concern the relevant market.

The position of the PTA

The Competition Authority comments support the PTA conclusions regarding the issues discussed in the comments. They thus give no reason for particular discussion here.

Siminn makes the comment that each analysis should relate to the coming 2-3 years but the actual life cycle of the Market Analysis is much longer than estimated, that is to say 4-5 years instead of 2-3.

The position of the PTA

It is true that in most instances more than two to three years have passed until analysis of specific markets have been repeated. On the other hand, one must take into account the fact that the analyses now generally take less time than they did initially, as the experience of the PTA of the methodology of processing analysis has increased considerably since the Administration first was given the role of implementing market analysis with Act number 81/2003. After the first round of market analysis the PTA furthermore, had to review and endorse many reference offers and cost analyses,

which resulted in a delay in the next round of market analysis - as the same members of staff at the PTA had to perform all these tasks. These members of staff at the PTA are considerably fewer than is usual for the same tasks at most of the PTA's sister organisations in Europe.

In addition to this, one also has to consider that the markets that need to be analysed are significantly fewer than before. There is thus no reason to assume that the next round of analysis will be delayed beyond the 2-3 years that is the norm for market analysis, pursuant to the Electronic Communications Act. As is stated in Appendix B to the PTA decision no. 36/2012 (M2 and M3) referred to by Siminn, amendments to EU Electronic Communications Directives from 2009 prescribe that there should be no more than 2-3 years between analyses. These amendments will in all likelihood be introduced into the EEA agreement and into Icelandic law in the near future.

Siminn considers it of vital importance that subsequent to analysis of Market 1, the decision should be made that all obligations should be withdrawn after 2-3 years unless the PTA has reviewed the prior analysis or where the PTA has taken into account what is ahead in fixed line telephone services in the next 4-5 years and has appreciated the fact that obligations are no longer appropriate as traditional fixed line telephone services (PSTN) are being replaced by VoIP solutions. Obligations on the services in question are such that they will lead to PSTN services being unable to compete with IP solutions and that they will deteriorate more rapidly as a result of the obligations. During recent years there has been a very significant reduction in PSTN connections on the market and the Siminn fixed line telephone services are first and foremost provided through PSTN connections. Siminn points out the fact there has been a reduction in PSTN connections from 2008 to 2012 from 140,858, down to 124,717. Siminn says that the PTA has not conducted any research on innovation and development in connection with these IP services. There is little or no discussion to be found on the future of the PSTN system in the coming years. The PTA emphasis in this context can be found on page 28, which in the opinion of Siminn is inadequate. The PTA point of departure seems to be the possible market development of Siminn and not the competitive restraint that other solutions exercise on Siminn. It is a wrong approach to solely concern oneself with possible market share, but rather the criterion should be whether Siminn has the strength to be able to adapt its services on the fixed line telephone markets without taking into consideration customers, competitors or other parties to the market.

The position of the PTA

The PTA discusses the increase in the share of VoIP services in Chapters 2.3.3, in Chapter 5 and Chapters 6.4 and 6.5. The PTA rejects the assertion that the discussion on VoIP is inadequate. As is stated in the Preliminary Draft Analysis, VoIP services have been available since 2005, but their share is nevertheless only 12% of the number of users of fixed line telephony services at a fixed location. The PTA considers that nothing has emerged that indicates that the transfer of users from PSTN over to VoIP will increase so significantly over the next 2-3 years that the circumstances on the market will be totally changed. The PTA expects that the number of VoIP users will continue to increase as it has done to date. During the past years the users of VoIP services through a fixed network point have increased by about 5-6 thousand per annum (see table 5.2 in Market Analysis - Appendix A). There

is thus no reason to expect that VoIP service will gain the upper hand during the projected period of validity of this analysis.

If development becomes more rapid than can be expected from available documentation and should there be a significant change in the position on the market before the projected period of validity of this analysis expires then the PTA is obliged to make a new analysis, pursuant to Paragraph 3 of Regulation no. 741/2009 on market analysis in the field of electronic communications. This means that there is no risk that the Analysis will retain its validity should it become obsolete because of unexpected developments on the market.

The PTA further considers that the imposition of the obligation for access to the PSTN system is not conducive to making PSTN services non-competitive as maintained by Siminn. The obligations allow for recompense for access, that represents normal returns on investment. Access by other companies to the PSTN network contributes to improving the efficiency of its use and thus to improving the operational basis for the network.

Siminn considers it clear, given the situation today, that the company cannot ignore the fact that the company's customers will stop using its services and even fixed line services in general if the company tries to price its services as though it were in a dominant market position. Because of increased competition, technological changes and a decline of the market it would be extremely unlikely that Siminn would be able to increase its prices above a competitive price level in such a manner that this would profit the company in the long term. Pricing of fixed line telephony services is among the least expensive known in Europe, see the PTA decision number 35/2012, and for this reason it is clear that the pricing of fixed line telephony services does not exceed a competitive price.

The position of the PTA

The PTA points out that Siminn has not needed to react to the entry of new companies and new technology into the market by lowering prices. Though the price of fixed line telephone services is among the lowest known in Europe, the development since 2008 has been such that Iceland has moved from first place down to fourth place of the countries that have the least expensive services, see Chapter 6.6.3 in the Market Analysis. Siminn has not seen the need to follow the least expensive subscription packages in Internet telephone services, which shows that there is insufficient pressure on pricing from that service.

3 Definition of service market

Siminn understands the PTA analysis to mean that a service which does not use a fixed connection point is not part of the market. For this reason Internet telephone or VoIP with telephone numbers are totally exempt.

The position of the PTA

In the preliminary PTA analysis, all VoIP services that use telephone numbers were considered part of the market. Nomadic service that uses telephone numbers is however subject to the limitation that the user who switches to such a service cannot transfer his number from the PSTN service. The PTA considers nevertheless, that it is possible that some users will use the service as a substitute for PSTN. It is not a deciding factor in the conclusion of the analysis whether nomadic service is included or not, as there are very few users of this service.

Siminn considers that residential and non-residential customers are clearly not analogous in the case of fixed line telephone services. There is almost no discussion on this in the PTA analysis of the service market in this matter. Siminn cannot see what changes have taken place in the service or in demand during the last 4 years that can justify PTA's varying approaches between the Analysis from 2008 and this analysis. The PTA has at least not been able to present objective arguments for the change and Siminn makes reference to the Competition Appellate Committee Ruling no. 4/2007, where the Appellate Committee rejected changes by the Competition Authority to the definition of the market. It is thus clear that the PTA has not fulfilled its investigative duty as there is no visible documentation on the views and needs of companies and individuals in Iceland that can justify the change in position taken by the PTA.

The position of the PTA

The PTA explains in the Preliminary Draft that in the Administration's analysis of Markets 1 and 2 in 2008 there had been some doubt as to whether one should distinguish between the markets for service with residential customers on the one hand and non-residential on the other. To a large extent these customers use the same kind of connections to the fixed line telephone network and general conditions do not make a distinction between these two groups of customers. In addition to this one can mention that there is clear supply-side substitutability between these groups as the electronic communications companies that provide services to one group can easily change their emphases and begin to offer services to the other group.

It cannot be seen from the text of the Competition Appellate Committee Ruling no. 4/2007 that the Committee has in general considered there to be any barriers to the definition of service markets being amended.

The PTA considers that the amended market definition to be found in the ESA Recommendation from 2008 is more appropriate than the prior definition and the PTA intends to use the amended one, as it is prescribed in the Act on Electronic Communications no. 81/2003 that market analyses should be in accordance with obligations pursuant to the EEA Agreement.

The PTA rejects that there is a need to do further research on this issue as the PTA arguments are adequately dealt with in Chapter 2.3.2 in the Market Analysis.

Siminn states that it leads to a wrong conclusion if one totally ignores goods or services that stand outside the market, i.e. that are not substitute products if such

products or services can verifiably provide adequate restraint. Though the PTA considers that VoIP service that does not use telephone numbers is not part of the market, the PTA must however take into account the fact that consumers can use such a service as a substitute for fixed line telephone. In the opinion of Siminn, there is significant substitutability between the services. Not all customers need to view the service as a substitute, but simply a sufficient number in order for it to belong to the same market. Though technology and the rules that apply may vary somewhat, it is a fact that VoIP without numbers influences the behaviour of consumers that use fixed line telephony services with numbers. Voice telephony companies cannot ignore this fact and for this reason, companies that have significant market power on the fixed line telephone market cannot behave as though they had a dominant market position, because of the restraint that this technical solution exerts. The PTA therefore has to investigate the influence of VoIP solutions without telephone numbers on the market, even though the service in question is not considered to belong to the relevant market. Siminn points out that the PTA needs to apply known methodology for analysing the voice market, such as the SSNIP test. Siminn names systems that are fighting for leadership in this type of service: Skype, Lync, Imessage and WebRTC. Siminn can see that companies are increasingly requesting IST connection with their Lync server. Such a connection totally replaces traditional connections with the general network. When telephone calls are between Lync with POTS and ISDN then telephone numbers are used, but if the party being called has Skype or Lync then the telephone system can make the call without using a telephone number. This is maybe the clearest example of substitutability.

The position of the PTA

The PTA describes the usefulness and limitations of this service in Chapter 2.3.3.3. There it is described how the service can to some extent be used by a limited group of users instead of traditional fixed line telephone service. The PTA considers it to be not possible to measure the extent of t-his use as it is usually a service for which no charge is made. In its analysis the PTA describes how traffic in fixed line networks has diminished, inter alia because of the advent of the Internet telephone, but it is not possible to identify the proportion of this reduction that can be attributed to use of Internet telephones without telephone numbers and the PTA considers that this would not have a significant impact on the conclusion of the analysis.

Siminn has presented these arguments in the consultation process for most market analysis in the field of telephone services during the past years. In none of these instances has the PTA considered the services to be substitute services or services that exert such considerable pressure on the relevant market that they could impact the conclusions of the analysis. Neither ESA nor the Competition Authority has commented on this conclusion.

The PTA considers it completely clear that a service which does not make it possible to call the user in question through a public telephone system, where most users are, cannot be a substitute service for traditional fixed line telephone service. One does not have to conduct research to come to this conclusion. It makes no difference in this connection whether some specific companies have servers installed in such a manner that it is possible to ring to and from the service.

The PTA has explained adequately how traffic in the public fixed line telephone network has shrunk and has come to the conclusion that the impact of VoIP is as yet not decisive. During the past decade it has continuously been predicted that VoIP is taking over from traditional public fixed line telephone services. This is not yet proven to be the case and it is uncertain when it will happen. Should there be a sudden acceleration of this development during the period of validity of this analysis, then the PTA will not hesitate to review its analysis, but today the PTA considers there to be nothing in sight that shows that there will be a revolution in the use of VoIP during the next 2-3 years.

4 Demarcation of the geographical market

Siminn emphasises that the PTA has not assessed real substitutability between varying regions. Competition is of quite a different nature in the capital city area on the one hand and in many locations outside that area on the other. It cannot be seen that the PTA has in reality analysed these quite different competitive conditions in such a way that it is possible to assert that because the Siminn system covers the country extensively then for this reason the market is the whole country. Though the Siminn network covers the whole country, this does not mean that the costs of providing services are the same throughout the country.

The position of the PTA

The PTA point of departure with respect to the scope of the electronic communications network and jurisdiction is taken from the ESA Guidelines on market analysis and assessment of significant market power from 14 July 2004. In Article 60 of the Guidelines it is stated that the geographical scope of the relevant market has traditionally been determined by reference to the area covered by a network and the legal environment. This methodology is based on European Court case law which is referred to in footnotes under the Article in question in the Guidelines.

As is stated in the PTA Market Analysis, the Siminn network covers the whole country. The Vodafone network is certainly not limited to the capital city area but on the contrary has grown significantly in recent years and the company has installed telephone exchanges in all regions of the country, though it has not achieved 100% coverage like the Siminn network. Smaller companies only have exchanges in the capital city area. This means that the current situation is that there are two networks in all regions of the country. Though their distribution areas do not match exactly, the PTA does not consider this to mean that the country needs to be divided into smaller market areas. It is also a relevant factor that companies on the market make no distinction between areas when pricing their services.

In the PTA analysis of the relevant market from 2008 the conclusion was that the country was one market and ESA made no comment on this. The PTA considers that the entry of a very small number of small telephone companies in the capital city area does not change the competition environment on the market in question to any significant degree.

The PTA therefore rejects the requirement to change its conclusion with respect to geographical demarcation of the market and considers there to be no need to make a more detailed analysis of this aspect, given current circumstances.

5 Supply and demand on the market in 2012

Siminn considers there to be no particular reason to comment on the PTA discussion on the position on the market in 2012. It is appropriate to point out that there is little discussion on the nature of demand and no attempt is made to analyse demand and the impact of demand for various services. Siminn points out that an issue like supply is not necessarily controlled by the number of companies, but it is also controlled by the ability of companies to be able to increase their own offer.

The position of the PTA

The PTA considers discussion on demand and supply to be adequate. The discussion is similar to what was presented in the prior analysis of Markets 1 and 2. The main types of services on offer are explained, who offers the services on the market and how demand has changed since the previous analysis was made. The PTA considers there to be no need for further discussion on these issues as Siminn does not describe how the presentation should preferably be. There are no misrepresentations indicated in the PTA presentation, and nor is it indicated how the alleged lack of discussion could impact the conclusion of the analysis.

6 Assessment of market power

6.1 Market share

Siminn does not agree with the PTA assertion that according to accepted case law a company can be designated as having a dominant position if its market share is over 50%. This is incorrect and no sources are referred to in support of the assertion. Siminn considers it appropriate to note that a commanding position has often been referred to in competition law as super-dominance. The concept of “single dominance” has also been used. It is not sufficient that market share exceeds 50%. Siminn refers to the ruling by the Competition Appellate Committee, no. 4/2007 and judgements of the Supreme Court in cases no. 188/2010 and 205/2011 in support of its contention.

The position of the PTA

The PTA discussion on the significance of market share over 50% originates in Article 76 of the ESA Recommendation where it says, inter alia: *According to established case-law, very large market shares, in excess of 50 %, are in themselves, save in exceptional circumstances, evidence of the existence of a dominant position.* In footnote 79 in the Guidelines, reference is made to relevant case law.¹ The PTA,

¹ See Paragraph 60 of Case no. C-62/86 AKZO v Commission, [1991] ECR I-3359, Paragraph 70 of Case T-228/97, Irish Sugar v Commission, [1999] ECR II-2969, Paragraph 41 of the previously

however, agrees that it is proper to take further factors into account, and this is done in the Market Analysis. As it is properly stated in Article 76 of the Guidelines there can be exceptional instances where companies are not considered to have market dominance despite having market share in excess of 50%.

The PTA does not agree that the judgements and rulings referred to by Siminn regarding this issue show that the PTA approach is incorrect, as the PTA states that there can be exceptions from the above-specified criterion being applied.

Siminn points out that as the PTA report on the market for the first half of 2012 has been published, one has to refer to this report for figures on market share.

The position of the PTA

The PTA has now updated the figures in the Analysis that can be updated with reference to the position in the middle of the year 2012. Figures in the Preliminary Draft of the Analysis related to traffic or to revenue for a whole year are not updated as the figures for the whole of the year 2012 are not yet available. Figures on the number of users and installed lines are however updated given the position in the middle of 2012. No significant changes have occurred that call for changes to the conclusions of the analysis. There was, however, a change in the middle of the year 2012, where Siminn gained one percentage point in share in number of subscribers and its share is now 67.5%. There is thus nothing that indicates that the Siminn share will drop below 50% during the next 2-3 years.

Siminn says that in general the fee for the local loop unbundling has been included in the pricing for fixed line telephone (PSTN) but not for VoIP telephony. This means that figures on market share will be distorted as the (local loop fee) is calculated separately at Gagnaveita Reykjavíkur (*fibre optic utility provider*) and for this reason probably not included in the revenue figures. This means that the market share of the companies that operate through PSTN connections is overestimated, to the extent of the amount of the local loop charge. Siminn points out that the current Siminn subscription does not include the local loop charge. In order to estimate the correct figures then one would have to deduct the local loop charge where it is included.

The position of the PTA

The PTA has examined revenue from local loop charges for fibre-optic connections. The impact of these charges not being included in fixed line telephone revenue in VoIP service is not significant. If the local loop charge in the fibre-optic network were included with income from VoIP, then the Siminn share by revenue for the year 2011 would drop from [...]² to [...]³ and Vodafone would rise from [...]⁴ to [...]⁵. The PTA considers it a more accurate approach to add the local loop charge to the fibre-optic part rather than to remove the local loop charge from the PSTN part.

referenced case Hoffmann-La Roche v Commission and Paragraph 51 of Case T-139/98, AAMS and Others v Commission [2001] ECR II-0000.

² Removed for reasons of confidentiality.

³ Removed for reasons of confidentiality.

⁴ Removed for reasons of confidentiality.

⁵ Removed for reasons of confidentiality.

Then one also has to keep in mind that Siminn income from PSTN connections goes entirely to the Skipti Group, while other fixed line telephone companies lease access to fibre-optic and copper local loops from unrelated companies.

Siminn points out that market share by number of minutes is now less than 60% for telephone calls in fixed line networks, under 40% in international calls, under 55% in calls to mobile phone networks and probably under 65% in the number of connections. Siminn considers that market share is lower, and also points out that the share in the capital city area is almost certainly much lower than that used as a basis by the PTA, possibly somewhere around 50%. Market share has however limited significance as it gives limited indications about the structure of the market, that is to say, reduction in use of the service. Market share always shows a certain proportion of the whole but does not identify the factors that cause reductions on the market. For this reason, Siminn considers that the characteristics of the market and its structure are such that discussion on market share is meaningless.

The position of the PTA

The PTA draws attention to the fact that the discussion here only relates to the market for access to the public telephone network at a fixed location and not the markets for telephone service in fixed-line networks. The PTA has presented a Preliminary Draft Analysis of the retail markets for fixed line telephone service (Markets 3-6) where the planned decision to withdraw the designation of Siminn as an undertaking with significant market power is announced. As has been stated in this analysis it is easier to enter the retail market for telephone calls than the market for access to the fixed line network. It thus has no impact on the results of the Analysis of the market for access to the fixed line telephone network if figures for shares in the markets for telephone calls have diminished. Apart from this, the Siminn share is still high on the telephone call markets, in the range of 40-60%.

The Siminn share of the market for access to the fixed line telephone network is still very high, 67.5% measured by number of subscribers. The geographical market for access to the fixed line telephone network is the whole country, as is explained in Chapter 3 of the Analysis. The Siminn idea that the share is possibly lower in the capital city area does not have any impact on the conclusion of the Analysis.

As has been stated previously the PTA bases its assessment on many factors other than market share. The PTA does however not agree with Siminn that discussion on market share is meaningless. Market share is in the great majority of cases the strongest indicator of market strength and Siminn has not demonstrated that this is not the case in this instance. The decline of traditional fixed line telephone services (PSTN and ISDN) does not lead to discussion on market share being meaningless as this service is still by far the most used on this market.

6.2 Profitability

Siminn points out that the PTA says that information on profitability gives inadequate information. For this reason Siminn points out that the PTA cannot stick to the assertion that there is nothing to indicate that profitability from fixed line telephone is inadequate to the extent that it reduces market power. As the PTA does not have adequate information on profitability and comparison of profitability then the PTA cannot make assertions about this issue. The only thing that can be asserted with any certainty is that information on profitability is inadequate. Nor is there any information about Siminn profitability having some impact. For this reason, the PTA is obliged to withdraw this assertion and to concentrate on the issues that can be verified and that can be supported with adequate documentation.

The position of the PTA

The PTA agrees to delete the final sentence in Chapter 6.3. The sentence has no independent meaning with respect to the conclusions of the Analysis, as it says immediately above in the Preliminary Analysis: *the PTA will make no further examination of profitability on the market in this instance, and nor will it draw specific conclusions on possible profitability of companies and its impact on market power.*

The PTA wishes however, to note that nothing has come to light to show that the costs of providing this service have increased in excess of general price development. Nor has the price dropped. Fewer units sold can however have the effect of lowering profitability.

6.3 Entry barriers

6.3.1 Economy of scale

Siminn considers that the PTA has not demonstrated that Siminn enjoys economies of scale and scope. The company has lost what amounts to 70% of traffic from the year 2004. So there is a certain contradiction in asserting at the same time that Siminn has a larger distribution system, which must be more expensive, but yet enjoys economy of scale. Siminn points out that Vodafone is not manifestly in a worse position than Siminn in this respect. The Vodafone product and service offer is to a great extent equally varied and the company operates on the same markets as Siminn. There is thus nothing that supports the assertion that Siminn has greater economy of scale or scope than Vodafone. Siminn challenges the PTA to prove the assertion in question and to support it precisely by arguments, when and in what manner this provided Siminn with a considerable advantage over Vodafone. What Siminn competitors do is to install their own telephone exchanges when they have achieved critical mass of customers such that the installation of exchanges has become efficient. This in turn leads to a corresponding reduction in efficiency at Siminn when such a number of customers leave Siminn's network. Siminn loses a significant amount of revenue, but still bears costs that cannot be recouped. There is no discussion on this fact in the PTA analysis and the extent to which this significantly limits Siminn's alleged

economy of scale. The matter in question is simply unproven and has not been investigated by the PTA and for this reason Siminn challenges the PTA to prove its assertion.

The position of the PTA

The PTA points out that despite the fact that Siminn has lost traffic from its network in the past decade, the company still has by far the largest group of customers of all electronic communications companies in the country. Traffic in the fixed line telephone network has shrunk in general in recent years, and this reduction is not limited to Siminn. Siminn has maintained the greatest number of users and amount of traffic during this period. Vodafone has achieved a broadly distributed fixed line telephone network but has much fewer users. Despite the fact that revenue from traffic has shrunk, Siminn still has income from by far the largest number of users in the form of fixed monthly fees, and it is this revenue that belongs to the market that is here under examination. Siminn has about 67.5% share by number of users, while Vodafone has 23.1%.

Vodafone has a largely parallel service offer to that of Siminn, but there is however a great difference in that within the Skipti Group there is a wide range of wholesale service operations in the name of Mila ehf. Siminn and Mila share procurement and facilities and this sharing has increased with the organisational changes within the Skipti Group. There is a great difference in the turnover of the Skipti Group, which was 27.9 billion in the year 2011, and the turnover of Vodafone which was 12.7 billion for the same period.

The PTA considers there to be no reason to calculate the companies' economy of scale as this is only one of a large number of factors that support the PTA conclusion on significant market power and it does not on its own decide this conclusion.

Siminn points out that the PTA imposed the obligation on Siminn to provide public telephones and to bear the cost of these itself, which is quite a considerable cost. This cost is borne by Siminn and by no other party. It reduces possible economy of scale when costs are imposed on one company that other companies do not have to bear. In the PTS analysis there is not a single word mentioned about the financial burden placed on the operations of fixed line telephone services by having to bear the costs for services that have limited demand and that none of Siminn's competitors need to provide. Siminn also points out that other universal service obligations constitute disadvantages in operations which reduce even further possible economy of scale. Siminn operates about 40 telephone exchanges for universal services obligations which would probably be closed as a result of inadequate performance, were the obligation is not in place. In this way, Siminn has to bear substantial costs as a result of other obligations imposed by the PTA on Siminn but this is not taken into consideration.

The position of the PTA

The PTA points out that the loss incurred by operating public telephones is very insignificant in comparison to the total turnover of Siminn. In its decision number 35/2012 the PTA came to the conclusion that the obligation for the operation of public telephones was not an unfair burden on Siminn. Loss from public telephones was

compared with the company's returns in the fixed line telephone sector in retail and the conclusion was that the loss from public telephones was insignificant when compared with the turnover and performance of the company. Siminn considered that the loss from the operation of public telephones had in the years 2007-2011 been something over 40 million, which amounts to approximately 8 million per annum on average. Then one still has to take into account the market advantage of universal services.

In those instances where Siminn considers that the operation of universal services constitutes an unfair burden, having taken into account market advantage, Siminn can apply for support from the Universal Services Compensation Fund. Siminn has only once applied for support from the fund for its fixed line telephone network, for the years 2000-2005, and that application for support led to a grant to the amount of ISK 163,233,277, see the ruling of the Appellate Committee for Telecommunications and Postal Affairs, 10 October 2007. The PTA considers this ruling to show that the financial burden on Siminn for universal services obligations is insignificant compared with the company's total turnover and furthermore that Siminn can receive support from the Compensation Fund, where the company can show an unfair burden resulting from universal services obligations. In October 2012 Siminn applied to the Compensation Fund for a grant for the operation of a copper line network in sparsely populated areas. This application is still being processed by the PTA.

The PTA therefore considers that universal services obligations have not had such an impact on Siminn's economy of scale that they could diminish the company's market power, and in addition to this, the universal services obligations are generally considered to constitute a market advantage.

6.3.2 Access to capital

Siminn considers it necessary to point out to the PTA that Vodafone was recently put on the stock market and that prior to this event the company's owners paid ISK 2 billion into the company. The company is now moderately indebted and thus has much easier access to capital than Siminn. Given the situation today one only needs to refer to the Skipti annual financial statements, i.e. the parent company of Siminn, to support the assertion that Siminn's access to capital on the market is not as easy as that of Vodafone. In addition to this Siminn needs to meet obligations which means that its capacity to employ capital is more limited than that of other companies. In its analysis the PTA must face the fact that companies that are extremely indebted have more limited access to capital than other companies. This is lacking in the PTA analysis.

The position of the PTA

The PTA conclusion, with respect to access to capital in the Preliminary Draft Analysis was first and foremost to the effect that limited access to capital was an entry barrier for new companies. There was no assessment made on whether access to capital was better at Vodafone or Siminn. Siminn discusses increased share capital in Vodafone and the entry of the company onto the stock market. The PTA considers that it is not possible to assert that Vodafone's access to capital is thus better than that of Siminn. The latest news says that financial restructuring has commenced at Skipti and

that when completed, one can assume that Siminn access to capital will be better than it has been since the economic crash of 2008.

6.3.3 Barriers to expansion

Siminn considers that the PTA conclusion on barriers to expansion is wrong. The position on the market does not provide Siminn with an advantage but rather it is the competitors that have the opportunity to grow, unlike Siminn. Figures on market development demonstrate this. The use of Siminn fixed line telephone services has diminished quickly and steadily since 2004 at the same time as the use with competitors has grown. Siminn considers that the market is in decline and that this is negative for those companies operating on the market when it comes to transfer to new solutions. They have technology and equipment which may become obsolete or costly to renew, while new companies can develop on a new and less expensive foundation. In this way these changes in the fixed line telephone environment gives new parties an advantage and not the other way around.

The position of the PTA

The PTA does not agree with this comment from Siminn and considers there to be no doubt whatsoever that it is more difficult for new companies to enter a market which has achieved full saturation and where demand is on the decline. This means that new companies need mostly to gain their customers from companies that have already established themselves on the market as there are a few possibilities to enlarge a customer base in any other way. Despite the fact that use of the Siminn fixed line telephone services has been on the decline since the year 2004, one must keep in mind that at the current time, which is more than a decade from the date when monopoly was lifted from electronic communications operations, Siminn still has a dominant market share in most sectors of fixed line telephone services and in particular on the market for access to the fixed line telephone network. The PSTN system is not yet obsolete and has been dominant on the market and is still, despite the fact that VoIP solutions have been available over a period of years.

6.3.4 Conclusion with respect to entry barriers

Siminn considers that the PTA position, to the effect that entry barriers are still substantial, does not harmonise with the Administration's discussion in Chapters 6.4.1-6.4.6 where the PTA seems in most instances to consider that there are not many entry barriers in existence. It is difficult to see how the PTA has come to this conclusion. The PTA must provide better arguments as to how the Administration comes to this conclusion as one cannot see what factors have led the Administration to the conclusion in question. With respect to economies of scale and scope, Siminn considers it necessary that the PTA examine the costs of each company with each customer and whether an increase in customers leads to higher or lower costs on each customer. In this way it will be possible to determine whether economy of scale is to Siminn's advantage or disadvantage. There is no analysis of whether and to what extent, Siminn has greater economy of scope than that of other parties on the market.

The PTA investigation of this case is thus significantly flawed and cannot contribute to the reaching of a correct conclusion.

The position of the PTA

It is quite clear in the results chapter on access barriers what the factors are that the PTA considers to cause access barriers on the market. It is first the economies of scale and scope enjoyed by Siminn that create a barrier for the entry of new companies into the market, as the Siminn market share is many times greater than the share of the smaller companies on the market. The PTA views the telephone market as a mature market and considers the limited potential for growth to be a barrier to new competitors. The PTA also considers that access to capital for new investments is difficult and that this acts as a barrier to new companies. These are the same factors that were considered to create entry barriers on the market in 2008, as the PTA considers there to be no fundamental change in the nature of the market since the previous PTA analysis was made. The Siminn dominance in market share is very similar to what it was in 2008. Neither ESA nor the Competition Authority made comments about the PTA discussion on entry barriers to the market in the year 2008. On the question of Siminn's economy of scale, reference is made to the discussion in Chapter 2.4.3 here above.

6.4 Potential competition and innovation

Siminn refers to discussion in the introduction to the impact of innovation and emphasises that the PTA has not assessed innovation in the field of communications solutions that are possible to use for the same purpose as fixed line telephone. The Skype solution is an example of innovation which achieved huge distribution and which has replaced fixed line telephone to a great extent.

The position of the PTA

As is stated in Chapter 2.1 here above, the PTA discusses VoIP solutions in Chapters 2.3.3, 5, 6 4 and 6.5 in the Market Analysis. A detailed description is provided of the impact that this technology has had and of the development that can be expected during the next 2-3 years. Skype is one of many IP solutions, but to date it has not been a substitute service for traditional fixed line telephone services as general access to telephone users is not in place, as the system does not use telephone numbers. The PTA considers there to have been adequate discussion on the possible impact of innovation during the next 2-3 years.

6.5 Behaviour of parties to the market

6.5.1 Integration of services

Siminn would like to state that the PTA discussion on integration of goods is in this instance incomprehensible. As the PTA knows, Siminn does not offer fixed line telephone with other services. The presentation by the PTA seems to imply that the company offers some kind of package where one product is sold and another unrelated product sold along with it or a discount given on product A if product B is

also purchased. Siminn's offer on other markets is not related to fixed line telephone service and therefore it cannot be seen how this should hinder the entry of new parties to the market. If integration has some kind of negative impact, then it is because of bundling by Tal and Vodafone, where the customers are offered better terms if they purchase three or more service items solely from Vodafone to take an example. These are called Vodafone Gull (*gold*) and Tal Tromp (*trump*), or Allur Pakkinn (*the whole package*). The PTA discussion on Siminn in this Chapter does not reflect reality and is thus inappropriate and simply incorrect. Siminn challenges the PTA to support its assertions with adequate documentation. Siminn also points out that there is nothing offered by Siminn in retail, that is not also being offered by Siminn's competitors. Siminn cannot understand the purpose of the PTA discussion. Other companies like Vodafone, Hringdu and Tal can offer, and in fact do so, the same product offer as Siminn on the retail market.

The position of the PTA

The PTA considers that Siminn does not properly interpret the discussion by the PTA in the Chapter in question. Nowhere in the Chapter is a discussion on the service packages in the understanding that one service is sold against another unrelated service offer being offered with it or a discount provided on one service type if another is bought at the same time. It should however be noted that Siminn offers fixed line telephone services in a package with fixed line telephone access. The PTA discussion is based on the general wish of consumers to purchase all electronic communications services from one provider. This creates a tendency with consumers to direct their business to companies that offer most types of electronic communications services and related services.

As it says in the Analysis the situation prevailed until the autumn of 2011 that Siminn did not offer fixed line telephone connections in wholesale. The consequence of this was that users that purchased fixed line telephone services through pre-selection from Siminn's competitors, needed to do business with two companies in order to be able to use the service. That gave Siminn dominance in integration of fixed line telephone connections and service. According to the obligation imposed on Siminn by the PTA the company is now obliged to provide wholesale access to fixed line telephone connections.

Today, most of the companies that offer fixed line telephone services have comprehensive services at retail level. The smaller companies are however dependent on purchasing a considerable part of this service in wholesale from Siminn. The Skipti Group on the other hand, operates all of its own service items, everything from networks to retail services.

6.5.2 Vertical integration

Siminn cannot see that the PTA has taken into account the fact that the position of copper technology in competition on the market is not as strong as it was before, with respect to vertical integration. Siminn points out that under this Chapter, the PTA reiterates that other electronic communications companies cannot integrate products in the same way as Siminn. When one considers the offer of the companies that operate on the market, see the web pages of the companies in question, then one

cannot see that this assertion is justified. One must consider that the PTA should prove and explain what it is that other electronic communications companies cannot do that Siminn does with respect to service offer. In the opinion of Siminn the assertion in question is not true. For example, the ability of Vodafone to offer services at wholesale and retail levels is to a large extent analogous while in the capital city area it is hardly possible to indicate any difference. Siminn challenges the PTA to provide arguments for its assertion with reference to specific issues that can be verified.

The position of the PTA

The PTA provides adequate information on how the share of fixed line telephone services and data transfer through the copper network has decreased. It is the conclusion of the PTA that traditional services through the copper network still have today by far the largest share of this market and that this will continue to be the case for the next 2-3 years. Siminn has improved the position of the copper network during the past years by installing what is called a VDSL to the kerb box which uses the copper local loops from the kerb box into the consumer's home. This has increased the speed of data transfer, which lessens the users incentive to switch over to a fibre local loop where this is an option. The PTA does not consider that the market share of the copper local loop will decrease significantly in the near future.

The PTA rejects that the Vodafone wholesale offer is analogous to the wholesale offer of the Skipti Group. There is a clear difference in the fact that Vodafone does not operate its own local loop system, but leases local loops, variously from Siminn or Gagnaveita Reykjavíkur.

6.5.3 Price development

Siminn points out that the PTA has no information on there being little competition in pricing on the market and that the PTA draws totally wrong conclusions from the information that the Administration has gathered. It is therefore incomprehensible why it is maintained that there is not much pressure on Siminn to lower prices. Siminn considers that on the contrary there is strong pricing competition, which means that competition is active. If competition were not active then the pricing in Iceland would not be among the least expensive known in Europe and that despite the fact that the cost of a fixed line telephone system is probably the highest per customer because of the sparsely populated areas of the country. As the PTA indicates, the monthly charge for a home telephone has increased with Siminn from ISK 1,395 including VAT (which was 24.5% in the year 2007) to ISK 1,880 including VAT (which is now 25.5%). Included in these amounts is the local loop charge, which is collected by Míla. Costs for the local loop charge is not part of Market 1, and thus one should ignore price rises attributable to these charges. In the year 2007 inflation was 6%. If one considers the period January 2007 to December 2012, then inflation has been 50%. Had the pricing of fixed line telephone services maintained its real value, then the charge today should be ISK 2,092. It is thus clear that pricing of fixed line telephone services has decreased in real terms by 5-10% depending on whether one uses the index from January 2007 or from December 2007. Siminn also considers that it should refer to market revenue from fixed line telephone services, which both shows lower revenue, whether by nominal rate or real value. Revenue from fixed line

telephone services was ISK 7.9 billion in 2007, while in 2011 revenue was ISK 7 billion. This is a nominal reduction of just under 900 million. Taking into account the indices of December 2007 and 2011 it comes to light that revenue should have been ISK 10 billion. The value of fixed line telephone has thus decreased by 30% in real terms. Revenue from the market has thus not maintained its real value, which means that there has been a reduction and not an increase as maintained by the PTA. This proves that there has been a negative price development, i.e. that the price has dropped, and it is clear that competition from existing competitors and from other factors that depress the prices result in a situation where Siminn has not been able to price its services higher than a competitive price. This means that the company does not have significant market power.

The position of the PTA

The PTA explains in the Market Analysis that the monthly charges for fixed line telephone connections at Siminn have increased at a lower rate than general price levels during the last four years. The PTA nevertheless considers that there are no indications of price reductions on the market resulting from increased competition. As is stated in the analysis, the structure of pricing for fixed line telephone services is not simple and there are many subscription options on offer where the proportion between monthly charges and charges by minute varies. The PTA points out that the charge per minute has increased in excess of general price levels. Siminn's total revenue from the service is not under discussion in this Chapter. The only matter being discussed here is pricing and how it affects consumers and the PTA sees no indications that consumers' interests are improving in this respect, as a result of increased competition. The pricing of fixed line telephone in Iceland has been among the lowest in Europe for many years. It is thus not an indication of increased competition that Iceland still belongs to the group with the lowest prices. The PTA points out that Iceland has moved from being the country with the least expensive fixed line telephone services in 2008 to being in fourth place on this list in 2012.

6.6 Circumstances on the demand-side

Siminn points out that the number of domestic telephone calls at Siminn has decreased proportionately more than the decrease in the total market for the period 2004-2011. The market decreased by 52% from 2004-2011, while the decrease at Siminn was 67%. This proves that the PTA assertion that there is not much pressure on Siminn to lower prices is wrong. The use of Siminn services has decreased, and in addition to this prices and revenues have decreased in real terms, as pricing of fixed line telephone has decreased in real terms. One can point out that during the same period the basic subscription decreased in real terms by about 5-10% between 2007-2012 with a reduction in minutes of about 30%. At the same time PSTN connections with Siminn decreased, i.e. by 15% between 2007 and the first half of 2012, while the total decrease in PSTN connections was 7%. When one considers the fact that the price of fixed line telephone services in real terms has decreased while Siminn services have nevertheless been subject to contraction (30% measured by use and 15% measured by number of connections), then one can easily conclude that there is considerable pressure on Siminn from competition and from other factors. These figures show that Siminn does not enjoy significant market power on the fixed line

telephone market as the company cannot price its services as though it were in a dominant market position.

The position of the PTA

The PTA is fully informed about the development of shares of fixed line telephone services and has described this in its Preliminary Draft Analyses of Markets 1 and 3-6. It is a normal development in a fully saturated market that on the entry of new parties the share of a dominant party decreases at a faster rate measured by percentage than the total contraction on the market. Despite this fact, Siminn still has an overwhelmingly dominant share of the market here being examined and on the market for domestic telephone calls. Siminn still has almost 60% share. Siminn has not reacted to the entry of new parties to the market with price competition and as is discussed in the Analysis and here above, the charges for fixed line telephone services have variously increased little less than general price level is and in some cases more. Iceland's position in comparison with other European states has deteriorated during the period from the last analysis and up to the present day. The PTA considers that developments in share and pricing do not in any way indicate that Siminn has lost its dominance on the market.

6.6.1 Countervailing buying power

Siminn points out that when evaluating countervailing buying power, then it is of no significance if one customer can make an impact, but rather whether customers can with their behaviour influence pricing. Siminn considers that such circumstances do exist and that they are reflected in the fact that prices of services have decreased by 5-10% in real terms. Competition enables customers to switch services quickly and at short notice. In this discussion the need to distinguish between companies and individuals is crystallised, as there is a very significant difference in countervailing buying power between the corporate market on the one hand and the market for individuals on the other.

The position of the PTA

As was shown in the Market Analysis, a strong customer negotiating position exists mainly when the customer buys a large part of the seller's production. On the retail market for electronic communications services there is no such situation where one customer purchases a large part of the seller's production. It is true that large companies purchase much more services than individuals, but few of them purchase to such a degree that they have a significant impact on the performance of the electronic communications company in question should one of them decide to transfer its business to another party. In the Competition Authority Decision no. 32/2002, which was confirmed with a ruling by the Competition Appellate Committee, no. 19/2002 there is a description of the instances where countervailing buying power can lead to a company with dominant market share not being deemed to have market dominance. In the decision it states:

It is clear that in special instances powerful buyers can provide significant competitive restraint on the relevant market. This mainly applies in those instances where there are very few purchasers and where they can easily and economically procure products from

other suppliers. Such countervailing buying power can lead to a company with a high market share being considered not to be in a dominant position.

The circumstances described above are totally different from the circumstances that now pertain on the retail market for access to fixed line telephone network, as the customers are measured in tens of thousands and none of them purchases a significant part of the service of an electronic communications company.

6.6.2 Customers switching options and cost of switching

Siminn points out that the company's customers are not obliged to do business with the company for an extended period of time. All customers of fixed line telephone services on the non-residential market have the authority to switch service provider at very short notice. This means that there is no binding obligation for individuals that has any impact.

The position of the PTA

The discussion presented by the PTA does not in fact contradict what is maintained by Siminn. The assessment of the PTA in the Preliminary Draft was that the cost of switching did not have a significant impact on this market. There is however the possibility that companies will tie customers for a period of time. As Siminn properly indicates it is generally easier for individuals than for companies to change service provider.

6.6.3 Consumer access to information

Siminn considers that the Siminn tariffs are not complex and that they are now very transparent and simple in design. It is thus easy for customers to determine the cost of services. Siminn can in no way understand the assertion that complex tariffs strengthen Siminn's position, as this is an assertion that is not supported by arguments and is unproven. The structure of the Siminn tariffs has no impact on alleged market power and Siminn challenges the PTA to investigate this matter more thoroughly and to provide adequate documentation for the assertion. Siminn challenges the PTA to provide documentation that supports the assertion that consumers would rather choose Siminn because of a lack of transparency in the tariffs of electronic communication companies. The PTA assertion does not describe reality as it is today.

The position of the PTA

The PTA does not agree that the Siminn tariffs, nor those of other electronic communications companies, have become very transparent. Many electronic communications companies, including Siminn have many subscription options with varying weighting between monthly charges, and chargers for usage. Subscription options for varying companies usually vary in structure, and for this reason, it is not easy to make a quick direct comparison between them. The PTA does not maintain that Siminn has less transparent tariffs than other companies, but the structure and inconsistency between tariffs in general on the market means that consumers find it

difficult to see whether it is to their advantage to change service provider. This can be advantageous for Siminn.

6.7 Designation of Siminn with significant market power

Siminn considers that it has demonstrated that there is no company that can hinder competition on the market for fixed line telephone and behave without taking customers and competitors into consideration. A company that tried this would be likely to accelerate the deterioration of the market and it would therefore not be profitable in the long term to price its services above a competitive price, which is the true measure of market power. The fixed line telephone market has decreased significantly in the past years and the Siminn share of the market has decreased considerably more. Despite a lower price in real terms, this has had no impact on the reduction, which shows that neither Siminn nor any other company can control this development. When assessing whether a company has a dominant position on the market one has to consider the company's position in a material manner rather than use formal metrics which give limited information on the ability of a company to behave in a certain manner. This means that measuring market share is almost pointless in a market in decline, as it does not specify the usage that leaves the market. If an assessment is not made of the impact of pricing and other factors on use or demand, then it is not possible to see whether a company is in a dominant market position. Market share up to 60% says precisely nothing about whether a company is in reality in the position where it can behave without taking other parties to the market into consideration. There is always the additional condition that market share needs to be stable over a long period of time, and this is not the case with Siminn. Use of the Siminn fixed line telephone system is 32% of what it was in the year 2004 and this on its own should confirm that Siminn does not have market dominance. Siminn challenges the PTA to rework its assessment on the basis of economic analysis supported by adequate documentation and arguments.

The position of the PTA

According to the table on page 20 in the Siminn comments, the use of the Siminn fixed line telephone system in the year 2011 was 40% of what it was in the year 2004. This reduction is explained partly by the fact that dial-up connections for Internet access, almost disappeared during this period.⁶ Despite the lower number of minutes in the fixed line telephone network, fixed line telephone connections rather hold their ground were the number of installed fixed line telephone lines in the PSTN/ISDN network in the middle of 2012 is about 86% of what it was in the year 2004. Therefore, users have generally seen the need to continue to purchase access to the fixed line telephone network, despite the fact that the use of minutes has been on the decline. It is thus not possible to say that the service being examined in this market analysis is declining rapidly. There is still considerable demand for fixed line telephone connections and they have in reality not decreased much, though some of them are now transferred to fibre-optic. Traditional PSTN/ISDN connections are still dominant on the market and Siminn is by far the largest seller of such connections. The PTA considers that for the time being, the decline of the market is not at such a

⁶According to figures from Statistics Iceland 40% of homes had dial-up connections in 2004 against only 2.6% in 2012.

level that it hinders Siminn from being able to exercise its dominant position. In this connection it is appropriate to mention that only some of the users have the option of switching to a fibre-optic connection.

7 Obligations

7.1 Competition problems

Siminn considers there to be no particular reason to discuss the PTA academic discussion on possible competition on markets that are analogous to the fixed line telephone market. It is clear that the discussion is based on varying theories in economics and that it is not the result of PTA work in analysis of the market. The PTA needs to keep it in mind that when presenting arguments based on theories or on academic discussion then, according to the law, one must provide references. Economics is an academic discipline where theories are far from being undisputed. Siminn draws attention to the provisions of the Copyright Act no. 73/1972. It can prove difficult to contradict PTA assertions if references are not provided, and it is unclear whether they are based on generally accepted theories or on theories that are strongly disputed. In addition to this, theories in economics are generally presented with specific criteria and when these criteria are relaxed the results change, as do the conclusions that one can draw from them.

The position of the PTA

The PTA interprets this comment from Siminn such that Siminn does not have any objections to the PTA description of the competition problems on the market. The description of competition problems is available in the Analysis and it would be a simple matter to provide criticism of this description should the party in question feel the need to do so. One cannot see the purpose of the Siminn reference to the Copyright Act. The PTA did not consult specific academics when analysing the competition problems. Most of the problems are well known on markets where companies with vertical integration have market dominance. Some of these problems are not simply academically possible in the circumstances pertaining on the market, but have actually occurred in Siminn's dealings with competitors. One can, for example, mention reluctance to sell fixed line telephone connections in wholesale and the tendency for excessively high pricing at wholesale level, as is described in the Chapter in question.

The PTA made among other things reference to analyses from other regulatory bodies in Europe on analogous markets, to the ESA guidelines⁷ on market analysis and to the report by the Association of European Regulatory Bodies for Electronic Communications on obligations that may be imposed on electronic communications companies with significant market power for the purpose of strengthening

⁷EFTA Surveillance Authority Guidelines of 14 July 2004 on market analysis and the assessment of significant market power under the regulatory framework for electronic communications networks and services referred to in Annex XI of the Agreement on the European Economic Area.

competition,⁸ without however there being any direct references or that the PTA conclusions were directly sought from these documents.

As the PTA considers that the form of the market has not changed much since 2008, it is the conclusion of the PTA that the same competition problems exist as before. They were described in the Analysis of the market in 2008 and the statutory consultation parties made no comments on that description at that time.

Siminn considers it appropriate to correct certain issues that the PTA appears to have misunderstood or not to have been sufficiently aware of on the nature of single billing services and the process that was implemented after obligations were imposed in December 2008. As the PTA is aware, Vodafone and Siminn worked jointly towards the solution and there is nothing that the PTA can indicate that the work on the introduction of a service that was not available was not done in an objective manner. The PTA must have been aware of the fact that Siminn pointed out specific problems that emerged as the rules on pre-selection were in conflict with the PTA decision. These rules were changed by the PTA, see rules no. 655/2010, and they came into force on 12 August 2010, which was 18 months after the decision was published. Soon after that Siminn offered the service and not two and a half years later as maintained by the PTA. Siminn points out that Hringdu entered the market at the end of 2010 and made an agreement with Siminn on single billing. The introduction of this for the company took a relatively short time, and the company could offer fixed line telephone through single billing when it started operations. Siminn thus rejects that there had been delays in introducing single billing. With respect to the matter referred to by the PTA concerning Nova, the PTA should consider the fact that Siminn has submitted documentation that shows that the complaint was not justified as the delay in processing the matter was not the fault of Siminn. Assertions by the PTA to the contrary support the contention that the PTA had already made a decision in the matter without regard to the documentation submitted by Siminn. This on its own is sufficient for the PTA to be not competent to treat this matter further, as the PTA assertion that Siminn had not been prepared to provide Nova with a specific service is simply incorrect and Siminn had already contradicted this. The PTA must thus show full neutrality in its discussion on complaints and may not draw conclusions that have no basis in the documents of the case.

The position of the PTA

The PTA totally rejects that it is normal for Siminn to take two and a half years to offer wholesale service that was already on offer to the Siminn retail department. With respect to changes of rules on pre-selection, the PTA declared in a letter to Vodafone on 17 December 2009 as a result of discussions between Vodafone and Siminn on single billing, that the rules in question did not prevent parties making agreements on single billing. It was however eventually the conclusion that the PTA would change the rules because of a dispute between the companies on access to short numbers. It was not before 2011 that the Siminn reference offer was in the form that it should have been in pursuant to obligations from 2008. Even though Siminn may

⁸Revised ERG Common Position on the approach to Appropriate remedies in the ECNS regulatory framework. Final Version May 2006. ERG (06) 33. One can see the document at: http://erg.eu.int/doc/meeting/erg_06_33_remedies_common_position_june_06.pdf.

have previously made an agreement with one company, this does not change the fact that the service was generally not on offer, according to the reference offer in the form that it should have been in until the year 2011. With respect to the complaint from Nova, the PTA takes no position on that in the Market Analysis, but simply points out that there is still dispute on access to the relevant market. There is however much that indicates that Siminn and Nova will resolve this matter internally without further intervention by the PTA.

Siminn considers it appropriate to point out that the company has recently begun to offer a new service for companies that do not have their own exchanges, i.e. what is called resale access. Siminn has been working hard on resolving software work which will enable the offer of fixed line telephone services without the prerequisite of having one's own electronic communications infrastructure. Siminn considers that this example is significant with respect to the PTA assessment on competition and development of competition in the coming years.

The position of the PTA

The PTA is very pleased that the offer of wholesale service is increasing. The PTA considers, however, that the time has not yet come to conclude that Siminn will in general offer requested wholesale access without obligations being in place. It should be noted that there was no wholesale access on offer at Siminn to installed fixed line telephone connections, with or without exchanges, until obligations had been imposed. It cannot be seen that this new wholesale service will have a decisive impact on the market during the next 2-3 years. The PTA will of course react by making a new market analysis at an earlier date should this prove to be the case.

7.2 The impact of existing obligations

Siminn considers there to be no connection between obligations and the position on the market and for this reason the impact of the obligations is an indeterminable factor. For this reason, it is hardly possible to discuss the impact, and the discussion in question appears to be based on guesswork and not on real measurements of verifiable impact.

The position of the PTA

The PTA describes how single billing was introduced to the market as a result of the obligations from 2008. It is clear that other electronic communications undertakings have long been interested in wholesale service like single billing⁹, but the service has not been on offer. The PTA considers it to be quite clear that there is a connection between the obligations and the offer of this new wholesale service. The connection is also clear between pricing of the wholesale service and the obligation on price control. The PTA considers it safe to conclude that in general these obligations facilitate the entry of new companies to the market. It is established that the number of companies has increased, subsequent to obligations being imposed. It is however

⁹See e. g. the comment by Íslandssími on the Parliamentary Billon Electronic Communications, dated 28 February 2003.
<http://www.althingi.is/pdf/umsogn.php4?lthing=128&malnr=599&dbnr=1399&nefnd=sg>

true that although it is not possible to measure exactly the extent to which there is a direct causal relationship between obligations and increased competition it is clear that obligations are a factor in this matter.

7.3 Proposals for obligations

Siminn considers that if the PTA considers that despite the above there is a need for obligations, then there is reason to consider withdrawing the possibility of pre-selection and maintaining the obligation on single billing. The arguments for this are that with pre-selection then significant complexity is introduced because single billing allows for the customer having all services at one location. Pre-selection on the other hand, allows for the customer having two service providers, one who is responsible for invoicing for use and the other for the base charge (i.e. from Siminn). When moving customers between the two, then the customer must make an agreement with two parties. For this reason Siminn considers it more appropriate to withdraw the obligation for pre-selection. As an example of the level of complexity, the customer that moves from single billing to pre-selection needs to have an agreement with two parties, that is to say with Siminn, and with the service provider in question. In this way it is possible to make the fixed line telephone a wholesale solution, and the retailer will simply handle his own customers and not the customers of competitors. Siminn considers that the PTA should agree to this solution and to examine the necessary changes of rules that will enable this to be achieved in a satisfactory manner.

The position of the PTA

The PTA considers that it does not have the authority to withdraw the obligation for pre-selection. According to Article 53 of the Act on Electronic Communications, an undertaking with significant market power in connections with public fixed line telephone networks shall offer carrier selection and pre-selection. The PTA considers it normal that purchasers on the wholesale market and final users should have a choice on whether they purchase all in one package or not.

7.4 Assessment of the effects of planned obligations

Siminn agrees that all obligations are burdensome and for this reason they should have a specific time limit in order that the PTA has an incentive to complete new market analyses on time. Otherwise the situation will arise where the PTA will repeatedly exceed the planned time. In addition to this Siminn emphasises that the obligations imposed on Siminn by the PTA do not cover VoIP services or Internet telephones of other types. Siminn understands the PTA analysis such that obligations are not imposed on the services and emphasises that decisions by the authority should be clear and precise in order that the party on whom obligations are imposed can understand the nature of the obligations. As VoIP and Internet telephone is not particularly specified in the obligations, Siminn assumes that these forms of communication are not covered by the obligations. Siminn points out that were prices to increase then this would in general create an incentive for new parties to introduce solutions that could be brought into the market. Because of changes in the market, it

has become very easy to offer varying VoIP solutions which means that restraint without obligations is fully in place to prevent abnormal price rises.

The position of the PTA

With respect to the period of validity of obligations the PTA refers to discussion in Chapter 2 here above where it is pointed out that there is no reason to assume that obligations will apply for an excessive period of time, as the PTA is obliged to review the Analysis within a reasonable period of time which in general, shall not be longer than 3 years, and also should there be a likelihood that significant changes have occurred on the relevant market.

The PTA confirms that obligations for access are not intended to apply to Siminn's VoIP services. The PTA observes the right on the other hand to review the Analysis in this respect or in other respects, and to make new decisions on obligations if a significant change should occur in the weighting of VoIP services during the estimated period of validity of the analysis.

Siminn considers that the company does not have significant market power, and for this reason the legal conditions are lacking to maintain obligations on the company. Siminn's market share in a declining market has declined rapidly and significantly despite the fact that pricing levels have dropped in real terms. Siminn challenges the PTA to withdraw the obligations at the earliest opportunity as it is not clear what positive impact they have on the fixed line telephone market, and to face the fact that new solutions are replacing the traditional fixed line telephone. Siminn also indicates the PTA analysis on pricing on the market, where it is confirmed on the basis of price levels that competition is truly active in Iceland. Were competition not active, then price levels would be much higher in Iceland. Should the PTA assert that this is because of the obligations imposed by the Administration on Siminn, then this is simply unproven and arguments refute this assertion. One can, in this connection point out that there are also obligations in those countries where price levels are higher than in Iceland. It is thus the structure of the market and the reactions of consumers that control price levels and not PTA obligations.

The position of the PTA

As is stated in the Market Analysis and in the PTA responses here above, the PTA considers that it has shown that Siminn has significant market power on the market for access to public fixed line telephone networks. Certain contributory factors lead to this conclusion. But the fact that weighs the heaviest is Siminn's dominant market share on the market. There are no factors that could lead to another conclusion with respect to a company with such a high market share. The main one to consider might be countervailing buying power but this is insignificant on this market. In the year 2008 Siminn was designated as having significant market power on this market, despite the fact that the price level was low in comparison with other European states. Today Iceland does not perform as well in this comparison as the country is now in fourth place in the list of countries with the lowest prices for fixed line telephone services instead of first place in the year 2008. It is thus not possible to say that price development should rather lead to the conclusion that there is active competition on the market today, no more than one could do in the year 2008.

As is stated in the PTA analysis there are significant and non-transitory barriers on the relevant market and it is the assessment of the PTA that obligations for access in the form of carrier selection, pre-selection and fixed line telephone connections in wholesale along with the following obligations for transparency, non-discrimination, accounting separation, price control and cost accounting are still today a prerequisite for active competition on the relevant market.