Appendix B

POST- AND TELECOM
ADMINISTRATION

Conclusions from PTA consultation on draft decision on analysis of wholesale markets for call origination and termination on the public telephone network provided at a fixed location

(Markets 2 and 3)

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1 Introduction

This document contains the answers and comments received as a result of the Post and Telecom Administration (PTA) consultation on the draft analysis of the wholesale market for call origination and termination on the public telephone network provided at a fixed location (Markets 2 and 3). The draft was submitted to stakeholders for consultation with a letter dated 26 June 2012 and was published on the PTA website at the same time. The notice for submission of comments was initially until 13 August 2012, but it was extended to 21 August.

The following parties submitted comments on the draft.

- Fjarskipti ehf. (Vodafone)
- Nova ehf.
- The Competition Authority
- Siminn hf.

Comments are categorised by subject, Chapters and Paragraphs. Endeavours have been made to identify all significant comments and to answer them. At the end of each comment there is a summary of the position of the PTA.

2 General comments

The Competition Authority restricts its examination to the definition of the relevant service market and to the geographical market, 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 those parts of the analysis to be well made and to serve their 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 handling 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 comments on the presentation in Chapter 1.4.3, where it is stated that the PTA does not have the authority to define markets in a specific manner. The PTA was obliged to define markets correctly and if a market was international this did not change the PTA's authority. What is probably being referred to here is that the PTA did not have the authority to intervene in markets that were international. The wording in question should be corrected.

The position of the PTA
What is meant by the referenced Chapter is that according to Paragraph 4 of Article 81 and Paragraph 1 of Article 16 of the Framework Directive 2002/21/EC, it is prescribed that the EU Commission and/or ESA along with the states involved be parties to a decision on demarcation of the market. This discussion is part of a general

introduction and has no impact in this analysis. The PTA considers that it is not necessary to discuss at this point in the report whether the Administration has the authority to demarcate geographical markets outside the country's boundaries and will therefore delete the sentence in question in the draft analysis.

3 Market 2 - Call origination

3.1 Geographical market

Siminn comments on the geographical demarcation of the market. Siminn considers that although the geographical market for electronic communications services has often been considered to be the whole country, it is not necessarily a fixed principle that one should relate to the scope of the electronic communications network and to the jurisdiction covered by the legislation in question. Siminn considers this to be a wrong methodology for defining markets. It is possible that this methodology is suitable for defining termination markets but not for the markets where competition is of a different nature. The main rule for assessing the scope of the relevant market is to look at the conditions for competition. If one looks at the electronic communications network or the jurisdiction, then one is not making an economic analysis, but an analysis of form which bears no relation to the service in question. This leads to wrong conclusions. It can be clearly seen that the PTA has not made a definition of a geographical area, but has relied on an approach based on form. Though the Siminn electronic communications network covers a larger area, the conditions for competition vary. The PTA says that when defining geographical markets there are two things that matter, i.e. the scope and distribution of the electronic communications network and price. But there is nothing said about which electronic communications network is the point of departure. The aspects that are of crucial importance when defining geographical markets are whether conditions for competition are sufficiently homogenous to be able to differentiate the area in question from neighbouring areas, see inter alia the decision of the Competition Authority number 51/2008 (SPM) and number 2/1010 (Lyf og heilsa) (sic)[1]. Then it is stated in a ruling from the Competition Appellate Committee, number 17-18/2003 (Netsmellir I) that it is general practice in competition law to define markets from their demand side. In the Competition Authority decisions it says inter alia that what is taken into consideration is whether there is a clear difference in companies' market share in the relevant area and in neighbouring areas. The PTA seems to have started at the wrong end and has ignored the demand-side and used the electronic communications network as the point of departure. Siminn considers that one cannot ignore the fact that development of electronic communication networks in the capital city area, in other built-up areas and in sparsely populated areas is significantly varied, which is the result of variations in demand in the different areas. This has not been examined in any way by the PTA which can be explained by the fact that the main principle applied by the PTA is wrong. Siminn challenges the PTA to examine varying areas and whether conditions for competition are sufficiently homogenous. Siminn points out that competition in the capital city area is totally different from what is seen on markets where companies like Vodafone have not seen a reason to build up their own network. Siminn feels it is safe to assert that consumers in Iceland would not agree with the PTA that conditions for competition are the same or similar across the whole country. The PTA must prove the assertion in question by referring to research or other solid evidence.

[1] This probably should be the decision 5/2010.

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. Until very recently the Siminn network was the only one that offered wholesale services on the relevant market. Vodafone now also offers wholesale services. 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 telephone exchanges in the capital city area but they are not selling wholesale call origination. This means that the current situation is that there are two networks that offer wholesale call origination 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.

The PTA considers that the competition law cases referred to by Siminn do not support Siminn's comments. Those cases deal with markets that are essentially different from electronic communications markets, i.e. financial services, pharmaceutical sales and flight services. In the large majority of instances the competition authorities in this country have considered the geographical market for electronic communications services to be the whole country.

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 markets for call origination to any significant degree, as none of them are offering wholesale call origination. Since 2008 the Vodafone network has developed considerably throughout the whole country, though it has not achieved countrywide distribution like the Siminn network.

In the analysis by NRA in Norway (NPT) of the markets for call origination in fixed line networks, which was published in August 2011, the conclusion was that the geographical market was still the whole country, despite the fact that the number of networks in demarcated areas had increased. This analysis was notified to ESA, which made no comment on the geographical demarcation of the market. The arguments used by NPT are very similar to the arguments used by the PTA. In the analysis it says on page 27:

"120. NPT concluded in the analysis of 24 March 2006 that the geographic market for call origination was nationwide. NPT places most of the emphasis on the fact that Telenor 1) has a nationwide telephony network and offers call origination throughout

Norway based on the network, and 2) that Telenor offers call origination on equal prices and terms throughout the country.

121. In recent years we have seen a continuous increase in alternative providers with their own access network (e.g. local/regional broadband providers and cable TV companies) who offer call origination in geographically defined areas, both in numbers and propagation. However, the number of end users that use alternative providers of access at a local level is still limited, and is insufficient to deem it necessary to create a new definition of the geographic market.

122. NPT therefore considers the geographic market for call origination to be nationwide."

The PTA therefore rejects the demand 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. It is worth noting that there are only three states that divide the geographical market for Market 2 into more than one market. The states are Finland, Hungary and the United Kingdom, which divide geographical markets in accordance with a sphere of operations of regional electronic communications companies that do not operate outside their own areas. In these states there are thus very special circumstances in this context compared to the European norm. It is clear that those circumstances do not apply in this country.

3.2 Definition of service market

Siminn feels that there is a reason to point out a wrong assertion by the PTA on page 11 where it is maintained that the EU Commission and ESA believe that certain conditions exist on the markets that are being examined. Siminn is not aware of any indication that the European Commission has at any time examined the markets in Iceland and nor has ESA examined conditions on these markets as one could understand from the PTA presentation. So this assertion is wrong as presented by the PTA and should be corrected.

The position of the PTA
In this subsection in question there is discussion on the three criteria that need to be in place to be able to analyse markets with a view to imposing ex-ante obligations to encourage competition (the three criteria test). It is clearly not meant that ESA or the Commission have examined the markets in question here in this country, but rather the meaning is that the Commission and ESA consider that the above specified conditions generally exist in the EEA, on the service markets that are being examined in this market analysis. The wording will be changed to avoid misunderstanding.

Siminn comments on there being no mention at all of the effect that Internet phone service (VoIP) which uses software, has on the operations of companies that offer fixed line services. Though the PTA does not believe that the service in question belongs to the same market, it can nevertheless not ignore the impact that the service in question has on competition and operations of companies that offer fixed line connections. Siminn emphasises its previously voiced opinions and objects to the fact that these issues have not been examined at all by the

PTA. Though a specific product may possibly not belong to the same market it can nevertheless create significant pressure and be a factor in assessment of market power. Siminn believes that Internet telephone services belong to the same market and have an impact on consumer demand. Siminn considers that the PTA needs to examine this more effectively than has been done. In the opinion of Siminn one can attribute part of the reduction in fixed line telephone traffic to the fact that consumers are increasingly using VoIP to communicate with each other.

The position of the PTA
The PTA describes the usefulness and limitations of this service in Chapter 2.3.8.2 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 this 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 arrival 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.

3.3 Assessment of market power

3.3.1 Market share

Vodafone considers it proper to draw PTA's attention to the fact that analysis of market share in Paragraph 90 is based on adding the Tal market share to that of Vodafone. However the nature of the resale agreement on which Tal bases its operations is such that it is relatively easy for the company to change service providers. This means that Tal could transfer its business to Siminn during the period of reference, inter alia for the next 2 to 3 years, which strengthens even further the PTA conclusion that it is likely that Siminn will have persistent significant market power.

The position of the PTA
The PTA considers that the origination of telephone calls that Tal purchases from Vodafone is considered to be part of Vodafone market share at the wholesale level. The PTA will not change its calculations of market share as a result of this comment but will state in its market analysis that there is a possibility that Tal will transfer its business from Vodafone in the near future.

Siminn considers it necessary to analyse market share on the basis of volume and not income as the latter metric is dependent on the same criteria being used as a basis for definition of income. For example, it has long been the practice to collect one combined fee for fixed line telephone, where the fee for local copper loop is included in the price. An analogous fee would be a monthly payment to Gagnaveitan (data transmission utility) which is not included in the price of a service provider. Using income as a reference leads to a situation where a party selling fixed line telephone services through the Gagnaveitan fibre-optic network has an incorrectly calculated market share as the service provider does not have to pay that cost, unlike the custom practised with payment for copper local loop. These different methods of charging mean that using income as a reference is not a suitable metric for market share and the PTA has agreed with comments to this effect (see the Administration's promotional brochure on market analysis, from August 2009).

The position of the PTA
The PTA does not base its conclusions solely on income figures. The PTA also discusses market share measured by traffic and the Siminn market share by traffic exceeds the reference limits as is stated in the analysis. The comment on criteria, with respect to income from a fixed line telephone services through the Gagnaveitan fibre-optic network is probably justified, but the number of such connections are not so great as to have a significant impact on market share figures by income.

Siminn would like to point out that since 2004 it has on average lost 12% of yearly traffic compared to the year before. Between 2004 and 2005 there was a reduction of about 30% and in the last years the reduction of minutes between years has been about 10%. Changes at competitors have on the other hand been of a different nature. Between 2004 in 2009 there was an increase in traffic each year. Since 2009 there has been a reduction, but very small, about 1-3%. If we allow for a continuation of this reduction then one can expect market share by traffic to be similar at Siminn and Vodafone by 2014/2015 where the difference would even be less than 10%. Today the difference is probably less than the PTA allows for because most of the year 2012 has passed and when the Decision is implemented one can expect the year 2012 to be over. One should however note that the time between market analyses is normally longer, about 4-5 years. If we assume that the next analysis will be made after such a period of time then it is clear that competition will then be active. In the opinion of Siminn, competition is actually already active on the market and for this reason one does not have to wait 4-5 years to confirm what has already happened. Siminn therefore considers there to be every likelihood that market share will have limited significance in supporting a conclusion of alleged Siminn significant market power as market share has decreased steadily. Such changes are an indication that significant market power does not exist as a prerequisite for the conclusion on significant market power is that there is both a steady and persistent high market share. As the conditions for steady market share do not exist there is an indication that Siminn does not enjoy significant market power. The development of market share does thus not support the PTA conclusion.

The position of the PTA
During the past three years the Siminn share in traffic has dropped by a total of 4% and by a total of 8% during the past four years. Should the trend continue to be similar to this, one could estimate that the Siminn share will be over 50% for at least the next four years. Attention is drawn to the fact that between the years 2010 and 2011 the reduction was only 1% and this indicates that there will be a deceleration in the decrease of share. Though the Siminn share decreases, it is not given that the Vodafone share will increase correspondingly during the next years. More companies have entered the fixed line telephony market so one can assume that the increase in share will be spread over more companies than before. So it is not axiomatic that the gap between Siminn and Vodafone will narrow in the coming years. In addition to this it is not certain that Tal will continue to do business with Vodafone during the next 2-3 years. The PTA considers it normal to look to the next 2-3 years when making the analysis, as is assumed in the ESA Guidelines. The PTA intends to shorten the time that passes between analyses on the markets and considers this to be realistic, particularly when one keeps in mind the fact that the markets that require analysis are becoming fewer and in addition to this, the time taken to review and analyse shortens with an increase in reviews and as knowledge increases in the Administration. The PTA does not consider there to be any reason to change the assessment of the impact of market share presented in Chapter 5.1 in the draft.

Siminn considers it proper to correct the assertion that according to case law a market share in excess of 50% is not in its own sufficient to designate an undertaking as having dominance. Companies in a dominant position, often called super-dominance, generally have at least 80%. This assertion then does not harmonise with case law if it only applies to companies in a dominant position. The correct statement would be that market share over 50% has been considered to indicate that it is likely that a company has a dominant market position, but one always has to consider other factors before one can confirm that a company has market dominance. Siminn points out that the PTA assertion is not supported by appropriate references. On the contrary, market share can be a risky metric when assessing whether a company has market dominance, as there are many other factors that result in a company with a high market share not being in a dominant position, quite apart from the variety of faults that can be in measurements of market share. In case number FI/2004/0082 this clearly comes to light. In that case the Commission used its veto against the Finnish Telecom Administration as it had not provided adequate arguments for TeliaSonera, which had over 60% market share, having market dominance. On the contrary the Commission considered that there were many factors that indicated the opposite.

The position of the PTA

The discussion of the PTA on the significance of market share over 50% originates in Article 76 of the ESA Guidelines 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, sufficient to presume that a company has SMP. In footnote 79 in the Guidelines, reference is made to relevant case law.[2]

The PTA however agrees with Siminn that it is proper to examine more factors and this is done in the market analysis. As is stated in the PTA market analysis on the relevant markets, most factors other than market share do not support the Siminn claim that the company does not have significant market power on the relevant market.

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%. In the referenced case FIA/2004/0082 there were special circumstances on which the Commission based its arguments, that is to say the progress made by a number of service providers at retail level that was considered to result in competition at wholesale level. On the market being examined in the PTA analysis, the development of competition at retail level is not as great as on the mobile phone market in Finland.

Finally, the PTA would like to point out that courts in Iceland have been unequivocal on such matters. In a Supreme Court judgement from 18 November, 2010 in case number 188/2010 (Hagar hf. v Competition Authority), a judgement by the District Court of Reykjavik was upheld with reference to its criteria. In the District Court judgement it was stated that "when assessing whether a company has significant market power on a defined market, certain factors were examined and jointly assessed." The first factor was the market share of the relevant company on the defined market and its development. One criterion was that if market share exceeded

[2] See Paragraph 60, Case C-62/86 AKZO v Commission, [1991] ECR I-3359, Paragraph 70, case T-228/97, Irish Sugar v Commission, [1999] ECR II-2969, Paragraph 41 of the previously referenced case Hoffmann-La Roche v Commission and Paragraph 51, Case T-139/98, AAMS and Others v Commission [2001] ECR II-0000.

50% there was every likelihood that the company had market dominance. One also had to examine entry barriers to the market and the difference in market shares of parties on the relevant market.

3.3.2 Total size and experience

Siminn considers that the presentation of this item by the PTA is flawed. Siminn does not see what advantage it has over Vodafone. Siminn seriously doubts that the PTA has tested the knowledge and experience of the employees that handle fixed line telephony at the relevant companies. Given that this is the case the PTA cannot assert Siminn has an advantage over, Vodafone, which means that this is an assertion that is not supported by adequate documentation. Siminn considers that in the light of the fact that Vodafone has been operating on the market for many years, the company must be equivalent to Siminn, with respect to total size and knowledge of the market. Should the PTA wish to maintain otherwise then it must provide cogent arguments for its position and base such arguments on a study of data. Otherwise, the PTA must retract the assertion in question.

The position of the PTA
In the Chapter in question there is no comparison made between the experience of staff of Siminn and Vodafone that handle fixed line telephony services. The conclusion in the Chapter is however that the size and experience of Siminn strengthens its position on the market more than others. It is true that the experience and size of Vodafone have increased. It is however a fact that the Siminn turnover, and particularly that of the Skipti Group in total, is much greater than that of Vodafone. Siminn has been active in these operations for more than 100 years, against 13-14 years for Vodafone. Staff of the Skipti Group total about 800, while at Vodafone there are 380. Operations of the Skipti Group are much more varied than the Vodafone operations. Taking all this into account, it is not injudicious to conclude that there is more experience within the Skipti Group, without having examined the work experience of individual employees of the companies.

Siminn points out that turnover on its own do not provide a competitive advantage. One has to take into account the burden of debt borne by a company. Large debts mean that the company with a big turnover does not have an advantage or dominance on the basis of turnover. Siminn again challenges the PTA to investigate the true financial position of the parties operating on the market and not to focus on one item of many in companies' annual accounts.

The position of the PTA
In Chapter 5.2 there is discussion on the total size of companies and turnover is used as a measure of size. The PTA considers that an assessment of indebtedness does not belong in the Chapter in question.

3.3.3 Entry barriers

Vodafone considers it dubious to conclude, as the PTA does in Paragraph 102, that the Skipti Group control of the copper local loop network does not constitute control of facilities that are difficult to replicate. Despite the fact that the PTA obligations mean that third parties can have access to the network, the fact remains that there are no economic criteria to assume that another copper local loop network or equivalent to such a network will be developed in this country.

The position of the PTA

The PTA agrees that it is unlikely that another copper local loop network will be developed in this country and that this undeniably has a significant impact on the market for local loops and other access networks. The PTA considers however that this issue cannot be rated as a significant entry barrier on the markets for call origination while access to the copper local loop network is assured with obligations that inter alia entail cost related pricing and an obligation for non-discrimination. As is stated in the market analysis, small companies today have the capacity to purchase at least one telephone exchange and they can lease access to the copper local loop network. In this way it is possible for them to install facilities to provide fixed line telephony services, despite the fact that they do not have the capacity to develop their own copper local loop network.

Siminn considers that the PTA has not investigated whether Siminn has an advantage on the basis of economy of scale, as there is little to be seen that supports the assertion in question. Siminn challenges the PTA to provide documentation that supports the assertion or to explain what documentation supports it. Siminn cannot see any sign that the PTA has actually investigated how much and to what extent there is economy of scale which has the effect that Vodafone is disadvantaged in its competition with Siminn. Siminn rejects that its economy of scale is more than that of Vodafone, or at the very least that it has some impact on competition. This is a case of an assertion that has not been researched and that cannot be used to assess Siminn's strength with respect to Vodafone.

The position of the PTA

The PTA considers it to be beyond all doubt that Siminn's economy of scale is greater than that of Vodafone, as much more traffic passes through the Siminn network The PTA considers 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. The PTA points out that in Siminn's observations, in the discussion on the possibilities of quantity discount it says: "although it is difficult to show cost economies in precise amounts, it is perfectly clear that larger quantities result in increased economy in many areas."

Siminn considers that the same considerations that apply in the discussion on economy of scale, also apply to economy of scope. One cannot see a difference between Siminn and Vodafone in this respect. This is a case of an assertion that has not been researched and that cannot be used to assess Siminn's strength with respect to Vodafone. Siminn cannot see the relevance of referring to organisational changes within the Skipti Group. The reasons were clear and were published in the media. On the other hand, Siminn does not see how they could have a negative impact on competition, quite the contrary. It should be positive if a company embarks on organisational changes in order to save costs. Siminn would also like to draw the PTA's attention to the Vodafone access to the NATO fibre-optic cable as there is no discussion on how this access strengthens Vodafone's competitive position. The company has sole access to the cable and there is no evidence of it having advertised or offered other companies access to the cable. When one considers all the obligations imposed on Siminn and Mila on separation and other things of this nature, Siminn cannot see how the PTA can assert that Vodafone is in a less advantageous position than Siminn. Vodafone is in a much better position to take advantage of economies of size and scope and does not have a weaker position than Siminn or Mila, as the Vodafone operations are within one and the same company.

The position of the PTA

The PTA repeats what was stated in Chapter 5.3.5. Vodafone's service offer is largely analogous to that of Siminn. The difference is however 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 have increased with the organisational changes within the Skipti Group. These economies on their own are not necessarily detrimental to competition but they do, along with other contributory factors, support increased market power.

Thus the PTA cannot see what the Vodafone lease of one fibre-optic thread has to say in this connection, while the Skipti Group has five threads in the same cable.

Vodafone makes comments on the PTA discussion on access to capital in Paragraphs 114 to 117 and considers it necessary to correct the Administration's assertion that the company is owned by financial undertakings. As is stated on the Vodafone web site, the company's main owners are pension funds.

The position of the PTA

The PTA will specify ownership of the company in more detail in the updated market analysis (Appendix A). It should however be noted that Landsbankinn is the largest shareholder in Framtakssjóður Íslands, according to information on the fund's website, and the company is both directly and through Vestia, the largest shareholder in Vodafone. Pension funds control a vast amount of capital and the PTA considers it to have a significant impact on access to capital if an electronic communications company is considered to be in majority ownership of pension funds or financial undertakings.

Siminn points out that Siminn is not owned by a financial undertaking. Skipti hf. is a shareholder of Siminn and is demonstrably not a financial undertaking. Nor is the shareholder of Skipti a financial undertaking.

The position of the PTA

Síminn is owned by Skipti hf. which is owned by Klakki ehf. and the three largest shareholders in Klakki are Arion Banki hf., Kaupthing hf. and Burlington Loan Management LTD. It is therefore clear that there are financial undertakings among the owners at the end of the ownership chain. The PTA will elaborate on this in its revised market analysis. The PTS draws no conclusions from ownership on ease of access to capital. The main point in the conclusion to this chapter is that it is not easy for new companies in the current climate to access capital to build up electronic communications networks that can compete with Siminn on the market for call origination.

Siminn rejects that investment in service systems is an entry barrier. It cannot be seen that the entry of new parties has been prevented or hindered in any manner.

The position of the PTA

The PTA disagrees with Siminn on this issue. New companies have not started to sell call origination in wholesale as they do not have the service systems to do this. At retail level the newest network operators (Símafélagið and Hringdu) have not yet achieved significant market share as they do not have extensive service systems or large marketing departments to reach a large number of users.

Siminn considers that other companies than Siminn do not have to struggle with barriers in achieving growth. During the past years other companies have not experienced as great a reduction in traffic as Siminn. Then there is the fact that companies' possibilities to handle increased demand are not subject to limitations. So a company's ability to grow is not an access barrier. There may however be a limited incentive to enter the market in the light of the fact that companies like Microsoft and Apple provide analogous service without charge, but this does not strengthen the Siminn position, it rather weakens it, as a drop in number of customers or traffic causes most damage to the company that needs to invest and maintain the system. Other competitors that do not use the same or lesser infrastructure do not face the same problems.

The position of the PTA

The PTA discussion on entry barriers refers to the market as a whole. It is clear that demand for fixed line telephony is dropping and it is not likely that the market as a whole will grow in the near future. This makes the entry of new companies more difficult as is described in the analysis. This fact alone strengthens the position of companies that have established themselves on the market. Siminn has by far the largest share on this market and does not depend on growth to the same extent as smaller companies. This means that limited possibilities for growth are a greater problem for companies other than Siminn.

Siminn objects to the PTA conclusion on entry barriers. The conclusion is mostly based on assertions that the PTA has assumed without having conducted appropriate investigations. The PTA seems to have totally ignored the fact that companies can offer their customers fixed line telephony services through the Gagnaveitan fibre-optic network. For this reason the discussion on other companies finding it difficult to install facilities like those controlled by the Skipti Group, is an anachronism and does not apply to current circumstances. Companies can buy wholesale services from many other companies or can sell fixed line telephony services through many companies. Gagnaveitan has probably connected fibre-optic to about 50,000 homes, which means that there are great growth opportunities for companies that offer such services. As the PTA analysis totally ignores the existence of the Gagnaveitan fibre-optic network, one can only assert that the analysis is based on false premises and is therefore not suitable to achieve its objectives. Siminn also considers it appropriate to refer to a case that was also discussed above, and that is case number FI/2004/0082. In that case the Finnish regulatory authority (FICORA) strongly emphasised economic strength, economies of scale and scope and market share. In short, the regulatory authority was contradicted and the Commission said that these were factors that could not lead to TeliaSonera being considered to enjoy significant market power. The PTA seems to base its analysis and assessment on exactly the same factors as FICORA. In fact all the factors that the Commission indicated had not been investigated by FICORA or explained, are also unexplained by the PTA. Siminn also points out that service providers can make an agreement with Siminn and Vodafone and in addition to this, they can offer fixed line telephony services through the Gagnaveitan fibre-optic network or through other parties. This demonstrates that competition is active on the market.

The position of the PTA

The PTA considers its analysis of entry barriers to be adequate and that there is no need for further investigations. The PTA points out that the analysis was made in an analogous manner to that made in 2008, where the ESA made no comments on the methodology. The Competition Authority, in its comments, said that it considered the analysis to be have been well made and fit for purpose.

With respect to the Siminn observations that relate to the Gagnaveitan fibre-optic network, the PTA would like to state that the market for access networks is not being examined here but the market for wholesale fixed line telephony services. It is not sufficient that a local loop exists, whether it is copper local loop or fibre-optic. Service providers also need to install telephone exchanges in one way or another. The PTA considers that the low proportion of users that use fixed line telephony through fibre-optic and the low number of service providers show that entry to the market by this route is not easy for new parties. Because there are so few users of this service today, the PTA considers that the service will not remove entry barriers to the market during the expected period of validity of the analysis.

The PTA considers that circumstances in the case FI/2004/0082 are not at all comparable to those that exist on the market for call origination in fixed line telephone networks in this country and in this respect refers to the discussion here above.

Finally, the PTA would like to state that all of the 30 countries in the EEA have reached the decision that active competition does not exist on that market. It is impossible to maintain that circumstances in Iceland are more conducive to competition than is the case elsewhere in Europe on the relevant market.

Nova considers that Siminn employs serious entry barriers on this market, in the case of fixed carrier pre-selection, single billing (CPSB). Nova provides companies with both mobile phone and fixed line services, which means that it is particularly important for Nova to have access to CPSB. Siminn is not prepared to provide Nova with CPSB for ISDN sub-numbers, but only for POTS and ISDN main numbers. As the vast majority of companies have ISDN sub numbers, this has meant that Nova can in no way use the CPSB service from Siminn, as Nova cannot have some numbers from a specific company in CPSB and other numbers not. Without comprehensive delivery by Siminn of CPSB for POTS and ISDN main numbers and ISDN sub numbers the CPSB service is therefore inoperable for Nova and other parties to the market. Siminn has argued that the level of complexity in Siminn's Business Systems mean that it is not possible to provide CPSB for ISDN sub numbers, but Nova considers it very surprising that Siminn should not make an effort to find a solution to this problem. Nova can only interpret this as being a serious entry barrier, whether the cause is the old Siminn business systems as is maintained or a management decision to employee entry barriers. The situation is then such that companies that are connected to Siminn cannot receive a single billing from Nova. The PTA has imposed obligations on Siminn that relate to Carrier selection and CPSB. Nova considers the situation to be untenable where despite these obligations, parties to the market cannot get CPSB from Siminn, and this situation significantly restricts Nova's possibilities for making progress on this market. As stated previously, Nova considers the above to be clear example of an entry barrier that the PTA needs to react to without delay.

The position of the PTA
The PTA does not consider this directly relevant in connection with discussion on entry barriers to Market 2. This is a case of alleged behaviour by a party to the market that could represent an obstacle to the entry of competitors to the retail markets. Such behaviour could however make it more difficult for companies to enter the wholesale market in the long-term, if that is their intention. The obligation referred to by Nova was imposed on Siminn on the retail markets for fixed line telephony services, that is to say Markets 1 and 2, according to the older ESA recommendation. The PTA is making a special examination of this issue of dispute, independent of the market analysis of wholesale markets for fixed line telephony services.

3.3.4 Potential competition and innovation

Siminn considers that there is a serious underestimation of possible competition and innovation. Repeated discussions have taken place on the pressure that various forms of VoIP software exert on fixed line telephony services. Though the PTA considers this to be a different market these are nevertheless issues that have an impact. There is considerable development in a large number of solutions and systems that lessen the need for major investment and that should increase competition. Siminn refers to what has already been stated, and that has not been answered by the PTA. One must also point out that Gagnaveitan has connected about 50,000 households and at the end of the year 2011 there were about 17,000 VoIP connections through fibre-optic. One could assume that this represents significant potential competition that the PTA has not taken into account, and it includes 30,000 homes that have not yet adopted fixed line telephony through fibre-optic. Such a number has an impact on the market.

The position of the PTA
The PTA considers the share of fixed line telephony services through fibre-optic to be still too small for this service to threaten Siminn's significant market power on Market 2. The development of the Gagnaveitan fibre-optic network has been taking place for more than a decade and the technology for offering fixed line telephony services through such a network has long been available. Despite this, only about 10% of fixed line telephony connections are in this form today. The PTA draws the conclusion from these facts that the use of fixed line telephone services through fibre-optic will not increase to such an extent during the period of validity of this analysis, that it can have a significant impact on Siminn's market power.

3.3.5 Behaviour of parties to the market

Siminn considers it incorrect that it could hinder competition if it were not for the PTA ex-ante obligations. The Gagnaveitan network is competition on the market that would render it unwise for Siminn to try to have a negative impact on the wholesale market. Such behaviour would only damage Siminn customers, and thus Siminn itself. Siminn considers that the PTA needs to review its assessment of the market. There are competition rules in force that should prevent constraints to competition and nothing could be further from the truth than that the

PTA's obligations are what prevent Siminn from behaving in a particular manner. Siminn has a strong incentive and willingness to offer its customers all the services that the company has to offer. Siminn strives continuously to produce new solutions and services to use the company's systems more effectively. Results can be best achieved in this respect by including more service providers in its network and not by driving them to competitors. Should no company have embarked on investment in the local loop market then the explanation is probably that this would be very expensive and that there are many other solutions on offer that enable companies to enter the market in another way. One cannot draw any conclusion from complaints from parties about Siminn's wholesale prices. The simple fact that the PTA intervenes in Siminn's pricing means that all companies see an advantage in pressing prices down as far as they possibly can. If they feel they can convince the PTA to lower prices even further, then they have a direct financial incentive in using the PTA as a "negotiator". The companies that Siminn makes agreements with can thus save the money they would otherwise spend in negotiations and transfer these costs to the PTA.

The position of the PTA

The PTA considers that it has been demonstrated that obligations on the local loop markets and markets for call origination are necessary. It is the opinion of the ESA, and of the EU Commission that general competition rules generally do not suffice to solve competition problems on these markets. Competition in this country is probably less than is generally the case within the EEA and therefore the PTA considers it not possible to withdraw obligations with the argument that there are competition rules in force, which is what Siminn does in its comments. The PTA points out that all 30 states in the EEA area have designated undertakings with significant market power in Markets 2 and 4.

The Skipti Group's vertical integration is conducive to strengthening Siminn's position. The same does not apply to those companies that use the Gagnaveitan fibre-optic system as it is operated by a completely unrelated company. The PTA points out that it has been shown that Siminn has an incentive to maintain excessively high wholesale prices and thus apply margin squeeze. The PTA bases its decisions on maximum prices on cost analysis or benchmarking as appropriate, but not on pressure from competitors as maintained by Siminn. The PTA further points out that Siminn had not been willing to make agreements on access to its networks prior to obligations being imposed.

3.3.6 Countervailing buying power

Siminn considers that the PTA has failed to examine countervailing buying power on the market. There are many parties on the market that could exert an influence. Buyers have options for making agreements with a number of parties. For example Tal has a resale agreement with Vodafone. A number of companies offer fixed line telephony through fibre-optic. In Siminn's opinion there are such significant business interests in transactions with service providers that countervailing buying power clearly exists. To lose a service provider who pays promptly has a clear negative impact on Siminn. Siminn considers that the nature of countervailing buying power is underestimated as there are significant interests in these transactions and if Siminn should behave without taking customers into consideration then they could easily go elsewhere. One could here also point out that Vodafone is a buyer on the market and the PTA would hardly maintain that Vodafone, which is part of one of the largest company groups in the country and owned by Framtakssjóður Íslands, is a small company.

The position of the PTA
As has been previously stated, Gagnaveitan does not operate on the market for call origination. Companies that wish to operate telephone services through the Gagnaveitan network must invest in equipment to do this. As things stand today there are only two realistic options to purchase call origination in wholesale, i.e. Siminn and Vodafone. The PTA considers that there was no progress in making agreements on access to the relevant market before the PTA imposed obligations in the year 2008. The PTA considers that the market share of service providers that need to purchase access to this market is in general so small that they have little power in negotiations. It could however be that Tal is approaching the size where companies would seek its customers. The PTA will mention this in its revised market analysis. One should however note that Tal has its fixed line telephone services today in the Vodafone systems but there are many indications that the company will move to Siminn in the near future. Such an event would strengthen Siminn's position on the relevant market even further.

Vodafone has become a relatively large company, but one has to keep in mind that the company operates its own extensive fixed line telephone network and its purchase of wholesale services on that market are not proportionate to the size of the company.

3.3.7 Cost of switching

Siminn does not understand the discussion on cost of switching. As far as Siminn can see, Tal is doing business with Vodafone, and Siminn cannot see what costs should prevent the company from doing business in both places. It is possible to offer fixed line telephony through fibre-optic but the PTA does not seem to have taken this into account. The existence of the Gagnaveitan system is of major importance. Tal, Vodafone and Hringdu all offer fixed line telephony through fibre-optic. One can thus not see that there is any cost for switching as most companies already offer fixed line telephony through various wholesalers.

The position of the PTA
The PTA reiterates that the Gagnaveitan fibre-optic network is an access network and not a fixed line telephone network. The PTA can except that switching costs do not necessarily need to be high when parties switch from one wholesale company to another, and will mention this in its analysis. On the other hand, the PTA does not consider that there is much choice on the market.

3.3.8 PTA conclusion on market strength

Siminn rejects that it has significant market power and considers the PTA analysis to be inadequate. The PTA conclusion does not seem to be based on current data, for example, there is nothing that supports the contention that Siminn has some advantage over Vodafone because of its financial position, economy of scale or economy of scope. There are almost no other factors than market share mentioned by the PTA in support of its conclusion. The Decision of the EU Commission in the case, FI/2004/0082 actually confirms that the methodology used by the PTA is wrong and cannot be the basis for a conclusion on significant market power. In that case it was maintained that a company had an advantage because of high market share (over 60%) and because the financial strength of the group and economies of scope and scale were significant, as the PTA does now. All of this was rejected.

Siminn points out that development in the coming 2 to 3 years are not covered in the PTA analysis so one can hardly say that an assessment is made of how the market will develop. In fact, there is normally a period of 4-5 years between analyses and one should thus take a realistic position on development and to the period of time until the next analysis. The PTA needs to explain this in much more detail, particularly as Siminn has lost on average about 10% of traffic of the previous year since 2004. This development is an indication that significant market power does not exist. Other competitors have not had to face such reductions. There are no indications that the development in question is changing significantly. Siminn emphasises that the burden of proof that Siminn has significant market power rests on the PTA. There is no evidence that an investigation has been made that would suffice to be able to state categorically that the Siminn position today is as described in the PTA analysis.

The position of the PTA
All of these points have been answered here above and the PTA refers to those answers. The PTA considers that Siminn's high market share, which in all likelihood will be in excess of 50%, next year, clearly indicates significant market power. Many other factors support this conclusion, as is described here above, and in the market analysis itself. In the Siminn observations there is information that further supports the PTA projection that the Siminn market share will be in excess of 50% for the estimated period of validity of the analysis, that is to say for the next 2-3 years. This is information on […]

As has previously been stated, the PTA considers that the referenced example from Finland is not appropriate to the relevant market. It would be more appropriate to refer to examples in Europe from the relevant wholesale markets for call origination in public fixed line telephone networks, and in those markets all 30 states in the EEA area have designated undertakings as having significant market power.

Siminn mentions often that there is generally a period of 4-5 years between the PTA market analyses. This is far from the truth as 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.

3.4 Obligations

3.4.1 Competition problems

Vodafone considers that in the Administration's discussion on employing market power through pricing, there is a lack of discussion on the possibilities that Siminn and its sister company Mila have to employee market squeeze on related markets, i.e. that there may be an unnaturally small price difference between the price for access to the copper local loop system and the Siminn retail price.

The position of the PTA
The PTA considers that such a situation could arise if there were no obligations on the copper local loop market. Existing obligations on the copper local loop market do however significantly limit this risk. This will be dealt with in Chapter 7.2.2.3 in the market analysis.

3.4.2 Obligation for access

Siminn would like to state that the company recently made an agreement with […] for resale of fixed line telephony, and that this was done without there being an obligation for such access. The PTA has been informed about this and so it is a matter of some regret that this is not taken into account in the PTA analysis. Siminn considers that this shows that there is active competition and that Siminn is offering services without obligations on business grounds. There is thus some doubt as to whether the access obligations are necessary.

The position of the PTA
PTA considers that the existence of this agreement does not show that competition is active on the market and that it is possible to withdraw obligations. This is simply a case of an agreement with one party and can thus not be considered an irrefutable indication that competition is active on the market. Further to this, the PTA considers it not certain that such an agreement would have been made if there were no access obligations in force. While a market is completely closed to new parties, predominant companies have an incentive to refuse agreements for access, but when the market has been opened with access obligations the result can be that companies show greater willingness to reach agreements in order to gain the business of parties entering the market.

Siminn considers it absolutely clear that the existence of obligations lessens the incentive for other companies to invest in their own equipment or infrastructure as they have an incentive not to invest. The disincentive is that they can always get less expensive service if they buy it from Siminn. Should companies be dissatisfied with the pricing, they can always enlist the help of the Competition Authority and of the PTA to force the price down. Investments always involve a certain risk and if it is possible to avoid this risk and yet still have access to the same infrastructure at cost price then there is no incentive to invest funds which are at some risk. When interest costs are high this lessens even further the incentive to invest under such circumstances.

The position of the PTA
The PTA does not agree with these comments from Siminn. The obligation for access is necessary on the relevant wholesale markets to enable companies to enter the fixed line telephony market. They can then develop an electronic communications network at a speed they can handle, and one can cite the development of the Vodafone fixed line network in this connection. Decisions on prices that have to be paid for access take into account the investments of the electronic communications company providing the access along with reasonable returns on sunk capital, keeping in mind the investment risk. It should therefore not be a cheaper option for new parties to the market in the long-term to purchase the service at wholesale level. There are many advantages to controlling one's own network and is not possible to conclude that obligations for access to another party's network prevent new investments.

Siminn considers in the light of experience that clearer instructions are required for termination of contract when a buyer does not pay on the due date. Siminn incurs significant costs as companies repeatedly do not pay on the due date in the knowledge that Siminn is obliged to provide access. It must therefore be considered important that obligations that are imposed do not provide an incentive not to pay. The only way to encourage payment is to disconnect in the case of repeated default.

The position of the PTA
In the obligations for access and price control it is of course understood that reasonable recompense be provided for the access. Obligations for access in no way constitute an incentive not to pay for the service. In the Siminn reference offer there are provisions for measures in the event of default. Should Siminn feel the need to revise these provisions the company can submit a proposal to this effect to the PTA for examination. The PTA however points out that one must respect proportionality with regards to consumers' interests when closing an account. Should closure of service be imminent, then end users must be given leeway to transfer their business so that they do not become disconnected.

Siminn considers there to be a particular need to make a demand for a bank guarantee as there is now a stronger incentive not to pay lawful invoices as companies are aware that the PTA has spoken against bank guarantees. In the light of transactions with specific service providers, Siminn considers it necessary to review Siminn's authority to demand a bank guarantee. This relates however first and foremost to Market 2, where this would be appropriate.

The position of the PTA
Bank guarantees can be a hindrance to new companies on the market. The PTA does not consider it appropriate to give Siminn the authority to judge when a bank guarantee is required, and in what manner. The PTA can however endorse a demand for a bank guarantee in individual cases where this is considered necessary in the light of circumstances.

3.4.3 Obligation for non-discrimination

Siminn considers there to be no real reason to make observations on the obligation for non-discrimination. On the other hand it must be clarified immediately and all doubt removed from the fact that the cost of an on-net minute is lower than origination plus termination as Siminn has demonstrated through its cost analysis. Siminn's understanding is thus that if an agreement is made with the company for resale, that is where no interconnection of networks takes place, then the company in question shall not pay for origination plus termination, but rather according to on-net tariff. The PTA has confirmed this approach in at least one case and therefore it is important that this understanding is confirmed in order to prevent varying understandings as has been the case with the virtual network agreement between Tal and Siminn for mobile phones. Siminn also considers that it is not logical to have to charge a termination fee on on-net calls as termination takes place when a telephone call terminates in a system other than the one in which it originated.

The position of the PTA
On 27 May 2011 the PTA made Decision number 15/2011 on cost analysis of Siminn wholesale prices for origination, termination and transfer of telephone calls in the company's fixed general public telephone network. The cost analysed prices were based on the Siminn cost analysis where inter alia it came to light that the cost for an on-net call was calculated as about […] lower when compared with the cost for origination and termination of an off-net call. The PTA agrees to explain more clearly in the obligation for non-discrimination that such a price difference can exist. Despite this conclusion the PTA cannot take a position in advance on whether and to what

extent on-net calls in wholesale can be less expensive than origination plus termination.

3.4.4 Obligation for transparency

Siminn cannot understand what significance or value it can have for competition to oblige one company to publish its book-keeping information. It should suffice to simply submit the information to the PTA. Siminn cannot compete on a level playing field as Vodafone has all the information about Siminn's wholesale performance while Siminn has no access to Vodafone's information. A proper situation would be where neither company had access to book-keeping information about their competitor. Siminn points out that there are no arguments to be found for the purpose of the obligation in question. Siminn objects strongly to the PTA proposal and considers it an obstruction to competition.

The position of the PTA
The purpose of publishing book-keeping information is to create trust in the pricing that has been decided for electronic communications companies' wholesale services. As the PTA now intends to base its price control on benchmarking, and not on cost figures from Siminn's book-keeping, one can accept that the publication of book-keeping information has less significance now than before. The PTA intends to take Siminn's comments into account and to withdraw the obligation to publish book-keeping information.

Siminn considers that the publishing of price information has serious consequences. The consequences impact first and foremost on Siminn and on those companies that do not control their own infrastructure. The party that increased dissemination of information will benefit most is Vodafone. Vodafone has even recently admitted that it uses the Siminn tariff in competition in order to offer lower prices. The company has managed to conduct itself in this manner, and this also damages Siminn's customers at wholesale level. Siminn cannot see what positive effect the publication of price information can have on competition. On the contrary it leads to cooling and affords one company an advantage over all the others, and that is the party that can offer service without purchasing it at wholesale level from Siminn. When companies know their competitors' cost base there is a danger that they coordinate their activities with tacit collusion. When companies know the cost base of their competitors, then this can also limit price competition between companies on markets that are characterised first and foremost by tenders and offers. Should the offers be too predictable and homogenous then buyers have little incentive to switch service provider. It also impinges on efficiency if competitors know what is needed to be able to offer a lower price than others on the market.

The position of the PTA
The PTA intends in the future to base its price decisions on these markets on international benchmarking. All criteria for this benchmarking will soon be available and the PTA will publish the conclusions in each instance. The price of the service will thus not be based on Siminn's costs and will thus not give an indication of the company's cost base. The PTA considers that in order to ensure transparency and non-discrimination on the markets, Siminn's tariff on the relevant markets must be published.

3.4.5 Price control

Vodafone supports the PTA views that were published in the media i.e. that for price control on Market 2 it is appropriate to use benchmarking. Vodafone considers it clear that there have been serious flaws in the implementation of the Siminn cost analysis which are reflected in the fact that the company demanded a 140% increase in rates in 2009 on the basis of such an analysis. It is clear that the cost analysis based on historical costs incorporates substantial inefficiency which does not harmonise with the regulatory framework currently in place in the EEA. Further to this, my client can agree that the cost of making an LRIC model could prove burdensome and supports the view of the PTA that it is appropriate to apply benchmarking, given the conditions presented in Paragraph 311 of the draft.

The position of the PTA
The Vodafone comments categorically support the PTA position on price control. There is no need for further discussion on this comment.

Siminn considers that there is no need for price control, as the obligation for non-discrimination suffices to achieve the same objectives, but in a more efficient and less burdensome manner. Siminn points out that the EU Commission appears to be moving away from the imposition of obligations related to pricing and towards relying solely on obligations for non-discrimination. The British bank HSBC has inter alia pointed out that obligations on price control damage growth of investment and that one should only apply obligations for non-discrimination, as they were better suited to achieve the objective of preventing imbalance in market position. An obligation on specific pricing is only justifiable in the case of a company with a monopoly and it is not disputed that this is not the case with Siminn. Siminn thus has an incentive to have its wholesale prices as low as possible in order to create competition on the retail market. Excessively high pricing at wholesale level would make it difficult for both Siminn and its customers. For this reason there is no need for price control. In the opinion of Siminn it is also possible to achieve the same results by having the PTA informed about the Siminn tariff and by providing the PTA with copies of Siminn agreements so that non-discrimination can be confirmed.

The position of the PTA
Siminn provides no sources for the assertion that the EU is moving away from imposition of obligations on pricing. The PTA is not aware of the fact that this is the general policy of the Commission today, as it is not long since the Commission published a categorical directive on strict monitoring of tariffs for termination in fixed line and mobile phone networks. Nor does Siminn indicate any sources for HSBC having spoken out against obligations on pricing, nor on whether such a pronouncement referred to the relevant market or to other markets. Apart from this, the PTA considers that the underlying interests behind assessments made by financial undertakings with respect to investment are not necessarily the same as the public interests that general and specialised competition rules should be based on. The PTA rejects that one needs to demonstrate "monopoly" to justify the imposition of obligations on price control. In this connection the PTA refers to clear authority in law in Article 32 of the Electronic Communications Act number 81/2003 to impose such obligations on a company that has significant market power. The PTA has demonstrated in its market analysis that Siminn has significant market power and there is thus legal authorisation to impose the obligations in question on the company.

Siminn says it normal to consider the granting of volume discount, as increased volume in the company's systems increases efficiency in the systems and predictability in operations. Although it is difficult to show cost economies in precise amounts, it is perfectly clear that larger quantities result in increased economy in many areas. Volume discounts can also increase competition at retail level as companies have the incentive to do better and increase business. Siminn considers that there is demand for such an arrangement from Siminn customers at wholesale level.

The position of the PTA

As is stated in the description of the planned obligation, the PTA intends to decide maximum prices with benchmarking. It is not actually prohibited to offer lower prices, but non-discrimination must be practised when doing so. Non-discrimination means that companies in analogous transactions should enjoy the same terms. It is not out of the question to grant a volume discount if Siminn can show lower costs resulting from increased volume. One needs however to take care that such terms are not tailor-made for the wholesale company itself, or related companies and one also has to be careful that the discounts are not detrimental to the competitive position of the newest and smallest companies on the market. All proposals for discount systems need to be submitted for special examination to the PTA and the Administration reserves the right to reject them if they appear detrimental to competition in any way.

Siminn strongly approves of the PTA intention to withdraw the obligation on cost accounting, as this is a very burdensome obligation. Siminn emphasises that an average is taken from at least five states that use analogous methodology in order to prevent an average being decided by too few states that may have quite different circumstances than those that pertain in Iceland.

The position of the PTA

In the Decision of the PTA number 15/2011, the Administration agreed to compare the Siminn cost analysed call origination price with the average of five of the lowest prices in EEA states that fulfil the conditions for comparison. The PTA intends to discontinue the use of cost analysis when deciding prices for origination and instead to refer to benchmarking with the EEA states that apply the BU-LRIC methodology for deciding call origination prices. The PTA agrees with Siminn that it is desirable that the average be based on at least five countries that fulfil conditions for analogous methodology.

Siminn would like to note that one could misunderstand the PTA discussion on page 58 that Siminn had endeavoured to increase its charges by 140% and the PTA had prevented such an increase being implemented. This is simply wrong. These were the results of an analysis on the basis of given criteria and this analysis showed that the cost was higher. This first and foremost reflects the complexity of cost analysis and the range of possible variation depending on the methodology used. Siminn points out that on other markets (Market 7) the use of certain criteria would have led to a significant increase and it was at Siminn's initiative that the move was made to the benchmarking methodology, which prevented an increase. So it was rather a case of Siminn supporting a methodology that resulted in a smaller increase, which is not what the PTA maintained. Siminn therefore requests that the PTA take care with its presentation and that it should not make assertions that could damage Siminn.

The position of the PTA
The discussion in the market analysis is not wrong. On the other hand, the PTA agrees to change the wording to show that varying criteria for cost analysis were used.

4 Market 3 - Call termination

4.1 Definition of service market

Siminn feels it necessary to make comments on the PTA definition regarding the product and/or service market related to internal use - that calls that originate and terminate within the same network belong to both markets. Siminn considers that call termination does not take place when call origination is within the same network. Siminn considers that the PTA approach does not harmonise with implementation within the EU and in this connection refers to 3 cases that relate to call termination in fixed line networks: PL/2011/1222, HU/2011/1224 and FR/2011/1236. These are only a few examples but one could probably find many more to support this further. Siminn cannot see what considerations can justify the application of another approach for mobile phones than for fixed line networks. The EU Commission probably did not see the need to state this specifically in its recent Explanatory Memorandum referred to by the PTA on page 13, as there is now considerable experience of that arrangement within the Union. In the above specified cases it is clear that termination is a service where a company receives traffic from another network operator. As is said in all the above specified instances, there is interconnection between different network operators. As internal traffic is within the same network then there is no need to connect two networks together. Siminn considers there to be no doubt that on-net calls, where interconnection between two networks does not take place, are not in any way a part of the market for termination. The market thus should be defined in an analogous manner to Market 7, as on-net calls are not a part of that market, that is to say the market for mobile phone call termination.

The position of the PTA
The PTA reaffirms its view as described in Chapter 2.3.2 in the market analysis. The PTA assumes in the market analysis that both voice telephony that goes between networks and voice telephony that is totally within the same network belong to the markets for call origination and termination. Underlying constituent parts in most telephony retail service are origination and termination of telephone calls, and in some instances transit of telephone calls. Electronic communication companies need this service to be able to provide retail voice telephony services. Although traffic does not pass through an interconnection point between networks when a call is completely on-net, it is clear that a call has both an origin and termination and that it goes through at least one telephone exchange on its route. The use of these service items creates demand on the wholesale market, both in cases where such transactions are made within the same company or between companies.

With respect to the Explanatory Memorandum to the Recommendation from the EU Commission from 2007 the PTA considers it a more logical explanation that the Commission had considered termination in mobile phone networks to have a special position and this is why on-net traffic was exempted from Market 7 and not from Market 3. The PTA considers that it would have needed to have been stated explicitly if on-net traffic was to be exempted from the latter market.

As is stated in the PTA analysis, the Norwegian electronic communications regulatory body (NPT) came to the same conclusion in its analysis of Markets 2 and 3 in August 2011. ESA made no comments on the definition. Nor did ESA make any comments on this issue in the prior round of market analyses in Iceland and in Norway. The PTA thus reaffirms its conclusion with respect to on-net traffic.

4.2 Assessment of market power

Siminn considers there to be no special reason to comment on the PTA assessment on these markets. Siminn considers it urgent that termination be governed by obligations as it was recently demonstrated that pricing on this market without obligations is not desirable, as there is an obligation for interconnection. Recently a company that operates today without obligations increased its pricing by 100% which was clearly done solely to have competitors fund its own operations without considering the costs inherent in the service provided. The duty for interconnection leads to a certain extent to all parties having market dominance in their own network and this is in accordance with approaches abroad. For this reason Siminn considers there to be no need to make any particular comments but this does not mean that Siminn accepts the PTA discussion.

The position of the PTA
Siminn's position on assessment of market power supports the PTA conclusion.

4.3 Obligations

Siminn does not see the purpose of imposing obligations on Siminn on the relevant markets which are not imposed on Vodafone. This breaches non-discrimination, as there are no adequate arguments that show that Vodafone's position is such that the company needs a special advantage over Siminn granted by the PTA. Siminn has drawn the attention of the PTA to the fact that Vodafone seems to have breached the obligation on transparency which was imposed on the company. The company has published no information on its website despite the fact that it was obliged to do so. Siminn drew the attention of the PTA to this, but Vodafone nevertheless seems not to have rectified this flaw. Given the PTA emphasis that Siminn should publish its reference offer on the Internet, Siminn cannot see why Vodafone is repeatedly granted exemptions from the various obligations that had been imposed on the company. Siminn points out that the PTA is obliged to practise non-discrimination in its operations, and to resolve analogous cases in an analogous manner. One can deduce from discussion from other electronic communications companies that they do not sell termination to their own departments where a call is on-net (i.e. fixed line to fixed line/mobile phone to mobile phone). Nova has, e.g., categorically stated to the PTA that termination on the mobile phone market does not take place when a call is between two of the company's customers. It is not logical to impose an obligation on companies that on-net calls involve termination. The PTA considered this to be impracticable in the case of mobile phones so the same must apply to fixed line phones. Siminn cannot see why it is the only company that has to publish a reference offer for termination. Siminn considers there to be every reason to impose analogous obligations on Vodafone and to ensure compliance. The PTA has not provided arguments as to why Vodafone is not required to provide the PTA with information on accounting separation as is the case with Siminn. The PTA surely needs this information to be able to confirm whether Vodafone is complying with the PTA obligations. For this reason, it must be a mistake that Vodafone is not included on page 72, as being required to provide the PTA with information on accounting separation. Siminn considers it illogical to impose heavier burdens on Siminn than Vodafone and challenges the PTA to practise non-discrimination.

The position of the PTA
The PTA intends to mainly impose the same obligations on all companies on the termination market. In the draft of the market analysis there is an explanation of why the obligation for transparency imposed on Siminn varies somewhat from the obligations imposed on smaller companies. Then it says in Chapter 7.6.2.3:

"The PTA does not consider there to be a need to oblige other companies than Siminn to publish reference offers. The companies in question are smaller than Siminn and their share in the total quantity of call termination is also much smaller. The PTA intends to make their maximum termination charges public with an obligation on price control, see Chapter 7.6.2.5, and access to facilities is not as varied with these companies as with Siminn."

As is shown there, all parties will be aware of the maximum price on the market and it is not likely that companies will offer a lower price because of the monopoly all companies enjoy on their own networks. Siminn has already published a reference offer for call origination and termination so it is not burdensome for the company to maintain this part of the offer. The PTA considers there to be logical reasons that justify obligations on Siminn not being exactly the same as obligations on smaller companies.

Siminn correctly indicates that it was not clearly enough stated that Vodafone should provide the PTA on an annual basis with appropriate documentation on accounting separation. The PTA has revised the wording in the Administration's analysis, in accordance with the above comment from Siminn

As with Market 2, the PTA intends to make the amendment that Siminn will not be obliged to publish book-keeping information.

The PTA will ensure that Vodafone and other companies on the market provide all the information specified by the obligations.

With respect to on-net calls reference is made to the discussion in Chapter 3.4.3 here above.