

Unofficial translation

## DECISION ON SIGNIFICANT MARKET POWER IN WHOLESALE MARKET FOR INTERNATIONAL ROAMING IN FINLAND

### 1 RELEVANT MARKET

#### 1.1 Product and service market

The relevant market concerned constitutes the national market for international roaming services on public mobile networks. The market in question is a wholesale level market that is included in the EC Commission Recommendation<sup>1</sup> on markets susceptible to ex ante regulation (market no. 17). Under section 16 of the Finnish Communications Market Act (393/2003), the Finnish Communications Regulatory Authority (hereafter FICORA) shall, in defining the relevant communications markets, take the Commission recommendation into account. The recommendation defines that this market consists of the wholesale national market for international roaming on public mobile networks.

End-users, who have subscribed to a certain mobile network (home network), can receive voice calls and messages, and make voice calls and send messages outside the coverage area of the home network by roaming onto another mobile network (visited network). In the wholesale market for international roaming, a Finnish mobile network operator (visited network) offers roaming services to a mobile network operator situated in another country (home network) in order for it to offer roaming services to end-customers who have joined their network. The demand in the wholesale market for international roaming in visited network is directly derivable from the demand of retail international roaming services of home network's subscribers.

#### *International roaming agreements*

In order for mobile network operators to be able to offer their customers the possibility to receive voice calls and make voice calls abroad, they have to make agreements on international roaming with foreign mobile network operators. International roaming agreements between mobile network operators are usually reciprocal. On the basis of reciprocal agreements, network customers of both contracting parties can roam on the other network operator's network.

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<sup>1</sup> Commission recommendation on relevant product and service markets within the electronic communications sector susceptible to ex ante regulation in accordance with Directive 2002/21/EC of the European Parliament and of the Council on a common regulatory framework for electronic communication networks and services 2003/311/EC, OJ L 114, 8.5.2003, p. 45

The Standard Terms for International Roaming Agreements (STIRA), issued by GSM Association (GSMA), a global trade organisation serving the interests of GSM mobile operators, are principally applied to international roaming agreements and their implementation. For example, pricing principles for roaming services are stated in the standardised terms by GSMA.

As to international roaming, the visited network charges the home network at wholesale level for using the visited network according to Inter Operator Tariff (IOT), defined by each operator. The IOT price is the price the visited network charges the home network for delivering the voice calls the roaming customer makes or the SMS messages s/he sends to the recipient. IOT prices are not reciprocal, but each mobile network operator can define its own IOT prices.

According to the terms defined by the GSMA, mobile network operators are obliged to apply non-discriminatory pricing to all mobile network operators in each individual country for using their mobile network. The GSMA terms state that mobile network operators can, however, offer discounts or preferential benefits for foreign mobile network operators on bilateral basis. The GSMA maintains a database comprising each operator's nominal IOT prices. Mobile network operators can access foreign mobile network operators' nominal IOT price information via the database. Because operators are able to make agreements on discounts, effective bilateral IOT prices could be lower than nominal IOT prices. Effective IOTs net of discounts are not public. GSMA membership is open to licensed mobile network operators only. For example, the membership is not open to mobile virtual network operators or service operators.

Retail prices for international roaming services are mainly defined by the IOT prices of foreign operators, and the pricing methods may vary from operator to operator. Earlier, pricing was often based on operators' wholesale prices, to which the operator buying a roaming service has added costs incurred from invoicing. Presently, the sort of pricing models are common where the operator charges an equal price for voice calls made in a certain geographical area.

In Finland, there are four mobile network operators who provide international roaming services for foreign mobile network operators. Operators who provide nationwide services are Sonera Mobile Networks Oy (hereafter Sonera), Elisa Matkapuhelinpalvelut Oy (hereafter Elisa) and Finnet Verkot Oy (hereafter Finnet). Ålands Mobiltelefon Ab (hereafter ÅMT) operates in the province of the Åland Islands. Although network coverage somewhat varies, the national operators' networks cover over 95 percent of the population in Finland. All mobile network operators in Finland are members of the GSMA, and undertakings comply with the terms of GSMA in their roaming agreements.

A significant part of the international roaming services is provided to mobile network operators from neighbouring countries. About 80 percent of international roaming voice calls in Finland are made by customers of mobile network operators from EU countries. Nearly 60 percent of the international roaming voice calls made in Finland are originated by the four most significant countries: Sweden, Estonia, Germany and Great Britain. The share of Sweden alone is nearly 30%.

*Originated and received roaming services*

In the market for international roaming services, there are two types of roaming services that can be distinguished from one another. The first one is: voice calls made or received or SMS messages sent or received by a foreign operator's mobile subscriber in the destination country (inbound roaming services), e.g. Finland. And, the second one is: voice calls made or received or SMS messages sent or received by a Finnish operator's mobile subscriber on foreign mobile networks (outbound roaming services).

The total income mobile operators receive from international roaming services mainly consist of the IOT prices the network operator receives for wholesale tariffs, and the retail charges that service operators charge their customers for outbound traffic and received calls.

Finnish mobile network operators set their end-customer prices for the outbound roaming services of their own subscribers. The end-customer price often consists of the IOT price defined by a foreign operator and the service operator share defined by a domestic service operator. From the viewpoint of wholesale level, the roaming services used by Finnish mobile subscribers abroad are inbound roaming services provided and priced by foreign mobile network operators operating in these countries. Therefore, it is not possible to analyse, at wholesale level, the outbound roaming services used by Finnish operators' mobile subscribers abroad. Wholesale assessment of outbound roaming services used by Finnish operators' mobile subscribers can only be made in each destination country.

In addition to paying for the voice calls s/he makes, the end-customer visiting on the destination country's network (inbound roaming services) pays for the voice calls s/he receives. The end-customer invoicing of received calls is often based on the service operator share collected by the home operator and the wholesale prices collected by the operator carrying out international traffic, which include the costs for terminating traffic collected by the network operators in the destination country. The retail prices of received calls are thus not actually related to wholesale prices collected by the operator in the destination country.

According to the assessment of the wholesale market FICORA made at national level, relevant are only wholesale inbound roaming services, whose prices are set and provided by Finnish mobile network operators.

According to current pricing models, outbound roaming services and services of received voice calls are not actually subject to the wholesale market assessed at the national level. Due to the reciprocal nature of roaming agreements and the close connection between the wholesale and the retail market, the significance of them needs to be taken into consideration when assessing the market for international roaming services as a whole.

*International roaming for voice call, SMS message and data services*

When Finnish mobile network operators provide network roaming services to foreign mobile network operators, voice call and SMS text message services are part of that service entity. For example, no single Finnish mobile network operator can offer SMS message services alone as part of international roaming services. As for the end-user, SMS messages and voice calls are almost without exception included in mobile services provided by operators. Therefore, in addition to voice calls, it is

well-founded to include SMS messages, too, as part of the relevant market for wholesale international roaming.

All Finnish mobile network operators provide GPRS (GPRS = General Packet Radio Service) roaming services and other data network roaming services, such as MMS services (MMS=Multimedia Messaging Service) to foreign mobile network operators. GPRS and other data network roaming services, unlike voice call and SMS message services, are not self-evidently included in international roaming services acquired by foreign mobile network operators as they make agreements on international roaming with Finnish mobile network operators. In practice, most foreign mobile network operators have made a roaming agreement on voice call and SMS messaging service with all Finnish mobile network operators. Meanwhile, distinct agreements on GPRS and other data services have often been made with only one or two Finnish operators.

Roaming agreements on GPRS and other data services have only been made for a couple of years. The market for international data roaming services is developing, and data services still represent a minor share in the turnover of international roaming. International data roaming services currently complement voice call and SMS message services.

It is insignificant for a foreign mobile network operator whether it acquires international voice or SMS message roaming services from a Finnish mobile network operator in the 2G or 3G network. Voice call or SMS prices in the IOT tariffs of Finnish mobile network operators are not either based on the fact whether a foreign customer roams on their 2G or 3G network. Thus, international voice call and text message roaming services in the 2G and 3G networks are included in the same relevant product and service market in Finland.

#### *Substitutability between operators*

Foreign mobile network operators can only acquire international roaming services for their end customers in Finland from those mobile network undertakings which currently operate in Finland. If it were essential for a foreign network operator to make a roaming agreement with all mobile network operators in Finland, for example, in order to ensure sufficient coverage, the market ought to be examined in such a way that each mobile network would form a network-specific market of its own. If, from the viewpoint of foreign operators, Finnish mobile network operators can be substituted with one another as a contracting party, the market comprises all Finnish mobile networks.

Agreements on international roaming are not exclusive. Operators are thus not obliged to provide roaming services to end-customers, who have joined their own network in a mobile network situated in a certain country. Typically, mobile network operators do make agreements on international roaming in each country with several or all mobile network operators operating in the destination country.

There are three nationwide mobile network operators and one regional mobile network operator in Finland. In practice, all of them provide international roaming services of nearly similar content to foreign mobile network operators. A foreign operator can, in practice, provide roaming services covering the entire Finland to their end-customers by making an agreement with only one Finnish network operator. FICORA thus estimates that obtaining national coverage is not significant factor for foreign operators to make agreements with several Finnish operators.

A significant incentive for making agreements on international roaming and maintaining them with more than one mobile network operator in the destination country is that the agreements are reciprocal. Making several reciprocal agreements on international roaming in each destination country gives the mobile network operator a chance to increase its inbound roaming traffic, and thereby receive more income from that country than by way of making an agreement with only one operator in each country.

#### *Traffic direction*

If the operator in the home country does not use technical methods to direct its end-customers to a certain mobile network in the destination country, or the subscriber does not manually select the network into which s/he should register herself or himself while abroad, subscribers are rather randomly directed to the networks of those mobile network operators in the destination country with whom the mobile network operator in the departure country has made an agreement on international roaming. Then, the destination country's mobile network characteristics at disembarkation sites, in particular, determine into which network the end-customer registers. The stronger and the more covering a signal the operator has at the site where the visitor arrives in the network coverage area, the greater the probability is for the customer to register into that operator's network. Factors that may affect the network characteristics are, in particular, frequencies allocated to operators, as well as the density and location of available base stations and receiver-transmitters at disembarkation sites.

Mobile network operators are able to use various traffic direction systems / technologies in order to direct their end-customers abroad to register into a certain network in the destination country. Although a mobile network operator had an agreement with all mobile network operators operating in the destination country, efficient traffic direction enables home operator to direct its traffic to another mobile network of his/her choice in the destination country. An example would be a situation where a mobile network operator in a certain destination country raises its IOT price. In cases where traffic direction is efficient, from a home operator's viewpoint, mobile network operators in the destination country are mutually substitutable because the home country's operator is able, by way of traffic direction, to select the mobile network which its end-customers are directed to use when abroad.

FICORA has examined how traffic direction functions by applying an indicator. The foreign operator's realized market share in the networks of Finnish network operators is divided by the market share which, according to FICORA's estimates based on FICORA's calculations, would end up in each network without traffic direction.

Traffic direction systems have developed significantly in the past few years. The market data collected by FICORA shows that operators who operate abroad have since 2003 increasingly applied traffic direction systems to direct their end-customers to the network of the Finnish mobile operator of their choice. Judging by the market data FICORA collected, some operators have directed nearly 90 percent of their traffic to the network of the Finnish mobile network operator of their choice. FICORA estimates that more than half of international roaming voice calls made from Finland have been directed by foreign mobile network operators to the network of a Finnish mobile network operator of their choice during the first half of the year 2005. According to FICORA's estimates, the cor-

responding share in the first half of year 2004 was approximately one third.

Those Finnish mobile network operators, in particular, who have made agreements on traffic direction, or are members of an international alliance<sup>2</sup>, have, to a considerable extent, over the past two years increased their relative market share of those operators' traffic with whom they have made agreements on the implementation of traffic direction or discount systems. Possible reasons for directing traffic to a certain mobile network may be the less expensive IOT prices a mobile network operator offers in comparison to others; or, the fact that the mobile network operators belong to the same group of companies; or, the fact that the operators belong to the same international alliance or grouping.

In practice, traffic direction does not very often work perfectly so that all traffic could be directed to the network of the mobile network operator of one's choice. Although certain operators belong to alliances and direct a considerable share of the traffic to operators often belonging to the same grouping, due to the imperfection of traffic direction and the possibility of manual network selection, traffic in the destination country is also randomly directed to the networks of other operators than the operator into whose network the home operator is directing its traffic. When all operators do not belong to any grouping, nor do all operators direct traffic to the networks of certain undertakings, the operators' incentives to maintain or make agreements on international roaming with several operators from each country remain. In practise, operators have not terminated agreements on international roaming for example with operators who do not belong to certain groupings.

#### Summary, relevant product and service market

Nationwide mobile network operators in Finland provide, in practices, roaming services with similar content that cover the entire Finland for foreign mobile network operators. The market data collected by FICORA shows that a considerable number of foreign operators, who operate in countries where Finland receives most of its roaming traffic, direct a considerable amount of the traffic to the network of the Finnish mobile network operator of their choice. FICORA maintains that mobile networks in Finland are mutually substitutable as far as the provision of international roaming services is concerned.

The relevant product and service market mainly consists of wholesale international inbound roaming services provided by mobile network operators operating in Finland. International voice call and SMS roaming services provided by Finnish mobile network companies in the 2G and 3G networks at wholesale level are included in this market. These services are supplemented by international data roaming services provided by Finnish mobile network operators. When assessing wholesale international roaming services, the closely-connected outbound roaming services and roaming services for received voice calls must be taken into consideration.

#### 1.2 Geographic market

A foreign mobile network operator can only acquire roaming services for their end-customers in Finland from those network undertakings which

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<sup>2</sup>In Europe, there are currently three significant alliances founded by mobile network operators: Freemove, Starmap and Vodafone group.

currently operate in Finland. The geographic market of wholesale roaming services equals to national market in Finland. The networks of national mobile network operators cover the entire Finland.

## 2 MARKET ANALYSIS AND DECISION ON SIGNIFICANT MARKET POWER

According to section 17(1) of the Finnish Communications Market Act, the Finnish Communications Regulatory Authority shall by decision declare a telecommunications operator to be an operator with significant market power (SMP) if, on the basis of market analysis, it is seen in a particular market to exert economic influence, alone or with others, that allows it to operate, to a considerable extent, independently of competitors, consumers or other users.

International roaming services are essential network services provided by mobile network undertakings. These services enable that end-users can use their handset while abroad without the need of changing telephone numbers. The final demand of roaming services provided by Finnish operators consists of the demand of foreign operators' subscribers.

### *Elasticity of demand*

Retail prices for international roaming services are often manifold in comparison to retail prices for voice calls made in one's native country. Also, the IOT prices collected at wholesale level are often manifold in comparison to the wholesale prices for outgoing voice calls mobile network operators charge Finnish service operators.

In the spring of 2005, FICORA commissioned a consumer survey on mobile phone usage abroad<sup>3</sup>. The survey revealed that Finnish consumers were satisfied with mobile phone usage abroad. Consumers are particularly satisfied with the functionality of their mobile phone abroad. Instead, consumers were rather dissatisfied with the costs incurred from using a mobile phone abroad. However, a considerable number of consumers (42%) have no idea of the costs incurred from using a mobile phone abroad. The national communications authorities in Great Britain and Ireland, Ofcom and ComReg, commissioned a similar survey for consumers in Ireland and Great Britain in 2002<sup>4</sup>. The results from this survey were in line with the results of the survey FICORA commissioned.

Although consumers hold an image of high prices, only about 3 percent of consumers have manually selected from their handset the network they use abroad. FICORA's survey shows that international roaming service prices have little or no impact on the choice of mobile subscription. Ninety percent of the respondents in the survey reported that international roaming prices had no impact on their choice of subscription. On the basis of the survey results, the demand for international roaming services seems rather inelastic. FICORA has not run an actual test on price elasticity.

FICORA estimates that only the major international undertakings, whose staff travels frequently, are in a position to gain volume discount on international roaming services.

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<sup>3</sup> Taloustutkimus Oy carried out the survey. It is available at: [http://www.ficora.fi/englanti/document/Roaming2005\\_eng.pdf](http://www.ficora.fi/englanti/document/Roaming2005_eng.pdf)

<sup>4</sup> See at: <http://www.comreg.ie/fileupload/publications/odtr0233.pdf>

Considering the shared similarity in the survey results of FICORA, Ofcom and ComReg as well as the situations in which international roaming services are used, we may state that consumer behaviour in other EU countries does not in all likelihood differ essentially from the behaviour of the consumers in FICORA's survey.

The demand for international roaming services at wholesale level is derived from the demand in the retail market. On the basis of the data FICORA collected from operators, the volume of international roaming services provided by Finnish operators has grown by 40 percent over 2002-2005. Simultaneously, the price level has risen by 7 percent on the average. The IOT prices of Finnish network operators are still low, if compared internationally. In addition, the increases in nominal IOT prices must be proportioned with the discount methods that were recently introduced.

The price level increase partially supports the fact that the overall demand in the market for international roaming services is rather inelastic. Price changes have not influenced dramatically the overall demand for roaming services. The elasticity of the overall demand cannot be assessed in a straightforward manner paying attention only to the connection between the prices and the demanded volume, because the overall volume of the market for roaming services has grown significantly over the period in focus.

Also, the firm-specific wholesale demand seems to be rather inelastic in the market for international roaming services. Individual network operators have adjusted their pricing over the investigated period, and the average IOT prices have increased as a result. At this stage, it is difficult to assess the final extent of the recent increase in price level and the impact of price increases on the market position of individual operators. This is partly due to the fact that the discount systems related to traffic direction have only recently been introduced, and not all price reductions related to the agreements have been realised. In addition, the changes in the market shares of individual operators are, in FICORA's opinion, mainly due to the powerful increase in traffic direction.

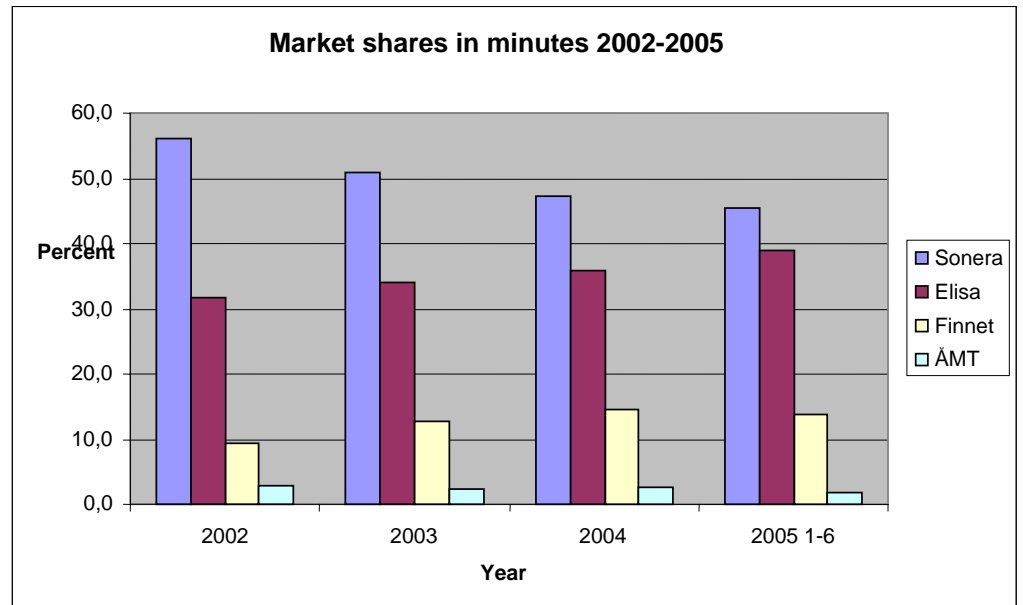
## 2.1 Single dominance

### *Market shares*

The market data collected by FICORA shows that Sonera's market share of roaming voice calls (minutes) made from Finland was 45 percent over the first half of 2005. That of Elisa's was 39%, Finnet's 14% and ÅMT's about 2%<sup>5</sup>. The development of the market shares of Finnish mobile network operators is shown in the following table. The calculation is based on roaming voice call minutes.

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<sup>5</sup> The undertakings' market shares for SMS messages are almost comparable.



The market share of the undertaking with the highest market share, i.e. Sonera, has decreased considerably (about 10 percent) since 2002, when a third national Finnish mobile network operator, i.e. Finnet, entered the market. Traffic direction started becoming more common since 2003, and, according to FICORA's estimates, has considerably affected the changes in market shares. Since late 2003, Sonera's market share has dropped by 4 to 5 percentage units, whereas the second largest operator's, Elisa's, market share has grown by 5 percentage units. It is not possible to conclude, merely on the basis of market shares, that an operator has significant market power in the market for international roaming service in Finland. Other factors should also be taken into consideration in assessing the market power.

#### *Operators' bargaining power*

Agreements on international roaming services are reciprocal. The overall customer and traffic volume of an individual mobile network operator in the home country has an impact on the operator's market power and bargaining position. The bargaining power of an operator that has many customers is stronger, and whose market power is therefore stronger than the one's who has few customers. Foreign mobile network operators receive more roaming traffic from large operators onto their network than from small operators. Therefore, the income foreign mobile network operators receive from major operators for providing international roaming services is greater than what they receive from smaller operators.

A great majority, about two thirds of the inbound roaming traffic Finnish customers travelling abroad produce to foreign operators consists of voice calls made by Sonera's subscriber customers. Therefore, Sonera's bargaining position, when making agreements on international roaming services with foreign mobile network operators, is, according to FICORA's estimates, slightly stronger than that of other Finnish mobile network operators'.

The size of an operator is important when assessing the bargaining power of Finnish operators concerning international roaming agreements. Measured by customer and traffic volumes, Finnish operators are rather small in comparison with operators in most big countries. The smaller size also weakens Sonera's, as well as other Finnish mobile network op-

erators' bargaining position in comparison with bigger foreign operators. The average voice call IOT prices of Finnish network undertakings have slightly risen in the past few years. Despite this, the average IOT income (voice call revenue/minute) received by Finnish operators are still remarkably lower, about 50%, than the average IOT fees (voice call revenue/minute) Finnish operators pay to foreign operators.

#### *The impact of traffic direction*

In assessing the impact of traffic direction on the market power of individual Finnish mobile network operators in the market for international roaming services, it is essential to determine the ability of foreign operators to take advantage of traffic direction, and whether traffic direction has enough effect to make relative price increases unprofitable. If traffic direction systems do not function, network operators can operate in a manner that is remarkably inconsiderate for consumers or competitors. Not even a significant increase in the wholesale price would substantially affect the number of roaming visitors registering onto the network of an individual mobile network operator, because traffic would still be divided randomly among all Finnish mobile network operators. If traffic direction systems work efficiently, it can be assumed that mobile network operators have an incentive to reduce prices and to increase the number of those who visit their networks, if the benefits of traffic increase are enough to compensate the price reduction.

A majority of foreign mobile network operators have made agreements on international roaming with several Finnish mobile network operators. Foreign mobile network operators have thus an opportunity to reduce the market power of Finnish mobile network operators by traffic direction. This may be compared to a situation where mobile network operators in Finland would provide their services without the opportunity to direct traffic. The greater the foreign mobile network operator's ability to direct traffic to the mobile network of its choice, the smaller the chance of a Finnish mobile network operator's to use market power. The incentive to direct traffic to a desired network may result from discount agreement arrangements between mobile network operators.

The traffic direction indicator FICORA applies clearly indicates that direction into Elisa's and Sonera's networks, in particular, has increased during 2004 and 2005. The foreign mobile network operators directing traffic have increased their share of the total roaming volume in both Elisa's and Sonera's networks.

In Finland, traffic direction has not yet led to price competition at wholesale level and less expensive IOT prices. On the contrary, the average IOT prices of Finnish mobile network operators have risen over the period of 2004-2005, when traffic direction has been used efficiently. Operators who direct traffic to one another's network are able to mutually apply volume discounts. Insofar, hardly any discounts have been paid. This partly results from the fact that price-cut systems have only recently been introduced since traffic direction has become more common. On the other hand, the IOT prices collected by Finnish mobile network operators are still relatively low in comparison with the European level.

#### *Manual network selection*

In addition to traffic direction, the end-users' opportunity to manually choose a network, onto which the end-user can register himself when abroad, can be considered a factor that increases competition. FICORA

estimates that the fact that the manual network selection made by end-customers has not in practice substantially affected market conditions, because only a small fraction of end-customers select the network they roam. According to the survey commissioned by FICORA, only about 3 percent of Finnish consumers have manually selected the network they use abroad<sup>6</sup>.

## Summary, single dominance

The functionality of traffic direction, in particular, enables competition between operators in the wholesale market for international roaming services in Finland. According to FICORA's assessment, traffic direction systems function rather well today, and they have developed fast for the last 18 months. Competition has not yet broken into price competition, but so far operators have directed traffic onto the networks of operators who are their primary cooperation partners. FICORA maintains that traffic direction will further grow, and it will have an impact on the market development in the future.

FICORA is of the opinion that on the basis of the above market analysis, no individual Finnish mobile network operator has such economic influence that it would be able, to a great extent, to act independently from its competitors and customers. Thus, no individual mobile network operator has significant market power in the wholesale market for international roaming services in Finland.

## 2.2. Joint dominance

### *Assessment principles of joint significant market power*

In accordance with Article 14 of the Framework Directive (2002/21/EC, OJ L 108/33), second subparagraph, national regulatory authorities must, when assessing whether two or more undertakings are in a joint dominant position in a market, take into careful consideration the guidelines<sup>7</sup> on market analysis and the assessment of significant market power published by the Commission.

The Commission's guidelines on market analysis and case-law of the Court say that in order to designate that two or more undertakings have joint dominance, it is necessary to first examine whether the undertakings in question together form a collective entity vis-à-vis their competitors, their trading partners and consumers in a particular market. This is true, if:

- 1) there is no actual competition between the undertakings, and
- 2) undertakings adopt a uniform conduct or common policy in the relevant market in question

Only if the answer to this question is affirmative, there is reason to examine whether the collective entity of undertakings truly enjoys a dominant position<sup>8</sup> in the market.

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<sup>6</sup> See: <http://www.ficora.fi/englanti/ajankoht/roaming05.htm>

<sup>7</sup> Commission guidelines on market analysis and the assessment of significant market power under the Community regulatory framework for electronic communications networks and services OJ, C 165/03, 11.7.2002.

<sup>8</sup> The Commission guidelines point to the ruling of the ECJ about the case: joined cases C-395/96 P and C-396/96 P, *Compagnie maritime belge and others v Commission* (2000, p. I-1365), paragraph 39.

Criteria to be used in making an assessment of joint dominance are set out in Annex II of the Framework Directive. The Commission guidelines on market analysis<sup>9</sup> give further information on their implementation. Pursuant to Annex II of the Framework Directive and the Commission guidelines on market analysis, two or more undertakings can be regarded to have a joint dominant position if they operate in oligopolistic markets whose structure is considered to be conducive to coordinated effects even in the absence of structural or other links between them.

National regulatory authorities, in making an assessment of joint dominance, must analyse:

- 1) whether the characteristics of the market makes it conducive to tacit coordination; and
- 2) whether such form of coordination is sustainable, that is

- Whether any of the oligopolists have the ability and incentive to deviate from the coordinated outcome, considering the ability and incentives of the non-deviators to retaliate (in order for punitive mechanisms to function efficiently, the advantage gained from coordinated practise that restricts competition must, in the long run, outweigh the benefits gained from competitive behaviour in a short run), and
- whether buyers / fringe competitors / potential entrants have the ability and incentive to challenge any anti-competitive coordinated outcome.

Annex II of the framework Directive and the Commission guidelines on market analysis state that there is probably joint dominance on the market when the market satisfies a number of appropriate characteristics, in particular in terms of market concentration, transparency and other characteristics below:

- mature market
- stagnant or moderate growth on the demand side
- low elasticity of demand
- homogenous product
- similar cost structures
- similar market shares
- lack of technical innovation, mature technology
- absence of excess capacity
- high barriers to entry
- lack of countervailing buying power
- lack of potential competition
- various kinds of informal or other links between the undertakings concerned
- retaliatory mechanisms
- lack or reduced scope for price competition

The list is not exhaustive, nor are the criteria cumulative. Rather, the list is intended to illustrate the sorts of evidence that could be used to support the existence of joint dominance. Even though the above-mentioned characteristics are often listed, it is important to examine all of them and make an overall assessment of them, instead of using it mechanically as a check list. Ultimately, the criteria which will carry the most sway will be those which are critical to a coordinated outcome in the specific market under consideration.

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<sup>9</sup> Commission guidelines on market analysis, paragraphs 86 - 106.

The notion of market concentration alone is insufficient for designating significant market power. In an oligopolistic market, it should be examined whether the market operators have a strong incentive to comply with uniform policy and refrain from mutual competition.

#### *FICORA's assessment of joint dominance*

Based on market shares, joint dominance in the wholesale market for international roaming services could possibly occur between the two largest mobile network operators operating in Finland, namely Elisa (market share about 39%) and Sonera (market share about 45%).

The market for international roaming services in Finland is fairly concentrated. Appropriate characteristics, such as low elasticity of demand, a homogeneous product and high barriers to entry, ease the compliance with coordinated practise in the relevant market.

The undertakings have not, however, complied with coordinated practice in the market for international roaming services in Finland. The market for international roaming services has undergone important changes during the past years. Both Elisa and Sonera have competed for roaming customers and tried to increase their own network traffic by making agreements on the introduction of traffic direction and discount systems with foreign mobile network operators.

The market has grown significantly, about 12% between 2003 and 2004. Operator-specific growth rates have varied to a great extent. Especially, the development of traffic direction has had a notable impact on the operators' market shares, which have varied significantly over the past few years. The transparency of markets has become weaker due to changes in the market, which are discount agreements and traffic direction. Operators are not in a position to acquire information on the agreements their competitors have made on traffic direction and discounts. This makes it more difficult to monitor competitors, and the operators' chances to observe any changes in the market behaviour of their competitors become lesser.

#### Conclusion, joint dominance

The operators have competed for foreign roaming customers and tried to increase their own network traffic by making agreements on the introduction of traffic direction and discount systems with foreign mobile network operators. Finnish operators have not thus formed a collective entity vis-à-vis their competitors and customers. Operators have not acted uniformly, nor have they complied with coordinated practise in the market.

FICORA is of the opinion that no Finnish undertaking enjoys, together with other operators, a position of economic strength affording it to behave to an appreciable extent independently of its competitors, consumers and other users.

### 3. SUMMARY OF MARKET DEFINITION AND MARKET ANALYSIS

FICORA estimates that the market for wholesale international roaming services in Finland is national. Mobile network operators can today rather efficiently affect to which network traffic is directed. National market de-

definition is also supported by the fact that mobile networks are, from the viewpoint of a foreign wholesale customer, to a great extent, substitutable alternatives as far as services and coverage are concerned.

The functionality of traffic direction has promoted competition between mobile network operators in the wholesale market for international roaming services in Finland. According to the market information submitted to FICORA, the development of traffic direction has been very fast. The development of traffic direction and cooperation between operators who belong to alliances will have a significant impact on the market for international roaming services in the future, too.

Based on the market analysis it made, FICORA is of the opinion that no Finnish mobile network operator is seen in the market for international roaming services to exert economic influence, alone or with others, that allows it to operate, to a considerable extent, independently of competitors or customers.

Competition between mobile network operators has not yet broken into price competition, but so far operators have directed traffic onto the networks of operators who are their primary cooperation partners. FICORA estimates that the single most important factor that has an impact on price competition in the market for international roaming services is low elasticity of demand. Roaming service prices are of hardly any significance when consumers and the majority of undertakings select subscriptions.

FICORA will continue to following up the development in the market for international roaming services. FICORA will especially monitor the development of the effective IOT prices net of discounts. Referring to the Commission's comments FICORA will review the effectiveness of competition if the effective IOT prices net of discounts will continue to rise or remain at their present level despite the ongoing implementation of traffic direction systems.

## 4. PUBLIC HEARING

### 4.1 National consultation

On 6 October 2005, FICORA reserved telecommunications operators and parties representing telecommunications operators and users an opportunity to present their views on the authority's draft decision on significant market power in the market for international roaming services in Finland. The deadline for comments was 31 October 2005. FICORA received 7 responses that dealt with this request for comments.

The Finnish Competition Authority (FCA) states in its statement that it does not have any remarks to make on the draft decision. The Finnish Competition Authority mainly concurs with the market definition and market analysis in the draft decision. In the FCA's opinion, the three national mobile networks are substitutable products for the purpose of providing international roaming services in Finland.

TeliaSonera Finland Oyj states that it agrees that the definition of policy about relevant markets included in FICORA's draft decision is right. As far as the definition of the product and service market is concerned, TeliaSonera Oyj states that there is reason to express more clearly that GPRS and other data network roaming services are not part of the relevant product and service market. TeliaSonera Finland Oyj has concurred

with the statement in the draft decision about that there are no operators with significant market power in the market, neither alone or together with other operators, and is of the opinion that the reasons stated in the draft decision are extensive and that the market description is illustrative. TeliaSonera Finland Oyj states in its opinion that it does not have better negotiation power than other Finnish mobile network operators in the relevant market.

Finnet Verkot Oy states that the powerfully-growing data service market, outbound traffic and received voice calls ought to be included in the relevant product and service market. In the viewpoint of Finnet Verkot Oy, the criteria for joint dominance listed in the Framework Directive are fulfilled in the Finnish market. Finnet Verkot Oy states that Sonera Mobile Networks and Elisa Oyj together have significant market power in the wholesale market for international roaming services in Finland.

In addition, Finnet Verkot Oy states in its opinion that European national regulatory authorities should assess the market as a whole, and that the two largest operators, counted by customer volume, in each country should be imposed an obligation to provide all international roaming services at a price level regulated by authorities. Finnet Verkot Oy pays special attention to the impact of outbound traffic on the roaming service agreement prices. Finnet Verkot Oy maintains that the bilateral exchange of outbound roaming minutes between two operators shows as increase of end-user prices, which is caused by the home network, not the visited one. Finnet Verkot thinks that it is possible that the major operators are able to use re-pricing of outbound traffic for compensating eventual drop of inbound prices.

Elisa Oyj, the Federation of Finnish Enterprises, the Finnish Competition Authority and the Central Chamber of Commerce have no remarks to make about FICORA's draft decision.

#### 4.2 International Consultation

On 18 November 2005, FICORA notified the European Commission of FICORA's draft decision on significant market power in wholesale market for international roaming in Finland. On 24 November 2005, the Commission asked FICORA to provide additional information concerning FICORA's draft decision. FICORA submitted the clarifications requested on 29 November 2005, and the corrective for the clarification on 1 December 2005. On 16 December 2005, the Commission gave its comments pursuant to article 7(3) of Directive 2002/21/EC.

The Commission stated that FICORA's market definition is in conformity with the Commission Recommendation on relevant markets.

In its comments, the Commission paid attention to the development of IOT prices charged by undertakings. The Commission stated that the factual evidence about the developments of average IOTs expressed in revenue per minute, as well as a basket of wholesale prices does not seem to lend support to FICORA's assertion that prices will soon start to decline. However, the Commission acknowledges that discounts are yet to be included in the calculation of effective IOTs, and that price baskets and average revenues may be overstating the true level of prices for the year 2004/2005.

In its opinion, the Commission asks FICORA to monitor development of Finnish operators' effective IOTs net of all discounts and analyse very close these findings. Furthermore, the Commission invites FICORA with-

out any delay to review the effectiveness of competition in close cooperation with the National Competition Authority if effective IOTs net of discounts continue to rise or remain at their present level despite the ongoing implementation of traffic direction techniques.

National regulatory authorities of other Member States have not commented on FICORA's draft decision on significant market power concerning wholesale market for international roaming in Finland.

## 5. LEGAL BASIS FOR THE DECISION

Communications Market Act (393/2003) sections 16(1), 17(1) and 127(3).

## 6. THE VALIDITY PERIOD OF THE DECISION

The decision will enter into force as of 1 January 2006 until further notice, unless FICORA revises the decision due to considerable changes in the circumstances referred to in the section 18(1) of the Communications Market Act or in the competition situation. This decision shall stand regardless of an appeal, if not otherwise prescribed by the appellate authority.

## 7. APPEAL

This decision can be challenged by an appeal to the Supreme Administrative Court as provided by the the Administrative Judicial Procedure Act (586/1996). Pursuant to section 6 of the Act, to whom a decision is addressed or whose right, obligation or interest is directly affected by the decision may appeal against this decision. Appeal directions are annexed to this decision.

Further information on this decision is given by Torsti Alhava, Senior Adviser, telephone +358 9 6966 461 and Mika Enäjärvi, Legal Counsel, telephone +358 9 6966 636.

Director-General

Rauni Hagman

Deputy Director

Johanna Juusela

## ANNEX

Appeal Directions

## DISTRIBUTION

Elisa Oyj  
Finnet Verkot Oy  
Sonera Mobile Networks Oy  
Ålands Mobiltelefon Ab