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Fjarskiptastofa
Sudurlandsbraut 4
108 Reykjavik
Iceland

For the attention of:
Mr. Hrafnkell V. Gíslason
Managing Director

Dear Mr. Gíslason,

Subject: Tariff for access to copper local loop in Iceland - Remedies

**Article 7(3) of Directive 2002/21/EC (“Framework Directive”)¹:
No comments**

I. PROCEDURE

On 29 March 2023, the EFTA Surveillance Authority (“ESA”) received a notification of a draft national measure in the field of electronic communications pursuant to Article 7 of the Framework Directive from the Icelandic national regulatory authority, *Fjarskiptastofa* (“ECOI”)², concerning remedies in the market for wholesale local access provided at a fixed location in Iceland³.

The notification became effective on the same day.

¹ Directive 2002/21/EC of the European Parliament and of the Council of 7 March 2002 on a common regulatory framework for electronic communications networks and services, OJ L 108, 24.4.2002, p. 33 (as amended by Regulation (EC) No 717/2007, OJ L 171, 29.6.2007, p. 32 and Regulation (EC) No 544/2009, OJ L 167, 29.6.2009, p. 12), as referred to at point 5 cl of Annex XI to the EEA Agreement and as adapted to the Agreement by Protocol 1 (“the Framework Directive”). On 24 September 2021, the EEA Joint Committee adopted Decision (“JCD”) No 275/2021 incorporating Directive (EU) 2018/1972 of the European Parliament and of the Council of 11 December 2018 establishing the European Electronic Communications Code (Recast), as corrected by OJ L 334, 27.12.2019, p. 164 and OJ L 419, 11.12.2020, p. 36 (“the Code”), into the EEA Agreement. The Code will repeal, *inter alia*, the Framework Directive. However, until JCD No 275/2021 enters into force, the Framework Directive remains applicable.

² On 1 July 2021, the name of the national regulatory authority in Iceland was changed from *Póst- og fjarskiptastofnun* (the Post and Telecoms Administration or PTA) to *Fjarskiptastofa* (the Electronic Communications Office of Iceland or “ECOI”). For ease of reference, the new name ECOI will be used throughout this letter even when referring to activities pre-dating 1 July 2021.

³ Corresponding to market 3a of the EFTA Surveillance Authority Recommendation of 11 May 2016 on relevant product and service markets within the electronic communications sector susceptible to *ex ante* regulation in accordance with the Act referred to at point 5cl of Annex XI to the EEA Agreement (the Framework Directive); adopted by Decision No 093/16/COL, OJ L 84, 30.3.2017, p. 7 (“2016 Recommendation”).

A national consultation was carried out by ECOI, pursuant to Article 6 of the Framework Directive, during the period 10 January to 9 February 2023.

On 9 March 2023, ESA sent a request for information (“RFI”) to ECOI (Doc No. 1367308), to which a reply was received on 16 March 2023 (Doc No. 1367311). Further follow-up questions were sent by ESA on 23 March 2023 (Doc No. 1367312), to which ECOI replied on 27 March 2023 (Doc No. 1364199).

The period for consultation with ESA and the national regulatory authorities (“NRAs”) in the EEA States, pursuant to Article 7 of the Framework Directive, expires on 2 May 2023.

II. DESCRIPTION OF THE DRAFT MEASURE

II.1. Background

The price control proposed in the current draft notification stems from the obligations imposed by ECOI in its Decision 5/2021 of 19 October 2021 (involving the reviews of markets 3a and 3b of the 2016 Recommendation)⁴.

ECOI designated Mila hf. (“Mila”) as having significant market power (“SMP”) in the relevant markets and imposed obligations regarding reasonable access, price control and cost accounting, non-discrimination, transparency and accounting separation.

The previous price control on access to copper local loops in market 3a was imposed by the Post and Telecommunications Authority (PTA) in its Decision 8/2019⁵. The decision set a maximum price cap of ISK 1,588 for the monthly rental fee for accessing Mila’s copper loops, ISK 3,166 for the setup fee and ISK 1,223 per month per 100 lines for access to the distribution frame.

II.2 Current notification

The current notification concerns ECOI’s price control on Mila’s access to copper local loops in market 3a. ECOI relied on Mila’s cost accounts for the year 2021, submitted by Mila in late 2022/early 2023, after multiple interactions with ECOI. The main elements used in ECOI’s assessment are described below.

Weighted average cost of capital (WACC). ECOI used the WACC for 2021 in its analysis. For the computation of the WACC, ECOI followed the European Commission’s notice on the calculation of the cost of capital (“the WACC Notice”)⁶, using the parameters provided by BEREC in its report of 2021⁷. The real WACC (i.e. excluding inflation) for 2021 was **5.16%**.

Operating Costs (OPEX). OPEX for copper local loops is based on Mila’s cost analysis and it comprises Housing costs (i.e. mostly space rentals at Mila’s premises), Transferred labour costs, Senior management and support department costs, Purchased services

⁴ See ESA’s Decision in [case 87359](#).

⁵ See ESA’s Decision in [case 83151](#).

⁶ See this [link](#).

⁷ See this [link](#).

costs, and other smaller cost components. Mila's OPEX for copper local loops have decreased significantly in the period 2017-2021, primarily due to the increased roll-out of fibre and the consequent reduction in the number of copper local loops in use, although the decrease is not proportional. Some costs have decreased to a greater extent than the reduction in copper local loops, while other costs have decreased to a lesser extent. Most notably, based on Mila's initial submission Housing costs, while they have decreased somewhat as a whole, they almost doubled from 2017 to 2021 on a per line equivalent basis. This was in part due to the inclusion in the cost basis of distribution frames that were not utilised or not fully utilised. ECOI requested this to be corrected, in order to base the costs only on equipment being used on a regular basis. Mila's overall OPEX after the correction was ISK [REDACTED]⁸.

Capital Expenditure (CAPEX). CAPEX for copper local loops was computed by Mila using a similar methodology as in previous cost assessments. CAPEX includes investments in copper and distribution frames, VDSL and various equipment. Each type of investment has a lifetime expectancy between 8 and 20 years used for depreciation over time. Lifetime expectancy and the WACC are used to compute an annuity of the CAPEX still to be depreciated. Other investments outside of their useful expected lifetime, such as microwave equipment, are not included in the current CAPEX figure because they are fully depreciated. Due to the increased roll-out of fibre, investments into copper technology have been decreasing steadily in recent years, and Mila expects to fully decommission its copper network by 2031 at the latest. Figure 1 provides a summary of the overall CAPEX and annuity by cost component.

Figure 1: Summary of the Mila's CAPEX and relevant annuity for the remaining lifetime of the investments [Confidential]

Investments	Indexed historical cost	Useful life	Annuity
Copper and distribution frames.....	[REDACTED]	10 to 20	[REDACTED]
VDSL, copper.....	[REDACTED]	8	[REDACTED]
Equipment.....	[REDACTED]	10	[REDACTED]
	[REDACTED]		[REDACTED]

Source: ECOI's draft decision, table 5.7

Setup charges. Mila decided to discontinue the setup charge to improve transparency of the tariff for access to the local loop. Instead, Mila charges a higher monthly fee such that the overall total cost of access is equivalent. In other words, the setup charge forms part of the monthly access fee, rather than being charged separately. ECOI has no objection in this regard.

Access to distribution frame. The fee to access the distribution frame will increase by the same proportion as the monthly fee for the local loop. This is in line with previous methodology and ECOI raises no objections.

Number of line equivalents. In Mila's cost analysis, the number of line equivalents is the same as the number of copper lines. Mila and ECOI disagree on the correct metric to use

⁸ Confidential information is placed in square brackets.

for line equivalents. Mila argues that the number of lines at the end of the period (██████) should be used, primarily because it is the most appropriate metric for the computation of a forward-looking maximum price, because copper lines are gradually being phased out. ECOI argues that the average number of lines over the year (██████) is more appropriate, primarily because the cost base to be divided accrued over the full year. Ultimately, ECOI maintains that to compute the unit cost for the OPEX the average number of line equivalents should be used, as the total OPEX over the year is correlated with the number of lines being used over the same period. However, ECOI accepts that to compute the unit cost for the CAPEX, the number of lines at the end of the period can be used, as the CAPEX depreciation is forward-looking and therefore more related to the number of lines at the end of the year.

Based on the above, and after some final adjustments to the cost base⁹, ECOI concludes that the copper local loop monthly fee is **ISK 1,978**, an increase of **27%** compared to the previous fee of ISK 1,588. The fee to access the distribution frame would increase by the same percentage value, to **ISK 1,553**.

According to ECOI, this increase is higher than the building cost index increase over the period 2017-2021 (17%), while it is in line with the wages index increase over the same period (29%). ECOI also notes that the building cost index increased significantly from 2021 to 2022. Taking this into account, over the period 2017-2022 (i.e. adding one year) the index increased by 28%. Further, the previous monthly fee did not include the setup fee, which was paid separately; while the current monthly fee includes part of the charge of the setup fee, which was discontinued as explained above. Without this change in methodology, the monthly fee would have increased by 25% rather than 27%.

Finally, ECOI notes that the new monthly fee is in line with the range indicated in the recommendation from the European Commission from 2012 (EUR 8 to 10)¹⁰, once changes in exchange rates and cost indices are taken into account. The copper local loop fee is also somewhat lower than the fibre-optic local loop fees available in Iceland from different providers, which is consistent with the difference in quality between the two services.

As described in Section I above, ESA sent an RFI with several questions to ECOI and followed up with additional questions, in order to better understand the underlying computation described in the decision. ECOI responded to ESA's questions in full and amended the draft decision carrying over relevant information and details from its responses.

III. NO COMMENTS

ESA has examined the notified draft measure and has no comments.

IV. FINAL REMARKS

⁹ Specifically, the cost base was slightly increased to account for the cost of the inventory, and then decreased to deduct the cost of accessing the distribution frame and other revenues. Finally, the Universal Service tax of 0.1% was included to the final monthly fee.

¹⁰ Commission Recommendation of 11 September 2013 on consistent non-discrimination obligations and costing methodologies to promote competition and enhance the broadband investment environment, available at this [link](#).

ECOI may adopt the draft measure and, when it does so, shall communicate it to ESA.

On a procedural note, ESA recalls that any future amendments to, or more detailed implementation of, the draft remedies consulted on in the current notification will require re-notification in accordance with Article 7(3) of the Framework Directive.

ESA's position on the current notification is without prejudice to any position ESA may take in respect of other notified draft measures.

Pursuant to Point 15 of the Procedural Recommendation¹¹, ESA will publish this document on its eCOM Online Notification Registry. ESA does not consider the information contained herein and not marked as confidential to be confidential. You are invited to inform ESA within three working days¹² following receipt of this letter if you consider, in accordance with EEA and national rules on confidentiality, that this letter contains confidential information which you wish to have deleted prior to publication. You should give reasons for any such request.

Yours sincerely,

Filip Ragolle
Deputy Director for Competition and Regulation
Competition and State Aid Directorate

This document has been electronically authenticated by Filip Ragolle.

¹¹ EFTA Surveillance Authority Recommendation of 2 December 2009 on notifications, time limits and consultations provided for in Article 7 of the Act referred to at point 5cl of Annex XI to the Agreement on the European Economic Area (Directive 2002/21/EC of the European Parliament and of the Council on a common regulatory framework for electronic communications networks and services), as adapted by Protocol 1 thereto, OJ C 302, 13.10.2011, p. 12, and available on ESA's website [here](#) ("the Procedural Recommendation").

¹² The request should be submitted through the eCOM Registry, marked for the attention of the eCOM Task Force.