EFTA SURVEILLANCE AUTHORITY

Brussels, 14 November 2014
Case No: 76297
Event No: 728533

Póst-Og Fjarskiptastofnun (PTA)
Sudurlandsbraut 4
108 Reykjavik, Iceland

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

Dear Mr. Gíslason,

Subject: Wholesale broadband access in Iceland - Remedies - Amendments to the Reference Offer for bitstream (introduction of vectoring)

- *Article 7(3) of Directive 2002/21/EC*[1]*: No comments*

I. Procedure

On 14 October 2014, the EFTA Surveillance Authority (the "Authority") 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, *Póst-Og Fjarskiptastofnun* (the "PTA"). The draft measure concerns an amendment to the transparency obligation on the wholesale market for broadband[2] in Iceland.

The notification became effective on the same day. National consultation pursuant to Article 6 of the Framework Directive was carried out in the period from 23 July 2014 to 20 August 2014.

The period for consultation with the Authority and the national regulatory authorities ("NRAs") in the EEA pursuant to Article 7 of the Framework Directive expires on 14 November 2014.

Pursuant to Article 7(3) of the Framework Directive, the Authority and the EEA NRAs may make comments on notified draft measures to the NRA concerned.

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[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 5cl of Annex XI to the EEA Agreement and as adapted to the Agreement by Protocol 1 (the "Framework Directive").

[2] Corresponding to market 5 in EFTA Surveillance Authority Recommendation of 5 November 2008 on relevant product and service markets within the electronic communications sector susceptible to *ex ante* regulation in accordance with the Framework Directive, OJ C 156, 9.7.2009, p.18 ("Recommendation on relevant markets").

II. Description of the draft measure

II.1. Background

The draft measure is based on the PTA's Decision no. 21/2014,[3] by which Míla ehf. ("Míla") was designated as being an undertaking with significant market power on markets 4 and 5. The PTA imposed a set of remedies, including the obligation to provide access (including sub-loop unbundling), non-discrimination, separation of accounts, price and accounting controls as well as transparency.

Under the obligation of transparency, Míla was to publish its reference offer for bitstream access, including VULA,[4] and for related facilities and services.

In those street cabinets where VDSL[5] equipment was already in place and where VULA was activated, the PTA provided an exemption from Míla's obligation for access to copper sub-loops. This exemption depended on two factors, namely credible plans for introducing vectoring[6] and the offer of VULA. Furthermore, such an exemption was to be granted to Míla after a specific endorsement by the PTA. If Míla has not applied vectoring within three months after the exception has been granted, the PTA would revoke it.

II.2. Current notification

Under the present draft measure, the PTA envisages to authorise Míla to amend its reference offer for bitstream with respect to the introduction of vectoring of the company's VDSL services.

As foreseen in the PTA's Decision no. 21/2014, the priority right to introduce vectoring will expire within three months after the entry into force of the current draft measure.[7] The PTA does not envision that this right can be renewed with a new request for the same area from Míla.

In line with the above decision, the right to develop vectoring can only be exercised under the condition that Míla guarantees VULA at the relevant locations to interested parties.

Once vectoring has been implemented, Míla can be granted an endorsement from the PTA for the cancellation of the obligation for sub-loops unbundling. It will therefore no longer be required to offer physical unbundled access at the relevant locations (if at the same time

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[3] The decision concerned the market for wholesale (physical) network infrastructure access at a fixed location (market 4 of the Recommendation on relevant markets) as well as market 5 in Iceland, as notified to and assessed by the Authority on 11 August 2014 under Case No 75750.

[4] Virtual Unbundled Local Access. VULA consists of access to local loops from an aggregation point to the end user in such a manner that the party leasing virtual access has full access to the VDSL system in question with all technical and performance specifications which are needed to provide any kind of service over bitstream.

[5] Very-high-bitrate Digital Subscriber Line. VDSL systems (like those operated by Míla) require shorter line lengths and therefore rely on access to sub loops. According to the PTA, it can, however, be problematic to provide access to more than one VDSL operator to street cabinets, e.g. because of lack of space in such cabinets.

[6] Vectoring is a technology that reduces crosstalk interference and thus increases the performance of VDSL connections. According to the PTA, for Míla to be able to implement vectoring, it is necessary that it is the only VDSL operator using the local loop in question.

[7] The PTA does not foresee any form of penalty in case Míla does not implement vectoring within the prescribed time limit, apart from revoking the exclusivity to develop vectoring. The PTA further underlines that, should the experience show that Míla's plans concerning the implementation of the planned vectoring are unrealistic, it will try to appeal to Míla to notify more realistic plans.

the VULA product is maintained).

III. Comments

The Authority has examined the notified draft measure and has no comments.

IV. Final remarks

On a procedural note, the Authority 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.

Pursuant to Article 7(5) of the Framework Directive, the PTA is required to take utmost account of the comments of the Authority and of any other regulatory authorities. It may adopt the resulting draft measure and, where it does so, must communicate it to the Authority.

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

Pursuant to Point 15 of the Procedural Recommendation[8], the Authority will publish this document on its eCOM Online Notification Registry. The Authority does not consider the information contained herein to be confidential. However, the PTA is invited to inform the Authority within three working days[9] following receipt of this letter if it considers, in accordance with EEA and national rules on confidentiality, that this letter contains confidential information which the PTA would like to have deleted prior to publication. The PTA should provide reasons for any such request.

Yours sincerely,

Ólafur Jóhannes Einarsson
Director
Internal Market Affairs Directorate

Gjermund Mathisen
Director
Competition and State Aid Directorate

[8] 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 the Authority's website at http://www.eftasurv.int/media/internal-market/recommendation.pdf ("the Procedural Recommendation").

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