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Case No: 77546
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EFTA SURVEILLANCE
AUTHORITY

Póst- og Fjarskiptastofnun
Sudurlandsbraut 4
108 Reykjavík,
Iceland

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

Dear Mr. Gíslason,

Subject: Market for wholesale broadband access - Remedies - Modification of reference offer for bitstream access with regard to tariffs and conditions for ADSL+ and SHDSL+ at Access Option 1

Comments pursuant to Article 7(3) of Directive 2002/21/EC (Framework Directive)¹

I. PROCEDURE

On 11 June 2015, 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”), concerning the modification of the standard reference offer for bitstream access with regard to tariffs and conditions for ADSL+ and SHDSL+ at Access Option 1² in the market for wholesale broadband access.³

The notification became effective on the same day.

A national consultation was carried out, pursuant to Article 6 of the Framework Directive, during the period from 15 April 2015 to 15 May 2015.

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 See footnote 7 of the Authority’s comments letter in Case No 75574, Document No 715657 for a description of Access Options 1-4.

³ Corresponding to market 5 of the EFTA Surveillance Authority Recommendation of 5 November 2008 (Decision No 688/08/COL) 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 (“the 2008 Recommendation”).

The period for consultation with the Authority and the national regulatory authorities (“NRAs”) in the EEA States pursuant to Article 7 of the Framework Directive expires on 13 July 2015.

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.

II. DESCRIPTION OF THE DRAFT MEASURE

II.1. Background

The current draft decision is based on the PTA’s Decision no. 21/2014 (dated 13 August 2014). According to this decision, *Mila ehf.* (“Mila”) was designated as an undertaking with significant market power in the market for wholesale broadband access (market 5).

According to PTA Decision no. 21/2014, Mila is subject to obligations for transparency and price control of the company’s tariffs for broadband access and copper local loops. Amendments to tariffs and to the standard reference offer which relate to wholesale broadband (bitstream) access through copper local loops are thus subject to endorsement by the PTA. In addition, Mila is obliged to inform third parties about distribution, enlargement or other developments of the company’s bitstream system (and related services and other significant innovations) with the same notice as other units of the Skipti Group, to which Mila belongs, and other related parties. The PTA established that the notice will under no circumstances be shorter than three months.

In its comments letter in August 2014 on the PTA’s draft decision for market 5⁴, the Authority commented *inter alia* on the PTA’s plans to receive Mila’s application of the proposed costing methodology six months after adoption of the final decision and the need to ensure a clear elaboration of the relevant methodology and its compatibility with the objectives of the EEA regulatory framework, as well as the need for a prompt and timely implementation of remedies.

Furthermore, in a prior comments letter in July 2014 concerning a notification by the PTA of remedies for market 5, namely a cost analysis for bitstream access according to Access Options 1 and 3⁵, the Authority referred *inter alia* to the need to avoid, where possible, partial approaches to price setting, and to adopt a comprehensive, stable and predictable approach to setting forward-looking prices across the range of products in the relevant market.

In a further comments letter in December 2014⁶ concerning a notification by the PTA of tariffs and conditions for VDSL+ for corporate connections and domain and ports for interconnection, the Authority underlined *inter alia* the importance of a timely and strict enforcement of the price control remedy imposed on market 5 in PTA’s Decision no. 21/2014 which had required Mila to submit its cost analysis to the PTA by February 2015.

⁴ See the Authority’s comments letter of 11 August 2014, Case No 75750, Document No 715771.

⁵ See the Authority’s comments letter of 21 July 2014, Case No 75574, Document No 715657.

⁶ See the Authority’s comments letter of 19 December 2014, Case No 76462, Document No 730516.

II.2. Current notification

The PTA proposes to adopt the current draft decision at the request of Mila, endorsing amendments to the company's standard reference offer for bitstream access concerning two services, namely ADSL+ and SHDSL+ connections at Access Option 1.

Mila contends that its customers have requested that they be able to purchase ADSL+ and SHDSL+ with Access Option 1. This service is currently only available with Access Option 3. The price difference between Access Option 1 and 3 constitutes the transit over a Multiprotocol Label Switching ("MPLS") network, a mechanism of high-performance telecommunications networks that directs data from one network node to the next. Mila leases MPLS transit from *Síminn hf.* ("Siminn"), also part of the Skipti Group. Hence, the difference is solely that in the case of Access Option 1 the customer is not required to pay for MPLS transit when it does not need it but can rather use its own network or the network of another party for data transfer.

Under the current draft measure, which is undertaken pursuant to Mila's obligations of transparency and price control on market 5 as set out above, the PTA has examined Mila's tariff for ADSL+ and SHDSL+ connections with Access Option 1 and raises no objections to Mila's prices. The PTA has carried out its assessment of Mila's request taking into account the terms of the obligations set out in its Decision no. 21/2014, in particular the need to provide third parties with adequate transparent notice on the conditions for access to wholesale products. The PTA considers it particularly important for third parties reliant on Mila's access products not to be discriminated against with respect to the company's retail units or other related parties within the Skipti Group.

Further, in accordance with the PTA's Decision no. 21/2014, the NRA intends to carry out an overall review of Mila's tariff for wholesale broadband (bitstream) access in the coming months. The PTA sees no reason to postpone endorsement of Mila's prices for ADSL+ and SHDSL+ at Access Option 1 until a new wholesale tariff for Mila's bitstream service is examined and endorsed as a whole.

It is therefore proposed that the setup charge for each ADSL+ and SHDSL+ connection at Access Option 1 that Mila will be authorised to offer from 15 July 2015 will be ISK 3,166 and the monthly charges will be as follows:

Access Option 1	
ADSL+	Monthly charge
2 Mb/s	ISK 2,416
4 Mb/s	ISK 2,868
8 Mb/s	ISK 3,440
14 Mb/s	ISK 3,550
SHDSL+	Monthly charge
2 Mb/s	ISK 3,978
4 Mb/s	ISK 6,134
5 Mb/s	ISK 6,272
10 Mb/s	ISK 9,651
15 Mb/s	ISK 11,590
20 Mb/s	ISK 14,510

III. COMMENTS

The Authority has examined the notified draft measure and has the following comment:

Need for a timely and holistic wholesale tariff review process

The Authority recalls that in its draft decision for market 5 the PTA proposed to evaluate Mila's application of its proposed costing methodology for market 5 six months after the adoption of the final decision in August 2014. In the present draft measure the PTA notes that there will be an overall review of Mila's tariff for wholesale bitstream access this year. Against this background, the Authority wishes to recall its comments issued under Cases 75574, 75750 and 76462 respectively and, in particular, the need for a timely implementation of the relevant price control obligations, as well as the need for a comprehensive and predictable approach to setting forward-looking prices across the range of products in the relevant market.

IV. FINAL REMARKS

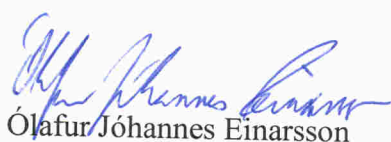
On a procedural note, the Authority recalls that any future amendments to, or more detailed implementation of, the draft remedies consulted on in the current notification will require re-notification in accordance with Article 7(3) of the Framework Directive.

Pursuant to Article 7(5) of the Framework Directive, the PTA shall take the utmost account of comments of other NRAs and the Authority. It may adopt the resulting draft measure and, when it does so, shall 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 Recommendation⁷, the Authority will publish this document on its eCOM Online Notification Registry. The Authority does not consider the information contained herein to be confidential. You are invited to inform the Authority within three working days⁸ 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.

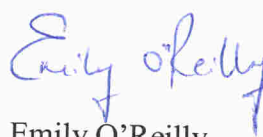
Yours sincerely,



Ólafur Jóhannes Einarsson

Director

Internal Market Affairs Directorate



Emily O'Reilly

Deputy Director for Competition

Competition and State Aid Directorate

⁷ 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").

⁸ The request should be submitted through the eCOM Registry, marked for the attention of the eCOM Task Force.