Appendix B

POST AND TELECOM
ADMINISTRATION
IN ICELAND

Conclusions from the PTA consultation on the initial draft market analysis of the wholesale market for terminating segments of leased lines (Market 6)

3 April 2014

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1 Introduction

This document contains a summary of the responses and comments received in relation to the Post and Telecom Administration (PTA) consultation on the initial draft of the wholesale market for terminating segments of leased lines (Market 6). The initial draft was presented to stakeholders for consultation on the PTA's website on 27 November 2013 and the consultation thus concluded last 20 January.
The following parties submitted comments on the initial draft.

- The Competition Authority
- Fjarskipti hf. – hereafter named Vodafone
- Míla ehf – hereafter named Mila

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

2 General comments

The Competition Authority said in its comments that the Authority's study of the draft market analysis has among other things focused on the definition of the service market in question, on the geographical market and on those aspects that one could assume to be significant when assessing market strength of companies on specific markets.
In the draft, the market in question was defined in advance in accordance with the role of the PTA. The Competition Authority made no comments on the part of the draft that it had examined and considered that the analysis had been well made and that it served its objectives.
It is however appropriate to state that the Competition Authority has the role of exercising the provisions of competition legislation on the electronic communications market. The conclusion reached by the Competition Authority on definitions of markets and of the positions of companies is decided by events in each individual case. In the light of this, the Competition Authority would clearly not be bound by the methodology and the opinions expressed in the draft when in the future it deliberates cases related to the market in question.

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.

Mila mentions that the Settlement between the Skipti Group and the Competition Authority is an important part of the market analysis and that this requires significant structural changes in the Skipti Group to achieve a clear separation between the Group's underlying systems on the one hand and Siminn retail operations on the other. Mila independence and significant separation between Mila on the one hand and Siminn and other subsidiaries of the Skipti Group on the other are prescribed. In the opinion of Mila the Settlement influences the designation of the company as having significant market power on the relevant market and on the obligations that it is appropriate to impose. The Settlement would prevent Siminn gaining an advantage over other companies on the market as a result of vertical integration. Vertical integration is prevented with structural changes and with management and operational separation. Mila therefore doubts that the strong position of one of the companies is transferred to the other as is maintained by the PTA in the market analysis.

The position of the PTA

The companies belonged to the same Group prior to the above-mentioned Settlement being made on 8 March 2013 and remain so today. The companies are thus a single economic unit in the understanding of competition law. This does not change with the Settlement. The Settlement allowed for its constituent parts being activated during the 6 to 12 month period subsequent to its coming into force. Now it has come to light that this timeframe cannot be adhered to because of a number of important issues, for example the Mila development of its own MPLS system which was to be completed last 8 March and in addition to this Siminn appears to have been able to utilise wholesale switches, which were only envisaged for Access Option 1, for other services without the knowledge of Mila, many months after the transfer of xDSL systems should have been completed in September 2013. The separation of the Group's systems thus appears not to have been implemented in practice and Mila is among other things still dependent on Siminn with respect to the above specified MPLS system despite the fact that the period of grace for Mila to develop its own such system has expired. Parties to the market, among others Vodafone, have declared that the Settlement has not achieved its purpose and that it requires significant changes for it to be able to achieve its purpose. The above specified issues strongly indicate that the Settlement in question was not implemented in the manner agreed on. A certain period of time must also pass from the time that the agreement is fully implemented until the PTA can take a position on the extent to which the Settlement has influenced the relevant market. Its real impact is thus in no way evident at this stage, though admittedly the Settlement was a step in the right direction in the opinion of the PTA, had it been implemented properly. Should the Settlement be well implemented there is a possibility that the PTA might expedite a revision of the analysis of the relevant market should this be considered appropriate.

Though the Group has acquiesced to the above specified Settlement, the PTA considers that the Group is still one economic unit in the understanding of Competition Law as stated above. Ownership and financial relations between the companies are indisputable, though the Settlement was intended to curtail their management connections.

Though a properly implemented Settlement should have reduced vertical integration within the Group, it is clear that such integration will never entirely disappear as a result of such Settlement. Vertical integration exists where the same party operates on more than one production and/or sales level, for example he manufactures goods, sells them to another party in wholesale and also sells the goods himself at retail level. It is clear that the Group continues to operate both at retail and wholesale levels and despite the Settlement it is in no way inconceivable that Mila and Siminn could individually hinder competition on the basis of a strong position on wholesale and retail markets. In addition to this the companies can according to the Settlement, still use the same support systems and can share various support services and systems. The companies still form a vertically integrated company group and Siminn is Mila’s largest customer (over 70% of Mila’s turnover).

The PTA considers that despite the above, the Settlement has to some extent simplified the analysis and made the boundaries between markets clearer than before. In the opinion of the PTA it has however not made such changes that would require a material change to the main conclusions of the PTA Draft Analysis. Despite the fact that the PTA considers the making of the Settlement to have been a positive step towards ensuring competition on the electronic communications market, the PTA cannot as previously stated take the Settlement into account at this stage in its analyses prior to the Settlement having been fully implemented and prior to those changes having taken place on the relevant markets that would mean that the position of the Group had changed on a permanent basis even were the Settlement no longer in force.

The most recent news on planned structural changes within the Group was that the subsidiary Siminn would merge with the parent company Skipti, which would then change its name and become Siminn, which means that Mila will become a subsidiary of Siminn. One can only conclude that all things being equal, Mila’s independence will be impaired with this measure. There is thus every reason for caution on the part of the PTA when considering future possibilities for the Group to apply entry barriers to the relevant market.

Furthermore, reference is made to the detailed Section 6.4 on the Competition Authority Decision no. 6/2013 in the Preliminary Draft.

Mila points out that the lifetime of the last analysis was far too long and not in accordance with demands that the PTA makes on itself to analyse markets relatively frequently, that is to say at 2-3 year intervals. Mila considers that one cannot ignore that GR development for leased lines in the Capital City Area, local development in urban areas and at other locations in the country and the impact of the 4G mobile network - affect a rapidly changing market.

The position of the PTA

The PTA agrees that the review of the markets in question has taken a long time but this is not solely the fault of the PTA as it took those companies that were designated as having significant market power on the relevant markets, that is to say Mila and Siminn, a long time to meet the obligations which were imposed on them in the previous analysis, including the obligation to submit to the PTA cost analyses and revised reference offers for scrutiny and endorsement. It is however clear that the conclusion of the analysis on the relevant market which was implemented for example in the years 2010-2011 would not have been different than the one presented here with respect to designation of Mila as having significant market power. The PTA aims at more frequent review of analysis of the markets in question from this point on.

With respect to the development of the GR electronic communications networks and other local electronic communications networks, the PTA refers to the fact that Mila still has an extremely high market share of the market in question, that is to say 65-70% by turnover. The PTA as stated in Section 4 in Appendix A on definition of geographical market did not consider there to be reason to divide the market geographically. Reference is made to that discussion and further discussion on that issue later in this document.

With respect to the development of 4G mobile networks, the PTA furthermore considers that development of such systems is in its infancy. Mobile networks as transmission media are furthermore not substitutable products for copper local loops, fibre-optic or fixed wireless access networks. The PTA will however monitor the development of data transmission over 3G and 4G mobile networks with possible substitutability for bitstream service on Market 5 in mind.

Mila considers it important to nurture an incentive for investment and development on these markets and that one should not go further in the imposition of obligations than is necessary. There is now competition from GR, from other local fibre-optic networks and from 4G mobile phone networks. The measures that the PTA chooses to apply may not go further than is necessary to achieve the objectives of the law and Mila refers to the principle of proportionality in the Administrative Act and to the provisions of the Electronic Communications Act on obligations, keeping in mind the initial owner´s investment and the risk taken.

An example of what Mila considers to be going too far is the obligation for passive access to ducts and local loops. Mila considers it unnecessary to prescribe access to ducts when access is prescribed to leased lines. All obligations entail costs and it harmonises with proportionality to not choose more obligations than necessary to achieve a specific goal.

Then Mila considers that obligations have been made significantly more onerous than in the market analysis currently in force. Mila considers the analysis to be limited to the position of wholesale and retail markets and that arguments are lacking for making obligations more onerous. The Mila market share is decreasing as is also the Siminn retail share, and the PTA came to the conclusion that there was no need to designate parties as having significant market power on what was previously Market 7 which covers the minimum set of leased lines in retail.

In addition to this Mila says that it is clear that the company has shouldered very significant obligations according to the Settlement between the Group and the Competition Authority and that it conflicts with the principle of proportionality to impose more onerous obligations on the company.

Mila emphasises that the regulatory framework should be predictable and not continuously changing and that legal certainty should be assured, if companies are to be prepared to embark on investments on the market. Decisions need to be clear and enforceable without them being significantly onerous or conducive to causing dispute or contention. Unnecessarily onerous Decisions increase costs and inhibit incentives to invest, which damages the market as a whole.

The position of the PTA

The PTA endeavours to organise its obligations on Market 6 in such a manner that they support active competition while at the same time encouraging investment and considers obligations imposed by the Administration to be normal in the light of Mila's position on the relevant market. In the opinion of the PTA the obligations that the Administration plans to impose on the relevant market are based on the competition problems that have been identified and that the obligations are in accordance with proportionality. Reference is made here to Section 6.6 in Appendix A on assessment of impact of the obligations, which are in most respects analogous with obligations imposed on Mila in the year 2007. Development of the relevant market from 2007 does not call for relaxation of obligations in this instance. The PTA considers it to be far from the truth that the obligations in question might prevent continued investment by Mila in electronic communications networks as allowance is made for cost analysed recompense to Mila for access, having taken into account a reasonable returns on investment.

The obligation to provide access to ducts is precisely conducive to Mila competitors seeing a possible advantage in investing in electronic communications networks. The PTA considers this aspect of access obligations to be of great importance, not least when taking into account development of NGA networks. In addition to this, problems have arisen with respect to such requests for access to Mila ducts and there is therefore every reason to remove all doubt with respect to such access here. It can be very costly for new network operators on the leased line market to develop the extensive facilities necessary to be able to offer an adequate network. Such costs are in many instances sunk costs. In order to distribute such development costs between the companies in question it is important to be able to share the cost of civil works and laying of ducts. It is thus important that parties can gain access to Mila ducts that are not fully utilised, for the installation of new connections (copper or fibre-optic). Mila of course receives cost analysed recompense for such access thus achieving better use of Mila investments and in addition to this, such sharing is economically advantageous for the country as a whole.

The PTA totally disagrees with Mila with respect to the PTA analysis of the relevant wholesale market being limited, and refers to detailed discussion on this matter in Sections 3 and 5 in Appendix A. The PTA saw no reason to analyse related retail markets in detail.

With respect to the impact of the Settlement, reference is made to the previous answer on the same issue.

The PTA agrees with Mila on the necessity for the regulatory framework to be predictable and indicates among other things the discussion in Section 6.5.5 in the Preliminary Draft on price control where the Administration emphasises the implementation of methods for deciding tariffs that return a conclusion that harmonises with the objectives of the EU Commission for supporting competition and improving the investment environment in electronic communications markets. Regular review of the Mila cost analysis along with clear criteria on which the cost analysis is based are intended to ensure balance in the recovery of costs and to support a clear, transparent and predictable structure, in order to strengthen competition, new investment and innovation. The planned conclusion of this analysis is to great extent analogous to the analysis from 2007. As the market has changed little then one can hardly maintain otherwise than that the planned conclusion is predictable. The PTA can in no way see that legal certainty is in any way impaired with this predictable conclusion.

Mila criticises the periods of notice and requests harmonisation with periods of notice as presented in the additional consultation on Markets 4 and 5. Mila also considers that the PTA should explain what is meant by Mila having to notify commencement of civil works with one year’s notice. One may not delay the offer of goods and marketing in such a manner that Mila cannot compete on the market with parties that are not bound by such obligations.

The position of the PTA

The PTA agrees with Mila that there needs to be correspondence between analogous periods of notice in Markets 4 and 6 and will review the Preliminary Draft with this in mind and shorten the period of notice with respect to civil works from 1 year to 6 months.

Mila considers that the PTA dealt with the discussion on geographical definition of the market in question in a cursory manner and disagrees with the PTA conclusion that the wholesale market for terminating segments of leased lines is the whole country. Mila considers that competition circumstances vary depending on whether the area in question is the Capital City Area or in fact another urban areas in the country. It is a simple matter to define the Capital City Area where Mila considers GR to have significant market power. The Capital City Area is well delineated and defined and has undergone significant development by GR in recent years and will be fully developed at the end of this year.

In the opinion of Mila one should view the Reykjavik Area as a special market as it has the greatest urban area and is home to most companies and about 80% of the population. Mila considers it to be a fault in the analysis that such an examination has not taken place and that it is a simple matter to gather data. Mila draws the conclusion from figures published by the PTA that GR has about 60-65% market share by revenue in the Capital City Area.

In the light of the fact that the PTA considers that demand for fibre-optic is increasing and that it will supersede demand for copper lines, Mila considers it to be worthy of criticism that the PTA did not take into account that the Mila access network is to a large extent a copper network and that Mila would need to embark on significant development to meet such demand.

Mila considers it to have little meaning that the price should be the same over the whole country when the Mila price is bound by obligations, and that the PTA should investigate leased line prices of other parties such as GR in the Capital City Area.

The position of the PTA

Mila's position in the competition area is extremely strong, as before, and Mila's dominant position at a national level is undisputed in the opinion of the PTA. It is not foreseeable that significant changes will take place in this respect during the lifetime of the analysis.

In the Capital City Area, where GR is Mila's only competitor on the local loop market, the GR access network will not entirely reach all of the most economically advantageous market areas in the coming years. Although GR plans allow for coverage of 97-98% of households in Reykjavik at the end of 2014 and of almost all households there at the end of 2015, the company will in most instances in other Capital City Area municipalities only install its fibre-optic local loops in greenfield districts. In most of the older districts in Reykjavik's neighbouring municipalities, GR will not install its local loops in the near future except in instances where there are civil works for the renewal of utility ducts. This means that Mila will be the only company in the Capital City Area with a comprehensive local loop network. Cost figures have furthermore demonstrated that in many places outside the Capital City Area there are areas that are comparable to the Capital City Area with respect to economic viability, for example Akureyri. It is therefore not logical to divide the market geographically into the Capital City Area on the one hand and the rest of the country on the other hand on the basis of the distribution of the GR access network. In the EEA area the leased line market in question has virtually nowhere been defined other than as covering the whole country.

The PTA reiterates that the Capital City Area is not homogenous in this understanding and that it is not possible to say that conditions for competition are uniform in all parts of the area. In the opinion of the PTA this will not be the case within the lifetime of the analysis as GR published plans do not cover for example Kópavogur, Garðabær or Hafnarfjörður except to a limited extent in the newest districts.

The PTA reiterates the statement in the Preliminary Draft that when markets are defined geographically it is not necessary for the competitive conditions of electronic communications companies to be exactly the same. It suffices that they are similar or sufficiently alike and for this reason it is only areas where competition circumstances are really "different" that cannot be considered to be the same geographical market. Among the significant factors when assessing the geographical market in question are the nature and characteristics of the product or service in question, possible entry barriers and/or customers behaviour, the number of service providers, a clear difference in market share of companies in the area in question and surrounding areas or a significant price difference between areas. Then one can examine whether there is a difference in marketing and/or quality of service between geographical areas.

Taking all of the above into account the PTA considered that there was no reason to divide the geographical market. It is then most important in the opinion of the PTA that there should be no significant price difference between areas, if any, neither within Mila nor between Mila and other network operators. In addition to this one can see from the PTA data collection that for example in the leasing of black fibre in wholesale in the terminating segments of leased lines, Mila is in no way smaller than other network operators on the relevant market which indicates that Mila has a significant stock of fibre-optic and that the company's position in this technology is such that it is not possible to say that the company has remained in copper networks while competitors are basing their operations on fibre-optic connections.

Though in general terms one can say that there is no reason to divide the geographical market, the situation could arise that competition problems vary between different areas, which could have an impact on the nature of obligations. Such discrepancies are however not sufficient to justify geographical division of the relevant market.

In addition to this the PTA would like to point out that in other EEA countries, 29 of 31 countries have defined the relevant market as a single geographical market. The exceptions are Finland where the Finnish telephone system is historically based on regional network operators who each have significant market power in their area, and the United Kingdom for similar reasons. All other countries in the EEA have defined the relevant market as a single geographical market.

Vodafone makes no comments on the PTA plans to define Mila as an undertaking with significant market power. Vodafone considers the intended obligations normal and necessary to support active competition on the relevant market.

Vodafone expresses its approval for the PTA planned innovation with respect to joint use of planned excavation and conduit installation projects and considers that this can be particularly useful for electronic communications on the relevant market.

The position of the PTA

Vodafone comments support the PTA conclusions regarding the issues discussed in the comments. They thus give no reason for particular discussion here.

3 Comments on specific paragraphs

Mila mentions with respect to Paragraph 30 in the Preliminary Draft that it is not correct to compare circumstances on Markets 4 and 5 on the one hand and Market 6 on the other as leased lines are very few in comparison with local loops. Equipment that is installed on leased lines thus belongs to one connection so the situation is the same for everyone as it is not possible to share equipment with other parties.

The position of the PTA
In this Paragraph the PTA is indicating the difference between the market for local loops, the bitstream market and terminating segments of leased lines and precisely mentions that the leased line connects fixed and specified locations with a specified transmission capacity and is thus unlike both local loop unbundling and bitstream access in this respect.

Vodafone comments on Paragraph 49 in the Preliminary Draft specifically with respect to item e on SHDSL digital bitstream access and considers that in the light of the fact that SHDSL is bitstream access and the same kind of information should be provided as for access options 1-3 in bitstream access**.**

The position of the PTA
Bitstream access belongs to a specific market (Market 5) and this market is covered in detail along with the relevant obligations in a specific market analysis of that market. This market has been subject to national consultation on two occasions during the last months and it is expected that the market will be formally notified to the EFTA Surveillance Authority (ESA) in March 2014.

SHDSL is a special case, as the capacity of such connections is symmetrical with 2 Mb/s bit rate. Because of these characteristics, SHDL is a substitute product for 2 Mb/s leased lines while access options 1-3 in bitstream service do not have such direct substitutability. For this reason the PTA believes that access options 1-3 do not belong to the market for terminating segments of leased lines.

Vodafone mentions with respect to Paragraph 65 in the draft that it is necessary to include WDM, CWDM, DWFM, MPLS-TP and GPON in the market for terminating segments of leased lines as the above specified services are already on offer on that market.

The position of the PTA

GPON belongs to the above specified Market 5 along with other asymmetric digital subscriber lines such as ADSL and VDSL. Wavelength division multiplexing (WDM, CWDM and DWDM) is discussed in Paragraph 36 in the draft analysis which reports on a previous analysis of the relevant market from 2007 and it is again covered in Paragraphs 54, 55 and 56 when it is stated that even though such technology is most common in trunk line networks it is also used in the terminating segments of leased lines. The fact that the listing in Paragraph 65 does not include wavelength division multiplexing is an inaccuracy that will be corrected in the draft decision.

Mila mentions with respect to Paragraph 112 that there is a misunderstanding there as leased lines in M6 are composed of a transmission layer which can be copper local loop, fibre-optic or fixed wireless access networks, and equipment that is installed on the line. Copper local loops belong to Market 11 and radio, that is to say user radio, is subject to special obligations. If the PTA is referring to the base layer then the PTA is mixing M6 and M11. Leased lines purchase local loops in the same manner as other parties and are thus in the same position as others. Mila does not install local loops specifically for leased lines but rather a core network, which is subject to obligations in M11. Mila considers that fibre-optic lines should be a special market as GR clearly has market dominance with more than 20,000 leased lines.

The position of the PTA

Not only is the Skipti Group vertically integrated from the core network to retail services but Mila is also a vertically integrated company within its own operations. In this Paragraph the PTA is drawing attention to the fact that Mila dominance of the core network (M11 according to the older numbers for markets, M4 according to the new numbers) gives the company dominance over infrastructure that is difficult to duplicate in the case of a leased line market that uses this core network. The local loop market is according to the new definition, technically independent and in the Preliminary Draft that Mila has received for consultation and on which it has made comments in that process, fibre-optic local loops are categorised under M4 as are copper local loops. One can expect that a final Decision on M4 will be published in the spring of 2014.

Mila comments on Paragraph 116 and considers significant costs are not incurred from localised service, for example in the Capital City Area which Mila considers to be a separate geographical market, where many parties have developed services in that retail area. Such parties purchase only co-location and local loops and set up equipment themselves for the provision of services.

The position of the PTA

The PTA sees no reason to change its discussion in Paragraph 116 in the Preliminary Draft because of the above comments from Mila. In addition to this these comments strengthen the position taken by the PTA that wholesale obligations are necessary if varied retail services are to flourish.

With respect to geographical division of the market, this has been covered elsewhere in this document.

Mila comments on Paragraph 129 in the Section on economy of scale as it considers it hardly possible to talk of economy of scale when such a small proportion of local loops are used for leased lines and in addition to this, having the same price independent of geographical location, leads to leasing outside the Capital City Area being operated at a loss.

The position of the PTA

The fact that Mila has 65-70% market share on the relevant market by revenue and over 80% by number of connections, and in addition has significant market power on related markets, must by the nature of things mean that Mila is most likely to enjoy economy of scale on the relevant market. At the same time the next largest party only has 1/3 of Mila market share by revenue. The Mila dominance in size, both by revenue and by number, is such that the only conclusion one can draw is that Mila has every possibility to enjoy economy of scale to a greater extent than other parties on the relevant market.

Mila comments on Paragraph 177 in the preliminary Draft Analysis on customer access to information and states that the PTA has the power pursuant to the Act on Electronic Communications to gather this information though it is not openly published.

The position of the PTA

This is a misunderstanding on the part of Mila. As indicated by the heading, the Section in question discusses customer access to information and not PTA access to information as Mila assumes in its criticism. In the text of the Paragraph it states that customer access to information and price on the market are not as good as they could be, as parties other than Mila do not bear an obligation for publishing tariffs and if it were not for the obligations then there would be little transparency on the market.

Mila comments on Paragraph 209 in the Preliminary Draft in the Section on the impact of obligations in force and says that the PTA assertions to the effect that prices would have been significantly higher had price control not been in force, are unfounded. Mila points out that lines in the access network were now fewer than before and it is clear that prices would have risen even more than was the case had there been a greater reduction of these lines, and competition on this market is in the form of access to xDSL service, fiber optic lines and comparable leased lines from other parties.

The position of the PTA
The PTA assertion that one could consider it certain that prices would have been even higher without PTA obligations from 2007 is based among other things on the PTA rejection of Mila's request for price increases in 2011 and the PTA rejection of tariffs being indexed in line with index increases, see the PTA Decision no. 14/2011, a Decision which is referenced in this Paragraph, and Decision 34/2011. The PTA agrees with Mila that a higher price would in all likelihood have reduced the number of leased lines in use even further.

Mila comments on Paragraph 210 in the Preliminary Draft where the PTA states that the transfer of large part of operations from copper to fibre-optic is the main change from the previous market analysis. Mila agrees with this and considers it therefore wrong that the analysis is implemented on the basis of copper. It is clear that GR and Tengir have made considerable progress in their market territories while Mila remains with the least profitable locations and with significantly onerous obligations that are contrary to the principle of proportionality and that Mila considers to inhibit the incentive to invest with attendant damage to the electronic communications market.

The position of the PTA
The Mila assertion that the market analysis is implemented on the basis of copper is wrong as the market is defined as technically neutral. The Mila share in for example the leasing of black fibre in wholesale in the terminating segments of leased line market, whether by number of connections or by revenue, indicates that the company is in no way small in market development from copper connections to connections provided through fibre-optic on the relevant market and that the company has a significant stock of fibre-optic connections in local loop networks.

Mila comments on Paragraph 224 on the necessity for price control in the Preliminary Draft and objects to this as being totally unfounded. Mila comments on Paragraph 225 of the Preliminary Draft where Mila expresses its astonishment that the PTA should consider amendments to the tariff that are in accordance with PTA decisions to be a problem warranting intervention and a solution requiring a Decision, and Mila considers that this indicates that the PTA does not have much to go on with respect to real competition problems on the market.

The position of the PTA

Price Decisions are intervention in the market and are based on obligations for price control on a company with significant market power. Price obligations are justified in the relevant market analysis and are based on the position of the party in question on the market and on existing entry barriers. Price obligations and decisions on such obligations are the result of underlying competition problems that have been revealed by PTA market analysis. The PTA came to the Decision in its market analysis of the market for terminating segments of leased lines in 2007 that Mila (formerly Siminn) had on its own the economic power to hinder active competition and could operate to a significant extent without taking into account competitors, customers and consumers. It also came to light that competition on the Icelandic leased line market was not sufficiently active.

The main conclusion of that market analysis was that the relevant market was characterised by the strong dominance of Mila (formerly Siminn) as a former special licence holder which had enjoyed a monopoly position in electronic communications in this country until 1998. The market analysis also showed that there were significant barriers on the leased line market and a lack of possible competition. The market was furthermore characterised by vertical integration of the Skipti Group, which served all sections of the market from wholesale to retail. In the opinion of the PTA this has not changed since 2007.

Cost analyses on which the price decisions are based have proven complex and time-consuming to implement. The PTA has in many instances needed to alter Mila conclusions on price calculation, see for example the Administration's Decisions number 14/2011 and number 34/2011.

Vodafone states that it agrees with the PTA in Paragraph 230 of the draft that the settlement between Skipti and the Competition Authority is not regarded as a factor in the withdrawal of obligations from the Skipti Group.

The position of the PTA

The PTA considers it important that the settlement between Skipti and the Competition Authority should be fully active for a considerable period of time before it would be possible to take its impact into account and the changes that might result on the relevant markets. Vodafone's position supports the PTA position.

Vodafone comments on Paragraph 232 in the draft and does not accept the PTA decision to withdraw obligations on Siminn IP-MPLS services. In the opinion of Vodafone, Siminn has significant market power on the market for base systems for IP-MPLS services even though Siminn does not operate on the wholesale market for leased lines.

The position of the PTA

As mentioned by Vodafone in its comments, Siminn does not operate on the wholesale market for leased lines. The Siminn IP-MPLS system is Siminn's base system for various kinds of services to which access is not on offer at wholesale level, though the system performs data transfer for a great variety of Siminn retail services on both residential and non-residential markets. As this Siminn system is not at wholesale level it does not belong to the relevant market and is thus not analysed in the market analysis and nor will obligations be imposed on it within the wholesale market for terminating segments of leased lines. According to the settlement between the Competition Authority and Skipti, Mila will adopt an analogous MPLS-TP transport network within the specified period of notice. This system will be a Mila wholesale product.

Mila mentions with respect to Paragraph 237 in the Preliminary Draft in the Section on obligation to provide access, that it considers it to be a misunderstanding that it requires significant amounts of money to develop terminating segments of leased lines. This is incorrect in the opinion of Mila, unless the PTA limits itself to companies that sell access to transmission media and not to service. All underlying components of Mila leased lines are already subject to obligations from the PTA, such as co-location and local loops so the only item required by an electronic communications company is point of service equipment which costs ISK 100-300 thousand per unit. Experience shows, in the opinion of Mila, that many electronic communications companies have developed such connections for their own use or for the customers and that there is no barrier to enter the market for leased lines based on the Mila core network.

The position of the PTA

In the Paragraph in question the PTA is discussing the development of a system covering the whole country and thus stands by the assertion that this requires substantial investment costs.

Vodafone comments on Paragraph 245 in the draft and requests more detailed explanations of the provision described there and would like to receive information on the instances where such a situation could arise.

The position of the PTA
In the Paragraph in question it states: *"The PTA considers it normal that Míla should only be authorised to limit access to and use of leased lines on the basis of fundamental demands that relate to operational security of electronic communications networks in emergencies, to the integrity of its systems and in proven instances of the operational capability of service systems and protection of data; see the Decision of the PTA from 15 April 2005 where Síminn was obliged to process transfer requests from Og fjarskipti ehf for ADSL service."*

The PTA considers this sentence in the access obligation to be clear. Mila is not authorised to limit access to or to limit the use of leased lines except on the basis of reasons supported by argument that relate to the above specified circumstances.

Mila comments on Paragraphs 248-250 in the Preliminary Draft which cover co-location and sharing and access to duct civil works and ducts. Mila rejects the PTA plans to impose such a wide reaching obligation on the company which inhibits the incentive to invest and to install ducts with future development in mind. Should an obligation be imposed on Mila to provide access to ducts then this destroys Mila's possibilities to use the ducts in the future. The incentive to invest is thus almost none. This also erodes the usage of connections and increases the unit price that Mila can offer as the cable ducts are fixed costs and if the number of connections is reduced then this cost is divided among fewer parties. There is therefore a significant risk that this obligation will lead to Mila not being able to recover costs or that costs to users will be significantly higher than they would have been otherwise. Mila draws attention to the fact in this connection that the tariff is subject to obligations on cost control.

The position of the PTA
As is stated in Paragraph 254 a normal and fair requests for access is being made in each instance that does not lead to a significant financial burden and it should therefore be an exception if such access destroys Mila's possibilities of future usage for its own purposes. Furthermore the fee for such access shall be cost related and based on Mila historical costs with the addition of reasonable profit.

The PTA emphasises that it is not imposing an obligation on Mila to install ducts in excess of its own needs but rather to share those ducts that are not fully utilised. Increased use of ducts should therefore lead to increased economy in operations of the Mila access network, contrary to assertions made by the company in this respect. The PTA points out that the laying of additional ducts with excess capacity creates insignificant additional costs of the total cost of the duct installation, which includes digging ditches and finishing. The PTA considers this obligation very important to increase competition in the development of electronic communications networks, not least NGA networks. In addition to this examples have shown that Mila has not acceded to requests from electronic communications companies for such sharing of ducts.

Mila comments on Paragraph 252 in the Preliminary Draft regarding the period of notice for civil works and duct installation and considers the obligation specified there to be extremely wide reaching and onerous. One often needs to react to circumstances at very short notice and to meet the needs of municipalities that embark on civil works at short notice. In addition to this in many instances the duct installations are for telecommunications company offers to end users who will not accept a delay of many months for a solution. Mila demands that the PTA elaborate this obligation in more detail or reduce the period of notice to one month.

The position of the PTA

PTA considers that all things being equal, a period of notice of one year is reasonable preparation time for construction such as civil works and duct installation. The manner in which Mila has up to this point in time organised its planning is not grounds for maintaining the same methodology. Obligations on parties with significant market power generally do not take such methodology into account which means that Mila must adapt its planning to the obligations. PTA considers it very important for ensuring non-discrimination between the Group and external parties that predictability with respect to the planned construction and possible sharing of ditches etc should be adequate.

On the other hand the PTA understands that Mila does not control all factors that influence the timing of civil works. In order to accommodate Mila to some extent the PTA will amend the provision in question such that Mila shall publish a list of planned civil works with 6 months’ notice. One must consider civil works and duct installation that has been decided with short notice as being exceptional. Should such an exception arise, Mila shall of course practise non-discrimination between internal and external parties.

Mila comments on Paragraph 253 in the Preliminary Draft on sharing and co-location because of the PTA assertion that sharing facilities is fair and should not entail a significant financial burden for Mila and should even be beneficial to the company. If such is the case then there is all likelihood that Mila would do this at its own initiative as Mila management has the company’s interests as its guiding light. Mila considers that the implementation of this provision with respect to ducts can precisely create significant financial burdens for Mila if the Mila ducts are accessible to other parties without taking into account Mila future utilisation of the facilities. The situation could arise where the Mila might be required to provide access to ducts and shortly afterwards might need to install ducts for its own use.

The position of the PTA

The PTA considers obligations on Mila to offer sharing and co-location to be normal and fair in the case of a company which has a dominant position on the relevant market when one takes into account the number of connections and the amount of co-location and that this should in most instances increase operational efficiency in the company, contrary to Mila doubts on this issue. An obligation on such sharing was prescribed in the previous market analysis of the relevant market in 2007 which means that Mila has had adequate time to adapt its civil works to potential requests from electronic communications companies for such sharing. As previously stated it is not a significant additional expense to install multi-use ducts.

Vodafone made comments on Paragraph 254 in the draft where it considers it to be important to specify street cabinets, conduit access pits (manholes) and analogous infrastructure.

The position of the PTA

The PTA mentions in this Paragraph that the Administration does intend to maintain the obligation on Mila to the effect that the company shall offer sharing or co-location for any kind of facilities controlled by the company in connection with terminating segments of leased lines. Buildings, conduits and pipes are named as examples. The fact that cabinets and conduit access pits are not mentioned does not exclude that Mila may be obliged to offer sharing of such infrastructure should a normal and reasonable request be received in connection with terminating segments of leased lines, which does not constitute a substantial financial burden for Mila, as is stated in the Paragraph.

Mila considers that as a result of Paragraph 269 in the Preliminary Draft on the non-discrimination obligation, 6 months is a relatively long period of notice and that it significantly lengthens the period for product development. Here Mila referred for example to the significant information that needs to accompany such notification, for example roll-out plan and proposed price. Mila considers it clear that this obligation restricts the company and makes it difficult for the company to react to competition or to meet customer requests for new products. Here the PTA is not taking into account the position after the Settlement between the Group and the Competition Authority and it should be sufficient for Mila to practise non-discrimination in the provision of information.

The position of the PTA

Mila voices concern over the long period of notice but do not make a proposal for a shorter period. The PTA considers that the 6 months' notice in question is normal for the Group's competitors in retail to have equal opportunities to develop their products and the interface for innovation and development in the Mila offer. The PTA draws attention to the fact that the Administration looks to the future in its analysis and in its imposition of obligations and as has been previously stated, the Settlement will not be fully taken into account before it has had a significant impact on market circumstances and when those changes call for milder obligations. This time has clearly not arrived.

Mila considers that with respect to Paragraphs 270 and 273 in the Preliminary Draft that 3 months is far too short notice to come to agreements with all parties on service level agreements whose nature is not yet known, and that the period of notice should be matched to the planned changes in M4 and M5.

The position of the PTA

For the purpose of harmonisation with analogous obligations that the intention is to impose on Mila for Markets 4 and 5, the PTA intends to lengthen the notice in question for the making of service level agreements and the service level guarantees from 3 months to 6 months.