POST AND TELECOM
ADMINISTRATION
IN ICELAND

Draft Decision no. xx/2014 on the designation of an undertaking with significant market power and on the imposition of obligations on the wholesale market for terminating segments of leased lines

(Market 6)

The Post and Telecom Administration (PTA) has with reference to Articles 16, 17 and 18 of Act no. 81/2003 on the Electronic Communications as amended, analysed the wholesale market for terminating segments of leased lines (Market 6).

Specifically this is the market that is numbered 6 in the ESA Recommendation on the relevant market from 5 July 2008:

- Wholesale market for terminating segments of leased lines

With a letter dated 27 November 2013 a draft analysis of the above specified market was sent to electronic communications companies and to the Competition Authority and they were invited to make comments on the draft market analysis and on its conclusions. The consultation was closed on 20 January 2014. The Competition Authority and Fjarskipti hf (Vodafone) submitted comments on the draft.

The analysis of Market 6 has now been updated in accordance with those observations that were taken into account. The updated analysis can be found in Appendix A to this draft measure and the comments that were received have been answered in Appendix B.

1. Designation of an undertaking with significant market power

Siminn hf and Mila ehf were designated as having significant market power on the relevant market (i.e. former Market 13) in PTA Decision no. 20/2007.

The conclusion of the analysis in this instance was that circumstances on the market had not changed much from the circumstances that pertained in 2007. All wholesale of leased lines within the Skipti Group have been transferred to Mila which means that Siminn therefore no longer operates on this market.

Taking into account the market analysis and the analysis of competition on the wholesale market for terminating segments of leased lines (now Market 6) and pursuant to Paragraph 2 of Article 17, see Article 18 of the Electronic Communications Act, the PTA has decided to designate Mila ehf as still having significant market power on the relevant market and that the Siminn hf designation be withdrawn.

2. Imposition of obligations on Mila ehf on Market 6

With the PTA Decision no. 20/2007, obligations were imposed on Mila ehf and Siminn hf on the relevant market (then Market 13) for access, non-discrimination, transparency, accounting separation, price control and cost accounting.

In accordance with Article 27 on the Electronic Communications Act, the PTA has decided to maintain the following obligations on Mila ehf as a result of the company's designation as having significant market power on the wholesale market for terminating segments of leased lines (Market 6).

The obligations that were imposed on Mila ehf in 2007 and that the PTA intends to maintain are mostly unchanged. There are however various amendments to implementation, such as with respect to the methodology for cost analysis and to the publication of bookkeeping information. In the opinion of the PTA these obligations are both in accordance with the objectives presented in the EU Framework and Access Directives and with the provisions of Icelandic legislation on electronic communications and that they are appropriate for the period that is expected to pass until the market will be analysed again. The PTA considers that the obligations are conducive to increasing competition on the relevant market. With respect to further discussion on the obligations the PTA refers to the revised analysis on the relevant market, see Appendix A.

The following obligations are intended to replace the obligations imposed on Mila ehf (Mila) with the PTA Decision no. 20/2007 of 14 September 2007. Further details are provided on the imposed obligations in Appendix A to this draft Decision.

2.1 Obligation to provide access

With the authority in Articles 28 and 33 of the Electronic Communications Act the PTA imposes the obligation on Mila to meet normal and reasonable requests for access for terminating segments of leased lines and for service at wholesale level. Mila shall inter alia meet normal and reasonable requests for access to resale, sharing or co-location, open access and technical interfaces, communications protocols and other technology that assures interactive service and interconnection of networks, access to support systems and appropriate information and in addition to this Mila shall announce all technical migration with a specific period of notice.

Agreements on access to and interconnection with the Mila leased line network shall be completed within a reasonable timescale and without unnecessary delay. Denial of access shall be justified in an adequate manner.

Access that Mila has already provided for another party, whether through supply of leased lines or with access to facilities, may not be withdrawn without the endorsement of the PTA. Mila ehf shall ensure that the service that is on offer will remain on offer for a reasonable period of time and it is only authorised to withdraw service after consultation with the relevant users and with the endorsement of the PTA. If a service is discontinued then the planned changes shall be notified to the electronic communications companies involved as soon as possible and no later than 6 months prior to the planned changes.

Míla shall provide a list of planned excavation and duct activities (Civil Works) with six months' notice. Other electronic communications companies shall be offered to participate in the projects with equal division of costs between parties to the projects.

2.2 Obligation for non-discrimination

With the authority of Article 30 of the Electronic Communications Act the PTA intends to impose an obligation on Mila for non-discrimination on the wholesale market for terminating segments of leased lines, both with respect to price and other conditions. Mila shall provide all purchasers of leased lines, including its own departments, with analogous terms of service, price and quality of supply of data handling speeds, transport and communications protocols. Mila shall provide the PTA with a tariff for all speeds and all protocols and shall confirm that there is no difference in treatment of internal departments and of external parties in this respect.

In order to ensure that Mila fulfils the obligation in question the PTA can perform a technical and/or economic investigation as to whether unrelated parties can replicate the product offer of related parties in a sustainable manner. Should the PTA conclusion be that unrelated parties cannot replicate the product offer of related parties for technical or economic reasons, the PTA can instruct Mila to alter its product offer and/or offer new wholesale products to enable unrelated parties to replicate the product offer of related parties on normal commercial grounds.

The PTA plans to make the reservation that Mila make service level agreements (SLA) with all purchasers of terminating segments of leased lines where among other things the quality of service shall be prescribed along with issues relating to non-discrimination, as itemised in the obligations that the PTA plans to impose on Mila on the relevant market. In addition to the obligation to make service level agreements the PTA intends to impose the obligation on Mila to issue a specific declaration on quality guarantees (Service Level Guarantees (SLG)).

In order to ensure that Mila respects the obligation for non-discrimination the PTA intends to impose the obligation on Mila that it should collect and publish regularly certain key performance indicators (KPI´s).

Mila shall arrange its operations in such a manner that the treatment of information is in accordance with Article 26 of the Electronic Communications Act. It is unauthorised to provide other parties with information on transactions with other companies with respect to potential purchase, including other departments in the Skipti Group, subsidiaries or partners.

2.3 Obligation for transparency

With the authority of Article 29 the PTA intends to maintain the obligation on Mila for the publication of an itemised reference offer for leased line termination segment access related facilities and services. Publication on the Mila website is deemed adequate. Further to this the reference offer should be broken down in accordance with the needs of the market and should contain a description of Mila´s terms and conditions along with the relevant tariff. Mila shall publish a reference offer in accordance with the description here above and shall update it as required, such as for changes in needs of parties to the market or as a result of changes in technology. Should the Mila reference offer not be considered adequate for the market, the PTA may prescribe amendments to the offer pursuant to Paragraph 2 of Article 29 of the Electronic Communications Act. All changes to the reference offer shall be submitted to the PTA for endorsement with reasonable notice and they will not come into force without the endorsement of the PTA. Mila shall send all agreements made on termination segments of leased lines in wholesale to the PTA.

2.4 Obligation on accounting separation

With the authority in Article 31 of the Electronic Communications Act the PTA maintains obligations on Mila for accounting separation. Such separation shall constitute as a minimum that the operation of terminating segments of leased lines in wholesale is separated in the accounts from other operations. The Mila wholesale prices and internal prices within the company shall be transparent, inter alia to prevent unjustified subsidies. In its accounts Mila shall separate revenue, costs, assets and liabilities for access to terminating segments of its leased lines. Mila is required to submit separate profit and loss accounts annually to the PTA along with a balance sheet for the operations of leased lines and a statement of the division of indirect costs that cannot be allocated with comparison with other cost items. The above specified statement should have reached the Administration no later than five months after the end of the financial year. Mila shall at the same time deliver a report from an independent auditor to the PTA to show that there is correspondence between the Mila description to the PTA on how costs are divided and the implementation of accounting separation by Mila.

2.5 Obligation for price control

With the authority of Article 32 of the Electronic Communications Act the PTA intends to impose the obligation on Mila for a cost oriented wholesale tariff for terminating segments of the company's leased lines.

When deciding prices for terminating segments of leased lines the cost analysis methodology shall be applied that is based on historical costs allocated to the services in question (HCA FAC) and the price of endpoint devices shall be based on replacement cost. Furthermore the PTA considers it proper that a review of tariffs for terminating segments of leased lines should take place in parallel with a review of tariffs for local loop unbundling (Market 4) in each instance as the cost of the access network is to a large degree common to both of the above specified markets. Such an implementation is not very time-consuming and/or onerous for Mila, or for the PTA surveillance.

When implementing its cost analysis Mila shall base its methodology on Chapter IV of Regulation no. 564/2011 on bookkeeping and cost analysis in the operations of the electronic communications undertakings, such as on evaluation of operating assets, lifetime and rate of return. When assessing the conclusion of the Mila´s cost analysis, the Administration will consider the prices of analogous products within the European Economic Area and in particular where a recognised methodology is applied, such as BU LRIC+ methodology, to decide the prices. The PTA will also have in mind that the tariff should relate logically to Mila's local loop unbundling prices, with respect to the possible excessive or under-pricing by the Skipti Group of the above specified services. PTA may reject to include costs if the PTA considers the cost to result from inefficient operation.

If the Mila cost analysis for terminating segments of leased lines returns a conclusion that the PTA considers unacceptable with respect to the above criterion, the PTA will reject such a conclusion. The Administration will then review the assumptions applied in the Mila cost analysis, for the purpose of returning a conclusion that harmonises with above criterion as well as the objectives of the EU Commission with respect to supporting competition and to improving the investment environment on the electronic communications market.

When deciding the tariff Mila shall base its decisions on the main criteria in its cost analysis as specified in Section 6.5.5 in Appendix A and shall submit this to the PTA no later than 6 months after the publication of this draft Decision. The tariff shall then be reviewed annually in accordance with annual updating of the cost analysis. A new wholesale tariff for terminating segments of leased lines will not come into force prior to endorsement by the PTA, subsequent to national consultation and consultation with ESA in each instance. The existing Mila wholesale tariff for terminating segments of leased lines shall remain in force until the reviewed tariff is available and has been endorsed by the PTA.

2.6 Cost accounting

Pursuant to Article 32 of the Act on Electronic Communications the PTA imposes the obligation for cost accounting on Mila for specific types of interconnection or for access, in accordance with a cost-oriented tariff. Pursuant to Chapter IV of Regulation no. 564/2011, on bookkeeping and cost analysis in the operations of an electronic communications undertakings, an electronic communications undertaking with significant market power on whom special obligations have been imposed pursuant to the Act on Electronic Communications shall inform the PTA on the structure of separation in bookkeeping, with respect to income and expenses, inter alia for the user network and the trunk line network.

The PTA plans to impose an obligation on Mila for cost accounting of those parts of the electronic communications operations necessary for giving access to terminating segments of leased lines. Mila shall submit to the PTA a description of the cost accounting for terminating segments of leased lines which shall show among other things cost categories, cost items and their relationship with the cost driver.

Mila shall, no later than six months after the publication of the Decision on the relevant market, submit to the PTA a description of cost accounting for terminating segments of leased lines and related facilities and shall publish cost categories and rules used to allocate costs. Mila shall at the same time submit a report to the PTA from an independent auditor showing that there is correspondence between the Mila description to the PTA of how costs are split and the implementation in the Mila cost bookkeeping system.

3. The coming into force of the Decision and channels for appeal

This decision comes into force from the day that it is published and will be in force until a Decision is made to the contrary by the Post and Telecom Administration.

This Decision can be appealed to the Appellate Committee for Electronic Communications and Postal Affairs, see Article 13 of Act no. 69/2003 on the Post and Telecom Administration. The appeal shall have reached the Appellate Committee four weeks from the time that the party in question became aware of the Decision of the Post and Telecom Administration.

Reykjavík, 3 April 2014

____

Hrafnkell V. Gíslason

____

Óskar Hafliði Ragnarsson

Attached:
Appendix A - Analysis of Market 6
Appendix B - Comments by stakeholders and the conclusions from consultation