Appendix B2

PÓST- OG FJARSKIPTASTOFNUN

Additional consultation

On specific amendments to the preliminary draft market analysis of the wholesale market for access networks at a fixed location and wholesale broadband access

(Markets 4 and 5)

13 August 2014

I. Introduction

On March 2013 the Post and Telecom Administration (PTA) opened consultation on the analysis of the wholesale market for access networks at a fixed location (Market 4) and wholesale broadband access (Market 5). The notice for consultation expired on 7 May 2013. Comments were received from Mila, Siminn, Vodafone, Tal and Inter.

While the PTA examined comments that were received subsequent to the above specified consultation, a Settlement was signed between the Competition Authority and Skipti hf. dated 26 March 2013 where various tasks were moved from Siminn to Mila, including xDSL service which is covered by Market 5. Various other changes furthermore took place on the markets in question from the time that the consultation in question was opened.

With the above development of the markets in question in mind and the comments from parties to the markets in the above specified consultation, the PTA considered it appropriate to open an additional consultation on further specified material changes that the PTA planned to make to the preliminary draft. This was then not an overall consultation on the markets in question but rather a limited additional consultation.

The limited additional consultation lasted from 20 December 2013 until 24 January 2014. Its text is published here in a separate Appendix entitled Appendix B2.

II. The Settlement between the Competition Authority and Skipti from 26 March 2013

2.1 General

According to the Decision of the Competition Authority (CA) no. 6/2013 dated 26 March 2013 a Settlement was made between CA and the Skipti group. This was a comprehensive Settlement for the conclusion of a large number of cases that the CA had been investigating with relation to companies in the group. With the Settlement, substantial changes were made to the structure of the group and in addition to this measures were taken to influence its future conduct on the electronic communications market for the purpose of strengthening competition. The CA had close operation with the PTA and with parties to the market when preparing the Settlement.

With the Settlement, a clear separation was established for the first time between the Skipti group core systems and service provided to electronic communications companies related to them on the one hand and with Siminn retail operations on the other. The Decision was intended to prevent the Skipti position in core electronic communications being leveraged to create a competitive advantage over competitors. For this purpose it was among other things prescribed that Síminn competitors should enjoy the same access to the Míla electronic communications infrastructure and electronic communications services with the same terms, conditions and quality as Síminn itself, at any given time, in order to ensure full non-discrimination between purchasers of all wholesale products sold by Mila. The same applies to non-discrimination with respect to all provision of information.

Míla's independence is strengthened with decrees on independent company business policy and scope of operations, with an autonomous Chairman of the Board and managerial autonomy, separate premises, obligations for confidentiality and a ban on sharing of specific services. Furthermore it was prescribed that important electronic communications systems and tasks (specifically wholesale of leased lines) that were transferred from Mila to Siminn in the year 2012 should be transferred back to Mila. In addition to this, other important electronic communications systems that had always been with Siminn should be transferred to Mila (bitstream service). The group had 6 months to complete the transfer of tasks in question and this transfer was completed in September 2013.

Siminn wholesale will on the other hand continue to sell specific services to the company's competitors, for example wholesale Internet service, fixed line telephone service and call termination in Siminn mobile phone network. Measures are prescribed to ensure the independence of Siminn wholesale in this respect and to ensure that Siminn competitors enjoy the same conditions as Siminn itself in transactions with Siminn wholesale, for example with respect to price, quality and non-discrimination in the provision of information.

Skipti was also obliged to establish a surveillance committee which was to operate within the group. It shall be composed of two independent persons and one representative from Skipti. It shall be ensured that the committee can operate independently and it has been allotted a variety of tasks to ensure implementation of the Settlement. The appointing of the independent members of the committee was subject to endorsement by the CA and the PTA. Committee members have been appointed and the committee commenced work in the summer of 2013 and has already received cases to process. Should the committee become aware of a breach of the Settlement by Skipti, it shall notify the CA. Breaches of the Settlement are subject to penalties.

In Article 30 of the Settlement it there is a reservation that states that the Settlement has no effect on the jurisdiction of the Post and Telecom Administration pursuant to Act no. 69/2003 on those issues covered by the Electronic Communications Act no. 81/2003 and derived rules and decisions on the basis of electronic communications legislation.

The above Settlement constitutes functional separation between the operations of companies within the Skipti group. On the other hand the measures did not go so far as to prescribe structural separation of the group. Separate legal entities operate within the Skipti group but under the same ownership. The purpose of the Settlement in question was first and foremost for the purposes of competition. It is thus clear that companies within the group, including Mila and Siminn, do still constitute a sole *economic* unit in the understanding of competition law.

2.2 Planned changes to Market 4 as a result of the Settlement

In Article 8 of the Settlement one can find general provisions on access to Míla services and systems. Míla is obliged to practise non-discrimination, impartiality and transparency towards the electronic communications companies that request access to electronic communications networks and other company facilities. This among other things applies to the leasing of local loops dealt with in Market 4. One should however note that such leasing of local loops has been in Mila's hands from the founding of the company in 2007 and subject to PTA obligations for a considerable period of time and for this reason is not transferred from Siminn subject to this Settlement.

According to Article 10 of the Settlement, Míla shall inform all its customers about new or planned products or services, changes or plans related to existing or planned services, at the same time and in the same manner. Furthermore according to Article 11 of the Settlement, Míla shall ensure with necessary measures that confidential information to which its employees are privy about individual company customers shall not be disclosed to Skipti, to Míla sister companies or other Míla customers, with the exception of those departments that are authorised to provide Míla with support services, see Article 5, should this be necessary in direct connection with the support service in question.

The Settlement does not prescribe the offer of specified wholesale services by Míla, with the exception of bitstream access, which is prescribed in Article 9 of the Settlement. There are no specific clauses on the offer of local loops in the Settlement and no provisions on price control of the tariff for local loops. The general provisions of Article 8 of the Settlement on access to Mila systems and services thus covers local loops.

The PTA has examined whether the above specified Decision by the Competition Surveillance Authority in any way diminishes the need for obligations on the relevant market. When assessing whether general competition rules suffice to correct market failure then one must keep in mind whether substantial measures are required, whether frequent and immediate intervention is required and whether special measures are needed to create legal predictability on the market.

Major measures would mainly be necessary when a company that controls critical facilities refuses to provide access to other parties and where the authorities need to establish access with decrees to the company in question or perhaps by organising the nature of access through intervention in pricing and with other conditions.

As stated in the preliminary draft the PTA considers that there are non-transitory entry barriers to the relevant market which among other things are manifested in the difficulty of duplicating facilities comparable to those controlled by the largest company on the market. Smaller electronic communications companies need to rely on having access to the Míla network to be able to serve their customers across the whole country. No other access network covers all inhabited areas of the country.

On the market for local loops, quite substantial measures were required to ensure access at fair terms. It has been necessary to establish extensive price control with the accompanying cost analyses to ensure that all purchasers on the market can rely on getting access on an equal footing and at a price that is not far in excess of cost having taken into account a reasonable return for Mila.

Experience has shown that not all problems on the market can be solved with one Decision but rather that regular intervention is required. The PTA has in recent years had to intervene on many occasions and has made Decisions in matters concerning local loops. In this respect one can cite the following PTA Decisions:

- 26/2007 on the designation of a company with significant market power and on the imposition of obligations on the wholesale market for access to copper local loops (Market 11), dated 21 December 2007.
- 1/2009 with respect to the Mila reference offer for access to local loops dated 19 February 2009.
- 13/2009 with respect to cost analysis for open access to copper local loops dated 17 July 2009.
- 16/2009 in a dispute on the Mila ehf. closure of shared access of a service provider to the upper frequency range of the local loop, dated 27 August 2009.
- 23/2009 As a result of a complaint by Gagnaveita Reykjavíkur ehf. about hosting charges by Míla ehf. - 30 December 2009.
- 30/2011 regarding the review of tariffs for copper local loops, start-up charges and access to distribution frame dated 30 November 2011.
- 15/2013 on amendments to the Míla tariff for copper local loops dated 30 July 2013.

This listing demonstrates that measures by the regulatory authorities are often required. It can hardly be expected that the competition authorities have the capacity for such frequent measures on one sub-market in the electronic communications sector. Furthermore the measures to which it has been necessary to resort have been much specialised, based on specific legal rules and on specialised knowledge of the PTA. The measures in question often relate to maximum wholesale prices where the Competition Authority has no authority to intervene.

There are often very substantial interests tied to gaining access to local loops without delay. It can prove impossible for electronic communications companies to commence operations in new areas if access to local loops in the area is not available. If new companies are denied access or if access is made uneconomic with excessive pricing or unfair terms and conditions it is possible that significant damage could result both for the company in question and for the market as a whole and as a result for consumers.

The risk of denial of access or of unfair conditions for access calls for permanent measures being in place to ensure that it is always possible to gain access and that it is possible to react without delay in order to prevent new companies being repelled from the market with delaying tactics. It should be assumed that the decisions of a specialised authority that operates according to special rules of electronic communications legislation will, all things being equal, be a quicker way to assure access on reasonable terms, rather than decisions based on general rules governing competition. There is among other things a provision in PTA legislation to the effect that the Administration can make temporary Decisions in cases where there are special circumstances, and this authority has often been exercised in practice.

When a company plans to attempt an entry into an electronic communications market where there is a need to invest significant sunk costs, it is necessary to be able to foresee the type of access it will be possible to gain to incumbents' networks and on what terms. Uncertainty about such issues would deter companies and investors from entering the market. Mitigating measures provided by the Electronic Communications Act which are ex-ante obligations on access and related issues, such as for example the publishing of a reference offer, are much more conducive to increasing predictability on a market like this rather than general rules of competition which allow for intervention subsequent to instances of misuse of a dominant market position coming to light. In such cases where intervention is post- event it is often extremely difficult to predict the conclusion and the length of time the case might take.

Obligations imposed by the PTA on companies with significant market power apply until a new decision has been made subsequent to a new market analysis where consultation has been made with parties to the market and with ESA. Transparency and predictability of such an arrangement is much greater than is generally the case with decisions made on the basis of the general Competition Law. Obligations that were imposed on Siminn with the PTA Decision no. 26/2007 do not specifically address the needs of the purchasers on the local loop market and there is for this reason a risk that damaging delays could occur were a party to demand access to a specific local loop service on the basis of the general provisions of the Settlement.

With the above in mind it is the planned conclusion of the PTA that the CA Decision no. 6/2013 does not for the time being restrict the need for specific obligations on the market for access to local loops except to a very limited degree. Experience has shown that there is a need for frequent and substantial intervention in the market and that predictability needs to be created with respect to access for competitors of the Skipti Group to the Míla networks. A Decision by the Competition Surveillance Authority is general in nature and does not specifically address issues on the relevant market. In addition to this, insufficient experience has yet been gained on the implementation of the Settlement. For this reason the PTA considers it necessary to maintain obligations on the market pursuant to the Electronic Communications Act. The PTA therefore does not plan to propose changes to the obligations that were announced in the above specified preliminary draft on the relevant market because of the making of the Settlement, in other respects than will be discussed in Section 5 here below.

2.3 Planned changes to Market 5 as a result of the Settlement

In Article 8 of the Settlement one can find general provisions on access to Míla services and systems. Míla is obliged to practise non-discrimination, impartiality and transparency towards the electronic communications companies that request access to electronic communications networks and other company facilities. In Article 9 of the Settlement it is specifically prescribed that Míla shall provide Síminn and its competitors with bitstream access.

According to Article 10 of the Settlement, Míla shall inform all its customers about new or planned products or services, changes or plans related to existing or planned services, at the same time and in the same manner. Furthermore according to Article 11 of the Settlement, Míla shall ensure with necessary measures that confidential information to which its employees are privy about individual company customers shall not be disclosed to Skipti, to Míla sister companies or other Míla customers, with the exception of those departments that are authorised to provide Míla with support services, see Article 5, should this be necessary in direct connection with the support service in question.

The Settlement does not prescribe the offer of specified wholesale services by Míla, with the exception of bitstream access, which is prescribed in Article 9 of the Settlement. There is no detailed discussion there about how the offer of bitstream access shall be structured and there are no provisions on surveillance of wholesale tariffs for such access. The provision prescribes first and foremost non-discrimination for all parties.

The PTA has examined whether the above specified Decision by the Competition Surveillance Authority in any way diminishes the need for obligations on the relevant market. When assessing whether general competition rules suffice to correct market failure then one must keep in mind whether substantial measures are required, whether frequent and immediate intervention is required and whether special measures are needed to create legal predictability on the market.

Major measures would mainly be necessary when a company that controlled critical facilities refused to provide access to other parties and where the authorities needed to establish access with decrees to the company in question or perhaps by organising the nature of access through intervention in pricing and with other conditions.

As stated in the preliminary draft the PTA considers that there are non-transitory entry barriers to the relevant market which among other things are manifested in the difficulty of duplicating facilities comparable to those controlled by the largest company on the market. Smaller electronic communications companies need to rely on having access to the Míla network to be able to serve their customers across the whole country. No other network covers all inhabited areas of the country.

On the market for bitstream access, quite substantial measures were required to ensure access at fair terms. It has been necessary to establish extensive price control with the accompanying cost analyses to ensure that all purchasers on the market can rely on getting access on an equal footing and at a price that is not far in excess of cost having taken into account a reasonable return for Mila.

Experience has shown that not all problems on the market can be solved with one decision but rather that regular intervention is required. The PTA has in recent years had to intervene on many occasions and make a decision in matters concerning bitstream service. In this respect one can cite the following PTA decisions:

- 8/2008 on the designation of a company with significant market power and on the imposition of obligations on the wholesale market for access to bitstream), dated 18 April 2008.
- 15/2008 dispute between Vodafone and Siminn on discount on price for bitstream access for resale dated 18 July 2008.
- 23/2009 As a result of a complaint by Gagnaveita Reykjavíkur ehf. about hosting charges by Míla ehf. - 30 December 2009.
- 7/2010 concerning cost analysis for bitstream access dated 26 March 2010.
- 11/2010 On confidentiality of specific information in the publishing of PTA Decision no. 7/2010 dated 5 May 2010..
- 12/2010 on amendments to conditions of the Siminn reference offer for bitstream access dated 19 May 2010.
- 38/2012 On Access Option 1 with Siminn dated 14 December 2012.
- Planned Decision with respect to cost analysis of bitstream access (Access Options 1-3) dated 20 September 2013.

This listing demonstrates that measures by the regulatory authorities are often required. It can hardly be expected that the competition authorities have the capacity for such frequent measures on one sub-market in the electronic communications sector. Furthermore the measures to which it has been necessary to resort have been much specialised, based on specific legal rules and on specialised knowledge of the PTA. The measures in question often relate to maximum wholesale prices where the Competition Authority has no authority to intervene.

There are often very substantial interests tied to gaining access to bitstream without delay. It can prove impossible for electronic communications companies to commence operations in new areas if access to bitstream in the area is not available. If new companies are denied access or if access is made uneconomic with excessive pricing or unfair terms and conditions it is possible that significant damage could result both for the company in question and for the market as a whole and as a result for consumers.

The risk of denial of access or of unfair conditions for access calls for permanent measures being in place to ensure that it is always possible to gain access and that it is possible to react without delay in order to prevent new companies being repelled from the market with delaying tactics. It should be assumed that the decisions of a specialised authority that operates according to special rules of electronic communications legislation will, all things being equal, be a quicker way to assure access on reasonable terms, rather than decisions based on general rules governing competition. There is among other things a provision in the PTA legislation to the effect that the Administration can make temporary decisions in cases under certain circumstances and this authority has often been exercised in practice.

When a company plans to attempt an entry into an electronic communications market where there is a need to invest significant sunk costs, it is necessary to be able to foresee the type of access it will be possible to gain to incumbents' networks and on what terms. Uncertainty about such issues would deter companies and investors from entering the market. Mitigating measures provided by the Electronic Communications Act which are ex-ante obligations on access and related issues, such as for example the publishing of a reference offer, are much more conducive to increasing predictability on a market like this rather than general rules of competition which allow for intervention subsequent to instances of misuse of a dominant market position coming to light. In such cases where intervention is post- event it is often extremely difficult to predict the conclusion and the length of time the case might take.

Obligations imposed by the PTA on companies with significant market power apply until a new Decision has been made subsequent to a new market analysis where consultation has been made with parties to the market and with ESA. Transparency and predictability of such an arrangement is much greater than is generally the case with decisions made on the basis of the general Competition Law. Obligations that were imposed on Siminn with the PTA Decision no. 26/2007 do not specifically address the needs of the purchasers on the bitstream market in other respects than to ensure non-discrimination in access, and there is for this reason a risk that damaging delays could occur were a party to demand access to a specific bitstream service solely on the basis of Article 9 of the Settlement were obligations from the PTA not in place.

With the above in mind it is the planned conclusion of the PTA that the CA Decision no. 6/2013 does not for the time being restrict the need for specific obligations on the market for access to bitstream except to a very limited degree. Experience has shown that there is a need for frequent and substantial intervention in the market and that predictability needs to be created with respect to access for competitors of the Skipti Group to the Míla networks. A decision by the Competition Surveillance Authority is general in nature and does not address issues in detail on the relevant market. In addition to this, insufficient experience has yet been gained on the implementation of the Settlement. For this reason the PTA considers it necessary to maintain obligations on the market pursuant to the Electronic Communications Act. The PTA therefore does not plan to propose changes to the obligations that were announced in the above specified preliminary draft on the relevant market because of the making of the Settlement, in other respects than is discussed in Section 5 here below. The PTA will however replace Siminn with Mila on the market in question as Mila has taken over Siminn tasks on the relevant market.

III. Amendment to obligation for price control

3.1 Annual review and consultation

The PTA proposes that a change be made to the obligation for price control on Markets 4 and 5 (Sections 8.4.5 and 10.4.5) in the preliminary draft such that a provision be included that the tariffs for access to local loops and bitstream be reviewed annually in accordance with the annual updating of the cost analysis. A new wholesale tariff for local loop lease and access to bitstream will not come into force prior to endorsement by the PTA, subsequent to domestic consultation and consultation with ESA in each instance.

3.2 Recommendation from the EU Commission

The EU Commission issued a new Recommendation on the implementation of harmonised non-discrimination obligations and cost analysis methodologies in order to increase competition and strengthen investments in the next generation of access networks (NGA)[1].

Though the EFTA surveillance authority (ESA) has not yet issued an analogous Recommendation, ESA referred to the Recommendation in its comments on the PTA Decision no. 15/2013 on review of the Mila tariff for copper local loops. On that occasion ESA proposed that the PTA take into account the guidelines with respect to cost analysis methodologies presented by the EU Commission in the Recommendation, among other things with respect to the PTA prescribing clearly when the cost analysis should be reviewed.

3.2.1 Planned amendments to the obligation for price control on Market 4

In the EU Commission Recommendation dated 11 September 2013 on the implementation of harmonised non-discrimination obligations and cost analysis methodologies in order to increase competition and strengthen investments in the next generation of access networks (NGA) it is stated that when selecting a methodology to decide access prices one must among other things take into account the following objectives[2]:

- The costing methodology needs to lead to access prices that replicate as much as possible pricing on an active competition market.
- The costing methodology needs to ensure that costs of an efficiently operated electronic communications company are recovered with an appropriate return on invested capital.
- The costing methodology needs to support the achieving of efficient entry to the electronic communications networks while at the same time providing the

[1] Commission Recommendation of 11.9.2013 on Consistent non-discrimination obligations and costing methodologies to promote competition and enhance the broadband investment environment.
[2] See further the specification in items 25-28 in the introduction to the Recommendation.

appropriate "build-or-buy" signal particularly in the case of Next Generation Networks (NGA).

- The costing methodology must ensure transparency and consistency within the Union.

In the opinion of the Commission the BU-LRIC+ costing methodology best meets the objectives that must be taken into account when price for wholesale access is decided. The Commission has recently examined conclusions from BU-LRIC+ models and estimates that the conclusions from such models will provide prices for fully unbundled access to the copper local loop in the European Union within a specific product range[3]. The objective is that the regulatory authorities that do not use the recommended cost model will endeavour to keep the price for fully unbundled access to the local loop within this price band.

As was mentioned in the preliminary draft analysis of the wholesale market for access networks at a fixed location the PTA considers that because of the high cost of implementing the BU-LRIC cost model that it is not appropriate at this point in time to adopt such a methodology on this market in this country. According to Article 42 of the Recommendation, regulatory authorities are authorised to continue using the costing methodology that, when the Recommendation came into force, returned a price for bundled access to the local loop that was within the price band specified in Article 41 of the Recommendation. As was stated in the PTA Decision 15/2013 on review of the Mila tariff for copper local loops, the Mila cost analysis returned a price for bundled access to the local loop which was equivalent to 8.5 € using the average exchange rate of the last quarter of 2012, and this is a price within the price band pursuant to the Recommendation. For this reason the PTA intention to authorise Mila to review its cost analysis for deciding the price for copper local loop service, is in accordance with Article 42 of the Recommendation.

The PTA plans to take the Recommendation into account (and eventually the analogous Recommendation from ESA) when evaluating the conclusion of the Mila cost analysis of copper local loop service. If the Mila cost analysis for access to local loops returns a conclusion that the PTA considers unacceptable having taken into account the Recommendation, the PTA will reject such a conclusion.[4] Should the PTA decide to reject conclusions of the cost analysis on access to copper local loops, the Administration will decide price on the basis of the average of those access prices that are decided by the regulatory authorities on comparable competition markets and that are in accordance with the above specified Recommendation. In this manner the PTA considers that the objectives that are kept in mind when selecting a methodology for deciding access prices, as defined in the Recommendations and stated here above, are met.

The PTA proposes that a change being made to the obligations for price control on Markets 4 and 5 (Section 8.4.5) in the preliminary draft such that a provision be

[3] The price band specified in the Recommendation is 8 to10 € with reference to price levels in the year 2012.

[4] The PTA can however endorse prices for access to local loops that lie outside the price band specified in the Recommendation in the event of special circumstances. Such circumstances could for example result from very significant changes to the exchange rate of the ISK.

included for annual review of the tariff for access to local loops be reviewed annually in accordance with the annual updating of the cost analysis. A new wholesale tariff for local loop lease will not come into force prior to endorsement by the PTA, subsequent to domestic consultation and consultation with ESA in each instance.

3.2.1 Planned amendments to the obligation for price control on Market 5

In the EU Commission Recommendation dated 11 September 2013 on the implementation of harmonised non-discrimination obligations and cost analysis methodologies in order to increase competition and strengthen investments in the next generation of access networks (NGA)[5] it is stated that when selecting a methodology to decide access prices one must among other things take into account the following objectives[6]:

- The costing methodology needs to lead to access prices that replicate as much as possible pricing on an active competition market.
- The costing methodology needs to ensure that costs of an efficiently operated electronic communications company are recovered with an appropriate return on invested capital.
- The costing methodology needs to support the achieving of efficient entry to the electronic communications networks while at the same time providing the appropriate "build-or-buy" signal particularly in the case of Next Generation Networks (NGA/NGN).
- The costing methodology must ensure transparency and consistency within the Union.

In the opinion of the Commission the BU-LRIC+ costing methodology best meets the objectives that must be taken into account when price for wholesale access is decided.

As was mentioned in the preliminary draft analysis of the wholesale broadband market (Market 5) the PTA considers that because of the high cost of implementing the BU-LRIC cost model that it is not appropriate at this point in time to adopt such a methodology on this market in this country.

The PTA plans to take the Recommendation into account (and eventually the analogous Recommendation from ESA) when evaluating the conclusion of the Mila cost analysis of bitstream access. If the Mila cost analysis for bitstream access returns a conclusion that the PTA considers unacceptable in comparison with tariffs on analogous competition markets, the PTA will reject such a conclusion. The Administration will review the methodology applied and will implement benchmarking or another methodology for the purpose of returning a conclusion that is in accordance with the objectives of the EU Commission according to the Recommendation on the implementation of consistent non-discrimination obligations and costing methodologies to promote competition and enhance the broadband investment environment in next generation access networks (NGA).

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[5] Commission Recommendation of 11.9.2013 on Consistent non-discrimination obligations and costing methodologies to promote competition and enhance the broadband investment environment.
[6] See further the specification in items 25-28 in the introduction to the Recommendation.

The PTA proposes that a change being made to the obligations for price control on Market 5 (Section 10.4.5) in the preliminary draft such that a provisions be included for the tariff for the annual review of bitstream access in accordance with the annual updating of the cost analysis. A new wholesale tariff for bitstream access will not come into force prior to endorsement by the PTA, subsequent to domestic consultation and consultation with ESA in each instance.

IV. Access Option 4 and its cost analysis removed

4.1 General

In Section 10.4.1 in the preliminary draft there is discussion on access obligations on Market 5. In Paragraph 811 it is stated that if requested, Siminn (now Mila) shall implement transmission of bitstream access through its backbone network to a location where the electronic communications company in question has a connection with Siminn (Access Options 1-3). It was also stated that for the purpose of supporting market development, the PTA planned to prescribe that Siminn was obliged to offer electronic communications companies that provide broadband service, bitstream access for resale in the form of Internet connections (Access Option 4).

In Section 10.4.5 there is then discussion on the obligation for price control on the Market 5. There among other things it is prescribed that Siminn (now Mila) shall cost analyse the above specified Access Options 1-4.

4.2. Planned amendments to the access obligation on Market 5

The PTA plans to withdraw the obligation in Section 10.4.1 for access according to the above specified Access Option 4, that is to say with resale of broadband service in the form of Internet connections. In the first case, Mila does not provide access to the Internet and this obligation would therefore need to be directed at Siminn as the Internet service provider in the Skipti group. In the second case it has been demonstrated in recent years that operation of Internet service is not such that there are significant entry barriers to the founding of such companies if they have access to adequate bitstream access analogous to Access Options 1, 2 or 3. In the third case there has been no demand for Access Option 4 from the time that obligations were imposed with the PTA Decision no. 8/2008 which among other things constituted such access. In addition to this one must have in mind that Internet service is not included in the wholesale market for bitstream access. Apart from this it is part of the Settlement between Skipti and the Competition Authority that Siminn shall offer its resale Internet service as wholesale service in accordance with Access Option 4.

The PTA furthermore intends to withdraw the obligation in Section 10.4.5 that cost analysis for tariff shall cover Access Option 4.

V. Mila notification period for new construction and updating of systems on Markets 4 and 5 shortened

5.1 General

The PTA plans to alter the periods of notice on Markets 4 and 5 having taken into account that the transfer of bitstream service from Siminn to Mila, which took place at the beginning of September in 2013 subsequent to the Settlement, diminishes the risk that Siminn could enjoy an advantage with access to information on development and distribution of systems.

5.2. Planned amendments to the non-discrimination and transparency obligations on Market 4

In Section 8.5.2 on the obligation for non-discrimination in the preliminary draft (Paragraph 671) it is proposed that Mila notify related and unrelated parties about distribution, building or other development of Mila local loop networks (and related service and other important innovations) with the same notice, which shall under no circumstances be less than one year.

The PTA plans to shorten this period of notice to 6 months as such a long period of notice on a market which is in a phase of rather rapid development at this point in time could hardly be considered to be in accordance with proportionality. Paragraph 671 and 684 in the preliminary draft will thus be changed accordingly.

In addition to this the PTA also intends to lengthen the period of notice for the making of service level agreements and guarantees from 3 months to 6 months from the publication of the Decision as will also be the case with the period of notice for publication of key indicators.

In Section 8.4.3 in the preliminary draft, on the obligation for transparency, the PTA plans to lengthen the Mila period of notice to submit a reference offer for open access to local loops from 3 months to 6 months. Paragraph 694 and 697 in the preliminary draft will be amended accordingly.

A new reference offer in accordance with the proposals and obligations that the PTA intends to impose on Mila, constitutes significant changes from the prior reference offer and in order to take this into account the period of notice is lengthened.

5.3. Planned amendments to the non-discrimination obligation on Market 5

In Section 10.4.2 on non-discrimination on the bitstream market, the obligation was imposed on Siminn in Paragraph 834 of the preliminary analysis that the company's wholesale arm should publish, with the same notice for its own retail department as for unrelated parties, its plans for distribution, building or other development of the company’s bitstream system (and related service and other important innovations) with at least months’ notice. This notice was specified as 6 months in the light of the fact that the wholesale and retail services were within the same unit, Siminn, and was conducive to giving retailers who were competing with Siminn the opportunity to develop service and prepare sales operations.

In the light of the fact that wholesale bitstream service has now been transferred to Mila, subsequent to the referenced Settlement that was to ensure separation between the companies, the PTA plans to shorten this period of notice to 3 months as Mila will notify such plans on distribution and development of its bitstream systems to all parties on the market in the same manner. The PTA considers this to harmonise better with the principle of proportionality. Paragraphs 834 and 684 in the preliminary draft will be changed accordingly.

The PTA considers it normal to shorten this period of notice to 3 months because of rapid development on the market and because the same risk no longer exists that Siminn will enjoy an advantage in the light of better or more detailed information on planned development and distribution of bitstream service.

In addition to this the PTA also intends to lengthen the period of notice for the making of service level agreements and guarantees from 3 months to 6 months from the publication of the Decision as will also be the case with the period of notice for publication of key indicators.

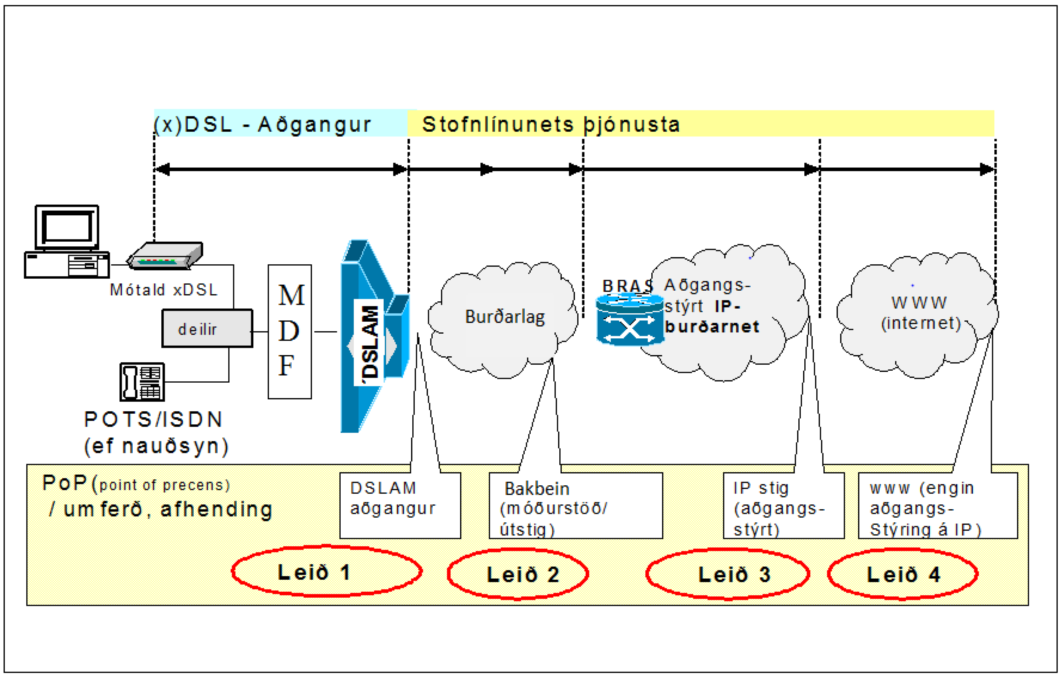
VI Access Option 2 as an option when providing bitstream access

6.1 General

In Section 10.4.1 in the preliminary draft there is discussion on an access obligation on Siminn (now Mila) on Market 5. In Paragraph 801 reference is made to the main principle on access in Paragraph 1 of the Electronic Communications Act where it is prescribed that a company with significant market power shall accede to normal and reasonable requests for open access to public electronic communications networks, network elements or related facilities with specific conditions set by the PTA.

In Paragraph 811 it is stated that if requested, Siminn (now Mila) shall implement transmission of bitstream access through its backbone network to a location where the electronic communications company in question has a connection with Siminn (Access Options 1-3). The options are described in the following manner:

1. In DSLAM or equivalent equipment at the place where the copper local loops connect to the telephone exchange distribution frame and/or telephone exchange fibre-optic distribution frame, street cabinet or other space (A1).
2. By ATM/IP transmission in the Siminn backbone network, that is Siminn handles transmission of signals from DSLAM and/or fibre-optic distribution frames to the connection point of another electronic communications company with the ATM/IP backbone network (A2).
3. After transmission with ATM/IP on the Siminn backbone network to the connection point of another electronic communications company with the previously mentioned network (A3).



In Paragraph 812 it is stated that when implementing the above specified Access Options the PTA considered it normal to take into account the economy consideration. In the case of Access Option 1 in VDSL it could for example prove economic to provide access from some kind of node point where connections from many street cabinets were collected together. Such an implementation could thus have the characteristics of varying Access Options, for example it could be at a level which one could consider to be between Access Options 1 and 2.

In Paragraph 813 it is stated that in the case of virtual unbundled local access (VULA) with the VDSL technology, access would be provided at ports that would be on Access Option 3, interwoven with access to the local loop itself, that is to say the upper frequency range of the copper local loop.

In paragraph 814 it is then stated that in addition to the duty to provide special access in the form of bitstream access the obligation would be imposed on Siminn (now Mila) to host equipment of other electronic communications companies and for access to other facilities necessary for the bitstream access to be fully used and to serve the intended purpose.

With the PTA Decision no. 38/2012 dated 14 December 2012, the administration resolved the dispute between Siminn and Vodafone in connection with access option 1. The PTA conclusion was that Siminn should accede to a Vodafone request for access to access option 1 in xDSL including VDSL with multicast and VoIP capabilities at a cost analysed prices without undue delay. All testing and introduction of procedures in connection with the access in question should be completed no later than 1 February 2013.

Then it was stated that in the case of VDSL, where DSLAM equipment is located in street cabinets, Siminn was authorised for the time being to provide the access in question in equipment in telephone exchanges where such equipment is categorised as equipment analogous to DSLAM in this connection. Such a solution should however not involve increased costs for Vodafone.

Furthermore it was stated that wholesale switches should be used in all instances. When Vodafone had formally undertaken to order wholesale switches, no more than 3 months should pass until they were formally taken into use and formal supply of the service had commenced. Vodafone should pay a specific start-up charge for each wholesale switch to cover the cost of installation, finishing and definition of DSLAM VLAN set up for the wholesale switch in question. Then Vodafone should pay a further specified monthly capex and opex charge for the switches (with the amount varying according to whether the switch in question was 1 GB/S or 10 GB/S). The monthly charge in question should decrease proportionately with the advent of a new party in the service in question. The above specified cost should be entirely separated from monthly access charges for xDSL service. The prices in question were temporary prices which were to apply until the PTA had endorsed the Siminn cost analysed prices.

The above specified inclusion with respect to the start-up charge for wholesale switches allowed for Siminn participated in costs of wholesale switches jointly with Vodafone.

6.1. Planned amendments to the access obligation on market 5

The PTA reiterates that the above specified PTA Decision number 38/2012 is not as relevant after Mila took over bitstream service from Siminn in the beginning of last September subsequent to the settlement. Mila is a pure network operator at wholesale level and does not conduct retail operations in competition with unrelated parties as Siminn does. For this reason the PTA considers it not to be normal that a network operator like Mila should collect a special start-up charge and monthly charge for specific system elements, such as network switches as the wholesale switches in question are categorised. Such an arrangement is not common practice when providing bitstream service in wholesale nor is it common practice in Mila wholesale services in the form here under discussion.

On the basis of considerations of economy the PTA believes that access option 2 could be a more suitable solution than access option 1 under certain circumstances. This particularly applies in the countryside where there are fewer connections in each telephone exchange than in urban areas. In order to support increased efficiency in the provision of wholesale bitstream service the PTA plans to set specific conditions for offer of access option 2. Should Mila receive a fair and normal request for access option 2, Mila shall accede to such a request. Mila shall be authorised, with prior endorsement from the PTA, to withdraw the offer of access option 1 for specific geographical areas where access option 2 is a more economic option. Access option 2 shall fulfil all of the same requirements that are made to access option 1 with respect to service offer, quality control multicast, communications protocols etc.

With the above in mind the PTA intends to alter the arrangement which came into force with its decision number 38/2012 on access option 1, that is to say that costs for wholesale switches is paid directly by the purchaser of the access option, as system design is the responsibility of Mila and the decision on whether one should use wholesale switches or other solutions is the responsibility of that company.

Should Mila make the decision to continue to use wholesale switches then this cost shall be calculated into the traditional access price subsequent to cost analysis and endorsement by the PTA. Mila shall submit the cost analysis to the PTA at the latest six months after the publication of the Decision on the wholesale market for broadband access. The existing Mila tariff for wholesale switches shall remain in force until the reviewed tariff is available and has been endorsed by the PTA.