EFTA SURVEILLANCE AUTHORITY

Brussels, 10 April 2019
Case No: 83151
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Póst- og Fjarskiptastofnun
Suðurlandsbraut 4
108 Reykjavik
Iceland

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

Dear Mr Gíslason,

Subject: Market for wholesale (physical) network infrastructure access (including shared or fully unbundled access) at a fixed location

Market for wholesale broadband access

Market for wholesale terminating segments of leased lines in Iceland - Remedies

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

I. PROCEDURE

On 11 March 2019, the EFTA Surveillance Authority ("the Authority") received a notification of draft national measures in the field of electronic communications, pursuant to Article 7 of the Framework Directive, from the Icelandic national regulatory authority, *Póst- og Fjarskiptastofnun* ("the PTA"). It concerns remedies in the market for wholesale (physical) network infrastructure access (including shared or fully unbundled access) at a fixed location, the market for wholesale broadband access and the market for wholesale terminating segments of leased lines in Iceland[2].

[1] Directive 2002/21/EC of the European Parliament and of the Council of 7 March 2002 on a common regulatory framework for electronic communications networks and services, OJ L 108, 24.4.2002, p. 33 (as amended by Regulation (EC) No 717/2007, OJ L 171, 29.6.2007, p. 32 and Regulation (EC) No 544/2009, OJ L 167, 29.6.2009, p. 12) as referred to at point 5 cl of Annex XI to the EEA Agreement and as adapted to the Agreement by Protocol 1 ("the Framework Directive").

[2] Corresponding to markets 4, 5 and 6 of the EFTA Surveillance Authority Recommendation of 5 November 2008 (Decision No 688/08/COL) on relevant product and service markets within the electronic communications sector susceptible to ex ante regulation in accordance with the Framework Directive, OJ C 156, 9.7.2009, p.18 ("the 2008 Recommendation").

The notification became effective on the same day.

National consultation was carried out, pursuant to Article 6 of the Framework Directive, during the period from 21 December 2018 to 23 January 2019.

On 22 March 2019, the Authority sent a request for information ("RFI") to the PTA (Doc No. 1059354), to which a reply was received on 26 March 2019 (Doc No. 1061043).

The period for consultation with the Authority and the national regulatory authorities ("NRAs") in the EEA States pursuant to Article 7 of the Framework Directive expires on 11 April 2019.

II. DESCRIPTION OF THE DRAFT MEASURE

II.1. Background

Market for wholesale (physical) network infrastructure access at a fixed location

In its Decision No. 21/2014[3], the PTA designated Míla ehf. ("Míla") with significant market power ("SMP") on the market for wholesale (physical) network infrastructure access at a fixed location. Furthermore, the PTA imposed obligations on Míla regarding access, non-discrimination, transparency (publication of a reference offer), price control (cost orientation) and separation of accounts.

The price control obligation, which applies only to copper-based local loops (local loop unbundling or "LLU"), was based on the fully-allocated historical costing ("HC FAC") methodology and the tariff was to be reviewed annually. With regard to the tariff structure, fully unbundled access (i.e. access to both the lower and upper frequency ranges of the local loop) was considered basic access. Accordingly, access seekers would be required to pay the full access charge regardless of how the local loop is used.

Subsequently, on 27 April 2017 the PTA notified the implementation of the price control obligation concerning copper local loops[4]. Furthermore, on 13 October 2017 the PTA submitted to the Authority a draft decision implementing the price control obligation with regard to fibre optic in the access network[5]. In the above two cases, the Authority commented on the need for timely enforcement and effectiveness of remedies, noting that the implementation of the price control obligation was significantly delayed.

Market for wholesale broadband access

In its Decision No. 21/2014 (notified to and assessed by the Authority under Case 75750), the PTA designated Míla with SMP on the market for wholesale broadband access. Furthermore, the PTA imposed obligations on Míla regarding access, non-discrimination, transparency (publication of a reference offer), price control (cost orientation) and separation of accounts.

[3] Notified to and assessed by the Authority under Case 75750.
[4] Notified to and assessed by the Authority under Case 80606.
[5] Notified to and assessed by the Authority under Case 81255.

The price control obligation, which applies only to wholesale bitstream access offered through copper-based local loops, was based on the HC FAC methodology. The tariff was to be reviewed annually. With regard to the tariff structure, Míla was required to prepare tariffs for wholesale bitstream access at different locations on the network (Access Options 1-3) with both DSL standards (VDSL and DSL) and for virtual access to sub-loops ("VULA") with VDSL technology. In addition, Míla was required to prepare tariffs for priority and quality-controlled access for transmission of visual content using multicast technology and for priority and quality-controlled transmission of bitstream for IP telephony services (for the delivery of IPTV and VoIP services), as well as a cost-oriented wholesale tariff for access to hosting of external equipment and other facilities related to bitstream and access to support systems and information.

Subsequently, on 27 April 2017 the PTA notified the implementation of the price control obligation concerning Míla's wholesale tariffs for bitstream access[6]. At the time, the Authority commented on the need for timely enforcement and effectiveness of remedies noting that the implementation of the price control obligation had been significantly delayed. Moreover, the Authority invited the PTA to closely monitor the need to develop an *ex ante* economic replicability test for broadband access products delivered over fibre-based infrastructure related to markets 4 and 5/2008, as foreseen in the PTA's Decision No. 21/2014. Furthermore, on 20 November 2017 the PTA notified its draft measure implementing the price control and transparency obligations imposed on Míla by the PTA's Decision No. 21/2014, with regard to VoIP services provided at a fixed location at Access Option 3[7]. The Authority stressed the importance of an efficient and predictable approach to setting tariffs on the market. Moreover, on 28 March 2018 the PTA notified amendments to the Míla reference offer for bitstream access with respect to conditions for IPTV services delivered via Access Option 3[8].

Market for wholesale terminating segments of leased lines

In its Decision No. 8/2014[9], the PTA designated Míla with SMP on the market for wholesale terminating segments of leased lines. Furthermore, the PTA imposed obligations on Míla regarding access, non-discrimination, transparency (publication of a reference offer), price control (cost orientation) and separation of accounts.

The price control obligation was based on the HC FAC methodology. In this respect, the local loop cost was to be based on Míla's wholesale tariff for LLU and the price of specific equipment for terminating segments of leased lines was to be based on the replacement cost of a modern equivalent asset and a reasonable re-use of equipment. Míla was required to prepare a cost analysis and submit that to the PTA for endorsement no later than 6 months from the publication of the PTA's Decision. In addition, annual reviews of the tariff were foreseen.

Subsequently, on 29 May 2017 the PTA notified a draft measure implementing the price control obligation imposed on Míla by the PTA's Decision No 8/2014, concerning the terminating segments of leased lines[10]. Furthermore, on 13 October 2017 the PTA submitted to the Authority a draft decision implementing the price control obligation with regard to

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[6] Notified to and assessed by the Authority under Case 80608.
[7] Notified to and assessed by the Authority under Case 81373.
[8] Notified to and assessed by the Authority under Case 81917.
[9] Notified to and assessed by the Authority under Case 75278.
[10] Notified to and assessed by the Authority under Case 80609.

fibre optic to street cabinets[11]. In the above two cases, the Authority commented on the need for timely enforcement and effectiveness of remedies, noting that the implementation of the price control obligation had been significantly delayed.

II.2 Current notification

Market for wholesale (physical) network infrastructure access at a fixed location

The currently notified draft decision is an annual update of tariffs in market 4/2008. The PTA intends to impose the following fees:

A) The monthly charge for access to the copper local loop shall be ISK 1,558 irrespective of whether access is to the telephone exchange or street cabinet; the setup charge for local loops will furthermore remain unchanged at ISK 3,166 while access to the distribution frame will be ISK 1,223/month for each 100 lines.

The PTA assumes that Míla's total revenue from monthly charges of copper local loops will increase by about 10.8%, according to the new tariff, as the reduction in Míla's costs does not quite follow the reduction in the number of local loops.

B) The monthly charges for fibre-optic to the street cabinet (comprising around 0,44% increase from previous prices) will be as follows:
   a. Fibre-optic to street cabinet, 1 thread ISK 6,888
   b. Fibre-optic to street cabinet, 2 thread ISK 9,840
   c. Fibre-optic to street cabinet, 3 thread ISK 12,793
   d. Fibre-optic to street cabinet, 4 thread ISK 15,745

   The setup charge for installation of fibre optic line is ISK 96, 680 (unchanged)

The weighted average cost of capital ("WACC") used to calculate prices on markets 4-6/2008 is set at 7.1% for 2017[12].

Market for wholesale broadband access

The currently notified draft decision is an annual update of tariffs in market 5/2008. The PTA proposes to impose the following fees for bitstream access:

Access Option 1

Connection	Monthly price
ADSL and VDSL	725 ISK
ADSL+ 2 Mb/s	1,651 ISK
ADSL+ 4Mb/s	1,982 ISK
ADSL+ 6 Mb/s	2,147 ISK
ADSL+ 8 Mb/s	2,229 ISK
ADSL+ 14 Mb/s	2,312 ISK

[11] Notified to and assessed by the Authority under Case 81255.
[12] The PTA explains that comparing with the WACC for 2016, which was at the level of 7%, the new decision foresees a 10 percentage points increase, which stems from the increase in the value of beta.

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VDSL + 50 Mb/s	2,642 ISK
VDSL + 100 Mb/s	3,303 ISK
G.SHDSL 2 Mb/s	3,697 ISK
G.SHDSL 4 Mb/s	6,802 ISK
G.SHDSL 5 Mb/s	4,574 ISK
G.SHDSL 10 Mb/s	7,639 ISK
G.SHDSL 15 Mb/s	11,711 ISK
G.SHDSL 20 Mb/s	16,284 ISK

Other services	**Price**
Taking over xDSL service	1,329 ISK
Changes from ADSL to VDSL*	3,166 ISK
New connection	3,166 ISK

*The charge does not apply to changes from ADSL to VDSL and vice versa on VDSL compatible equipment.

Access to ports for business connections at wholesale switch or similar:

Port	**Monthly price**
1 Gb/s	7,000 ISK
10 Gb/s	35,000 ISK.

Set-up charge is charged as per the Míla tariff for billed hours and service.

Multicast and unicast

Service	**Monthly price**
Transmission, per Mb/s	21.06 ISK

The total price for dedicated bandwidth is based on the number of set-top boxes on each DSLAM. It is presumed that the data volume will increase with the number of set-top boxes and the following table shows the estimated data volume on the basis of the number of set-top boxes:

Number	**Data Mb/s**	**Volume**
-9	50	
10-29	130	
30-49	160	
50-99	240	
100-199	360	
200-399	560	
400-	600	

VoIP

Service	**Monthly price**
VoIP, per unit	55.85 ISK

VULA

Service	**Price**
Setup fee	4,200,000 ISK

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VULA access price, per month	70,000 ISK
VULA monthly price, per connection	79 ISK

Access Option 2

Pricing of Access Option 2 will be according to the tariff for Ethernet service and Míla's trunk line network will sell this service directly to customers. In addition to this, customers will pay for connection to end users, according to the tariff for Access Option 1.

If more than one party requests Access Option 2 at the relevant location, then Míla shall endeavour to share connections to Míla counterparties to facilitate lower unit prices.

Access Option 3

Service	Monthly fee
ADSL and VDSL	1,239 ISK
ADSL+ 2 Mb/s	2,470 ISK
ADSL+ 4Mb/s	3,090 ISK
ADSL+ 6 Mb/s	3,484 ISK
ADSL+ 8 Mb/s	3,761 ISK
ADSL+ 14 Mb/s	4,204 ISK
VDSL + 50 Mb/s	6,732 ISK
VDSL + 100 Mb/s	9,093 ISK
G.SHDSL 2 Mb/s	4,643 ISK
G.SHDSL 4 Mb/s	8,140 ISK
G.SHDSL 5 Mb/s	6,406 ISK
G.SHDSL 10 Mb/s	9,754 ISK
G.SHDSL 15 Mb/s	14,300 ISK
G.SHDSL 20 Mb/s	19,275 ISK

Other services	Price
Taking over xDSL service	1,329 ISK
Changes from ADSL to VDSL*	3,166 ISK
New connection	3,166 ISK

* The charge does not apply to changes from ADSL to VDSL and vice versa on VDSL compatible equipment.

Interconnection of Internet Service Providers with the xDSL and GPON system for Access Option 3

Setup fee	Price
Setup of first domain	114,173 ISK
Setup of additional domain	28,543 ISK

Ports	Monthly price
Port up to 1 Gb/s	9,986 ISK
Port 10 Gb/s	59,921 ISK

The PTA foresees an increase of around 5% in monthly prices for ADSL, VDSL, ADSL+ and VDSL+ connections on Access Option 1 and of about 10% increase for SHDSL+ connections.
There are no tariff changes envisaged for Access Option 2 and VULA. According to information from Míla, there has been no demand for these products, which means that it is not possible to revise the calculations with actual figures. With respect to VULA, the PTA considers that Access Option 1 and Access Option 3 fulfil the requirements of most operators and, for the time being, there is little added value in VULA via VDSL technology, compared to these products[13]. Because of high setup costs, there is a minimum economy of scale in the number of connections. Therefore, the proposed new tariff for VULA via VDSL technology remains unchanged.

Market for wholesale terminating segments of leased lines

The currently notified draft decision is an annual update of tariffs on market 6/2008. The PTA intends to impose the following fees:

A) Terminating segments of leased lines:

Digital leased line within the same area

Speed	**Monthly charge**
64 kb/s	ISK 8,503
128 kb/s	ISK 8,815
256 kb/s	ISK 9,126
512 kb/s	ISK 9,749
2 Mb/s	ISK 9,905

Setup charge	ISK 87,907

Leased line between areas

Speed	**Monthly charge**
64 kb/s	ISK 8,934
128 kb/s	ISK 9,245
256 kb/s	ISK 9,557
512 kb/s	ISK 10,180
2 Mb/s	ISK 10,336

Setup charge	ISK 152,225

[13] In its reply to the Authority's RFI, the PTA further explained that most of alternative companies present on the relevant market are small in size. Access Option 1 (access at the DSLAM) and Access Option 3 (central access) have been popular with the alternative operators. These products are of a high level of quality of throughput, lag and jitter and hence there is little added value in VULA via VDSL technology compared to these products as the VULA product has little room for differentiation. VULA is not practical for small operators because of the minimum economy of scale in the number of connections. For access products delivered via fibre infrastructure, the PTA also clarified in its reply to the RFI that it has not received complaints and has not deemed it necessary to perform an economic replicability test. Míla's roll-out of fibre local loops has been mainly in areas where there are fibre local loops available from an alternative operator.

Leased lines - single segment

Speed	Monthly charge
64 kb/s	ISK 4,467
128 kb/s	ISK 4,623
256 kb/s	ISK 4,778
512 kb/s	ISK 5,090
2 Mb/s	ISK 5,168
Setup charge	ISK 76,112

Ethernet over copper

Speed	Monthly charge
5 Mb/s	ISK 11,887
10 Mb/s	ISK 14,224
15 Mb/s	ISK 15,003
20 Mb/s	ISK 16,561
25 Mb/s	ISK 19,677
30 Mb/s	ISK 20,456
35 Mb/s	ISK 21,235
40 -100 Mb/s	ISK 22,014
Setup charge	ISK 95,587

Other services

Service	Charge
Digital leased line within the same area - transfer	ISK 36,532
Digital leased line between areas - transfer	ISK 73,064
Digital leased line within the same area - change in speed	ISK 16,899
Digital leased line between areas - change in speed	ISK 28,164
Withdrawal, work started on line setup	ISK 8,884
Withdrawal, work started on equipment setup	ISK 36,614
EOC - transfer	ISK 57,369
EOC - change in speed	ISK 16,889

The PTA estimates an average increase of 8% of monthly prices for terminating segments of leased lines, which is mostly due to increase in OPEX.

B) The monthly charge for fibre-optic in the access network will be as follows:
   a. Fibre-optic in access network, 1 thread ISK 13,777 (0.43% increase from previous price)
   b. Fibre-optic in access network, 1 pair ISK 19,681 (0.44% increase)

The setup charge for installation of fibre optic line is ISK 96, 680 (unchanged)

The PTA plans to commence national consultations on the updated market analyses for all of the above markets in the course of 2019.

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III. COMMENTS

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

IV. FINAL REMARKS

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

The PTA may adopt the draft national measures and, when it does so, shall communicate it to the Authority.

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

Pursuant to Point 15 of the Procedural Recommendation,[14] the Authority will publish this document on its eCOM Online Notification Registry. The Authority does not consider the information contained herein to be confidential. You are invited to inform the Authority within three working days[15] following receipt of this letter if you consider, in accordance with EEA and national rules on confidentiality, that this letter contains confidential information which you wish to have deleted prior to publication. You should give reasons for any such request.

Yours sincerely,

Gunnar Thor Petursson
Director
Internal Market Affairs Directorate

Emily O'Reilly
Deputy Director for Competition
Competition and State Aid Directorate

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[14] EFTA Surveillance Authority Recommendation of 2 December 2009 on notifications, time limits and consultations provided for in Article 7 of the Act referred to at point 5cl of Annex XI to the Agreement on the European Economic Area (Directive 2002/21/EC of the European Parliament and of the Council on a common regulatory framework for electronic communications networks and services), as adapted by Protocol 1 thereto, OJ C 302, 13.10.2011, p. 12, and available on the Authority's website at http://www.eftasurv.int/media/internal-market/recommendation.pdf ("the Procedural Recommendation").

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