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EFTA SURVEILLANCE  
AUTHORITY

Póst- og Fjarskiptastofnun  
Sudurlandsbraut 4  
108 Reykjavík  
Iceland

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

Dear Mr Gíslason,

**Subject: Mila conditions for IPTV over Access Option 3 - Remedies**

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

## **I. PROCEDURE**

On 28 March 2018, the EFTA Surveillance Authority (“the Authority”) received a notification of a draft national measure in the field of electronic communications, pursuant to Article 7 of the Framework Directive from the Icelandic national regulatory authority, *Póst- og Fjarskiptastofnun* (“the PTA”), concerning the market for wholesale broadband access in Iceland.<sup>2</sup>

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 13 December 2017 to 5 January 2018.

On 13 April 2018, the Authority sent a request for information (“RFI”) to the PTA (Doc No. 908610), to which a reply was received on 16 April 2018 (Doc No. 909275).

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<sup>1</sup> 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”).

<sup>2</sup> Corresponding to market 5 of the EFTA Surveillance Authority Recommendation of 5 November 2008 (Decision No 688/08/COL) on relevant product and service markets within the electronic communications sector susceptible to *ex ante* regulation in accordance with the Framework Directive, OJ C 156, 9.7.2009, p.18 (“the 2008 Recommendation”).

The period for consultation with the Authority and the national regulatory authorities ("NRAs") in the EEA States, pursuant to Article 7 of the Framework Directive, expires on 30 April 2018.

Pursuant to Article 7(3) of the Framework Directive, the Authority and the EEA NRAs may make comments on notified draft measures to the NRA concerned.

## II. DESCRIPTION OF THE DRAFT MEASURE

### II.1. Background

In its Decision No. 21/2014,<sup>3</sup> the PTA designated Mila ehf. ("Mila") with significant market power ("SMP") on the market for wholesale broadband access (market 5/2008). Furthermore, the PTA imposed an access obligation on Mila with respect to bitstream access and an obligation to publish a reference offer. Mila was obliged, among other things, to offer bitstream access with specific quality definitions, including access which uses significant bandwidth and which made high demands on quality for TV distribution over IP (IPTV<sup>4</sup>).

Subsequently, the PTA adopted a set of decisions related to its analysis of the wholesale broadband access market.<sup>5</sup>

### II.2 Current notification

In the currently notified measure, the PTA proposes to introduce amendments to the Mila reference offer for bitstream access, with respect to conditions for IPTV services delivered via Access Option 3 (A3). The Decision covers: (i) access with large bandwidth with high quality of service requirements (QoS) for IPTV with multicast technology, and (ii) access to large bandwidth with high QoS for IP video rental (VoD) with interactive bitstream transmission.

IPTV via A3 means transit of both multicast and unicast from central Points of Interconnection (PoIs) to various access options through a backbone network for bitstream services and to an end user. This entails transit of shared TV channels and streaming traffic from the service purchaser through the Mila trunk and access networks. All of the same limitations and conditions apply for IPTV on A3 as apply to other access options. IPTV over A3 gives Mila's service purchasers the option of distributing their IPTV service at all locations where Mila has installed IP DSLAM equipment and where the IPTV service is already on offer. When a new location is configured for IPTV services, then the IPTV

<sup>3</sup> Notified to the Authority on 11 July 2014 and assessed by the Authority on 11 August 2014, Case No. 75750, Document No. 715771.

<sup>4</sup> As explained in its reply to the Authority's RFI, regarding Mila's obligation to offer access to IPTV, the PTA found it necessary that it would cover all access forms, i.e. Access Option 1, Access Option 2 and Access Option 3.

<sup>5</sup> I.e. Decision 29/2014 – Amendments to the Reference Offer for bitstream, introduction of vectoring (Case 76297); Decision 41/2014 – Tariff and conditions for VDSL+ for corporate connections and domain and ports for interconnection (Case 76462); Decision 18/2015 – Modification of reference offer for bitstream access with regard to tariffs and conditions for ADSL+ and SHDSL+ at Access Option 1 (Case 77546); Decision 9/2016 – Wholesale market access to local loops in Iceland, Reference Offer (Case 79335); Decision 5/2017 – Review of the Mila wholesale tariff for copper local loops (Case 80606); Decision 6/2017 – Review of the Mila wholesale tariff for bitstream access (Case 80608); Decision 10/2017 – Review of the Mila reference offer for wholesale bitstream access (Case 80773); Decision 24/2017 – Review of the Mila wholesale tariff for fibre optic to street cabinets and fibre optic in the access network (Case 81255) and Decision 27/2017 – Conditions and wholesale tariff for Mila's IP telephony service provided at a fixed location at Access Option 3 (Case 81373).



service over A3 is included automatically unless specified otherwise. The service thus provides access to the whole country which means that it is not possible to select individual locations or areas for IPTV service over A3. The service is offered on ADSL2+, VDSL2 and GPON connections on Mila's access systems. The maximum number of channels to end users is the same as on other access options, i.e. 5.<sup>6</sup>

The PTA proposes a setup and monthly fee structure for the service. As to the actual calculation of tariffs for IPTV delivered via A3, the PTA explains, in its reply to the Authority's RFI, that if Mila receives a reasonable access request for such a service, the PTA would instruct the company to deliver a cost analysis in due time. However, as it is not considered very likely that an access seeker will request access to IPTV on A3, the PTA does not find it proportionate to request Mila to conduct a cost analysis for that service at this time.<sup>7</sup>

The proposed amendments to the reference offer shall enter into force on 1 May 2018.

### III. COMMENTS

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

#### **Timely enforcement and effectiveness of remedies**

The Authority acknowledges the PTA's explanation in its reply to the Authority's RFI that it does not currently consider it very likely that an access seeker will request IPTV via A3 in the near future. Therefore, the PTA considered that it was more urgent to regulate other access options first, leaving regulation of IPTV access over A3 to a later stage.

Nevertheless, and in accordance with Article 16 of the Framework Directive, the Authority would like to recall that the imposition, maintenance, amendment or withdrawal of remedies is an integral part of the market analysis process. The fragmented specification of terms and conditions for individual access services in Iceland, significantly after the completion of the underlying market analysis, risks harming competition and reducing legal certainty for market participants.

It is recalled that, in the interests of pursuing a consistent policy across all EEA States and ensuring effective and targeted regulation, it is important that regulators enforce remedies in a timely and effective manner following the conclusion of the underlying market analysis.

Against this background, the Authority strongly urges the PTA to address its delayed and disjointed implementation of remedies. In this regard, the Authority encourages the PTA to undertake a timely analysis and notification of its next market review.

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<sup>6</sup> Apart from ADSL lines where the service on offer is either 1 HD channel or two standard SD channels.

<sup>7</sup> The PTA further explains that the two electronic communications undertakings currently providing IPTV services to end users are Siminn (Mila's mother company) and Vodafone. Those companies both buy access from Mila for IPTV on Access Option 1 (much deeper access than Access Option 3).

#### IV. FINAL REMARKS

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

Pursuant to Article 7(5) of the Framework Directive, the PTA shall take the utmost account of comments of other regulatory authorities and the Authority. It may adopt the resulting draft measure and, when it does so, shall communicate it to the Authority.


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

Pursuant to Point 15 of the Procedural Recommendation,<sup>8</sup> 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<sup>9</sup> 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

<sup>8</sup> 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").

<sup>9</sup> The request should be submitted through the eCOM Registry, marked for the attention of the eCOM Task Force.