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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: Review of Míla's wholesale tariffs in the market for trunk segments of leased lines - Remedies

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

I. PROCEDURE

On 16 April 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 trunk segments of leased lines in Iceland.²

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 14 February 2018 to 14 March 2018.

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 market 14 of the EFTA Surveillance Authority Recommendation of 14 July 2004 on relevant product and service markets within the electronic communications sector susceptible to *ex ante* regulation in accordance with Directive 2002/21/EC of the European Parliament and of the Council on a common regulatory framework for electronic communication networks and services, as incorporated into the Agreement on the Economic European Area (No. 194/04/COL) ("the 2004 Recommendation").

On 24 April 2018, the Authority sent a request for information (“RFI”) to the PTA (Document No. 910153), to which a reply was received on 26 April 2018 (Document No. 911034).

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 16 May 2018.

Pursuant to Article 7(3) of the Framework Directive, the Authority and the 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. 21/2015³ the PTA designated Míla ehf. (“Míla”) with significant market power (“SMP”) on the wholesale market for trunk segments of leased lines. Furthermore, the PTA imposed obligations on Míla regarding access, non-discrimination, transparency (publication of a reference offer), price control and cost accounting, and accounting separation. In particular, the PTA required Míla to prepare a cost model for the calculation of the wholesale prices for trunk segments of leased lines based on fully-allocated historical costs (“FAC HC”).⁴

In parallel, the PTA notified cost analyses and resulting wholesale tariffs for trunk segments of leased lines, Ethernet services, Metropolitan Data Highway (“MDH”) and temporary connections.⁵ In November 2015, the PTA also notified a recalculation of the wholesale tariffs for MDH connections.⁶ Míla was further required to review these tariffs no later than by the end of 2016 and on an annual basis thereafter, subject to authorisation by the PTA (following national consultation and consultation with the Authority).

In its assessment of the above draft measures, the Authority commented *inter alia* on the need to ensure a prompt and timely implementation of the proposed obligations, as well as the need to ensure an efficient and predictable approach to setting wholesale tariffs.

II.2 Current notification

In the current draft decision, the PTA notified its review of wholesale tariffs for services falling within the relevant market for wholesale trunk segments of leased lines in Iceland, namely MDH, Ethernet services (for locations both on and outside of the Fibre-Optic Ring), a new service called Sync-Ethernet, and other leased lines in the trunk line network.⁷

Míla submitted a cost analysis to the PTA based on the same methodology as in previous analyses and taking account of data from the operational year 2016.⁸ The initial cost analysis

³ Notified to the Authority on 1 July 2015, Case 77596.

⁴ In its reply to the Authority’s RFI, the PTA explained that it intended to review the costing methodology in the next market analysis, if the result of that analysis still showed a position of SMP on the market. The frequency and the method of the tariff reviews would also be reconsidered at that time.

⁵ Notified to the Authority on 1 July 2015, Case 77597.

⁶ Notified to the Authority on 23 November 2015, Case 78301.

⁷ The draft decision will, at the time of entry into force, replace PTA Decisions No. 22/2015, 23/2018 and 25/2015 (Case 77597) and 32/2015 (Case 78301).

⁸ In its reply to the Authority’s RFI, the PTA clarified *inter alia* that data for 2017 was not available at the time of the national consultation.

was submitted to the PTA in June 2017 with further revisions submitted up to February 2018.

In addition to the Ethernet service that was already on offer, a cost analysis was submitted for a new Sync-Ethernet service which Míla intends to offer. In its response to the Authority's RFI, the PTA explained that the new service is a further development of the basic Ethernet service and, as such, falls within the scope of the relevant market definition identified in PTA Decision No. 21/2015. Tariffs for temporary connections as well as one-time charges (e.g. set-up fees) are to remain unchanged.

As regards the delay in the tariff review process, the PTA explained, in its reply to the Authority's RFI, that Míla was allowed several extensions to the deadline for delivery of its costing analysis in order to fully include data for 2016. Delays were also incurred to allow for submission of a single comprehensive analysis that can be easily updated with new data for subsequent tariff reviews.

Míla is obliged to give at least 60 days' notice before the new tariffs can enter into force.⁹

In accordance with PTA Decision No. 21/2015, Míla is to submit an updated cost analysis no later than 1 April 2019 and based on data for the operational year 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 reasons (in section II above) for the delay in the tariff review process. However, the PTA's Decision No. 21/2015 did specify that Míla should review the tariffs no later than by the end of 2016 and on an annual basis thereafter.

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 access services in Iceland after the completion of the underlying market analysis, and with delays in the implementation timetable prescribed therein, risks 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 fragmented implementation of remedies. In this regard, the Authority encourages the PTA to undertake a timely analysis and notification of its next market review, as well as a timely analysis and notification of any further proposed updates or changes to the costing analysis in the current draft decision.

⁹ The proposed tariffs are included in Appendix 1 to the draft decision. In line with PTA Decision No. 21/2015, which specified that the PTA shall take the development of tariffs on comparable competition markets into account, the PTA examined a limited selection of tariffs in other markets, but noted difficulties in finding reliable comparators for the services in question.

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.

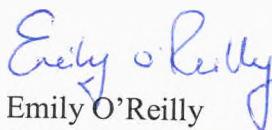
The Authority's position on the current notification is without prejudice to any position the Authority may take in respect of other notified draft measures.

Pursuant to Point 15 of the Procedural Recommendation,¹⁰ 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 days¹¹ 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,



Gabrielle Somers
Acting Director
Internal Market Affairs Directorate



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

¹⁰ 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").

¹¹ The request should be submitted through the eCOM Registry, marked for the attention of the eCOM Task Force.